



Item No. 16 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: MAY 17, 2017

**SUBJECT: REVIEW, DISCUSS AND PROVIDE DIRECTION REGARDING
THE TRANSPORTATION COMMITTEE REQUEST – EAST PALO
ALTO VERSUS MENLO PARK – CEQA CHALLENGE**

RECOMMENDATION

Review, discuss and provide direction regarding the Transportation Committee request – East Palo Alto (EPA) v Menlo Park – CEQA Challenge.

BACKGROUND/ANALYSIS

EPA has filed a writ of mandate charging that Menlo Park’s recent General Plan amendment violates state law – specifically the California Environmental Quality Act (CEQA). The writ claims that Menlo Park failed to adequately address several potentially significant environmental impacts before taking General Plan and Zoning actions.

The action claims that the burdens of development taking place in Menlo Park are not being adequately shared by the two agencies. Concerns include traffic, jobs/housing imbalance, and contributions to affordable housing in the area. The suit raises a variety of specific instances of violations on the part of Menlo Park as it went through its revision process.

At the March 21, 2017 meeting of the Town’s Transportation Committee, the Committee discussed the issue and recommended that the City Council consider joining EPA in the lawsuit or file a brief with the court.

The City Attorney has reviewed the pending action and is prepared to advise the Council with respect to the issues.

ATTACHMENTS

1. Community News Article “East Palo Alto sues Menlo Park over bayfront growth plans”
2. Copy of City of East Palo Alto v. City of Menlo Park and the City Council of Menlo Park Petition for Writ of Mandate

BREAKING NEWS The Latest: Pence says firing unrelated to Russia probe

Community News

East Palo Alto sues Menlo Park over bayfront growth plans

City files lawsuit over Menlo Park's recently approved General Plan update, saying it violates state rules

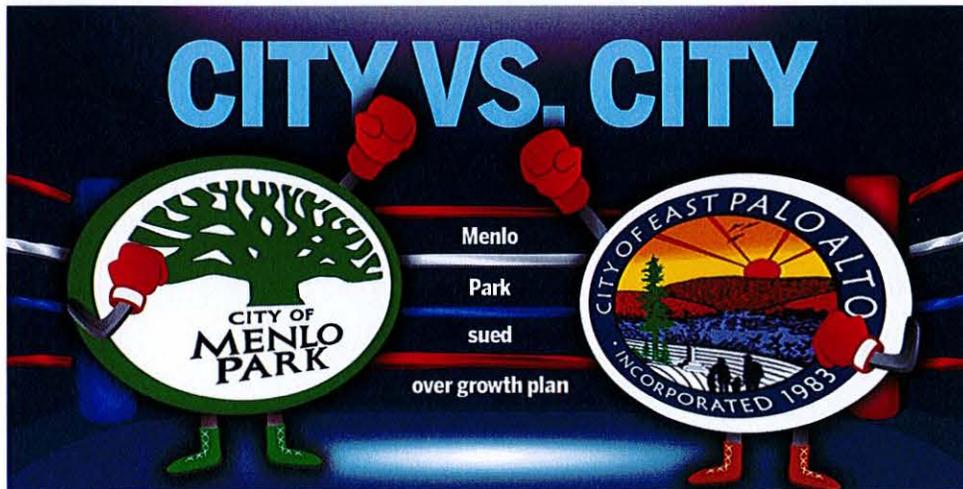


Illustration by Greg Frazier / Daily News

By **KEVIN KELLY** | kkelly@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: January 5, 2017 at 12:20 pm | UPDATED: January 5, 2017 at 4:55 pm

East Palo Alto leaders have been warning Menlo Park since mid-2015 that its plan to greatly expand development in the east side of town wasn't seriously considering the impact of all that growth on their city.

On Dec. 29, East Palo Alto hammered that point home by slapping Menlo Park with a lawsuit alleging its General Plan update violates state law.

The update, approved by the Menlo Park City Council on Nov. 29, allows for up to 4,500 new residential units, 2.3 million square feet of new nonresidential uses and 400 new hotel rooms in the city's bayfront area.

"East Palo Alto ... has exhausted any and all available administrative remedies to the extent possible and required by law," the lawsuit states. "East Palo Alto, along with other members of the public, has repeatedly objected to the approval of the (plan) ... without adequate environmental review and measures necessary to address the impacts of the development permitted by the (plan). ... The final EIR (environmental impact report) failed to adequately respond to comments from East Palo Alto concerning the impacts of the general plan update."

The lawsuit was filed in San Mateo County Superior Court by Ellison Folk, an attorney with Shute, Mihaly & Weinberger LLP, a San Francisco law firm. Folk said it could be up to four months before the case goes to trial — if it does.

Under state law, Menlo Park officials now must meet with East Palo Alto within 45 days of the lawsuit being filed. Talks can extend beyond one setting, but if it becomes clear no compromise can be reached, both cities would have roughly 60 days to prepare for trial.

"The whole process will probably take eight months to a year," Folk said.

She hinted that East Palo Alto would be happy with a settlement that addresses its concerns.

"We filed a lawsuit because East Palo Alto didn't feel like it was getting the response that we thought was required by law and CEQA (California Environmental Quality Act) requires the parties to have settlement discussions," Folk said. "It's not saying Menlo Park can't do this, it's that the impacts and the burdens need to be more equitably shared."

16 CW03062 - Rafael Alvarado

As have letters from East Palo Alto officials over the past 1 1/2 years, the lawsuit contends the level of office development proposed would worsen traffic congestion in East Palo Alto, exacerbate the jobs/housing imbalance and contribute to an affordable housing crisis in the region.

“Traffic congestion has deteriorated to the point that East Palo Alto streets are gridlocked throughout the morning and evening commutes and often residents are unable to pull out of their driveways just to get to work or take their children to school,” the lawsuit states. “Pressure on the housing market from the substantial growth in tech industry jobs has resulted in the displacement of East Palo Alto residents, who have been forced to move to more distant locations and commute further to their jobs.

“Increased pressure on the housing market will also force cities like East Palo Alto to build more affordable housing to keep up with demand.”

Menlo Park City Attorney Bill McClure disagreed that East Palo Alto’s concerns weren’t addressed in the updated plan.

“We thought we had responded to those items,” he said, a sentiment echoed by Kirsten Keith, the city’s new mayor.

McClure said the lawsuit doesn’t stop the plan, or the zoning changes approved by the City Council on Dec. 6 that allow for increased density to take effect.

But it could cause some hesitation, he said. Facebook, for example, might choose to wait to bring its development plan for the Prologis site to the city until after the lawsuit is resolved, McClure said. The Prologis site, on the east side of Willow Road, is where Facebook intends to build up to 1,500 housing units.

“If they wanted to develop the Prologis site, they could move forward with it but they are at risk if somewhere along the way, the court says there is a problem,” McClure said. “The court might then halt construction until that defect was cured (but) in the meantime, they could be proceeding.”

According to the suit, Menlo Park’s General Plan update violated state law by:

- analyzing environmental impacts of Facebook’s campus expansion at 301-309 Constitution Dr. separately from the update process;

- underestimating the amount of employment “with unrealistically low estimates of the number of employees that the new offices and life sciences development could support ... even though evidence in the record unequivocally demonstrates that the tech sector and life sciences uses support a greater number of employees per square foot than traditional office uses;”
- excluding an analysis of intersections that would be heavily impacted by traffic and “relying on overly optimistic assumptions about the effectiveness of measures to reduce traffic from new development,” such as vehicle trip caps, carpooling and corporate shuttles;
- acknowledging that the plan would bring significant impacts in East Palo Alto but failing “to commit to mitigating these impacts” or consult with East Palo Alto on “feasible measures to reduce identified impacts;”
- not evaluating the indirect impacts of increased job growth, “including the multiplier effect whereby each new tech job results in additional employment growth in the service industry, which in turn creates additional traffic and demand for housing;”
- and failing to evaluate air quality impacts, including greenhouse gas emissions, because it underestimated traffic congestion.

McClure said he is arranging a closed session Tuesday for the Menlo Park City Council to discuss the lawsuit before its regular meeting.



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Kevin Kelly Kevin Kelly is the reporter covering



Menlo Park. He joined The Daily News in 2005 as a copy editor and served as the copy desk chief before the paper was reformed as a weekly.

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16 CITY OF EAST PALO ALTO

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF SAN MATEO**

19 CITY OF EAST PALO ALTO,

20 Petitioner,

21 v.

22 CITY OF MENLO PARK, and CITY
23 COUNCIL OF MENLO PARK,

24 Respondents.

Case No.

16C1V03062

PETITION FOR WRIT OF MANDATE

**CALIFORNIA ENVIRONMENTAL
QUALITY ACT (PUBLIC
RESOURCES CODE § 21000, et. seq.)**

BY FAX

FILED
SAN MATEO COUNTY

DEC 29 2016

Clerk of the Superior Court

By

DEPUTY CLERK

16 - CIV - 03062
PETWM
Petition for Writ of Mandate
313663



1 **INTRODUCTION**

2 This action challenges the City of Menlo Park’s approval of the ConnectMenlo General
3 Plan—a plan that calls for a massive increase in office and commercial development in Menlo
4 Park without adequate housing for the substantial number of new employees anticipated with
5 this development. Substantial growth in Menlo Park’s tech industry has resulted in a significant
6 imbalance between the number of jobs located in the City and the housing available to
7 employees, particularly affordable housing. As a result residents throughout the Silicon Valley
8 must travel long distances to work and increased job growth has put tremendous pressure on the
9 housing market, particular in the few areas—like East Palo Alto—that provide most of the
10 affordable housing in the region. While Menlo Park has reaped the economic benefit of
11 substantial job growth, the impacts of this development are often borne by its neighbors in the
12 form of displacement of existing residents, increased housing costs which drives people further
13 from their jobs, traffic congestion, and air pollution. The ConnectMenlo General Plan will
14 exacerbate population displacement and traffic congestion, without adequate mitigation. As
15 such, Menlo Park violated the requirements of the California Environmental Quality Act
16 (“CEQA”) when it approved the ConnectMenlo General Plan.

17 **PARTIES**

18 1. Petitioner City of East Palo Alto is a general law municipal corporation located in
19 San Mateo County. Incorporated in 1983, East Palo Alto shares its northern and western
20 borders with Menlo Park. Menlo Park’s unlawful approval of the ConnectMenlo General Plan
21 will significantly impact East Palo Alto because the General Plan will allow substantial
22 commercial and office development adjacent to East Palo Alto without adequate controls to
23 mitigate impacts on housing, traffic and transportation, and air quality in East Palo Alto. Menlo
24 Park’s failure to properly analyze and adopt adequate alternatives or mitigation measures will
25 directly impact the health and welfare of the City’s residents. East Palo Alto is beneficially
26 interested in this matter because it has a direct interest in ensuring that Menlo Park fulfill its
27 duties to comply with CEQA and state law. The maintenance and prosecution of this action will
28 also confer a substantial benefit on the public more broadly by protecting it from the

1 environmental and other harms alleged herein.

2 2. Respondent City of Menlo Park is a charter city located in San Mateo County and
3 is the "lead agency" responsible for compliance with CEQA. Respondent City Council of
4 Menlo Park is the governing body of Menlo Park. Respondent City Council took formal action
5 to certify an EIR in violation of CEQA on or about November 29, 2016 and at the same meeting,
6 adopted the ConnectMenlo General Plan.

7 3. East Palo Alto is unaware of the true names and capacities of Respondents
8 fictitiously named DOES 1 through 10 and sues such respondents by fictitious names. Petitioner
9 is informed and believe, and on the basis of such information and belief, allege the fictitiously
10 named respondents are also responsible for the actions described in this Petition. When the true
11 identities and capacities of these respondents have been determined, Petitioner will amend this
12 petition, with leave of the court if necessary, to insert such identities and capacities.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over the matters alleged in this Petition pursuant to
15 Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168,
16 21168.5 and 21168.9.

17 5. Venue is proper in this Court because the causes of action alleged in this Petition
18 arose in San Mateo County, where Respondents approved the project and where the
19 ConnectMenlo General Plan will take effect.

20 6. East Palo Alto has performed any and all conditions precedent to filing the instant
21 action and have exhausted any and all available administrative remedies to the extent possible
22 and required by law. East Palo Alto, along with other members of the public, has repeatedly
23 objected to the approval of the ConnectMenlo General Plan without adequate environmental
24 review and measures necessary to address the impacts of the development permitted by the
25 ConnectMenlo General Plan.

26 7. Respondents have a duty to comply with applicable state laws, including but not
27 limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. East
28 Palo Alto possesses no effective remedy to challenge the approvals at issue in this action other

1 than by means of this lawsuit.

2 8. On December 28, 2016 East Palo Alto complied with Public Resources Code
3 Section 21167.5 by emailing and mailing to Respondents a letter stating that East Palo Alto
4 planned to file a Petition for Writ of Mandate seeking to invalidate Respondents' approvals.
5 Attached hereto as Exhibit A are the true and correct copies of these letters.

6 9. On December 29, 2016 East Palo Alto complied with Public Resources Code
7 Section 21167.7 and Code of Civil Procedure Section 388 by furnishing the Attorney General of
8 the State of California with a copy of the Petition. Attached hereto as Exhibit B is the true and
9 correct copy of the letter transmitting the Petition to the Attorney General.

10 10. Pursuant to Public Resources Code Section 21167.6(b)(2), East Palo Alto elects to
11 prepare the record of proceedings in this Action. Concurrently with this Petition, East Palo Alto
12 filed a notice of election to prepare the administrative record.

13 11. East Palo Alto has no plain, speedy, or adequate remedy in the course of ordinary
14 law unless this Court grants the requested writ of mandate to require Respondents to set aside
15 their approval of the ConnectMenlo General Plan and to require compliance with CEQA. In the
16 absence of such remedies, Respondents' approvals will remain in effect in violation of State law,
17 and East Palo Alto will be irreparably harmed.

18 **Factual Background**

19 12. In the summer of 2014, Menlo Park began the process of updating its General Plan
20 to address the development of its Bayfront area—an area located on its western boundary,
21 straddling Highway 101 and immediately adjacent to East Palo Alto. At the time the City
22 initiated its update, the majority of the Bayfront area was comprised of the Menlo Park's
23 industrial and business park uses and included Menlo Park's entire M2 industrial zone.

24 13. In June 2015 Menlo Park released a proposed land use map and land use element
25 for the updated General Plan, which proposed three new land use designations in the Bayfront
26 area: Office, Life Science, and Mixed Use Residential. The Bayfront area was the only area
27 where Menlo Park proposed changes to any land uses in the City.

28 14. On June 18, 2015 Menlo Park issued a notice of preparation for a draft

1 environmental impact report on the ConnectMenlo General Plan.

2 15. East Palo Alto submitted comments on the notice of preparation and expressed its
3 view that the level of office development proposed by the General Plan update would adversely
4 impact traffic in East Palo Alto, would exacerbate the imbalance between jobs and housing in
5 Menlo Park, and would contribute to an affordable housing crisis in the Silicon Valley. East
6 Palo Alto therefore requested Menlo Park consider the direct and indirect impacts of its land use
7 plans and adopt all feasible mitigation measures.

8 16. At the same time as it issued the notice of preparation for the ConnectMenlo
9 General Plan, Menlo Park also issued a notice of preparation of a draft environmental impact
10 report for the expansion of the Facebook campus. Although this expansion would occur in the
11 Bayfront area that is the subject of the General Plan update, Menlo Park opted to process the
12 Facebook expansion separately from the ConnectMenlo General Plan. The Facebook expansion
13 would result in the development of 962,400 square feet of office space to support approximately
14 6,550 new employees in the Bayfront area, all in addition to the development that would be
15 allowed under the ConnectMenlo General Plan.

16 17. Menlo Park issued a draft environmental impact report for the ConnectMenlo
17 General Plan on June 1, 2016 and took public comments on the draft EIR through August 1,
18 2016. At the same time, Menlo Park issued the draft EIR for the Facebook expansion.

19 18. East Palo Alto, along with many other public agencies and members of the public,
20 submitted comments on the ConnectMenlo draft EIR. In its comments, East Palo Alto detailed
21 the significant impacts that have occurred in its city with the expansion of the tech industry in
22 the Silicon Valley, particularly since Menlo Park's 2011 approval of the Facebook campus.
23 Traffic congestion has deteriorated to the point that East Palo Alto streets are gridlocked
24 throughout the morning and evening commutes and often residents are unable to pull out of their
25 driveways just to get to work or take their children to school. Pressure on the housing market
26 from the substantial growth in tech industry jobs has resulted in the displacement of East Palo
27 Alto residents, who have been forced to move to more distant locations and commute further to
28 their jobs. Increased pressure on the housing market will also force cities like East Palo Alto to

1 build more affordable housing to keep up with demand. East Palo Alto is one of the few cities
2 in the Silicon Valley with any significant stock of affordable housing. While East Palo Alto is
3 committed to providing affordable housing, its construction has environmental impacts that
4 must be addressed. As East Palo Alto commented on the draft EIR, the ConnectMenlo General
5 Plan would permit even more development without adequate measures to address its impacts.

6 19. Other members of the public reiterated East Palo Alto's concerns about the
7 impacts of the general plan update on displacement and traffic in the region, as well as its other
8 significant impacts.

9 20. On October 10, 2016 Menlo Park issued the final EIR for the ConnectMenlo General
10 Plan. The final EIR failed to adequately respond to comments from East Palo Alto concerning the
11 impacts of the general plan update. For example, the final EIR continued to rely on a traffic study
12 that omitted critical intersections that would be impacted by increased traffic from the development
13 permitted under the plan. The final EIR also continued to take the position that impacts on housing
14 were not environmental impacts that require analysis under CEQA.

15 21. East Palo Alto submitted comments to the Menlo Park Planning Commission
16 regarding the impacts of the ConnectMenlo General Plan. In these comments, East Palo Alto stated
17 its commitment to working with Menlo Park to address the impacts of new development in the
18 region. However, East Palo Alto also expressed its view addressing these impacts depends on an
19 adequate assessment of the impacts of the General Plan Update and potential mitigation measures.

20 22. On October 24, 2016 the Menlo Park Planning Commission recommended approval of
21 the ConnectMenlo General Plan.

22 23. On November 14, 2016 East Palo Alto again provided comments to Menlo Park
23 documenting its concerns regarding the ConnectMenlo General Plan and reiterating its commitment
24 to addressing these impacts.

25 24. On November 29, 2016 the City Council certified the ConnectMenlo
26 Environmental Impact Report and approved the General Plan Land Use and Circulation
27 Elements. As approved, the land use changes in the ConnectMenlo General Plan will allow an
28 increase in net new development potential of up to 2.3 million square feet of non-residential

1 uses, up to 4,500 residential units, and up to 400 hotel rooms.

2 25. On December 6, 2016 the City Council adopted three new zoning districts (Office
3 (O), Life Sciences (LS), and Residential Mixed Use (R-MU)) to implement the new Bayfront
4 land use designations in the Land Use Element of the ConnectMenlo General Plan. The City
5 Council also approved modifications to the C-2-B zoning district to allow for residential uses
6 and mixed-use developments and established an administrative permit review process for
7 hazardous materials when certain conditions are met. These amendments become effective on
8 January 6, 2017 but depend on the adoption of the MenloConnect General Plan to be valid.

9 **FIRST CAUSE OF ACTION**

10 **(Violations of CEQA; Code Civ. Proc., §§ 1085)**

11 26. East Palo Alto incorporates by reference all preceding paragraphs in their entirety.

12 27. CEQA requires public agencies to first identify the environmental effects of its
13 project and to mitigate those adverse environmental effects through the imposition of feasible
14 mitigation measures or the analysis and selection of feasible alternatives. (Pub. Res. Code,
15 §21002). CEQA requires a lead agency to establish that either: (1) impacts will not have a
16 significant effect on the environment or (2) the agency has adopted findings that all significant
17 environmental effects have been avoided or mitigated to the extent feasible, and any remaining
18 effects found to be unavoidable are acceptable due to specific overriding economic, social
19 technological, or other benefits. (Pub. Res. Code § 21081).

20 28. An EIR must identify the whole of the project and evaluate the direct, indirect and
21 cumulative environmental impacts of all phases of a project. (14 California Code of Regulations
22 ("C.C.R"), § 15126, § 15130). The discussion must include relevant specifics of the area, the
23 resources involved, physical changes, alterations to ecological systems, and changes inducted in
24 population distribution, population concentration, the human use of the land (including
25 commercial and residential development), health and safety problems caused by the physical
26 changes and other aspects of the resource base such as water, historical resources, scenic quality
27 and public services. (14 C.C.R., §15126.2).

28 29. A lead agency must describe and evaluate feasible measures for minimizing or

1 avoiding a project's direct, indirect, and cumulative impacts on the environment. (Pub. Res.
2 Code, §21100(b)(3); 14 C.C.R., §15126.4.) A lead agency may not improperly defer the
3 formulation of mitigation measures until a future time. (14 C.C.R., §15126.4.)

4 30. A lead agency must identify all significant effects on the environment caused by a
5 proposed project that cannot be avoided. (Pub. Res., Code, §21100(b)(2)(A).) A lead agency
6 must also provide information in the record to justify rejecting mitigation measures as infeasible
7 based on economic, social, or housing reasons. (14 C.C.R., §15131(c).)

8 31. An EIR must describe a range of reasonable alternatives to the project, or to the
9 location of the project, that would feasibly attain most of the basic objectives of the project but
10 would avoid or substantially lessen any of the significant effects of the project, and must
11 evaluate the comparative merits of the alternatives. (14 C.C.R., §15126.6.) An EIR must also
12 include sufficient information about each alternative to allow meaningful evaluation, analysis,
13 and comparison with the proposed project.

14 32. A lead agency may not approve a project for which an EIR identifies a significant
15 environmental impact unless the impact has been mitigated or avoided by changes in the project,
16 or unless the agency specifically finds that overriding benefits outweigh the significant effects
17 on the environment. (Pub. Res. Code, §21081.)

18 33. Menlo Park violated the requirements of CEQA when it approved the
19 ConnectMenlo General Plan by failing to adequately evaluate and mitigate its significant project
20 impacts for the following non-inclusive list of reasons:

21 a) The EIR improperly segmented the ConnectMenlo General Plan from the
22 Facebook Expansion project and as a result minimized the environmental impacts of the whole
23 of the action and constrained consideration of project alternatives. For example, the Facebook
24 Expansion would result in the addition of approximately 6,550 employees to the Bayfront
25 area—more than anticipated under the ConnectMenlo General Plan update itself. Segmenting
26 these projects results in an underestimate of the employment growth in Menlo Park and its
27 corresponding impacts on traffic, housing, and population displacement.

28 b) The EIR substantially underestimated the amount of employment that

1 would result from development under the ConnectMenlo General Plan with unrealistically low
2 estimates of the number of employees that the new office and life sciences development could
3 support. For example, the EIR assumed that the new office and life sciences development
4 would result in approximately 5,500 new employees even though evidence in the record
5 unequivocally demonstrates that the tech sector and life science uses support a greater number of
6 employees per square foot than traditional office uses.

7 c) The EIR fails to adequately define the baseline environmental conditions in
8 the region and improperly compares the impacts of the ConnectMenlo General Plan to other
9 planning documents rather than existing conditions on the ground, as required by CEQA.

10 d) The EIR failed to analyze all of the potentially significant traffic impacts of
11 the ConnectMenlo General Plan by excluding intersections from its analysis that would be
12 significantly impacted by development under the Plan. The EIR also underestimated significant
13 project impacts by relying on overly optimistic assumptions about the effectiveness of measures
14 to reduce traffic from new development. Rather than evaluate the impacts of all potential new
15 traffic from the ConnectMenlo General Plan and then evaluate measures to address this impact,
16 the EIR improperly assumed that this traffic would not occur at all due to transportation demand
17 measures. However, the EIR did not demonstrate that such measures were realistic or
18 enforceable thereby underestimating the project's impact and failing to consider adequate
19 mitigation.

20 e) The EIR failed to impose adequate and feasible mitigation for traffic
21 impacts that were identified in East Palo Alto. Although the EIR acknowledged that the
22 ConnectMenlo General Plan would result in significant impacts in East Palo Alto, it failed to
23 commit to mitigating these impacts. Instead of consulting with East Palo Alto about feasible
24 measures to reduce identified impacts, the EIR identified measures that it considered to be
25 infeasible and only committed to fair share funding of them if East Palo Alto found the measures
26 feasible. This constrained approach to evaluating traffic impacts and mitigation excluded other
27 feasible approaches to mitigating traffic impacts in East Palo Alto, such as traffic calming,
28 alternative schedule measures, ride sharing incentives, bike, pedestrian and public transportation

1 improvements, and excluding approaches to certain roads. As a result, significant traffic
2 impacts from the ConnectMenlo General Plan will go unmitigated.

3 f) The EIR failed to address the significant impacts of the project on housing
4 and population displacement. Among other failings, the EIR did not evaluate the indirect
5 impacts of increased employment, including the multiplier effect whereby each new tech job
6 results in additional employment growth in the service industry, which in turn creates additional
7 traffic and demand for housing. The EIR also improperly found that impacts on housing and
8 population displacement were not environmental impacts. Contrary to the EIR's position,
9 because these impacts result in changes to the physical environment, including longer commutes
10 that adversely affect traffic congestion and increase air pollution and the need to construct new
11 housing, CEQA requires an analysis of and mitigation for these impacts.

12 g) The EIR did not evaluate the full impacts of the ConnectMenlo General
13 Plan. Rather than evaluate the impacts of the level of development actually permitted by the
14 Plan, the EIR evaluated a smaller level of development. As a result, the EIR failed to disclose
15 and mitigate the impacts of the project actually approved by Menlo Park.

16 h) The EIR failed to adequately consider and mitigate the cumulative impacts
17 of the ConnectMenlo General Plan and other existing and reasonably foreseeable future
18 development in the region, including the Facebook expansion project approved on November 1,
19 2016.

20 i) Because it underestimated traffic impacts from the ConnectMenlo General
21 Plan, the EIR failed to evaluate air quality impacts, including greenhouse gas emissions.

22 34. Respondents further violated CEQA by failing to consider a reasonable range of
23 project alternatives. In particular, the EIR failed to evaluate any alternative that involved
24 changes in land use designations or the development of housing in any area of Menlo Park other
25 than the Bayfront area.

26 35. Respondents further violated CEQA by adopting a statement of overriding
27 considerations that the significant impacts of the ConnectMenlo General Plan are outweighed by
28 its benefits. Substantial evidence in the record does not support the statement of overriding

1 considerations, and the statement itself is inadequately supported by the findings. There is
2 substantial evidence in the record that disproves the statement, including evidence
3 demonstrating that respondents failed to consider feasible mitigation measures and ignored
4 significant regional impacts that outweigh the individual benefits accruing to Menlo Park.

5 36. Because the EIR does not adequately address significant environmental impacts of
6 the project and fails to evaluate reasonable alternatives and mitigation measures, it fails as an
7 informational document and does not provide substantial evidence to support Respondents'
8 findings regarding the significant impacts of the ConnectMenlo General Plan, mitigation
9 measures and alternatives, or the Plan's benefits. Respondents therefore prejudicially abused its
10 discretion in certifying the EIR and approving the ConnectMenlo General Plan.

11 **PRAYER**

12 WHEREFORE, Petitioner prays as follows:

13 1. For a peremptory writ of mandate directing Menlo Park to set aside its action
14 taken on November 29, 2016 certifying the EIR for the ConnectMenlo General Plan and
15 adopting the ConnectMenlo General Plan,

16 2. For an order staying the effect of the Menlo Park's actions pending the outcome of
17 this proceeding.

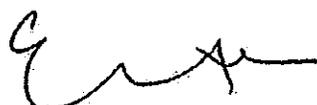
18 3. For costs of suit;

19 4. For attorney's fees pursuant to Code of Civil Procedure section 1021.5; and

20 5. For such other and further relief as the court deems just and proper.

21 DATED: December 29, 2016

SHUTE, MIHALY & WEINBERGER LLP

22
23
24 By: 

ELLISON FOLK

25
26 Attorneys for Petitioner
CITY OF EAST PALO ALTO

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EXHIBIT A

SHUTE, MIHALY
& WEINBERGER LLP

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December 28, 2016

Via E-Mail and U.S. Mail

Mayor Keith and Members of the City Council
City of Menlo Park
701 Laurel Street
Menlo Park, California 94025
city.council@menlopark.org

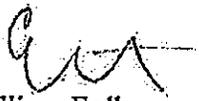
Re: Notice of Filing CEQA Litigation
City of East Palo Alto v. City of Menlo Park, City Council of Menlo Park

Dear Mayor Keith and Members of the City Council:

Please take notice that the City of East Palo Alto will file suit challenging the City of Menlo Park's approval of an update to the Menlo Park General Plan (MenloConnect) and the adoption of zoning ordinances in connection therewith for failure to comply with the California Environmental Quality Act. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Ellison Folk

cc: Bill McClure, Menlo Park City Attorney

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On December 28, 2016, I served true copies of the following document(s) described as:

LETTER TO CITY RE NOTICE OF FILING CEQA SUIT

on the parties in this action as follows:

Mayor Keith and Members of the City Council
City of Menlo Park
701 Laurel Street
Menlo Park, California 94025
city.council@menlopark.org

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Larkin@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 28, 2016, at San Francisco, California.


Patricia Larkin
Patricia Larkin

90-0000-0000
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
NOV 19 1990

EXHIBIT B

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102

T: (415) 552-7272 F: (415) 552-5816

www.smwlaw.com

ELLISON FOLK

Attorney

folk@smwlaw.com

December 29, 2016

Via U.S. Mail

Kamala D. Harris
Attorney General
California Department of Justice
1300 I Street
Sacramento, California 95814-2919

Re: Notice of Filing CEQA Litigation
City of East Palo Alto v. City of Menlo Park, City Council of Menlo Park

Dear Attorney General Harris:

Enclosed please find a copy of the Petition for Writ of Mandate in the above-entitled action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

Enclosure: Petition for Writ of Mandate

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