



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Via E-mail

Deanna Chow, Principal Planner
City of Menlo Park, Planning Division
701 Laurel St.
Menlo Park, CA 94025
Submitted via connectmenlo@menlopark.org

RE: Draft EIR for the Menlo Park General Plan and M-2 Zoning Update

Dear Ms. Chow:

The Citizens Committee to Complete the Refuge (CCCR) appreciates this opportunity to respond to the Draft Environmental Impact Report (DEIR) for the Menlo Park (City) General Plan and M-2 Zoning Update (Project, Update).

CCCR has its roots in the citizens who led the campaign that founded the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) in 1972. For the decades since, we have been active pursuing Refuge expansion and the protection of Refuge habitats, wildlife and lands as well as all threatened and dwindling wetlands of the Bay. Our interests have prompted us to comment on multiple projects of the City in the last decade inclusive of scoping comments responding to the Project's NOP (see Appendix A). We additionally participated in focus group, workshop, public meeting and survey actions conducted as part of the ConnectMenlo public process.

Project Description: We understand that this DEIR addresses two major actions. It proposes updates to several State-mandated elements of the City's General Plan (GP), specifically, Land Use and Circulation. As consistent with other GP elements, these updates are applicable to the entire City, excepting certain content that by nature is location-specific. The second major action would amend Title 16, Zoning, of the City's Municipal Code in regard to zoning changes proposed for the M-2 Area (Bayfront), intended to update Bayfront zoning designations with implementation of updated GP programs, development objectives and regulations and of design standards.

The DEIR is defined as a Program Level EIR (Sec. 1.3) and a basis for subsequent streamlined environmental review of eligible development through tiering provisions of CEQA (Sec. 1.4.1) and/or Infill Project qualification under Senate Bill (SB) 226 of 2011 (Sec. 1.4.2). It also explains that the City Council set six objectives for the GP updates given that the Project "mainly addresses growth in the Bayfront Area and applicable land use and circulation policies citywide." (Sec. 3.5) and quoted here:

- Establish and achieve the community's vision.
- Realize economic and revenue potential.
- Directly involve Bayfront Area property owners (as land use changes are expected only in that area).
- Streamline development review.

- Improve mobility for all travel modes.
- Preserve neighborhood character.

Comments Regarding this DEIR: In our review and comments here, CCCR has paid particular attention to information and concerns presented in our scoping comments and those of the USFWS regarding the Don Edwards National Wildlife Refuge (Refuge). (See Appendix A) Additionally our comments will address topics of concern that rose to our attention during our review.

The comments are presented in two steps, first discussing issues of broad, major concern and then comments specific to content of the DEIR.

MAJOR ISSUES OF CONCERN

Summary

1. The DEIR is inadequate as a Program EIR for the Bayfront by failing to provide data and analysis suited to consideration of an Area Plan and foreseeable impact of zoning changes, to sufficiently inform the public and decision-makers and to establish explicit, measurable mitigations to guide tiered projects and infill-exemption eligibility.
2. The City has inappropriately and impermissibly conducted parallel rather than sequential CEQA processes for this Project and the Updates-dependent Facebook West Expansion Project.
3. The DEIR incorrectly uses Initial Study checklist items as its criteria and thresholds of significance, thereby omitting or failing to analyze important issues relevant to this Project.
4. The DEIR fails to incorporate multiple, directly-applicable conservation plans and thereby fails to assess high-density development and residency impacts introduced by Bayfront zoning updates.

Discussion

1. Inadequacy of the document to serve as a Program EIR for the Bayfront.

It is our observation that the DEIR provides a mile-high perspective of the Project even when a ground-level view is needed. This error may arise from the DEIR's action in regard to GP elements, which are city-wide in nature. Very differently, the Bayfront action is specific as an area plan and development standard, an action that demands much more detailed analysis to assess foreseeable impacts and specific, measurable mitigations. For area plans, a Program EIR must provide narrowly-focused, detailed analysis and mitigation specification. This becomes an issue of great concern given that the Project Descriptions leads to us to conclude that streamlining Bayfront development as tiered projects or as CEQA-exempted Infill projects is a key desired outcome. The DEIR is inadequate for such decisions.

As stated in the DEIR (Sec. 3.7.3, p. 3-28): Under Section 15064(d) of the CEQA Guidelines, *"In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project."*

The DEIR fails to identify and analyze numerous potential impacts and in many cases, defers that analysis to future study as part of project permitting. This approach improperly defers analysis to future mitigation. While this approach may be necessary in cases where it is not possible to assess impacts at the program level, such analysis is possible in this case and, therefore, required. Even at the program level, the EIR preparers can anticipate that these impacts could occur, quantify the impacts, and identify detailed mitigation measures. The fact that this DEIR fails to conduct the necessary evaluations and impermissibly defers them will likely deprive the public of any opportunity to review these impacts. This is of particular concern because City Council objectives and DEIR discussion of streamlining environmental review (Sec. 1.4) cause us to conclude that the City will consider options that eliminate public review. In that regard and importantly, the inadequate analysis of this DEIR fails to inform decision-makers of the likely consequences of approving the Project.

Development in the Bayfront is a City Council objective and zoning changes (or "updates") are needed to do so. As such it is a critical concern that the DEIR failed to provide detailed analysis of known conditions of high potential risk in the Bayfront. New zoning and zoning boundaries simultaneously introduce new risks and occur in locations that previously were not at similar risk. For each placement of new zoning, the City has an obligation to identify location-specific impacts and mitigation requirements that may differ from locations with like zoning. An area plan differs from the situation in which a developer comes to the City to request a rezoning of a particular site. In that case, the resulting environmental analysis would inform the City and developer of specific mitigation obligations. An area plan introduces substantial complexity but cannot dismiss analysis of impacts of particular rezoning in relation to location and relationship to existing conditions or, where applicable, to adjoining, different rezoning.

Some examples of great concern arise from inadequacies of analysis regarding natural community conditions, sensitive species and hydrology adjoining the Facebook East Campus, wetland impacts of the Life Science rezoning and potential flood impact on Bayfront Canal in Redwood City, as we discuss in detail below. As written in this DEIR, the many mitigations are inadequate to the task of flagging well known conditions that should force additional environmental review of tiered projects and/or disallow Infill CEQA exemptions under SB 226. Without analysis and appropriate mitigations, the public and decision-makers would be denied opportunities to be informed about impacts.

Especially in regard to the Bayfront, the DEIR must include new analysis of adequate depth as well as mitigations that provide measurable guidance and that do not impermissibly defer mitigation determination to future reviews, policies and permitting.

2. Relationship to the Facebook Expansion Project (FB Expansion): Our response to the NOP asked that the DEIR explain how the FB Expansion CEQA process could run in parallel to this DEIR, when that Project is dependent on outcomes of the Update. We had asked the same question in our response to the FB Expansion NOP. We are very disappointed that the City offered no such explanation in either DEIR and were further amazed to see the following:

- a. "In this case, the proposed project that is the subject of this EIR consists of long-term plans that will be implemented over a 24-year buildout horizon (e.g., 2016 to 2040) as policy documents *guiding future development* activities and City actions. *No specific development projects are proposed as part of the project.*" (Sec. 1.3, emphasis added)

b. *"The proposed project includes potential new development, that would only occur in the Bayfront Area, associated with implementation of ConnectMenlo in combination with the remaining and previously approved buildout potential in the current General Plan that would be reaffirmed and carried forward to the 2040 buildout horizon upon approval of this General Plan and Zoning Update."* (Chapter 3. Project Description, paragraph one)

c. The Project's buildout targets and analysis (Sec. 3.7.3 and Table 3-2) include the buildout targets of the FB Expansion. This data is published just days after the DEIR for the FB Expansion is released for public comment, quite some time before its proposals can be considered final. Significantly, it is also well before the Update CEQA process is complete and inclusive of final outcomes that would provide a zoning change on which the FB Expansion depends.

d. Throughout the discussions of environmental impacts, under existing conditions, the FB Expansion DEIR included proposed goals, policies and programs of the GP Update that *may* apply. The GP Update is not an existing condition of that project nor is that project an existing condition of the Update, as a Program EIR (see above) or as defined in the CEQA Guidelines, 14 CCR § 15125, Environmental Setting, as follows, emphasis added:

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation* is published, or if no notice of preparation is published, at the time environmental analysis is commenced, *from both a local and regional perspective*. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. *The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.*

(d) *The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.*

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

Given such findings both the FB Expansion and the GP Updates DEIRs are premature through cross-reference and presumed outcomes and are inappropriate as parallel rather than sequential projects. For impact analysis and mitigation, both projects are impermissibly based on plans that are not existing conditions, baselines established at the time of their respective NOPs in the summer of 2015.

The City must defer consideration of the FB Expansion until after the Updates CEQA process is complete and recorded.

Reference: On July 11th, 2016, CCCR submitted comments to the Menlo Park Planning Department regarding the FB Expansion DEIR. As it is impossible to separate that project from this one, ***we include that letter, located in the Update DEIR's Appendix A, as part of these comments.***

3. Standards of Significance

The DEIR uses the Initial Study (IS) checklist items as its criteria and thresholds of significance. This approach results in a document that misses some of the most important issues. An IS, which is a screening document to direct further CEQA review, is very different than an EIR, which conducts the detailed review. Further, the use of IS checklist items as thresholds of significance is in error. With the exception of the Mandatory Findings of Significance, an IS checklist does not provide any thresholds or criteria of significance. Rather it identifies topics to be evaluated during the screening for potentially significant impacts. The EIR should be revised to focus all environmental impact analysis on actual impacts of potential significance.

4. Omitted conservation plans and impacts of high density development and housing to wildlife, habitats, hydrology and recreation.

In our scoping comments we listed a number of major conservation plans that would need to be considered as existing conditions and information resources for impacts analysis in the DEIR, all of them directly involving the Refuge lands that line the Bayfront and most of the shoreline Planning Area of the Project. These comprise ~1572 acres, the largest expanse of open space in Menlo Park, stretching from the East Palo Alto border near the Dumbarton Bridge to Bedwell Bayfront Park. These publicly-held lands are all planned for habitat restoration as part of the South Bay Salt Pond Restoration Project (Restoration Project), an approved and authorized Federal/State plan, and are also subject to two other approved Federal wildlife and habitat plans, the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan and the US Fish & Wildlife Service (USFWS) Tidal Marsh Recovery Plan.

Given the development focus on the Bayfront, it was more than disturbing to find that the Biological Resources discussion (Sec. 4.3) lists not one of these plans, as CEQA requires. Again CEQA Guidelines 14 CCR § 15125 (d) applies.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

General mentions were included in Biological Resources text about the Refuge and the Restoration Project, as entities but not associated with relevant plans, as a footnote citing a Refuge Complex map (seven refuges, not a detailed local reference) and another footnote referencing a scientific study on mudflats posted on the Restoration Project website. Somewhat in contrast, in Hydrology and Water Quality (Sec. 4.8) text described certain details of both plans, each directly referenced in footnotes, confirming that the DEIR preparers knew about these plans.

Please consider these descriptions that demonstrate the direct relevance and, in fact, analysis value for assessing the biological impacts along the shoreline and identifying mitigations of but not limited to Public Services and Recreation, Biological Resources and Hydrology and Water Quality

a. Don Edwards SF Bay NWR Comprehensive Conservation Plan (CCP): Approved in 2012, this document is a 15-year plan to guide Refuge actions toward well-defined goals. As part of the National Wildlife Refuge System, the goals of the CCP fit within the System-wide mission of wildlife-first, an objective that, by Congressional direction, must use the best available science. Operating under the National Wildlife Refuge System Act, the Refuge also provides wildlife-compatible public use opportunities, some already available in Menlo Park. With this wildlife focus, the CCP, prepared under NEPA guidelines, provides a wealth of best-of-science detail for Menlo Park on wildlife, plants, habitat categories, threats, hydrology, geology, sediment and a broad host of other details and describe existing conditions on Refuge lands better than any other source. For all analysis of potential impacts to Refuge lands, this document should have been referenced as an existing condition.¹

b. South Bay Salt Pond Restoration Project Program and Phase 1 EIR/EIS and Phase 2 EIR/EIS: In December, 2007 the final Programmatic EIR/EIS was recorded and released. The plan described in extensive detail the 50-year restoration plan for more than 15,000 acres of former salt ponds, including all of the ponds in Menlo Park. The plan provided a stepped set of restoration plans, to be phased over decades, developed with broad stakeholder participation and incorporating the best of science. It's tri-fold purpose was set as habitat restoration, flood protection and public access. The document also provided the Project-level Phase 1, location-specific actions that included pond SF-2 in Menlo Park and public benefits of trail improvements and an interpretative overlook in Bedwell Bayfront Park. This document, program and project level, is a conservation plan that should have been listed under existing conditions.²

Although not an existing condition at the time of the NOP, the Phase 2 EIR/EIS, final within recent months, would have been reasonable, under CEQA, to list with the 2007 Program document for the information it provides for changes expected during the Project's 24-year buildout. The actions of Phase 2 also gained probable funding resources with the June passage of Measure AA, funding the San Francisco Bay Restoration Authority. The Phase 2 plan describes extensive restoration action in ponds along the Bayfront. Several years ago members of the City's ConnectMenlo staff participated in a tour introducing the draft Phase 2 alternatives to the public. In fact, one of the alternatives discussed that day was described in Hydrology & Water Quality, p. 4.8-19. As this information is

¹ Don Edwards San Francisco Bay NWR Comprehensive Conservation Plan, 2012:

https://www.fws.gov/refuge/Don_Edwards_San_Francisco_Bay/planning.html

² South Bay Salt Pond Restoration Project Final EIR/EIS 2007: <http://www.southbayrestoration.org/EIR/>

relevant, and particularly so to wildlife, habitat, and public access, listing and referencing it would more fully inform the public and decisionmakers, while providing a more robust basis for analysis and mitigation.

c. Tidal Marsh Recovery Plan, Tidal ecosystems of Northern and Central California (TMRP): This plan was published in December 2013, after completing the NEPA process and 15 years of development. It is a plan of the US FWS Endangered Species Division that spells out a recovery plan for five endangered species, bird, mammal and plant, and additionally for 11 species/subspecies of concern, all of which depend on tidal marsh ecosystems. The document's analysis is based on the biology of each species but its goal is the comprehensive restoration and management of tidal marsh ecosystems in and beyond San Francisco Bay.

Not a regulatory document in and of itself, the TMRP does form the core of USFWS guidance for any programs that manage or restore tidal ecosystems. In Menlo Park, this guidance directly applies to the Refuge, charged in its mission to protect and provide habitat for a number of the endangered species, species known to be found along Ravenswood Slough, Flood Slough and/or north of Bedwell Bayfront Park on Greco Island. Similarly then it is guidance to the Restoration Project which will be leading Phase 2 restoration in the Refuge ponds and is intended to reestablish tidal ecosystems in Pond R4, adjoining Bedwell Bayfront Park, enticing the federally-endangered Ridgeway rail (formerly California clapper rail) and salt marsh harvest mouse to expand their populations into the restored pond.

Given its role in this shoreline's evolution toward restoration, the TMRP should appropriately be a reference of guidance to this Project. Its content, along with the CCP, document key threats to locally significant species, threats that include impacts of development construction, structure design, increases of population density (job or residence) and of predation. The TMRP includes map and localized detail that directly apply to the Bayfront.³

The DEIR must be improved to list these three conservation plans, all of substantial significance to the Bayfront and to the overall Planning Area that includes tidal marshes and mudflats from Flood Slough to offshore of East Palo Alto.

COMMENTS ON SPECIFIC ENVIRONMENTAL IMPACTS AND MITIGATION

Many CCCR comments that follow are additive, where appropriate, to major concerns already discussed, serving as examples, relevant detail or clarification.

Project Description, Chapter 3

3.3.2.1 Existing Land Use and Figure 3-2

We observe that the City lists and maps just 10% of the City's lands as Open Space/Conservation Area inclusive of a County park. Conversely, as the Figure 3-2 map demonstrates, that 10% does not include the ~1572 acres of premier conservation lands of the Refuge. The Refuge is a City landowner and its lands are public lands. If the Refuge was correctly included in that designation, perhaps analysis

³ Tidal Marsh Recovery Plan, USFWS, FEIS 2013: https://www.fws.gov/sacramento/es/recovery-planning/tidal-marsh/es_recovery_tidal-marsh-recovery.htm

throughout this DEIR and other Bayfront plans would receive analysis more consistent with the GP Goals, Policies and Programs protecting City lands now designated as Open Space/Conservation Area.

3.4 Project Study Area

The DEIR states: "The State of California encourages cities to look beyond their borders when undertaking the sort of comprehensive planning required of a General Plan." The section then goes on to limit the study area to lands within City jurisdiction and Sphere of Influence (potential annexations). Doing so impermissibly avoids impacts that the Project may have regionally i.e. on neighboring lands and jurisdictions. An example we have in mind are potential impacts on Redwood City involving Bayfront Canal, which Figure 3-5 appears to show as within the Study Area. The DEIR must analyze its impacts beyond the Study Area and, in this example, does not. (See Sec. 4.8, Hydrology comments below)

3.7.1.1 Land Use Element Update

1. The primary purpose of the Land Use Element Update ... "describes the changes for the future development in the Bayfront Area, including new land use designations and changes in designations for individual parcels." It is with some great concern here, and elsewhere, that maps included fail to provide detailed focus on the Bayfront but rather persist in providing only a mile-high overlook of the entire City/Study Area. This DEIR cannot serve as guidance for Bayfront tiering or Infill CEQA exemptions unless it provides detail-level information for analysis and for public and decision-maker review. An example of our concern is the lack of a map that clearly provides boundaries for the proposed Life Sciences designation near, or possibly on top of, wetlands.

The Project Description needs to provide Bayfront-focused equivalents of the various land use designation, zoning and circulation maps that are currently only City-wide views.

2. Land Use Designations/Bayfront: It is our great concern that the DEIR proposes to layer several Residential-Mixed Use (R-MU) designated areas on the Facebook East campus, itself rezoned from General Industrial, Conditional Park (M2(X)) to the more varied Office (O). We understand that the R-MU designation will permit Facebook to build housing for its employees. In our comments regarding Biological Resources (below), we discuss the extraordinarily sensitive nature of that location and extensive potential impacts, a concern we raised in our scoping letter as also done by the Refuge.

Here again we see that this DEIR fails to make the existing conditions evident by using a mile-high analysis approach such that the impacts are only evident to readers who are familiar with these lands.

We ask that housing be prohibited on the Facebook East campus, regardless of land use designation, and, to inform the public and decision-makers generally, that the DEIR be revised to include detailed land use designation and like maps for the Bayfront.

3. Land Use Designation/Baylands, p. 3-20: It is notable in other designations that institutions associated with each land use are identified. So it puzzles us that the Baylands designation does not identify the Refuge, owner/manager of the majority of the Baylands. This land is publicly held in perpetuity as a National Wildlife Refuge and cannot be sold or transferred without an Act of Congress.

This land use designation should be corrected to acknowledge the Refuge presence.

Public Services and Recreation, Sec. 4.1

4.12.3 Parks and Recreation

4.12.3.1, Environmental Setting/Existing Conditions

As mentioned elsewhere, analysis of this environmental impact is city-wide and is devoid of analysis of impacts of Bayfront development on local recreation resources. Under "Regional Parks and Preserves" the Refuge is identified but there is no analysis that drills down on what Bayfront-specific impacts may result from high density development and housing. Bayfront-specific impact analysis needed to be provided. Previously cited major conservation plans that include recreation programs and plans need to be listed and considered.

In the Refuge's scoping letter (Appendix A), Project Leader Anne Morkill raised concerns about the expected significant increase of pedestrian and bicyclist traffic along the Bay Trail. This increase is reasonably anticipated in the Bayfront given the DEIR's high density development proposals, inclusive of a pedestrian/bike bridge crossing Bayfront Expressway. Additionally, Phase 2 of the Restoration Project plans to install a new trail connection from the Bay Trail to Bedwell Bayfront Park, crossing through the Refuge. Phase 2 will also add other Refuge trails and an overlook adjacent to the Park, recreation changes serving the Bayfront.

Parks and Recreation needs to be analyzed in detail for the Bayfront due to changes that can very reasonably be anticipated from vastly increased density.

4.12.3.2 Standards of Significance

We repeat here that the Standards of Significance are limited to guidelines of the Initial Study and that the impact analysis of and EIR must instead be based on actual impacts of the Project.

4.12.3.3 Impact Discussion and 4.12.3.4 Cumulative Impact Discussion

None of the impacts discussed in these sections adequately analyze impacts in the Bayfront and therefore are unusable as a basis for mitigation or decisions regarding streamlining development projects in the Bayfront area.

Section 4.3 must be revised to provide the appropriate level of analysis of Bayfront impacts and mitigations.

Biological Resources, Sec. 4.3

Impacts on biological resources is of very great concern to CCCR as regards impacts of proposed Bayfront rezoning and development. We reemphasize here the existing condition and impact analysis issues discussed as major concerns above. Emblematic of our mile-high concerns, we note that all of the map figures of this section include the entire City. Not one drills down to detail the Bayfront.

4.3.1.2 Existing Conditions

The DEIR provides a general, cursory description of biological resources in and adjacent to Menlo Park's Bayfront Area that contains inaccuracies and important omissions that must be rectified:

1. National Wetland Inventory Wetland Habitat Types, Figure 4.3-4 : The section incorrectly identifies the former salt ponds that are adjacent to the Bayfront Area as either "Lake" habitat or "Freshwater Emergent". In fact, the ponds are neither.

2. Coastal Salt Marsh and Salt Ponds, Page 4.3-9: This section fails to identify the ponds as being part of a National Wildlife Refuge and provides no information on current conditions or habitat values. These ponds provide important seasonal roosting and foraging habitat for thousands of migratory shorebirds and other waterfowl when they fill with winter rainwater, making this a sensitive site with respect to potential impacts from the proposed changes in land use, development intensity, building height and pedestrian/bike circulation, and construction activities on adjacent Bayfront Area parcels.

Additionally, the DEIR fails to identify and discuss the near-term changes in the salt pond conditions scheduled to occur when the South Bay Salt Pond Restoration Project's recently-adopted Phase 2 plan for the Ravenswood ponds is implemented. The Phase 2 plan will expand areas of tidal salt marsh for the federally-endangered Ridgeway's rail and salt marsh harvest mouse and create nesting habitat for the endangered snowy plover in ponds directly adjacent to the Bayfront Area.

3. Sensitive Natural Communities, Page 4.3-17: This discussion is an example of the broad-brush analysis that does not provide Bayfront biological detail that is badly needed, as discussed elsewhere. The section depends on the CNDDDB database and not on local surveys nor does it access applicable conservation plans that we have discussed previously. Instead we are surprised to see the section refer to a 2004 report of the San Francisquito Creek Joint Powers Authority, a flood control agency, instead of using scientifically-qualified biological sources and more recent information.

4. Jurisdictional Wetlands and Other Waters, Page 4.3-17 : This section correctly identifies the "freshwater emergent" wetlands in the only undeveloped portion of the M-2 area located "along University Avenue and south of Bayfront Expressway" as being likely jurisdictional. On page 4.3-24, the DEIR states that this site "has a designation of Life Sciences over areas of marsh land cover" and would "be a sensitive natural community". In spite of these significant facts regarding an area slated for development, the DEIR includes no detailed location map, provides no information on acreage potentially impacted and no information on current vegetation or habitat values. It appears that at least 60% of this undeveloped area has vegetation associated with wetlands including cattail, sedge, rushes, marsh baccharis, pickleweed, saltgrass and alkali heath.

All of these concerns need to be addressed in a revised and recirculated DEIR.

4.3.2 Standards of Significance

Here again the DEIR misuses Standards used for Initial Studies and fails to define impacts that specifically arise from this Project, failing through it to inform the public and decision-makers.

4.3.3 Impact Discussion

Seven potential general impacts to Biological Resources are identified in the DEIR. The discussion in the DEIR for almost all of the identified impacts includes statements that "goals, policies and programs in the proposed Land Use Element and existing Section II, OpenSpace/Conservation" in the General Plan

would help protect biological resources and “minimize impacts”; however, **goals, policies and programs do not assure mitigation, and the DEIR concludes that six of the seven impacts would be “potentially significant” unless mitigated.**

The mitigation measure for each of these significant impacts (BIO-1 through BIO-4 and BIO-6 and BIO-7) is identical: Mitigation Measure BIO -1. Mitigation Measure BIO-1 improperly defers analysis to future study in a “biological resources assessment” required as part of “project approval” by Menlo Park and when the project applicant obtains “appropriate authorizations” from regulatory agencies. **In fact, the language in Mitigation Measure BIO-1 states that future study is required, but outlines no enforceable measures to ensure that any of the six specified significant impacts will be adequately mitigated.**

Additionally, in the absence of a requirement explicitly stated in this measure for a full EIR at the project level for biological resources, agencies, other interested parties and the public will have no opportunity to review and comment on the adequacy of future analysis and mitigation.

The DEIR fails to identify, analyze or provide mitigation for a number of potential impacts that could result specifically from the proposed program-level changes to the Bayfront including the following:

- 1) Increasing the maximum allowed height (including the bonus) from 35 feet in the current *General Industrial* zoning to 6 stories for the proposed *Office, Life Sciences* and *High Density Residential* zoning, and 10 stories for *Optional Hotel* zoning.

Increased building height can create bird strike hazards, lighting impacts and shadowing on adjacent sensitive biological resources, including the National Wildlife Refuge and the undeveloped parcels and open space south of Bayfront Expressway. These impacts from taller buildings could be especially serious on the Facebook East Campus which is surrounded by the Refuge on two of its three sides and actually juts out into a flyway corridor between ponds used by waterfowl and other birds within the Refuge. The DEIR discusses proposed “bird-safe” design regulations that could help address this impact, but the regulation includes “a waiver from one or more” of the requirements. Without a specific and enforceable mitigation measure, this impact is potentially significant.

- 2) The new *Life Sciences* zoning is overlain on an estimated 15 acres of undeveloped baylands that include freshwater emergent wetlands. This area is directly adjacent to lands proposed to be designated *Open Space and Conservation* that also contain significant areas of freshwater emergent wetlands.

This Menlo Park zoning overlay would potentially allow fill of jurisdictional wetlands and the direct loss of a sensitive natural community. Additionally, moving development closer to the *Open Space* lands could impact wildlife in that area as well. Fill for development and additional stormwater runoff could alter the hydrology, threatening the areas of freshwater marsh found throughout this area. These are program-level potentially significant impacts that have not been analyzed or mitigated.

- 3) The proposed zoning change from *General Industrial* to *High Density Residential* development on the periphery of the Facebook East Campus would generate a number of potential impacts to wildlife in the immediately adjacent Refuge. Specific concerns were brought to the City's attention by the USFWS San Francisco Bay National Wildlife Refuge (see July 2015 letter in Appendix A - Notice of Preparation and Scoping Comments) as documented in the excerpt below from the agency's NOP comment letter:

“We are deeply concerned about the development, particularly the residential aspect, proposed for the M-2 Area. Residential development has a host of implications for wildlife resources and habitats in the area. We met with Facebook several months ago regarding their desire to provide housing on their East campus and expressed opposition to this residential concept. We have already experienced trespassing by Facebook staff through our lands neighboring the East campus. Housing on this campus will no doubt increase trespassing to our properties at all hours. Furthermore, housing near wildlife habitat generally has other negative implications including increases in noise, ambient lighting that will attract predators and disturb nesting endangered species, presence of free-roaming domestic animals that will predate on native wildlife, attracting nuisance animals (e.g., raccoon, skunk, crows), and garbage issues.” (*emphasis added*)

Additionally, the Refuge comment letter outlines the changes that will be occurring in the salt ponds along the north side of Highway 84 and directly adjacent to the Facebook East Campus. The recently-adopted Phase 2 Plan of the South Bay Salt Pond Restoration Project will enhance “nesting habitat of the federally and state-listed western snowy plover”, a ground nesting bird “particularly vulnerable to predation”, and tidal marsh restoration will “further benefit endangered species recovery along the borders of the East campus.”

The DEIR should have identified and analyzed these potentially significant impacts that can be anticipated to occur to endangered species and other wildlife, both from construction activities and the new residential use in the Bayfront Area, and the final EIR must provide specific mitigation measures.

4) The proposed changes to the Land Use and Circulation Elements and zoning changes will lead to significantly denser development in the Bayfront Area that will increase the number of commuting employees and new residents utilizing the Bay Trail, and the proposed pedestrian/bicycle bridge adjacent to the Refuge. The DEIR fails to examine impacts to wildlife from increased noise, disturbance, dogs (on or off-leash), night lights and avian predator perches associated with new structures, light poles, etc. These impacts were identified in the Refuge and CCCR scoping comment letters. They are related to the proposed overall increase in development in the Bayfront Area, which is not associated with specific projects; therefore, analysis and mitigation measures must be included in this program-level DEIR.

CCCR comments regarding Biological Resource impact measures

Impact BIO-1: Impacts to special status species

See all previous related comments. The DEIR improperly limits discussion to “checklist” criteria and fails to identify, analyze or mitigate potentially significant impacts to other wildlife in the Bayfront Area. Even for “special status species”, adequate baseline information, technical analysis and mitigation for program-level impacts is improperly deferred; therefore, the impact assessment/conclusion of “less than significant with implementation of Mitigation Measure BIO-1” is unsupported. Impacts remain “potentially significant”.

Impact BIO-2: Impacts to sensitive natural communities

See all previous related comments. DEIR improperly limits discussion of impacts to “checklist” criteria, when other important natural habitats in the Bayfront could be impacted (such as the salt pond roosting/foraging habitat used by migratory waterfowl). The DEIR identifies the “areas of marshland cover” along University Avenue as a “sensitive natural community” that could be impacted, as well as salt marsh habitat; however, due to inadequate technical analysis and mitigation, the impact assessment/conclusion of “less than significant with implementation of Mitigation Measure BIO-1” is unsupported; therefore, impacts remain “potentially significant”.

Impact BIO-3: Impacts to federally-protected wetlands

See all previous related comments. Due to inadequate baseline information, technical analysis and mitigation, the impact assessment/conclusion of “less than significant with implementation of Mitigation Measure BIO-1” is unsupported; therefore, impacts remain “potentially significant”.

Impact BIO-4: Impacts on movement of wildlife, wildlife corridors, and nursery sites

See all previous related comments. In reference to development reducing “the remaining natural habitat in the study area”, the DEIR includes a statement that “most wildlife in these areas are already acclimated to human activity”. There is no information provided on what wildlife is actually in “these areas” and no evidence provided to substantiate this conclusion.

As noted earlier, the reference to “bird-safe” design regulations for the Bayfront protecting migratory birds is not a correct assessment because the requirements can be waived. Due to inadequate information, technical analysis and mitigation, the impact assessment/conclusion of “less than significant with implementation of Mitigation Measure BIO-1” is unsupported; therefore, impacts remain “potentially significant”.

Impact BIO-5: Conflicts with local plans and policies

The DEIR concludes that there are no conflicts with local plans and policies and that the changes proposed in the Land Use Element and Bayfront Area M-2 zoning are consistent with General Plan goals, policies and programs, making this impact “less than significant”. A review of the General Plan goals, policies and programs listed in the DEIR (pages 4.3-20 through 4.3-23) indicates that this assessment/conclusion is unsupported with respect to biological resources in the Bayfront and should be revised to “significant”.

Placing the proposed Bayfront Area *Life Science* zoning overlay on undeveloped bayland parcels with jurisdictional wetlands and a sensitive natural community conflicts with a number of General Plan goals and policies including:

- Goal LU-6: Preserve open-space lands for recreation; protect natural resources and air and water quality; and protect and enhance scenic qualities.
- Policy LU-6.5: Open Space Retention. Maximize the retention of open space on larger tracts (e.g., portions of the St. Patrick's Seminary site) through means such as rezoning consistent with existing uses, clustered development, acquisition of a permanent open space easement, and/or transfer of development rights.

- Policy LU-6.7: Habitat Preservation. Collaborate with neighboring jurisdictions to preserve and enhance the Bay, shoreline, San Francisquito Creek, and other wildlife habitat and ecologically fragile areas to the maximum extent possible.
- Policy LU-6.11: Baylands Preservation. Allow development near the Bay only in already developed areas.
- Goal OSC-1: Maintain, Protect and Enhance Open Space and Natural Resources.
- Policy OSC-1.2: Habitat for Open Space and Conservation Purposes. Preserve, protect, maintain, and enhance water, water-related areas, and plant and wildlife habitat for open space and conservation purposes.

Irrespective of any possible future decisions by regulatory agencies, Menlo Park is proposing a zoning overlay for development, and according to Mitigation Measure BIO-1, the City would issue "grading and other construction permits" allowing for the loss of biologically sensitive open space lands "if avoidance is infeasible" and "compensatory mitigation" is provided. This site is adjacent to, and hydrologically connected with publically-owned wetlands that are designated as *Open Space/Conservation*. Clearly, the City-sanctioned loss of any wetlands in this area would be inconsistent with the goals and policies of Menlo Park's General Plan.

Impact BIO-6: Conflicts with provisions of approved habitat conservation plans

As discussed previously, the DEIR fails to identify and discuss the relevant conservation plans that are in place pertaining to biological resources both in and adjacent to the Bayfront Area, even though the plans' information below provided by CCCR in our scoping comment letter.

The BIO measures and impact discussions must be revised to adequately address analysis inadequacies, to better inform the public and decisionmakers and to develop Bayfront-appropriate mitigations.

Geology, Soils, and Seismicity, Section 4.5

4.5.2 Standards of Significance

As elsewhere discussed, it is inappropriate to use Standards of Significance required for Initial Studies to define impacts to be considered in an EIR. Doing so will omit actual impacts and fail to inform the public and decision-makers adequately.

4.5.3 Impact Discussion

General comment, GEO measures: The fact that the discussions and impact analysis of these major natural risks are again done at the "mile high" level for the Bayfront negates conclusions drawn. Location by location, liquefaction may vary due to the nature of alluvial soil layering. During seismic events, locations that are closest to open water, near Flood Slough, Ravenswood Slough, and the Dumbarton Bridge may be at risk for combinations of liquefaction and local inundation. Risks vary by location and the impacts and mitigation cannot be analyzed with a superficial city-wide view. An outcome in the Bayfront is that the findings are not suited to assessments of tiered projects or of infill project exemption eligibility.

GEO-1, GEO-3, GEO-4

Inadequate. See General comment, GEO measures above.

GEO-5

This measure defers any analysis of soil or seismic impacts to wastewater systems to the rationale that the area is serviced by several sanitary districts. The fact that City contracts with those districts for those services does not relieve the City from, as mitigation, maintaining a role monitoring the age, quality and capacity of the sanitary sewage infrastructure and the systems' ability to withstand impacts of seismic events. The City's role on behalf of residents, businesses and institutions should not be silently assumed or omitted from these impact discussions and mitigations.

4.5.4 Cumulative Impact Discussion

GEO-6

Inadequate. See General comment, GEO measures above.

Hydrology and Water Quality, Section 4.8

4.8.1.2 Existing Conditions/Physical Environment/Storm Drain System

There was some head-scratching while reading this section as its description lacks both detail and clarity. It was simply not sufficient as a presentation of the City's storm drain systems and related actions. It mention several studies, in 2003 and 2013. The description of the more recent study, flow capacity along Middlefield Road, seemed to imply it included data regarding flow to both San Francisquito Creek and the Atherton Channel, but not detailed in the DEIR. The related footnote (#21) did not link to data. By email to Justin Murphy, City Director of Public Works, we learned that the 2013 study included only flow data impacting San Francisquito Creek. We remain curious as to how much stormwater runs from Menlo Park and its Sphere of Influence into the Atherton Channel, of interest as that channel drains to the western perimeter of the Bayfront and affects Bayfront Canal.

Here again we are dismayed at the lack of detail for the Bayfront. We learned through the Facebook Expansion DEIR (FB Expansion) that storm drainage of its project site was inadequate to the degree that Facebook proposed to install new, larger storm drains leading to the pump station and Flood Slough. We wonder, what is the carrying capacity of the rest of the Bayfront storm drain systems? This DEIR does not tell us.

This Storm Drain section needs extensive improvement, adding detailed system information for the Bayfront and ensuring that footnotes identify actual data.

4.8.1.2 Existing Conditions/Physical Environment/Groundwater

This section is an exceptional example of why analysis of impacts in the Bayfront cannot be mile-high but requires detail including graphics that present existing conditions clearly. In the Bayfront, sitting on an alluvial cone, all development will be affected by a shallow water table which foretells impacts that

will almost universally apply such as dewatering and limited stormwater absorption capacity. In our response to the FB Expansion, we expressed concerns which apply here. This DEIR should provide data that would allow similar assessment of all Bayfront locations that may be developed or redeveloped. Please see our Facebook Expansion letter, previously referenced.

4.8.1.2 Existing Conditions/Physical Environment/Flood Hazard Areas. P. 4.8-19

This section describes flooding that has occurred from the Atherton Channel and, affecting Redwood City, the Bayfront Canal due to carrying capacity limits and lack of detention options. Through local reports we are aware that there is a project underway that will improve carrying capacity of the Atherton Channel, a channel that transports stormwater from both Atherton and Menlo Park. (See comment on storm drains, above).

From there the section stumbles into the reason why proposed plans should not be discussed as "existing conditions." There is an error in the text, an assumption included in a statement about the Bayfront Canal and Atherton Channel Improvement Project. It states that it "will include installing a culvert to direct water to the Ravenswood Ponds". This was a proposal considered in alternatives of the Restoration Project but ultimately not included in the final EIR/EIS. While the City Public Works Department should keep an eye on evolving changes in the landscape (like the Atherton Channel project), the same information is error-prone and falsely misleading for the public and decisionmakers when included in a DEIR. **In fact, the existing condition that should be described is that high tides combined with peak stormwater flow in Flood Slough can still for the foreseeable future produce flooding in Redwood City via the Bayfront Canal.**

This section should be revised to correctly inform impact analysis, the public and decision-makers.

4.8.1.2 Existing Conditions/Physical Environment/Sea Level Rise Pp. 4.8-20, 21

It is seriously disconcerting to read discussion about sea level rise (SLR) risk assessment that dismisses action as unnecessary beyond BCDC jurisdiction, added to a long list of exceptions. It is of great concern to us when Menlo Park or any other shoreline city, separates itself from catastrophic future impact and expense for the sake of revenue today. In this case, the City aligns with the developers one of whom told me that a shoreline disaster in 30 years was no problem as the business would just move away, leaving behind inundated development and infrastructure while bearing no clean-up responsibility.

The section discusses a number of SLR risk assessment projects that are underway and one, the SAFER Project of the SFC JPA, that is in preliminary stages of a shoreline levee feasibility study that currently would include the Menlo Park shoreline. Here again, this is not an existing condition and DEIR discussion can mislead or misinform the public and decision-makers. CCCR's experience with the first shoreline levee planned for the Bay, in Alviso, has taught us to be wary. That project's first public meeting was in 2006. After much back and forth on alternatives, it finally has an approved environmental review and approved federal funding. Yet as the bulk of design is still to be completed, we wonder if construction will begin in 2018 as projected. It is far too soon in the 24-year build out window to base development decisions on the SAFER Project. Notably the Alviso levee project has the Santa Clara Valley Water District, a large agency with depth in technical staff for flood control as a planning advantage. San Mateo County has no equivalent agency and the SFCJPA is a very small agency dealing with an immense project. Building organizational capability may slow progress.

A point of DEIR clarification: The DEIR states that the SAFER project will “restore more than 1,000 acres of historic marshlands...” That is not the case in Menlo Park. As described in the Restoration Project's 2007 Program EIR/EIS, restoration of all the Project acreage held by the Refuge will be performed by the Refuge (USFWS) in conjunction with the State Coastal Conservancy. The Restoration Project needs to partner with the SAFER Project because it can't perform major breaches needed to create tidal ecosystem conditions until landward infrastructure is protected by new levees. Of course this arrangement makes good sense because the SFC JPA is a flood control agency first and foremost, not staffed with ecological scientists while the Refuge and the Restoration Project have that expertise.

4.8.1.2 Existing Conditions/Physical Environment/Mudflow P. 4.8-26

The very brief discussion of mudflow for some reason omits any discussion of potential mudflow from Searsville Dam, should it fail in a major earthquake. That facility is 90% sediment i.e. wet sediment. While that dam is not in Menlo Park, it is part of the upstream watershed that empties through San Francisquito Creek. Why isn't it discussed?

4.8.2 Standards of Significance

We repeat, it is inappropriate to use standards that were intended only for the development of the Initial Study. Doing so eliminates consideration of actual impacts of the project and misinforms the public and the decisionmakers.

4.8.3 Impact Discussion

General comment: None of the HYDRO measures can be deemed adequate for impact analysis and mitigation for future Bayfront development. The DEIR has failed to provide the Bayfront-intense detail needed to develop substantive, measurable mitigation, as we've discussed elsewhere.

HYDRO-1

On-site infiltration: The entire Bayfront is an area of shallow groundwater, probably varying somewhat from parcel to parcel. In later years of the 24-year build-out period, it is also possible that sea level rise may begin to bring shallow water closer to the surface in the Bayfront. Higher groundwater levels will affect infiltration capacity and the use of bioswales. As mitigation to limit stormwater runoff, studies will be needed wherever and whenever a project is proposed, a mitigation requirement not included in this measure. It needs to be.

HYDRO-3

The failure of the DEIR to provide detailed stormwater system information regarding carrying capacity, relevant to existing conditions and to zoning change proposals, makes it impossible to identify, by particular Bayfront location, potential impacts and appropriate mitigation.

HYDRO-4

1. The comment for HYDRO-3 applies here as well. It is in addition to the failure of the DEIR to analyze, on a true existing-condition basis, potential flooding impacts on the Bayfront Canal and Redwood City, especially during the combination of peak stormwater runoff (extreme storm or serial storm events) during high tides. We refer you to our FB Expansion comment letter for additional, relevant discussion.

2. "Net new impervious surface" Again referring to the FB Expansion as an example, we find that the DEIR has failed to establish criteria of what does and does not qualify as pervious surface. Roof gardens, while valuable in many ways, in peak rainfall periods have less absorption capacity in contrast to ground-level gardens and bioswales. Therefore a roof garden cannot be granted equal credit when calculating "net new impervious surface" although that is what was done in the FB Expansion DEIR.

HYDRO-5

Please see comments above regarding, pervious/impervious surfaces, on-site infiltration and impact on Bayfront Canal flooding. Please also see our letter regarding the FB Expansion project.

HYDRO-7

For the Bayfront, proposals to add new housing are insufficiently protected by the minimal FEMA standards and the Goals, policies and programs of the City. There is **no planning included for escape routes**, a particularly severe concern in the Bayfront where circulation patterns are already severely impacted and expected to become much worse through this Project.

HYDRO-9

It is inappropriate to combine risks from flooding from sea level rise in the same impact analysis as all other causes of flooding. In fact, all of those other causes will continue to exist as sea level rises and, as such, need analysis and mitigation appropriate to those conditions. In contrast, sea level rise flooding analysis would need to consider levee height, height of creek/slough flows, king tides, sea surge, presence/absence of protective tidal marsh, and increased stormwater impacts due to reduced infiltration capacity (near-surface groundwater conditions).

4.8.3 Cumulative Impacts

HYDRO-11

For reasons cited above for other HYDRO impacts, this measure cannot be deemed adequate, particularly as regards the Bayfront. As a cumulative impact measure, its failure to include potential impact on the Bayfront Canal/Redwood City is a major omission.

We hope these comments will assist the City in revision of this DEIR, toward the end of producing a document and a CEQA process that has fulfills the information, adequacy and impact analysis purposes for which it is intended. If there is any need, feel free contact the writer at 408-257-7599 or wildlifestewards@aol.com. Please use this email address for any distributions regarding the Project.

CCCR is a 501(c)(3) nonprofit corporation that is fully volunteer-run, acts to ensure that the Refuge fulfills its Congressional acquisition authority to expand its land holdings and to protect special and

sensitive habitats and wildlife along the South Bay's shores. Very similarly, it acts on behalf of the continuous protection of the wildlife and habitats the Refuge must provide.

Truly yours,



Eileen McLaughlin
Board Member, CCCR

CC: Carin High, Co-Chair, CCCR
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