

**ATTACHMENT A**

**Department 29  
Superior Court of California  
County of Sacramento  
720 Ninth Street  
Timothy M. Frawley, Judge  
Frank Temmerman, Clerk**

**Hearing Held: Friday, February 4, 2011, 9:00 a.m.**

<b>FOOTHILL CONSERVANCY, et al.</b>  v.  <b>EAST BAY MUNICIPAL UTILITY DISTRICT, et al.</b>	<b>Case Number: 34-2010-80000491</b>
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**Proceedings: Petition for Writ of Mandate**

**Filed By: Michael Graf and Thomas P. Infusino, Attorneys for  
Petitioners**

On February 4, 2011, at 9:00 a.m., this matter came on for hearing with counsel present as indicated on the record. The matter was argued and submitted. Having taken the matter under submission, the Court now rules as follows:

**RULING UNDER SUBMISSION**

This proceeding involves a challenge under the California Environmental Quality Act ("CEQA") to Respondent East Bay Municipal District's approval and accompanying certification of a program-level environmental impact report ("EIR") for the update to its "Water Supply Management Program" plan. Petitioners Foothill Conservancy, Friends of the River, and the California Sportfishing Protection Alliance contend that the project approval and EIR certification should be set aside because the District failed to comply with the requirements of CEQA.

The gravamen of Petitioners' complaint is that the District failed to adequately analyze and mitigate the environmental impacts of its programmatic decision to expand the Pardee and Lower Bear Reservoirs.

The District contends that its Water Supply Plan is a policy-level document that examines the results of a planning exercise and does not commit to undertake any supplemental water supply projects, including the Pardee and Lower Bear Reservoir expansions. The District denies the Water Supply Plan is subject to

CEQA, but even if it is, the District contends it satisfied the requirements for a first-tier, program-level EIR.

For the reasons described below, the petition is granted in part and denied in part. The Court concludes the District's Water Supply Plan is a project subject to CEQA, but concludes the District's EIR was only required to include a broad, program-level discussion of the potential environmental impacts of the project. The Court agrees with Petitioners, however, that even at a broad, programmatic level, the EIR fails in a number of respects to adequately analyze the potential impacts of, and alternatives to, the proposed project.

### Background Facts and Procedure

The "project" at issue in this proceeding is the District's most recent update to its Water Supply Plan, entitled the *Water Supply Management Program 2040 Plan*. The primary purpose of the Water Supply Plan is to identify and recommend solutions to meet the District's dry-year water supply needs through the year 2040. The Plan estimates dry-year water supply needs to the year 2040, and proposes a program of policy initiatives and projects to meet those needs.

Because the District's existing supplies are insufficient in dry years, the Plan proposes and evaluates a range of "portfolios" to bridge the gap between supply and demand. Each portfolio consists of a series of actions that could be implemented over time to meet the need for water in the District's service area. In general, the portfolios include demand-side water management solutions -- i.e., conservation, water recycling, rationing measures -- and an assortment of potential supplemental water supply projects that could be pursued, as necessary, to meet future dry-year water needs. Thus, the "components" of the portfolios are water conservation, rationing, and recycling policy initiatives, and the proposed supplemental water supply projects. (4 AR 688-689, 1669-1672.)

Over 50 potential components were initially identified. The components were assembled into 14 distinct water supply portfolios. The portfolios were then evaluated based on their ability to meet the District's water supply planning objectives. (10 AR 4261-4265; 11 AR 4423-4425.) The evaluation process ultimately yielded six portfolios: one "Preferred Portfolio" and five alternative portfolios.

The Preferred Portfolio includes the following components: dry-year water rationing, conservation measures, recycled water programs, and various supplemental water supply projects. The supplemental water supply options in the Preferred Portfolio include, as part of the "Regional Upcountry Project," expanding Pardee Reservoir and Lower Bear Reservoir.

Expanding Pardee Reservoir would potentially raise the existing reservoir level by up to 33 feet, thereby increasing the maximum storage capacity of the

reservoir from 209,950 AF to 370,000 AF, and the total surface area of the reservoir from 2,200 acres to 3,480 acres. If implemented, the project would inundate up to two miles of the Mokelumne River.

Expanding Lower Bear Reservoir would raise the existing dam by 32 feet, thereby increasing the maximum storage capacity of the reservoir by about 18,300 AF.

The District prepared a program EIR (the "EIR") to evaluate, at a program level, the potential adverse environmental impacts of the Preferred Portfolio and its alternatives, and to identify feasible mitigation measures to reduce or eliminate the potentially significant impacts.

In July of 2008, the District issued its Notice of Intent to prepare the draft EIR. Public scoping hearings followed.

In February of 2009, the District released the draft EIR for public review and comment. In regard to impacts unique to the Pardee and Lower Bear Reservoir expansions, the draft EIR found potentially significant and unavoidable impacts to air quality (Impacts 5.2.F-2, F-3, and F-4), noise (Impacts 5.2.G-1, G-2, and G-4), and visual resources (Impact 5.2.I-1). (2 AR 504-515, 560-564.)

The draft EIR also found that the Pardee and Lower Bear expansions would, with mitigation, have less-than-significant impacts on hydrology, groundwater and water quality; geology, soils and seismicity; biological resources; land use and recreation; transportation; cultural resources; hazards; public services, utilities and energy; and environmental justice. According to the draft EIR, the potentially significant impacts that could be mitigated to a level of insignificance include, among other things: potential changes in Mokelumne River basin hydrologic conditions from enlarged reservoirs; potential exposure of people or structures to geologic or seismic hazards; potential impacts to sensitive natural communities or wetlands; potential disturbance or loss of special-status plants, trees, invertebrates, reptiles, amphibians, mammals, nesting birds, fish, and habitats; disruption of downstream flow releases; potential impairment of recreation facilities and activities; potential alterations or damage to cultural resources; and potential exposure to risk of wildland fires. (2 AR 515-548.)

Petitioners and other members of the public submitted comments objecting to the Pardee and Lower Bear Reservoir expansion projects and the District's environmental review of those projects. The District held public meetings and workshops to discuss the comments received on the draft EIR, evaluate the issues, and allow additional public input.

On October 1, 2009, the District released its final EIR for the Water Supply Plan. The final EIR included several revisions to the draft EIR. (10 AR 4233-4250.)

On October 13, 2009, the District Board certified the final EIR and approved the Water Supply Plan, with the following three changes: (1) the District included a definition of "upcountry stakeholders;" (2) the District agreed to work with upcountry stakeholders to achieve a Wild and Scenic River designation for the Mokelumne River; and (3) the District agreed to eliminate consideration of Pardee Reservoir configurations with a spillway elevation above 600 feet.<sup>1</sup> (2 AR 484-487; 2 AR 491-566.)

Further, in response to comments, the District placed limits on its authority to proceed with the Enlarge Pardee Reservoir project. Specifically, the District's Board committed to prepare project-level CEQA documentation before proceeding with the Enlarge Pardee Reservoir project. The Board further committed that it would not proceed with project-level CEQA documentation for the Enlarge Pardee Reservoir project until after the following three conditions are satisfied:

1. The District has worked as part of a regional partnership to conceptually develop and study the feasibility of a Regional Upcountry Project or an Integrated Regional Conjunctive Use Project, and, as part of such studies, has considered multiple elevation and capacity configurations for an enlarged Pardee Reservoir project at or below a spillway elevation of 600 feet;
2. The Regional Upcountry Project or Integrated Regional Conjunctive Use Project is determined to provide regional benefits and is supported by "upcountry stakeholders;" and
3. The Board confirms that additional water is needed based on the status of customer demand, progress toward completion of the conservation, recycling, and supplemental water supply elements identified in the Water Supply Plan, and consideration of the degree to which customer rationing has been achieved and the quantity of water available from the Mokelumne River during the drought planning sequence. (2 AR 475-476, 485-487.)

The District filed its Notice of Determination for the project on October 20, 2009.

On November 19, 2009, Petitioners filed the instant petition for writ of mandate challenging the District's approval of the Water Supply Plan and certification of the EIR for failure to comply with the requirements of CEQA. Petitioners seek a peremptory writ of mandate ordering the District to set aside its approval of the Water Supply Plan and certification of the EIR,

#### Standard of Review

In a mandate proceeding to review an agency's decision for compliance with CEQA, the court reviews the administrative record to determine whether the

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<sup>1</sup> The District Board further amended its approval on October 27, 2009, to increase to 15% the amount of rationing under the Preferred Portfolio. (2 AR 475-476.)

agency abused its discretion. (Pub. Res. Code §§ 21168, 21168.5.) Abuse of discretion is shown if the agency has not proceeded in the manner required by law, or the determination is not supported by substantial evidence. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106.) Judicial review differs significantly depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. (*Ebbets Pass Forest Watch v. California Dept. of Forestry & Fire Prot.* (2008) 43 Cal.4th 936, 944, 949.)

On review of whether an agency has failed to proceed in the manner required by law, the court evaluates de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131.) An agency may fail to proceed in the manner required by law if its analysis is based on an erroneous interpretation of CEQA's requirements, or if it has failed to comply with the standards in CEQA for an adequate EIR.

The EIR has been described as the "heart of CEQA." (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368.) It is an "environmental alarm bell" which has the objective of providing governmental officials and the public with detailed information about the effect which a proposed project is likely to have on the environment before the decision is made. (*Ibid.*) Thus, the failure to include adequate information in an EIR may constitute a failure to proceed in the manner required by law.

However, when reviewing the adequacy of an EIR, courts do not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informational document. (*Laurel Heights Improvement Ass'n v. Regents of University of California* ["*Laurel Heights I*"] (1988) 47 Cal.3d 376, 392.) The sufficiency of an EIR is determined according to what is reasonably feasible. (Cal. Code Regs., tit. 14, § 15151; *Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.368.) Courts do not look for technical perfection, but for "adequacy, completeness, and a good faith effort at full disclosure." (Cal. Code Regs., tit. 14, § 15151; *Sequoyah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 712; *Association of Irrigated Residents v. County of Madera* (2004) 107 Cal.App.4th 1383, 1390-1391.)

The absence of information in an EIR is not *per se* a prejudicial abuse of discretion. (*Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748; *Association of Irrigated Residents, supra*, 107 Cal.App.4th at p.1391.) A prejudicial abuse of discretion occurs only if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.<sup>2</sup> (*Al*

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<sup>2</sup> But a failure to disclose information necessary to informed decisionmaking and informed public participation constitutes a prejudicial abuse of discretion regardless whether a different outcome would have resulted if the agency had complied with the disclosure requirements. (Pub. Res.

*Larson Boat Shop, supra*, 18 Cal.App.4th at p.748; see also *Association of Irrigated Residents, supra*, 107 Cal.App.4th at p.1390 [EIR must provide detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project]; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594 [EIR must provide agencies with sufficient information to enable them to make a decision that intelligently takes account of the environmental consequences of the proposed project].)

While questions of interpretation or application of the requirements of CEQA are reviewed *de novo*, reviewing courts accord greater deference to the agency's substantive factual conclusions. (*Save Tara, supra*, 45 Cal.4th at p.131.) An agency's factual determinations are reviewed under the substantial evidence standard. (*Laurel Heights I, supra*, 47 Cal.3d at p.393.)

Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit.14, § 15384.) Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment." (*Ibid.*)

In applying the substantial evidence standard, the court does not determine whether the agency's factual determinations were correct, but only whether they were supported by substantial evidence. (*Laurel Heights I, supra*, at p.393; *Association of Irrigated Residents, supra*, 107 Cal.App.4th at p.1391.) The court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. (*Laurel Heights I, supra*, 47 Cal.3d at p.393.) The court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. (*Ibid.*)

Regardless of what is alleged, an EIR approved by a governmental agency is presumed legally adequate, and the party challenging the EIR has the burden of showing otherwise. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 158; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 919.)

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Code § 21005; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198; *Association of Irrigated Residents, supra*, 107 Cal.App.4th at p.1392.)

## Discussion

Petitioners filed the instant petition for writ of mandate challenging the District's approval of the Water Supply Plan and certification of the EIR. Petitioners allege that the District violated CEQA by failing to adequately identify and mitigate the significant impacts of the proposed reservoir expansions on recreational, historical, public safety, biological, and cultural resources in the Mokelumne River and Delta.

In particular, Petitioners allege that the EIR fails to identify potentially significant impacts that expansion of the Pardee Reservoir will have due to inundation of approximately 2 miles of the Mokelumne River, including: (i) the loss of the Middle Bar (whitewater) Run and part of the Electra Run; (ii) loss of instream, riparian, and upland habitat; (iii) loss of native Miwok ancestral gathering places; (iv) loss of the Middle Bar Bridge, a historic resource and important emergency evacuation route; (v) loss of a Bureau of Land Management (BLM) planned recreational facility; and (vi) inability to have this stretch of the Mokelumne River designated a "wild and scenic river" by BLM. In addition, Petitioners allege the EIR fails to identify potentially significant impacts that expansion of the Pardee Reservoir may have on the downstream habitat of the Delta.

Petitioners allege that the EIR also fails to identify potentially significant impacts from the proposed expansion of the Lower Bear Reservoir, including the growth-inducing impacts of the additional water supply, the elimination of existing recreational facilities, and the biological impacts from increasing cold water flows during the summer months.

In addition to the EIR's failure to adequately describe these impacts, Petitioners contend the EIR fails to include adequate mitigation measures to reduce them to insignificance. Instead, the EIR defers the formulation and implementation of mitigation measures unless and until the District conducts project-level environmental review for the reservoir expansion projects. As a result, Petitioners argue, the District's determination that impacts will be mitigated to a less-than-significant level is not supported by substantial evidence.

Further, Petitioners contend that the EIR's flawed findings on impacts and mitigation skewed the EIR's alternatives analysis, preventing consideration of reasonable alternatives that feasibly could avoid or reduce the project's significant adverse environmental effects.

Finally, Petitioners contend that the District violated CEQA by failing to respond adequately to comments on the EIR.

The District responds that all of Petitioners' CEQA claims should be dismissed because the District's Water Supply Plan is a mere planning or feasibility study, exempt from the requirements of CEQA.

Further, even if the District was required to prepare an EIR before adopting the Water Supply Plan, the District contends that its EIR is consistent with the requirements of CEQA. The District accuses Petitioners of seeking to require the detailed level of analysis that is required for a project-level EIR, even though the Water Supply Plan is a general, program-level document. The District maintains that the level of detail Petitioners seek is not required, advisable, or even possible.

Instead of speculating about the specific impacts of optional projects, the District contends it properly provided a generalized discussion of the possible impacts of the Water Supply Plan as a whole. The District asserts that the EIR adequately evaluated and appropriately mitigated all of the potentially significant environmental effects of the Water Supply Plan at a program level. Further, it evaluated a reasonable range of alternative portfolios and adequately justified the decision to exclude the Los Vaqueros Reservoir and to reject the Buckhorn Reservoir projects. Moreover, it adequately responded to public comments.<sup>3</sup> Accordingly, the District maintains that the EIR satisfies the CEQA requirements for a program-level EIR.

Finally, even if the EIR is deficient, the District contends there is no prejudicial abuse of discretion because the District has committed it will not "tier" off the program-level EIR as a means of avoiding a full project-level analysis of the Enlarge Pardee Reservoir project. Instead, if that project is ever developed, the District insists it will prepare a project-level EIR to fully analyze and mitigate all of the project's significant impacts.

The Court separately addresses each of these claims below.

A. Is the District's Plan exempt from CEQA review?

As an initial matter, Respondent District contends that all of the challenges to its EIR should be dismissed because the Water Supply Plan is not a project subject to CEQA.

To determine whether the District was required to prepare an EIR for the Water Supply Plan, the Court turns first to the text of CEQA and the CEQA Guidelines. CEQA provides that a public agency must prepare an EIR for any discretionary "project" it proposes to carry out or "approve" that may have a significant effect on the environment. (Pub. Resources Code §§ 21080, 21100(a), 21151(a).)

A "project" is defined as an activity undertaken by a public agency, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Pub.

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<sup>3</sup> In any event, the District argues Petitioners waived this argument by failing to identify a single deficient response.

Resources Code § 21065(a).) The term "project" refers to the whole of an action which is being approved, and which may be subject to several discretionary approvals by governmental agencies. (14 C.C.R. ["Guidelines"] § 15378.) The term "project" does not mean each separate governmental approval. (*Ibid.*)

"Approval" means "the decision by a public agency which commits the agency to a definite course of action in regard to a project . . ." (Guidelines § 15352(a).) Approval cannot be equated with mere interest in, or inclination to support, a project, no matter how well defined. (*Save Tara, supra*, 45 Cal.4th at p.136.) Instead, courts look to determine whether, as a practical matter, the agency has taken action that furthers a project in a manner that effectively precludes alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (*Id.* at pp.138-139.) CEQA does not apply to projects which a public agency rejects or disapproves. (Pub. Resources Code § 21080(b)(5).) But if, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has "approved" the project. (*Id.* at p.139.)

In this case, the District admits it approved the Water Supply Plan, but the District contends the Plan is not a "project." Because the Water Supply Plan does not commit the District to undertake any particular supplemental water supply project, the District argues that the Plan is merely a planning or feasibility study, exempt from the requirements of CEQA.

The flaw in District's argument is that it takes an overly narrow view of the Water Supply Plan. First, by focusing only on the potential supplemental water supply projects, the District ignores the Water Supply Plan's fundamental policy initiatives.

The purpose of the Water Supply Plan is to identify and recommend solutions to meet the District's future dry-year water supply needs. In so doing, the Water Supply Plan incorporates a fundamental policy decision about how the District will proceed to provide water to its customers in the future. As described in the Plan and the EIR, one of the purposes of the Water Supply Plan is to establish conservation, water recycling, and rationing initiatives to reduce water demand. (See, e.g., 10 AR 4257, 4267-4268, 4271.) Since there is a projected gap between supply and demand, these demand-side water management solutions are directly related to the District's need for additional water supply projects: the more demand is reduced, the less additional water supplies will be required to meet future water needs.

By adopting the Water Supply Plan, the District committed itself to particular rationing, conservation, and recycling levels. This, in turn, committed the District to a specific programmatic direction that will require the District to pursue various supplemental water supply projects to bridge the gap between supply and

demand. (2 AR 604 ["During droughts a combination of rationing and additional supplemental water sources will be needed"]; 2 AR 667 ["Supplemental water sources, beyond those already planned or constructed under EBMUD's 1993 WSMP must be developed to ensure reliability during a multiple-year drought event"]; 4 AR 1672 ["Additional supplemental water supplies will be needed . . . ."]; see also 4 AR 691; 10 AR 4266.)

In this sense, the Plan charts the District's direction for meeting future water needs and guides the District's decisions concerning future supplemental water supply projects. (See 10 AR 1674.)

Second, while the District may not have "approved" any particular water supply project, the District has approved a "preferred portfolio" of supplemental water supply options. The very purpose of the Water Supply Plan was to identify and "recommend" solutions to ensure that projected increases in water demand can be met in dry years. (2 AR 601.) As a result, the Water Supply Plan includes "proposed supplemental supply projects." (4 AR 1672.)

In order to provide flexibility and ensure that the objectives of WSMP 2040 are achieved, the "preferred portfolio" includes multiple supplemental water supply components. (2 AR 476.) It is possible that some of the "preferred" supplemental water supply components may not be constructed. (4 AR 1672.<sup>4</sup>) However, because the EIR concedes that "additional supplemental water supplies will be needed," it is reasonably foreseeable that some of the "preferred" supplemental supply components will be constructed. (10 AR 4266.)

The District may not have committed itself to implement any *particular* supplemental supply component, but it has made a choice to implement one (or more) of the "preferred" supplemental supply options. Therefore, it has taken an "essential step" to implement a project that effectively precludes alternatives and mitigation measures that CEQA would otherwise require to be considered -- e.g., a "no project" alternative pursuant to which the District would not pursue any additional water supplies to meet future dry-year water needs. (See 2 AR 555; see also 2 AR 747-749.)

To ensure reliability of water supply during a multiple-year drought event, the District's Plan proposes to develop one or more of the supplemental supply components. That itself is a "definite course of action" leading to an environmental impact and requiring environmental review. (See Guidelines § 15352(a); *Save Tara, supra*, 45 Cal.4th at pp.138-139.)

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<sup>4</sup> "All of the . . . supplemental supply components are included in the Preferred Portfolio; however, only those components that are most feasible according to the circumstances that arise during the 2010-2040 planning period would be implemented." (4 AR 693; see also 4 AR 1680.)

Therefore, the Court concludes that the Water Supply Plan is a "project" for purposes of CEQA, and the District was required to prepare an EIR evaluating the environmental impacts of the Plan.

B. Was the District required to conduct a comprehensive, detailed analysis of the supplemental water supply components?

Even if an EIR was required for the Water Supply Plan, the District contends it was not required to conduct a detailed environmental analysis of the supplemental water supply components. Because the Water Supply Plan is a policy-level document and does not commit the District to any particular water supply component, the District contends the EIR was not required to analyze the site-specific impacts of the preferred supplemental water supply components. According to the District, the EIR at most was required to include a broad, policy-level discussion of the potential environmental impacts of supplying additional sources of water. To the extent its EIR includes detailed analysis of the preferred water supply options, the District asserts it has exceeded the requirements of CEQA, and should not be penalized for doing so.

Petitioners argue that because the District included specific supplemental water supply components in its Water Supply Plan and EIR, the District was obligated to go "all the way," and provide a comprehensive, site-specific analysis of those components.

The Court finds neither party is entirely correct and that the level of detail required in the District's EIR lies between the two extremes urged by the parties. Nevertheless, the Court ultimately agrees with the District that because the Water Supply Plan does not commit the District to undertake any particular water supply component, the EIR was not required to analyze the site-specific impacts of the preferred supplemental water supply components.

Since it is undisputed the District intended its EIR to be a first-tier, "program-level EIR," the Court begins its analysis with a discussion of "program EIRs" and the related concept of tiering.

Under CEQA, a "program EIR" is a specific type of EIR. It is used to review in one document a series of related actions that can be characterized as "one large project."<sup>5</sup> (Guidelines, § 15168.) The use of a program EIR allows a lead agency to focus its analysis on the broad, long-term cumulative impacts of a planning-level or policy action. Further, by "tiering," the program EIR may allow

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<sup>5</sup> As provided in the CEQA Guidelines, a program EIR is an optional procedure to review in one document "a series of actions that can be characterized as one large project" and that can be related either (1) geographically, (2) as logical parts in the chain of contemplated actions, (3) in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. (Guidelines, § 15168.)

the agency to dispense with environmental review for later activities within the program that were adequately covered in the program EIR. (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (10th ed. 1999) p.518.)

"Tiering" refers to the coverage of general matters in broader EIRs with subsequent narrower or site-specific CEQA review incorporating by reference the general discussions from the broader EIR and concentrating the later EIR or negative declaration solely on the issues specific to the later project. (Guidelines §§ 15152, 15385.) Tiering is a process by which agencies can adopt programs, plans, or policies with an EIR focusing on the "big picture," followed by narrower or site-specific environmental review focusing on the specific impacts of the later projects. (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36.)

By "tiering" from a first-tier, program EIR, the agency may be able to carry out an entire "program" without having to prepare any additional, site-specific EIRs or negative declarations.<sup>6</sup> (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (10th ed. 1999) p.518.) Thus, if a program EIR is sufficiently comprehensive and detailed, a program EIR can serve two important functions: (1) as a "first-tier" EIR for a program-level decision, allowing the agency to focus on broad policy alternatives, generalized mitigation measures, and other factors that apply to the program as a whole; and (2) as a site-specific EIR, allowing an agency to dispense with further environmental review for later activities within the program that were adequately covered in the previous EIR.

Of course, where a lead agency intends to rely on an initial EIR to carry out an entire "program" without having to prepare any additional environmental review, the initial EIR must be very detailed. If the future activity is not adequately considered in the initial EIR, it will have to be discussed in a subsequent EIR or negative declaration before it is approved under CEQA.

Tiering *may* enable a public agency to avoid having to undertake a repetitious analysis of significant environmental effects previously addressed in an earlier EIR. Tiering is *not* a device for deferring analysis of the significant environmental impacts of a proposed project. Every EIR, including a first-tier EIR, must describe the project being reviewed and discuss the potentially significant environmental effects if the project is approved. (Guidelines § 15124.) A decision to tier does *not* excuse a governmental entity from preparing an EIR that adequately analyzes the project actually being approved. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 197; Guidelines § 15152(b).)

However, the level of specificity required in an EIR is determined by the nature of the project being reviewed. (*Al Larson Boat Shop, Inc. v. Bd. of Harbor*

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<sup>6</sup> Conversely, if a later project is not adequately considered in the program EIR, the activity will have to be analyzed in a subsequent EIR or negative declaration before it can be approved under CEQA. (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.372.)

*Commissioners* (1993) 18 Cal.App.4th 729, 741-742, 746 [the degree of specificity required in an EIR corresponds to the degree of specificity involved in the proposed project]; *Rio Vista Farm Bureau Ctr. v. County of Solano* (1992) 5 Cal.App.4th 351, 374 [same].) The level of detail required in an EIR need not be greater than that of the proposed project. (Guidelines § 15152(b).)

Where the proposed project is a large-scale, planning-level decision, an EIR may contain only generalized mitigation criteria and policy-level alternatives, and defer for future study the formulation of details regarding later, site-specific projects. (*Koster, supra*, 47 Cal.App.4th at p.37.) The initial EIR then may be followed by "tiered" environmental analysis focusing on the specific impacts of later projects that implement the program, policy, or plan.<sup>7</sup> Subsequent EIRs or negative declarations need not examine environmental effects that the agency finds were mitigated or avoided as a result of the prior project approval or that were reviewed in sufficient detail in the previous EIR to allow those effects to be mitigated when the later project is approved.

The purpose of an EIR is to provide public agencies and the public with detailed information about the significant effects a project is likely to have on the environment, to list ways those effects might be minimized or avoided, and to identify alternatives to the project. (Pub. Resources Code §§ 21061, 21100.) An agency faced with a project with significant environmental effects has a duty under CEQA to avoid or minimize environmental damages whenever feasible before approving the project. Thus, an EIR's analysis must be sufficiently detailed to enable lead agencies to make a decision that intelligently takes account of the environmental impacts that are likely to occur.<sup>8</sup> (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

However, CEQA only requires an EIR to discuss the significant environmental effects of the project being reviewed for approval, not some hypothetical project. (*Rio Vista Farm Bureau Ctr. v. County of Solano* (1992) 5 Cal.App.4th 351, 373.)

It follows that an accurate description of the project is necessary to decide what kind of EIR is required. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) Only through an accurate view of the project may official decisionmakers and the public balance the project's benefit against its environmental cost, consider mitigation measures, and weigh other alternatives.

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<sup>7</sup> Conversely, where a lead agency intends to rely on its initial EIR to carry out an entire "program," without having to prepare any additional site-specific EIRs or negative declarations, the first-tier EIR must be very detailed; it must include sufficient detail to allow the agency to anticipate the specific effects of later projects within the scope of the program and mitigate those effects when the later projects are approved. CEQA Guideline section 15152 provides detailed guidance for determining whether a site-specific project's environmental effects were adequately addressed in a first-tier EIR.

<sup>8</sup> The EIR need not discuss impacts that are clearly insignificant or unlikely to occur. (Guidelines § 15143.)

(*Id.* at p.193 [an accurate, stable and finite description of the project is "the *sine qua non* of an informative and legally sufficient EIR."].)

CEQA defines a "project" as "an activity, which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment." (Pub. Resources Code § 21065; Guidelines § 15378.) The term is broadly construed to maximize protection of the environment. Under CEQA, an EIR's project description must describe the "whole of the action" which is being approved, including all components and future activities that are reasonably anticipated to become part of the project. (Guidelines § 15378; *Laurel Heights Improvement Assn. v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 396; see also *Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.370 [the requirements of CEQA cannot be avoided by chopping a large project into many little ones or by excluding reasonably foreseeable future activities that may become part of the project].)

In contrast, future activities which are not currently proposed for approval, and not a reasonably foreseeable consequence of the project, need not be included in the EIR's description of the project. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1453; *Laurel Heights Improvement, supra*, 47 Cal.3d at p.396; *Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.373.) "Where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." (*City of Santee, supra*, 214 Cal.App.3d at p.1453; see also *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358 [CEQA applies to project components that an agency is proposing to implement, not to preliminary plans, feasibility studies or contemplated development the agency is not proposing to approve or undertake]; *National Parks and Conservation Association v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1520 [deferral of environmental review does not violate CEQA where an EIR cannot currently provide meaningful information about speculative future projects].)

In this case, the parties agree that the Water Supply Plan is the "project," but disagree as to whether the "Regional Upcountry" components are within the scope of that project. The Court concludes that they are.

The question is not, as the District maintains, whether the District has committed to implement all of the components of the Preferred Portfolio. (See 4 AR 1674.) The question is whether the decision has committed the District to a definite course of action in regard to future supplemental water supply projects. This question must be answered in the affirmative.

As described above, by adopting the Water Supply Plan, the District committed to a specific programmatic direction that will require the District to pursue various

supplemental water supply projects to bridge the gap between supply and demand.

Had the Water Supply Plan stopped here, the District's EIR would not have been required to describe specific supplemental water supply projects or to address the site-specific impacts of those projects. It would have been sufficient for the District to include a broad, policy-level discussion of the secondary effects of supplemental water supply projects generally.

But this is not what happened. Instead, the District considered a range of specific supplemental water supply components, rejected the components that did not meet the District's objectives, and selected a "preferred portfolio" of supplemental water supply solutions to be included as part of the District's Water Supply Plan.

In determining whether an agency has "approved" a project, courts look to determine whether, as a practical matter, the agency has taken action that furthers the project in a manner that effectively precludes alternatives or mitigation measures that CEQA would otherwise require to be considered. (*Save Tara, supra*, 45 Cal.4th at pp.138-139.) If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then the agency has "approved" the project. (*Id.* at p.139.)

Here, the District has made a choice to advance its "preferred" water supply options, and this choice, as a practical matter, is likely to preclude alternatives that CEQA otherwise would require to be considered. Thus, the Court finds the District was required to evaluate the "preferred" water supply components in its EIR.

The situation here is similar to *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29. At issue in *Koster* was a Board of Supervisor's decision to permit the inclusion of two new communities in a long-range general plan amendment. The trial court rejected a challenge to the Board's decision as premature, reasoning that the general plan did not approve construction of the communities and the mere act of placing the towns on a map for possible future development is not by itself, an environmental impact. The trial court concluded that the petitioners should challenge the environmental impacts of the communities when concrete plans are submitted by the developers. (*Id.* at pp.31-35.)

The Third Appellate District Court of Appeal reversed with directions to the trial court to consider petitioners' challenges on the merits. Although acknowledging the Board had not fully committed to implement the new towns, the Court found that the Board had made a fundamental policy decision about where future growth "ought to occur" within San Joaquin County. (*Id.* at p.41.) By placing these towns on the general plan map, "[t]he Board did not merely find that two

new towns of a certain approximate size should be considered somewhere in the southern part of San Joaquin County," it made a "choice" about site selection. (*Id.* at p.42.)

Likewise, here the District did not merely determine that some, undecided supplemental water supplies would be needed at some undetermined locations, it selected a specific portfolio of "preferred" supplemental water supply options to be implemented as part of the District's Water Supply Plan.

The District's reliance on *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, is misplaced. The facts of those cases are different.

*Rio Vista Farm Bureau* involved the validity of an EIR for a county's hazardous waste management plan. The plan did not select any specific sites for hazardous waste disposal facilities, or even determine that future facilities will be necessary, but instead merely designated certain areas within the county in which future facilities permissibly could be located. (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at pp.373-374.)

*Al Larson Boat Shop* is similar. At issue in that case was a proposed five-year plan to increase port cargo handling capacity. Although the plan and EIR described six "anticipated" port projects, the Court found that the EIR described the projects *solely for the purposes of giving a reasonably detailed consideration to the overall plan*. The Court found the Board did not intend the plan and EIR to be a material step in officially selecting or approving any of the "anticipated" projects. (*Al Larson Boat Shop, supra*, 18 Cal.App.4th at pp.742-743; see also *In re Bay-Delta Programmatic Environmental Impact Report ("In re Bay-Delta EIR")* (2008) 43 Cal.4th 1143, 1168 n.8 [noting EIR for CALFED identified specific, "representative" projects for achieving the goal of water storage].)

The same cannot be said here. The District did not merely designate certain areas where supplemental water supply projects would be appropriate, or describe "representative" supply projects for purposes of giving detail to the Water Supply Plan. Rather, the District selected a portfolio of specific solutions to meet the District's need for supplemental water supplies.

The "Regional Upcountry" components are within the scope of the Water Supply Plan project and the District was required to evaluate them. Under the circumstances, it would not have been sufficient for the EIR to describe, in general terms, the secondary effects of unspecified supplemental water supply projects.

Still, the level of detail required in the EIR need not be greater than that of the proposed project. CEQA recognizes that the impacts of policy-level decisions

cannot be predicted or examined with the same exactitude and detail required for a construction project. (*Koster, supra*, 47 Cal.App.4th at p.41.) The difficulty of assessing future impacts at the policy-level does not excuse preparation of an EIR, but it reduces the level of specificity required. (*Ibid.*) Thus, a program-level EIR need not be as precise as a project-specific EIR. (*Ibid.*; *Al Larson Boat Shop, supra*, 18 Cal.App.4th at p.746 [EIR on the adoption of a general plan must focus on the secondary effects of adoption, but need not be as precise as an EIR on the specific projects which might follow].)

The sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. (Guidelines § 15151.) Where development of detailed, site-specific information is not feasible in a first-tier EIR, it is proper for a lead agency to focus the first-tier EIR on the general plan or program and defer site-specific analysis to the future when specific projects are being considered. (*In re Bay-Delta EIR, supra*, 43 Cal.4th at pp.1174-1175; see also *Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.373 [where EIR cannot provide meaningful information about a future project, deferral of environmental assessment does not violate CEQA]; *Al Larson Boat Shop, supra*, 18 Cal.App.4th at p.746 [while an EIR cannot defer all consideration of cumulative impacts to a later time, it may legitimately indicate that more detailed information may be considered in future project EIRs].)

Here, because the Water Supply Plan is a policy-level document and does not commit the District to any particular water supply component, the District contends it was not required by CEQA to conduct a full-scale, detailed environmental analysis of the Regional Upcountry components. According to the District, the EIR at most was required to include a broad, policy-level discussion of the potential environmental impacts of supplying additional sources of water. The District asserts that environmental documentation should be prepared to evaluate the site-specific impacts of the portfolio components as they are developed. There is merit to the District's arguments.

The Water Supply Plan at issue here is not a "project" to enlarge the Pardee and Lower Bear Reservoirs or undertake any particular supplemental water supply project. The Plan suggests that supplemental water supply projects will be necessary, and even selects "preferred" water supply options, but the Water Supply Plan does not commit the District to implement all of the preferred portfolio components, or any particular water supply project. Thus, although supplemental water supply options have been identified, it is unknown which of the potential water supply projects will actually be developed.

The District is not required to undertake a full-scale, detailed environmental analysis of the preferred portfolio components merely because the EIR may be used to focus or simplify later review in a tiered EIR.<sup>9</sup> In reviewing the sufficiency

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<sup>9</sup> Citing to its Findings, the District claims that it does not intend to tier from its program EIR. (2 AR 486.) The cited portions of the Findings do not support this claim. The Findings show the District has committed to prepare a project-level EIR for future, project-level activities, but the

of the EIR, the question is whether the EIR includes enough information for decisionmakers to intelligently consider the environmental consequences of the project. The Court is not aware of any authority finding an EIR deficient for including too much information. Such a finding would be contrary to the purposes of CEQA. Lead agencies should not be faulted for providing decisionmakers and the public with as much information as possible about the project and its environmental impacts.

Of course, if a future project is not fully analyzed in a first-tier EIR, it will have to be discussed in a subsequent EIR or negative declaration before it can be approved under CEQA. (*Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at p.396.) Later, project-level environmental review will require an independent determination and disclosure of site-specific environmental impacts. (*In re Bay-Delta EIR*, *supra*, 43 Cal.4th at p.1176.)

Yet in light of the broad, programmatic nature of the District's Water Supply Plan, and the flexible and uncertain nature of the supplemental water supply components, the Court finds the District was not required to conduct comprehensive, site-specific analysis of the individual water supply components in its program-level EIR. The District merely was required to include a general discussion of the potential environmental impacts of the preferred supplemental water supply components.

Against this background, the Court turns to Petitioners' specific challenges to the EIR, to decide whether the District's EIR included sufficient detail to enable those who did not participate in its preparation to understand and meaningfully consider the environmental consequences of the Water Supply Plan. (See *Rio Vista Farm Bureau*, *supra*, 5 Cal.App.4th at p.375; *In re Bay-Delta EIR*, *supra*, 43 Cal.4th at p.1175.)

C. Did the District violate CEQA by failing adequately to identify or mitigate the significant impacts of the Enlarge Pardee Reservoir and Enlarge Lower Bear Reservoir components of the project?

Petitioners allege that the District violated CEQA by failing to adequately identify and mitigate the potentially significant environmental impacts of proposals to expand the Pardee Reservoir and Lower Bear Reservoir. The Court considers each component separately.

1. The Enlarge Pardee Reservoir component

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District did not pledge that it would not seek to tier from its program EIR. And even if it had, the enforceability of such a pledge would be questionable. Nevertheless, the Court will take the District at its word that it will not tier from the program EIR, at least in regard to future supplemental water supply projects. Indeed, this result appears to be compelled under CEQA.

Petitioners allege that the EIR does not adequately identify the potentially significant environmental effects that an expanded Pardee Reservoir would have on recreational, historical, biological, cultural, and public safety resources in the upper Mokelumne River and Delta. Petitioners allege the EIR fails to identify potentially significant impacts that expansion of the Pardee Reservoir will have due to inundation of approximately two miles of the Mokelumne River, including: (i) the loss of the Middle Bar (whitewater) Run, part of the Electra Run, and other recreational facilities; (ii) loss of instream, riparian, and upland habitat; (iii) loss of native Miwok ancestral gathering places; (iv) loss of the Middle Bar Bridge, a historic resource and important emergency evacuation route; and (v) inability to have this stretch of the Mokelumne River designated a "wild and scenic river" by BLM. In addition, Petitioners allege the EIR fails to identify potentially significant impacts that expansion of the Pardee Reservoir may have on the downstream habitat of the Delta.

Petitioners further allege that the EIR fails to include adequate mitigation measures to reduce these impacts to a level of insignificance. As a result, Petitioners argue, the District's determination that impacts will be mitigated to a less-than-significant level is not supported by substantial evidence.

a. Recreational and Cultural Resources: Potential loss of Middle Bar Run and native Miwok ancestral gathering places

Petitioners contend the District's EIR is deficient because it fails to identify the Middle Bar Run as a recreational resource, and fails to describe the potentially significant impact on recreation that would result if this section of the river is inundated by expansion of the Pardee Reservoir. The Court agrees.

The District argues that because the specific configuration (elevation) for an expanded Pardee Reservoir has not been determined, a detailed evaluation of how the Enlarge Pardee Reservoir component would impact the Middle Bar Run would be speculative. However, the problem with the District's EIR is not that it fails to include a detailed description of how the Middle Bar Run would be impacted under different configurations. The problem is that the EIR does not acknowledge the Middle Bar Run even exists.

There can be no dispute that if the Pardee Reservoir component is implemented, no matter which configuration (elevation) is chosen, some portion of the Middle Bar Run will be inundated. (See 10 AR 4237; 18 AR 7358.) The Middle Bar Run is a significant recreational resource, and inundation would eliminate this recreational resource. Thus, approval of the project may have a potentially significant environmental impact on recreational resources due to inundation of the Middle Bar Run. The EIR is inadequate from an informational standpoint because it fails to acknowledge this potentially significant impact.

Moreover, because the EIR fails to identify this potentially significant impact on recreational resources, the EIR's proposed mitigation measures are inadequate. The District found that potential impacts on existing recreational facilities could be mitigated to less than significance by operating the reservoir to preserve the "Electra Whitewater Run." (2 AR 534.) The Electra Whitewater Run is upstream of the Middle Bar Run, so committing to preserve the Electra Whitewater Run does not mitigate the potentially significant impacts to the Middle Bar Run. Thus, the District's finding that impairment of recreational facilities and activities will be "less than significant after mitigation" is not supported by substantial evidence.

Although the District was not necessarily required to formulate specific mitigation measures for the impact to the Middle Bar Run as part of its program EIR,<sup>10</sup> the District was required to identify inundation of the Middle Bar Run as a potentially significant environmental impact of the project.

Petitioners further contend the District's EIR is deficient because it fails to adequately identify and mitigate the potentially significant impacts to native Miwok cultural gathering places. Petitioners argue that inundation of the Middle Bar area, an inevitable result of the Pardee Reservoir expansion, will eliminate these cultural sites. (The District's brief does not address this issue at all, except in its introduction.)

The EIR acknowledges that the Miwok have a Black Willow gathering site in the Middle Bar area, but the EIR does not appear to include any proposed mitigation measures for the potential inundation of the site. Nevertheless, the District found that implementation of Mitigation Measures 5.2.H-1a, 5.2.H-1b, 5.2.H-1c, and 5.2.H-1d would reduce the potentially significant impacts from alteration or damage to known or unrecorded cultural resources to a less than significant level.

While deferring formulation of specific mitigation measures would be appropriate, the Court finds that the District has deferred formulating any mitigation measures for this impact, while nevertheless finding that its mitigation measures will reduce this potential impact to a less than significant level. This violates CEQA. The District has failed to adequately describe and mitigate the potentially significant impact to native Miwok ancestral gathering places.

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<sup>10</sup> *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 377; see also *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking]; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 916 [impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 [deferral improper where no reason or basis is provided in the EIR for the deferral to a future management plan].

In contrast, the Court finds the EIR adequately identifies and analyzes the potentially significant recreational impacts due to possible inundation of the Electra Run, and adequately mitigates these impacts by committing to implement an operations plan that "preserves the Electra whitewater run." (2 AR 534.)

b. Historical and Public Safety Resources: Potential loss of Middle Bar Bridge

Petitioners also contend the District's EIR is deficient because it fails to adequately identify and mitigate the potentially significant impacts due to possible elimination of the Middle Bar Bridge, and the emergency evacuation option it represents.

The EIR identifies Middle Bar Bridge as a historical resource. The EIR finds that expanding the Pardee Reservoir could have potentially significant impacts on historical resources since raising the reservoir could require removal of the bridge, but the District found that the potential historical impact can be mitigated to a level of insignificance by committing to create a data recovery plan and interpretative display. (4 AR 958; 4 AR 1131; 4 AR 1133; 2 AR 540.)

Petitioners contend this mitigation measure is inadequate because it does not require the Bridge to be preserved (either by raising it or relocating it). In addition, Petitioners contend the EIR fails to analyze the potential safety impacts due to the possible elimination of an emergency access route.

The Court does not agree that a "data recovery plan" is not adequate mitigation. While the District may need to consider raising or relocating the bridge as part of a project-level EIR, if the bridge cannot be preserved, a data recovery plan would reduce the impact to a less than significant level.

In contrast, the Court agrees with Petitioners that the District has impermissibly deferred analysis and mitigation of the potential safety impacts due to possible removal of emergency evacuation routes.

Here, it is uncertain whether the Enlarge Pardee Reservoir component will be implemented, and if the component is implemented, whether the Middle Bar Bridge will need to be removed. In light of this uncertainty, it was permissible for the District to defer detailed analysis and mitigation of this issue to a future project EIR if and when the District decides to move forward with the Enlarge Pardee Reservoir component.<sup>11</sup> (6 AR 2806; 5 AR 2000; see also 10 AR 4243; 4 AR 1084.)

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<sup>11</sup> Of course, if the District ultimately decides to move forward with the Enlarge Pardee Reservoir component, it will need to prepare a project-level EIR to fully analyze and mitigate any public safety impacts from moving or removing the Middle Bar Bridge.

However, the District should have identified the potential safety impact due to possible elimination of emergency evacuation routes and adopted at least a general mitigation measure to mitigate such impacts.<sup>12</sup>

c. Biological Resources: Potential loss of instream, riparian, and upland habitat

Petitioners contend the District's EIR is deficient because it fails to adequately analyze the impacts on biological resources that would result if the river is inundated by expansion of the Pardee Reservoir.

The Court finds the discussion of possible biological impacts to be adequate for a first-tier, program EIR.

The EIR generally discusses the habitat conditions in the area of the Pardee Reservoir and the species that presently occupy this habitat. The EIR recognizes that implementation of the Enlarge Pardee Reservoir component could have a significant impact on the species or their habitat. However, because the specific configuration of the Pardee Reservoir component has yet to be determined, and implementation of the Pardee Reservoir expansion remains uncertain, the District properly concluded that it would not be feasible or practical to perform a detailed analysis of the particular biological impacts of the project. Instead, the EIR commits to fully examine such impacts in a project-level EIR when and if the District decides to move forward with the Enlarge Pardee Reservoir component.

The EIR includes enough information about the potential biological impacts of the Pardee Reservoir component for decisionmakers to intelligently consider the environmental consequences of adopting the project, which is the Water Supply Plan. The EIR does not include enough information to intelligently consider the environmental consequences of moving forward with the Enlarge Pardee Reservoir component, but the Water Supply Plan does not approve that component. Thus, under the circumstances, the Court finds the EIR's discussion of biological impacts to be adequate.

The Court also finds the District's adopted mitigation measures are adequate for a first-tier EIR.

Because it is uncertain whether the Enlarge Pardee Reservoir component will be implemented, and the specific configuration (elevation) for an expanded Pardee Reservoir has not been determined, deferring detailed analysis and formulation of specific mitigation measures was appropriate. (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44

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<sup>12</sup> The mitigation measure need not be specific. It would seem to be sufficient, for example, to commit to perform a study and take such mitigation measures as are recommended by it to preserve necessary emergency evacuation routes.

Cal.4th 459, 503 [tiering is properly used to defer analysis of environmental impacts and mitigation measures when the impacts or mitigation measures are specific to later phases].) It would have been premature for the District to attempt to analyze and mitigate site-specific impacts to biological resources based on speculation that the Pardee Reservoir will be expanded according to a particular configuration.

Where, as here, the agency is preparing a program-level EIR and devising specific mitigation measures is impractical, the agency can satisfy CEQA by making a firm commitment to future mitigation of significant impacts by devising measures that will satisfy articulated performance criteria. (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at pp.377, 381-382; *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 367; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395.)

In this case, the District has committed to conduct habitat assessments and biological surveys prior to implementing any water supply component; to avoid critical habitat and sensitive species, where possible; or, if avoidance is not feasible, to consult with state and federal regulatory agencies to determine appropriate site-specific mitigation measures, such as replacement habitat or participation in an in-lieu fee program. (See 2 AR 525-533.) In general, this is sufficient to meet the requirements of CEQA for a first-tier EIR.

To support the District's finding that the adopted mitigation measures are sufficient to avoid or mitigate potentially significant biological impacts to a less than significant level, the District's mitigation measures should include a commitment by the District not to develop the Enlarge Pardee Reservoir component unless the potentially significant biological impacts are mitigated to a less than significant level. In the absence of such a commitment, it was premature for the District to find the potentially significant effects would be mitigated to less-than-significant levels.

However, the District remedied this problem by committing, as a condition of project approval, to prepare a project-specific EIR with mitigation for all potentially significant impacts before proceeding with the Enlarge Pardee Reservoir project. In so doing, the District has committed to future mitigation of all potentially significant impacts. With this commitment, the Court finds the District's adopted mitigation measures to be adequate for a first-tier EIR.

d. Other: Potential loss of eligibility for National Wild and Scenic River status and downstream impacts to Delta

Petitioners contend the District's EIR is deficient because it fails to adequately analyze the detrimental impact that flooding a stretch of the Mokelumne River could have on its eligibility for designation under the federal Wild and Scenic River Act.

The Court is not persuaded that the District's EIR was required to discuss the potential loss of consideration for "wild and scenic river" status as a potentially significant adverse environmental impact. No portion of the river currently is designated as part of the Wild and Scenic Rivers system. (5 AR 1995.) The potential loss of this prospective environmental benefit is not, in this Court's view, equivalent to an adverse environmental impact.

In any event, the Court finds the EIR's discussion of this potential "impact" to be adequate. (See 5 AR 1995, 1998; 7 AR 3030.) The EIR indicates that the portion of the Mokelumne River between "Electra Afterbay" and the Highway 49 Bridge is suitable and eligible for possible inclusion in the national Wild and Scenic Rivers System. The EIR states that if the Pardee Reservoir is expanded, depending on the configuration, there is a possibility that this segment of the river could be inundated, but that the extent of that inundation and impacts cannot be determined unless and until the District develops a specific design proposal for this component. (7 AR 3030.) The Court agrees and therefore finds the EIR's discussion to be adequate for a program-level EIR.

Petitioners also allege the EIR is deficient because it fails to adequately analyze impacts that expansion of the Pardee Reservoir may have on the Delta. The Court does not agree.

The EIR acknowledges that there could be potentially significant long-term impacts to the lower Mokelumne River hydrology from construction of the Enlarged Pardee Reservoir. (See 4 AR 1039-1040; 2 AR 627-628.) The EIR finds, however, that implementation of Mitigation Measure 5.2A-11 would reduce these potential impacts to less-than-significant levels. This finding is supported by substantial evidence in the record.

The evidence in the record shows that Mokelumne River flows constitute less than 3% of the overall flow to the Delta. (5 AR 1998.) While enlargement of the Pardee Reservoir could temporarily impact lower Mokelumne River flows, the disruptions to flows could be minimized through management of operations at Pardee Reservoir and Camanche Reservoir, which is downstream of Pardee. (4 AR 1039-1040.)

The District's interference with Mokelumne River flows already are limited by its contract with the U.S. Bureau of Reclamation, FERC licenses, the terms of the District's water rights, and a Joint Settlement Agreement with the U.S. Fish and Wildlife Service and the California Department of Fish and Game. (5 AR 1998.) Any increase in capture above existing entitlements would be subject to legal and regulatory proceedings. (4 AR 1040.) The Water Supply Plan does not propose to increase the District's water rights or change its Joint Settlement Agreement water releases. (5 AR 1998.) Further, Mitigation Measure 5.2A-11 commits the District to modify and manage the future operations of the reservoirs to meet the

flow requirements established by the Joint Settlement Agreement and as needed to meet all environmental and downstream appropriator and riparian rights obligations. (4 AR 1040.)

Given the limited contribution of the Mokelumne River on the overall flow to the Delta, and the District's commitment to manage future operations of the reservoirs to maintain flow requirements established by the Joint Settlement Agreement and as necessary to meet environmental obligations, the Court finds that the District has adequately analyzed and mitigated the potentially significant impacts to the Delta.

## 2. The Enlarge Lower Bear Reservoir component.

Petitioners also allege that the EIR fails to identify potentially significant impacts from the proposed expansion of the Lower Bear Reservoir, including the growth-inducing impacts of the additional water supply, the elimination of existing recreational facilities, and the biological impacts from increasing cold water flows during the summer months.

The analysis regarding the biological impacts of the Enlarge Lower Bear Reservoir is essentially identical to the analysis regarding the biological impacts of the Enlarge Pardee Reservoir. As described above, the Court finds the EIR's discussion of potential biological impacts from the Enlarge Pardee Reservoir to be adequate for a first-tier, program EIR. For similar reasons, the Court finds the EIR's discussion of potential biological impacts from the Enlarge Lower Bear Reservoir also to be adequate for a first-tier, program EIR.

The Court finds the EIR also adequately identifies, for purposes of a first-tier EIR, the potentially significant impacts to recreational facilities. (4 AR 906.) The EIR acknowledges that enlarging Lower Bear Reservoir could have a potentially significant impact on recreation facilities and activities, but proposes to mitigate those impacts by relocating or replacing any recreational features displaced by enlargement of the reservoir. (4 AR 723, 793, 1077-1079.) This is adequate for a first-tier, program EIR.

The District also did not abuse its discretion in finding the potential growth-inducing impacts of the project to be less than significant. As the District notes in the EIR, the project is a solution to meet the District's dry-year water needs through 2040. The incremental increase in water storage created by the Enlarge Lower Bear Reservoir component would only be used to meet demand in dry years. Therefore, the potential growth-inducing impacts of the project are less than significant.

As for potential growth-inducing impacts outside the District's service area, the EIR states that while regional participation is desired, at this stage it cannot be determined if and to what extent other regional partners might participate. The

evidence supports the finding that regional participation in the project is too uncertain and speculative to require detailed environmental review at this time. (4 AR 793, 1207; 10 AR 4355.)

D. Did the District violate CEQA by failing to prepare an adequate analysis of reasonable alternatives to the project?

Petitioners complain that the District further violated CEQA by failing to prepare an adequate "alternatives analysis." First, Petitioners allege that the EIR's failure to identify significant impacts to the Mokelumne River and the Delta understated the potential impacts of the Regional Upcountry components, thereby skewing the EIR's alternatives analysis. Second, Petitioners allege the District improperly excluded the Los Vaqueros Reservoir project as a potentially feasible alternative. Third, Petitioners allege the District improperly rejected the Buckhorn Canyon Reservoir project as an infeasible alternative.

The Court agrees with Petitioners' first argument. The EIR failed to adequately identify potentially significant impacts due to the possible expansion of Pardee Reservoir. As a result, the District's Board was given an erroneous view of the potential environmental impacts for the Enlarged Pardee Reservoir component. This improperly skewed the EIR's alternatives analysis. (See *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431 [an analysis which understates the severity and significance of impacts impedes meaningful public discussion and skews the decisionmaker's perspective of the project's environmental consequences, alternatives, mitigation measures, and the appropriateness of project approval].)

Petitioners' second argument, concerning the Los Vaqueros Reservoir, involves three interrelated issues: (1) whether the EIR presented sufficient information to explain the decision to exclude the Los Vaqueros project from analysis in the EIR; (2) whether there is substantial evidence in the record to support the decision to exclude the Los Vaqueros project; and (3) whether the range of alternatives analyzed in the EIR is reasonable in the absence of the Los Vaqueros project. The Court considers each issue separately below.

The lead agency is responsible for selecting a range of project alternatives for examination. There is no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.378.) Each case must be evaluated on its facts. (*Ibid.*) However, an EIR is required to ensure that all reasonable alternatives to a proposed project are thoroughly assessed by the responsible official. Therefore, an EIR must describe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872.)

To be legally sufficient, the consideration of project alternatives in an EIR must permit informed decisionmaking and informed public participation. (Cal. Code Regs., tit. 14, § 15126.6(a); *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1351.) Thus, the range of alternatives considered in an EIR must represent enough variation to permit a reasonable choice of alternatives so far as environmental aspects are concerned. (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.378.)

An EIR is required to include an in-depth discussion of those alternatives identified as at least "potentially feasible." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 569; *Preservation Action Council, supra*, 141 Cal.App.4th at p.1351.) But an EIR is not required to consider alternatives which are infeasible. (*Ibid.*) Thus, the lead agency must make an initial determination as to which alternatives are potentially feasible, meriting in-depth consideration, and which are not. (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p.569.)

The Legislature has defined "feasible" for purposes of CEQA to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Res. Code § 21061.1; see also Cal. Code Regs., tit. 14, § 15364.) Among the factors that may be taken into account when assessing feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent reasonably can acquire, control, or otherwise have access to the alternative site. (Cal. Code Regs., tit. 14, § 15126.6(f)(1); *Citizens of Goleta Valley, supra*, 52 Cal.3d at pp.574-575.)

The EIR should publicly disclose its reasoning for selecting the alternatives considered in an EIR. The EIR should describe the rationale for selecting the alternatives to be discussed in the EIR. It also should identify any alternatives that were considered but rejected as infeasible during the scoping process, and briefly explain the reasons underlying that determination. (Cal. Code Regs., tit. 14, § 15126.6(c).) The evidence of infeasibility need not be found within the EIR itself, but any finding of infeasibility must be supported by substantial evidence in the record. (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 569.)

In this case, the District stated in its Draft EIR that it considered but eliminated the Los Vaqueros Reservoir project due to "lack of definition of partners, benefits, and timeline for implementation." (4 AR 819; 11 AR 4413-4414.) In comments on the Draft EIR, the Contra Costa Water District (CCWD) argued the Draft EIR is not accurate. CCWD asserted the Los Vaqueros project is "sufficiently advanced" and defined to be evaluated in the EIR. (See, e.g., 5 AR 1843; see also 7 AR 3051.) In response, the Final EIR stated that, "[g]iven the uncertainty about when and whether the [Los Vaqueros] project will be approved and whether it could provide specific benefits to EBMUD under mutually agreeable terms and conditions, the [project] has not been incorporated into EBMUD's

WSMP 2040 preferred portfolio." (5 AR 1845-1846.) However, the District indicated it would continue to track the project for future consideration. (*Ibid.*; 11 AR 4413; see also 113 AR 42789-42792.)

The Court finds no violation of CEQA's informational mandate in regard to the Los Vaqueros Reservoir project. The EIR presented sufficient information to explain the reason for excluding that project, namely, the uncertainty regarding the cost, quantity, and reliability of future dry-year water supply that could be made available to the District by the project. (See, e.g, 5 AR 1845.)

However, as to the substantive decision to omit the Los Vaqueros Reservoir project, the Court agrees with Petitioners that the decision to exclude the project from consideration in the District's program EIR is not supported by substantial evidence in the record.

The District purportedly rejected the Los Vaqueros project due to lack of detail regarding implementation of the project. However, the same could be said for many, if not all, of the water supply components discussed in the EIR, including those in the Preferred Portfolio. Nearly all of the components involve regional partners and none of the regional partners have been confirmed. (4 AR 1207.) Moreover, most of the components have no defined benefits or timeline for implementation.

The Northern California Water Transfers component "assumes" the District will seek water transfers with partners who have supplies that originate in the north Delta, and indicates that new facilities "may be needed" to make water available for transfer. (4 AR 780-781.)

The Bayside Groundwater Project Phase 2 is based upon an existing successful storage project, but the EIR concedes that a "tangible project configuration for Phase 2" has not yet been determined. (4 AR 783.)

The Sacramento Basin Groundwater Banking/Exchange component is a "conceptual" project for which actual operational details are unknown. The EIR considered three conceptual "options" for implementing the project. (4 AR 786-787.)

The Regional Desalination component is a project being "explored" which "could consist of one or more desalination facilities." (4 AR 788.) The proposed location for the project has not been determined, so the EIR "assumes" the East Contra Costa site will be selected and "presumes" the capacity of the completed project will be 71 MGD. (*Ibid.*)

The Mokelumne Inter-Regional Conjunctive Use Project (IRCUP) / San Joaquin Groundwater Banking/Exchange component is a "conceptualized" project to use the foothill counties' Mokelumne River water rights as a source of water, the

District's Mokelumne River facilities as a conveyance mechanism, and San Joaquin County's groundwater basin for water storage. (4 AR 795.) The Draft EIR indicates that forum members are working to move the concept forward so that studies, agreements, etc. could be developed, "resulting in a more definitive project configuration." (*Ibid.*)

The configuration of the Enlarge Pardee Reservoir component is not determined. (10 AR 4237.) Neither is the operation scheme, which will "depend on the engineering design and the participants involved." (4 AR 793.) Further, while the majority of the land surrounding the existing reservoir is owned by the District, the District anticipates it will have to purchase or secure easements on additional lands needed for the project. (4 AR 790.) As the District itself vociferously has argued, it is uncertain whether the Enlarge Pardee Reservoir project will be approved and, if it is, what specific water supply benefits it will provide to the District.

The Enlarge Lower Bear Reservoir component is perhaps the best example since it is owned by PG&E, and PG&E expressly commented that it "cannot agree to the feasibility" of raising the Lower Bear Dam because it represents a "substantial modification" to a FERC-licensed project and "PG&E and EBMUD have not engaged in the substantive discussions required to fully understand the implications of this part of the WSMP 2040 proposal." (5 AR 1875; see also 4 AR 793 [noting the operation scheme has not been determined and would depend on the design of the dam and the participants involved].)

In short, all of the District's "preferred" water supply components are shrouded in as much, or more, uncertainty than the Los Vaqueros Reservoir project.

Because of the broad, programmatic nature of the District's Water Supply Plan, and the flexible and uncertain nature of the supplemental water supply components, the District was not required to include a detailed, site-specific analysis of the individual water supply components in its EIR.

However, for the same reason, the District cannot arbitrarily exclude potential water supply options merely because they are not fully defined and certain.

The evidence in the record supports the assertion that the Los Vaqueros Reservoir project was sufficiently defined to be included as a "potentially feasible" alternative. The District abused its discretion in arbitrarily excluding the Los Vaqueros project for being "undefined" and "uncertain" while retaining other water supply components that are equally undefined and uncertain. The District's determination that the Los Vaqueros project is "infeasible" is not supported by substantial evidence in the administrative record as a whole. The District should have included the Los Vaqueros project as a potentially feasible alternative water supply component.

The Court now proceeds to consider whether exclusion of the Los Vaqueros project renders the EIR defective.

The range of project alternatives required to be analyzed in an EIR is judged against a "rule of reason." (*Rio Vista Farm Bureau, supra*, 5 Cal.App.4th at p.378.) An EIR need not consider every conceivable alternative to a proposed project. (*Ibid.*) CEQA merely requires enough variation to permit informed decisionmaking. (*Ibid.*) Thus, in assessing a claim that exclusion of a particular alternative renders the EIR defective, the question is whether the range of alternatives analyzed in the EIR is reasonable in the absence of the omitted alternative. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 992.)

The District contends that it considered a reasonable range of alternative portfolios to the project as a whole, and that it was not required to identify or evaluate a range of alternatives to the individual components of the project.

In general, the Court agrees that the District only was required to evaluate a reasonable range of alternatives to the proposed project, but the Court does not agree that it did so. While the Court has no objection to the conceptual range of portfolios described in the EIR, the Court finds there is insufficient variation in the composition of those portfolios to permit informed decisionmaking.

An EIR is required to ensure that all reasonable alternatives to a proposed project are thoroughly assessed by the responsible official. Therefore, an EIR must describe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872.) The discussion must focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of project objectives, or would be more costly. (*Ibid.*)

As described above, the project at issue is the District's Water Supply Plan. The purpose of the Plan is to identify and recommend solutions to meet the District's dry-year water supply needs through the year 2040. The Plan estimates dry-year water supply needs to the year 2040, and proposes and evaluates a range of "portfolios" to bridge the gap between supply and demand. Each portfolio consists of a series of "components" that could be implemented over time to meet the need for water in the District's service area. The components are comprised of water conservation, rationing, and recycling levels, and proposed supplemental water supply projects. (4 AR 688-689, 1669-1672.)

The Preferred Portfolio consists of the following components: 10% rationing<sup>13</sup> (22 MGD [millions of gallons per day]), Level D conservation (39 MGD), Level 3 water recycling (11 MGD), and the following supplemental water supply components: the Northern California Water Transfers, the Bayside Groundwater Project Phase 2, the Sacramento Basin Groundwater Banking-Exchange, Regional Desalination, Enlarge Pardee Reservoir, Enlarge Lower Bear Reservoir, and the IRCUP/San Joaquin Groundwater Banking-Exchange.

In addition to the required "no project" alternative, the EIR considered five alternative portfolios: Alternative Portfolios A, B, C, D, and E.

Alternative Portfolio A is the "Groundwater/Conjunctive Use and Water Transfers" option. It emphasizes water production through groundwater/conjunctive use components and water transfers. Portfolio A differs from the Preferred Portfolio in that it requires less recycling (Level 2, or 5 MGD), and excludes the Enlarge Pardee Reservoir, Enlarge Lower Bear Reservoir, and Regional Desalination water supply components.

Alternative Portfolio B is entitled the "Regional Partnerships" option. It emphasizes water production through regional partnerships. Portfolio B differs from the Preferred Portfolio in that it requires less conservation (Level C, or 37 MGD) and less recycling (Level 2, or 5 MGD), and excludes the Enlarge Pardee Reservoir and Bayside Groundwater Project Phase 2 water supply components.

Alternative Portfolio C is entitled the "Local System Reliance" option. It emphasizes water production through reliance on a new increment of water storage in the District's service area. Portfolio C differs from the Preferred Portfolio in that it includes more rationing (15%, or 32 MGD), less conservation (Level C, or 37 MGD), and less recycling (Level 2, or 5 MGD). It also differs in that it includes the Buckhorn Canyon Reservoir water supply component, and excludes all of the water supply components in the Preferred Portfolio.

Alternative Portfolio D is entitled the "Lower Carbon Footprint" option. It emphasizes water production through projects and facilities having the lowest carbon footprint. Portfolio D differs from the Preferred Portfolio in that it includes more rationing (15%, or 32 MGD), less conservation (Level C, or 37 MGD), less recycling (Level 2, or 5 MGD), and excludes the Northern California Water Transfers, the Sacramento Basin Groundwater Banking-Exchange, Regional Desalination, Enlarge Lower Bear Reservoir, and IRCUP/San Joaquin Groundwater Banking-Exchange water supply components.

Alternative Portfolio E is entitled the "Recycled Water and Water Transfers" option. It emphasizes water production through recycled water and water transfers. Portfolio E differs from the Preferred Portfolio in that in that it includes

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<sup>13</sup> This was subsequently changed at the time of project approval to 15%.

less conservation (Level C, or 37 MGD), and excludes the Regional Desalination, Enlarge Pardee Reservoir, Enlarge Lower Bear Reservoir, and the IRCUP/San Joaquin Groundwater Banking-Exchange water supply components.

In sum, the EIR considered the Preferred Portfolio, a "no-action" option, a "groundwater/conjunctive use and water transfers" option, a "regional partnership" option, a "local system" option, a "low carbon footprint" option, and a "recycled water and water transfers" option. The differences between the Preferred Portfolio and the alternative portfolios are summarized in the table below (with differences indicated in bold). (See 4 AR 798.)

	Pfd.	A	B	C	D	E
Rationing	10%	10%	10%	<b>15%</b>	<b>15%</b>	10%
Conservation	Level D	Level D	<b>Level C</b>	<b>Level C</b>	<b>Level C</b>	<b>Level C</b>
Recycling	Level 3	Level 3	<b>Level 2</b>	<b>Level 2</b>	<b>Level 2</b>	Level 3
Nor. Cal. Water Trans.	X	X	X			X
Bayside Groundwater Phase 2	X	X			X	X
Sac. Basin Groundwater	X	X	X			X
Regional Desalination	X		X			
IRCUP	X	X	X			
Enlarge Pardee Res.	X				X	
Enlarge Lower Bear Res.	X		X			
Buckhorn Canyon Res.				<b>X</b>		

At least two important observations can be made about this table.

First, while the EIR analyzed several different portfolios, each involving a different combination of components, the table shows that there is little variation between the components of the Preferred Portfolio and the components of the Alternative Portfolios. The EIR analyzed, in addition to the components of the Preferred Portfolio, just one alternative level of rationing (15%), one alternative level of conservation (Level C), one alternative level of recycling (Level 2), and one alternative supplemental water supply project (the Buckhorn Canyon Reservoir project).<sup>14</sup>

<sup>14</sup> The Court does not mean to suggest that the District was required to identify and evaluate a range of alternatives for each individual component in the Preferred Portfolio. However, an EIR is required to evaluate a reasonable range of alternatives to the proposed project. When alternatives are simply reduced versions of the proposed project, there may not be sufficient

Second, the table shows that, at least in some cases, one component dominated and determined the overall portfolio. The most obvious – and relevant – example of this is Portfolio C, the "Local System Reliance" option. As described above, the purpose of this alternative is to emphasize water production through reliance on new water storage in the District's service area. (See 2 AR 558; 4 AR 694.) However, the only water supply component included in Portfolio C is the Buckhorn Canyon Reservoir project. (2 AR 558.) As a result, the "Local System Reliance" option is dominated and determined by the Buckhorn Canyon Reservoir component. (11 AR 4427.)

The question becomes, therefore, whether the Buckhorn Canyon Reservoir component is sufficient to allow a meaningful evaluation, analysis, and comparison of the "Local System Reliance" alternative. The Court concludes it is not.

Unlike any of the other supplemental surface water storage components, the Buckhorn Canyon Reservoir is the only one that involves constructing a new reservoir in a previously undeveloped area, rather than enlarging an existing reservoir. (4 AR 810, 1193, 1673.) Not surprisingly, the District subsequently determined the Buckhorn Canyon Reservoir project would have greater environmental impacts than the proposed reservoir expansions. (See 11 AR 4418.)

In addition, as the EIR notes, there is a long history, dating back to at least 1988, of strong opposition to the Buckhorn Canyon Reservoir project by community and environmental groups because of the expected environmental impacts to wetlands and biological resources. (2 AR 558; 10 AR 4378.)

For these reasons, the Buckhorn Canyon Reservoir likely never was a feasible water supply option. Not coincidentally, the District ultimately rejected the Buckhorn Canyon Reservoir project as "infeasible. (See 2 AR 558; 4 AR 1673; 10 AR 4362, 4378.) In so doing, the District also rejected the only local water storage alternative, in favor of the Preferred Portfolio and its Regional Upcountry components.

The District removed the Buckhorn Canyon Reservoir from further consideration because of its potential environmental impacts, the strong community opposition to the project, and the lack of potential regional partnering opportunities.<sup>15</sup>

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variation between the alternatives and the proposed project to permit informed decisionmaking about whether to approve the project. In essence because an agency may approve part of the proposed project described in an EIR, an "alternative" consisting of parts of the proposed project may not be a true alternative. (See *Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1043.)

<sup>15</sup> The Court upholds the District's decision to reject the Buckhorn Canyon project as infeasible. This decision is supported by substantial evidence.

Against this background, the Court evaluates the District's decision to exclude the Los Vaqueros Reservoir project from consideration in the EIR. The Los Vaqueros Reservoir component, which was explored by the District as part of its 1993 Water Supply Plan, would involve expanding the capacity of the Los Vaqueros Reservoir, a local reservoir just outside the District's service area.

Unlike Buckhorn Canyon, the Los Vaqueros project does not involve a new reservoir in a previously undeveloped area, does not involve significant historical community opposition, and would allow the District to partner with other agencies to jointly resolve water supply issues. It also would avoid the potentially significant impacts to the Mokelumne River that may result from expansion of the Pardee and/or Lower Bear Reservoirs.

Under the circumstances, the Court is persuaded that there is not sufficient variation to permit a reasonable choice of alternatives in the absence of the Los Vaqueros Reservoir component. A meaningful evaluation and analysis of a "local" water storage alternative requires consideration of more than just the one, highly-controversial proposal for a new local reservoir in a previously undeveloped area. Accordingly, the Court concludes the EIR's alternatives analysis is deficient.

E. Did the District violate CEQA by failing to respond to comments?

Finally, Petitioners assert that the EIR's responses to comments do not satisfy CEQA's information standards. The Court is not persuaded. Petitioners have failed to cite to any specific responses to comments that do not meet CEQA's information standards. Based on the Court's review of the record, the District's responses appear to be adequate from an informational standpoint. Thus, this claim is denied.

Disposition

For the reasons described above, the petition shall be granted in part and denied in part. The petition shall be granted in respect to the claims that (i) the EIR fails to adequately describe and mitigate the potentially significant impacts on cultural and recreational resources that would result if the Mokelumne River is inundated by expansion of the Pardee Reservoir; (ii) the EIR fails to adequately identify and mitigate the potentially significant safety impacts due to elimination of emergency evacuation routes; (iii) the EIR's alternatives analysis is deficient because it eliminated the Los Vaqueros Reservoir project and failed to consider a reasonable range of alternatives to the Regional Upcountry water supply components. In all other respects, the petition shall be denied.

A peremptory writ of mandate shall issue from this Court commanding Respondent District to set aside its certification of the EIR and all related project approvals based on the CEQA violations as set forth herein, and to prepare,

circulate, and certify a legally adequate EIR (consistent with views expressed in this ruling) before proceeding with the project. The peremptory writ shall further command District to file a return in this Court within six months after the issuance of the writ specifying what it has done to comply with the writ.

Petitioners are directed to prepare a formal judgment incorporating this ruling, and a peremptory writ of mandate consistent with the judgment; submit them to opposing counsel for approval as to form; and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312. Petitioners shall be entitled to recover their costs upon appropriate application.

Dated: April 11, 2011

Signed: \_\_\_\_\_

Hon. Timothy M. Frawley  
Judge, Superior Court of California  
County of Sacramento



Case Number: 34-2010-80000491  
Case Title: Foothill Conservancy v. EBMUD

Department: 29

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

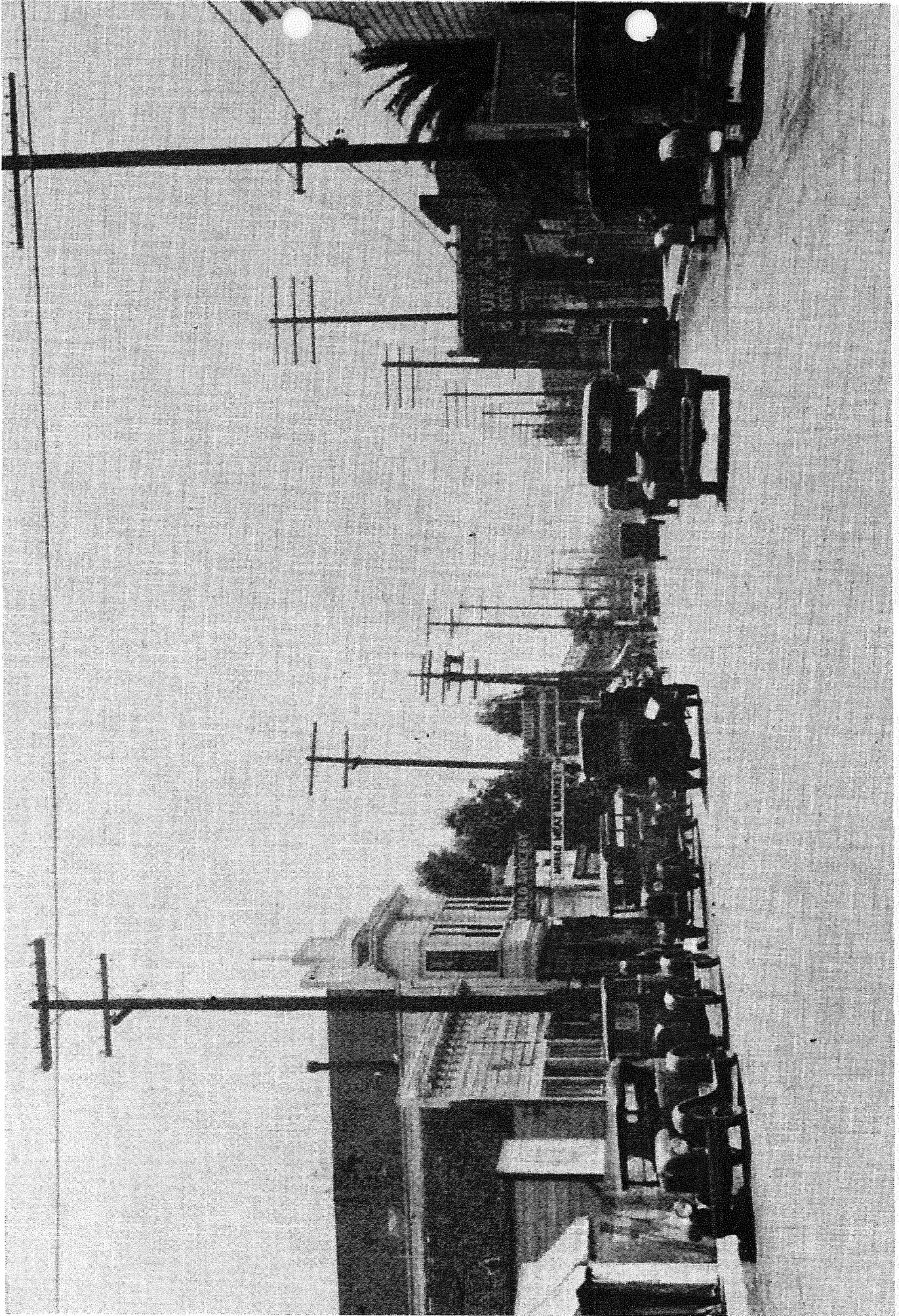
Dated: April 11, 2011

Superior Court of California, County of  
Sacramento

By:

  
\_\_\_\_\_  
F. Temmerman  
Deputy Clerk

**ATTACHMENT B**



Street scene in the 1920's

## The original "vision" for downtown Menlo Park:

Menlo Park had visionaries in its past. Charles Burgess, for one, enunciated the view back in 1947 that if the downtown was going to develop and be able to compete with the just developing concept of shopping centers, it had to offer offstreet parking. And so, for the next 20 years so-called "property owner participation programs" (i.e. assessment districts) were set up to purchase and improve parking plazas behind the existing businesses.

In 1953 the U.S. Chamber of Commerce in its nationally circulated publication featured Menlo Park for its foresighted purchase of parking plazas through downtown assessment districts.

That early vision has served Menlo Park well and still serves it well. Easy convenient surface parking is the "lifeblood" of independent downtown business.

Since this early innovation, communities that developed later could take advantage of this model, and incorporated it into their planning (examples further down the peninsula include Los Altos and Los Gatos with their parking plazas) and have managed to retain their open small town feeling. Communities whose downtown became established before this time have either suffered from strangulated central shopping districts or undergone paroxysms of major re-development in their efforts to remain viable and avoid slow decay into blight.

Even today in difficult times, Menlo Park, is able to attract and retain strong businesses because of what it can offer. The vacancy rate in the Menlo Park downtown shopping area is the lowest compared to any of our neighboring towns on the peninsula. This is directly because shoppers (both residents and non-residents of Menlo Park) continue to patronize our downtown, in preference to the more congested and less "parking friendly" environments offered by neighboring communities

*Mayor Charles Burgess received an inoculation against polio during the 1950s.*

## TOWN'S MASTERMIND

Alabama-born Charles P. Burgess (1905-1957) became one of California's best-known, small city leaders during the 1950s. A 1928 graduate of Stanford, he was elected to the Menlo town council in 1942 when the population was 3,000. He was mayor during 1945-1953 and again 1954-1955, when he also served as president of the League of California Cities.

Burgess brought about revolutionary changes in town after World War II. Though a daily commuter to San Francisco, he revitalized Menlo Park's downtown, then a shabby collection of buildings along both sides of El Camino Real.

While the California trend was toward development of suburban shopping centers, Burgess widened and improved Santa Cruz Avenue. Old houses between El Camino and University Drive were replaced by new businesses. Off-street parking facilities were created behind buildings on both sides of Santa Cruz.

In 1948, Burgess arranged for the purchase of a portion of the former military hospital property earmarking it for a civic center. Acquired with the purchase were park lands, a swimming pool, theater and gymnasium. Dilapidated barracks became city offices. The park was named for him.

Burgess was disturbed that the community had no high school and that students were bussed to Sequoia High School in Redwood City. Determined that Menlo Park should have a school of its own, Burgess ran successfully for a seat on the high school board. His goal was fulfilled when Menlo-Atherton High School was dedicated September 16, 1951.



MENLO PARK HISTORICAL ASSOCIATION



MENLO PARK HISTORICAL ASSOCIATION

*Charles P. Burgess*



TELLS US:

California vehicle owners have an extra job this year, one they haven't tackled for seven years—attaching new license plates. "And, simple as the task might seem, there are several legal restrictions to be observed," Capt. John Kennedy, commander of the California Highway Patrol's Redwood City area, said.

"When two plates are issued, one must be placed on the front of the car, one on the rear. They must be firmly attached, so the plates don't swing, and they must be not less than 12 inches nor more than 60 inches from the ground.

"They must be clearly visible, which means trailer hitches, license plate holders, and bumpers should not obscure the plates. In addition, no covering may be used on plates except a type approved by the Patrol.

"Since legibility of plates is the key to vehicle identification, the law makes it clear that license plates must be properly mounted and clearly visible at all times."

The seagulls who used to aid in weather prediction at the South San Mateo County Garbage and Refuse Disposal District's dump aren't working too well these days, according to observers.

They've been spoiled and sit around, instead of flying inland at the approach of a storm.

A psychiatrist, according to a recent report, has admitted finding a group of college students who are "so well adjusted they cannot be described as normal."

Members of the Live Oak Lions Club are telling their friends the following story, which appeared in their weekly "newsletter":

Describing her ride in a friend's private plane, the young lady said, "As we went into a sudden dive all my past since flashed before me. It was so interesting that I made the pilot dive eight more times."

The San Francisco zoo last week welcomed a new baby giraffe, born to a couple known as "Hot Lips" and "Zoo Beau."

All this and the appropriate vital statistics have been published elsewhere, but nobody seems to have paid much attention to the economy of the thing. Says one part of the blurb:

"The baby's mother, 'Hot Lips,' came from Kenya in 1959 at the age of three years. She was traded for three tigers and a camel."

So you see how tigers rate on the animal market.

# History Told

Currently in the works is a new parking district proposal for the downtown Menlo Park area.

It'll be studied by the city council and city planning commission, then submitted to a parking committee of merchants who'll have to pay for it, for further study.

Then, if it's acceptable it'll become the subject of hearing or series of hearings, at which proponents and objectors will all have their say.

Finally, a few months from now, the city might actually set up the parking assessment district, issue bonds for the purchase of land and the construction of improvements, and start condemning areas which have been shown on the proper maps as those to be taken for parking.

There will follow, if the pattern of previous districts holds true, a few court actions, in which owners of some land will protest that they don't want it taken, or that they aren't being offered enough for it. But if the previous pattern holds good, the district will be formed, the assessments levied, and there'll be more offstreet parking in the downtown district.

It takes time. Residents new to Menlo Park — that is, those who arrived only in the past seven or 10 years — might wonder why, if offstreet parking is considered a necessity, it takes such a cumbersome mechanism to acquire it.

The best answer would be a review of the philosophy of Menlo Park city councils of the past, who set up the "property owner participation" program years ago.

It was about 1947 that the late Charles P. Burgess, longtime mayor and councilman, first enunciated the view.

Offstreet parking was going to be needed, he said, if the downtown area was going to develop. (At that time, a few scattered stores along Santa Cruz Avenue and the older stores fronting on El Camino Real constituted the "business district.")

Next he said the cost of this offstreet parking was a legitimate cost of doing business. The expense should not be foisted off on customers via the medium of the use of parking meters, and it shouldn't be borne by the taxpayers in general because some of them might not prefer to use it.

He — and the council of the day — pointed out, however, that the city itself had a stake in the matter. Haphazard development by a private district might be more harmful than helpful in encouraging business.

So it was agreed that the city legitimately could handle engineering and legal aspects of offstreet parking developments, bearing at least this part of the cost, and do some hopeful master planning for the future.

The concept of the "shopping center" outside of a downtown business area was just developing. It was pretty generally conceded by observers that these new, planned collections of stores would provide rough competition for traditional business districts unless the latter did something to provide their own parking.

Happily for Menlo Park, there wasn't much in the way of new business buildings in the downtown area at the time.

And also happily, the original subdividers of the area had seen fit to subdivide in deep lots in the original tracts laid out in the 1870's.

(These were residential lots and a few of the old sheds and outhouses which were put up before the turn of the century are still to be seen, in a few cases.)

It was therefore possible — if the majority of affected property owners agreed — to condemn the back ends of lots for parking, and assess the owners of the lots benefitted to pay the cost.

The first parking plaza was almost classic in its simplicity of outline and lent itself well to the undertaking.

In the block bounded by El Camino Real, Santa Cruz and Oak Grove avenues and Chestnut Street, it contained lots of old residences and few stores.

The owners of the old houses legitimately could expect that, if their remaining property was zoned for commercial or professional use, they'd benefit substantially even if losing some of the total land area in their lots.

There were problems, of course.

Largest property owner on the block was the Presbyterian church and since the costs of the land condemnation and improvements was levied on a square foot basis, the church inherited the largest assessment. It took a community-wide fundraising to get the church's assessment paid.

The church later sold the land at a considerable profit and moved its installations elsewhere.

Other technicalities had to be considered.

There are offstreet parking lot users who actually will walk across the street to do their shopping.

Therefore, merchants other than those on the block in which offstreet parking was situated had to be assessed, too. This required a decision on how much they ought to be assessed.

The first offstreet parking plaza was opened with a gala celebration in August of 1948. Real estate development on the perimeter began.

There were doubters and headshakers.

But in the years following, other parking assessment districts were set up and more parking was added in the downtown area.

February 25, 1948.

Announcement of plan the Sequoia Union High School District Board of trustees enlarge Sequoia High School drew a request from the Menlo Park Taxpayers' League action be deferred pending full investigation of their quest for a high school to the southern part of San Mateo county.

It was pointed out that is justified from a stand of student enrollment and educational advantages and over one-third of the ass valuation of the Sequoia High School District is in Menlo Park, Ravenswood Lomitas and Portola School Districts.

The Chairman of the Executive Board of the Taxpayers' League was instructed to the following committee to President Merrill of the district's board of trustees:

"Information is at hand the effect that your honor board is contemplating largement of Sequoia School and drawing on serve fund for that purpose."

"The Menlo Park Taxpayers' League through its board of directors has instructed chairman to address you as follows:

"We believe that that has arrived when the enrollment of Menlo Ravenswood, Las Lomitas Portola School District tied the immediate continuation of the erection of school to more adequate these districts. . . .

(Construction of Mererton High School, the being sought, actually started until 1950.—ed.)

## Nixon-Khrushchev Talk Will Be Topic in Valle

A first-hand account famed Nixon Khrushchev at the 1959 Americanation in Moscow will be ed on Sunday, March the Portola Valley Co Center. It begins at the Portola Valley multi-use room.

The guest speaker Joseph Roizen, Portola resident, who represents Ampex Corp. at the center and traveled through the center while on duty. He'll also show color the points he visited.

The program will be led by the center's managing to elect new office

## The Wea

Menlo Park Sanitar Sewage Treatment

Date	Prec. (Inches)
Feb. 19.....	00
20.....	00
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22.....	00
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24.....	00
25.....	00

# Big Plaza Days In Menlo Park

by Frank Helfrich

**I**N RECENT WEEKS much attention has been given to the parking plaza where the Farmers' Market is held. The whole plaza has been repaved and beautified. It appears that history sort of repeats itself.

About 50 years ago, in 1948, Menlo Park gained nationwide interest when the town first embarked on the program of providing free, municipal parking facilities. It was deemed such a success that in 1956 three additional new parking plazas were opened with three days of City-wide celebration.

The three blocks of Menlo Park's main business artery were closed off September 27, 28 and 29 of that year, while Oak Grove Avenue and Menlo Avenue were utilized to handle the additional traffic during the celebration. The two original parking plazas were 1) Camino Plaza and 2) University Plaza, which were located northwest of Santa Cruz Avenue, while the three newly opened plazas were 3) Evelyn Plaza, 4) Crane Plaza and 5) Curtis Plaza to the

southeast. Santa Cruz Avenue itself was closed off from Doyle to Evelyn Streets. This plan of traffic was first suggested in a "Master Plan" report authorized by planning consultant Harold Wise and has since been put to use during other town festivities.

The three-day celebration was a joint effort with more than 90 Menlo Park merchants and businessmen combining forces to present what was known as "Plaza Days." Loud words of praise came from Fred Simon, secretary-manager of the Chamber of Commerce for the merchants' support of the celebration.

During the three days, area industry and public agencies showed real versatility in the exhibits. More than 25 of the exhibitors had manned demonstrations.

Some featured complex mechanical and electronic devices, such as those presented by Stanford Research Institute; others featured participation by the audience, such as an archery range by the Ravenswood-

Atherton-Menlo Park unit of the YMCA.

Highlights of the celebration on Friday night was a fashion show featuring a promenade of models wearing an array of fall fashions from Menlo Park stores, coordinated by Ed Dixson and narrated by Nerice Fugate, director of the House of Charm in San Francisco. Local merchant Rose Brickman made special arrangements for professional models from San Francisco to model lingerie.

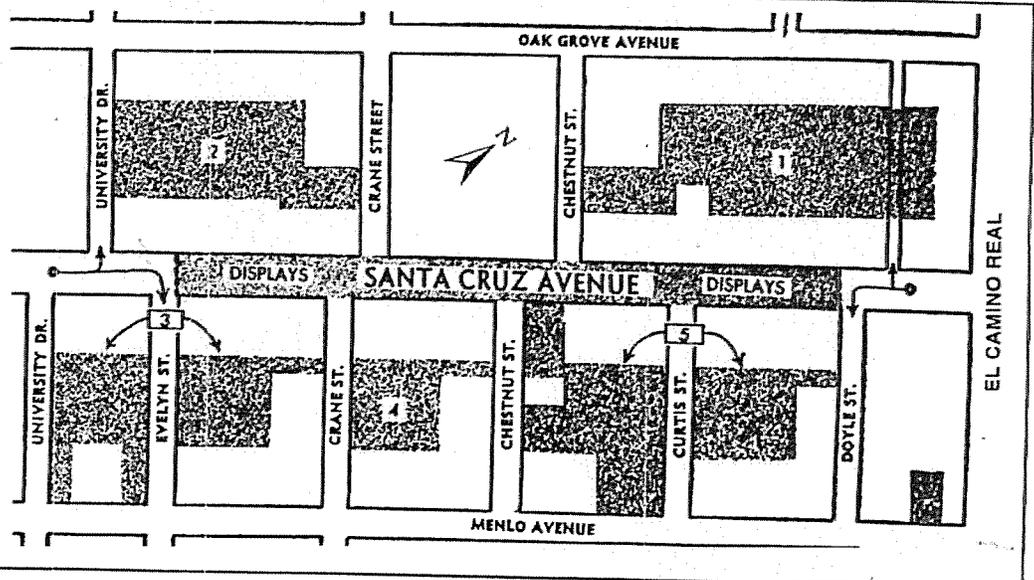
Other participating industries presenting displays were Magna Engineering, manufacturers of Shopsmith and other power tools; Johnson and Johnson, pharmaceuticals; Winthrop Laboratories, also pharmaceuticals; and Allstate Insurance Company.

Finally, at noon on Saturday, the big event was the demonstration by the Heller Helicopter Corporation. They landed one of the craft they produced here in Menlo Park on one of the parking plazas. It was a great celebration that maybe we should repeat.

"SCENE FOR FUN... is the downtown shopping area of Menlo Park... five free municipal parking plazas... to be dedicated... by Mayor George S. Ford and christened by Amrette Ott, Miss Menlo-Atherton of 1956..."

1. CAMINO PLAZA
2. UNIVERSITY PLAZA
3. EVELYN PLAZA
4. CRANE PLAZA
5. CURTIS PLAZA

from Menlo Park Recorder, Sept. 27, 1956



**New Five-Inch Mesh Law Means Longer Life For Fish**

Those good little soles who have been meeting an untimely end will have a fighting chance, after January 1, 1948, to become good, big, brawny soles of size and delicacy to delight an epicure.

The Bureau of Marine Fisheries, California Division of Fish and Games, declares an opportunity for the burgeoning of the good little sole is provided by a measure recently signed by Governor Earl Warren which establishes the minimum mesh size in trawl nets in California to five inches. The new law becomes effective next January 1.

The five inch mesh law will permit almost all of the little, immature soles and other small flatfish to slip through the deadly nets and spawn at least once before they are retaken.

Subscribe to Recorder — \$2.00 Year

**Bradys Offer City Deed To Land, Decline To Contest Codemnation**

The city's contest with Charles and Frank Brady over acquisition of a strip of land on Santa Cruz Ave. at El Camino Real came to an end this week when the owners offered deed to the property and the city accepted it.

The trouble started during public hearings when the Santa Cruz Ave. Improvement project was first proposed. The Bradys objected that 20 feet of land taken off the rear of their property was too much.

Later, they offered to come to an agreement if the city would mark a sidewalk along the east side of the entrance to the proposed parking plaza at the rear of their property. The city agreed to paint a white stripe to designate the sidewalk.

The Bradys first accepted the of-

fer and then two weeks later wanted to give the city four more feet of curb and separate sidewalk. This the council rejected and the city started condemnation proceedings.

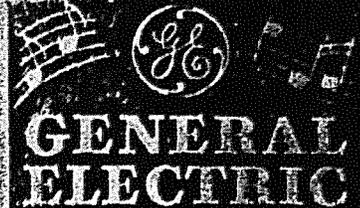
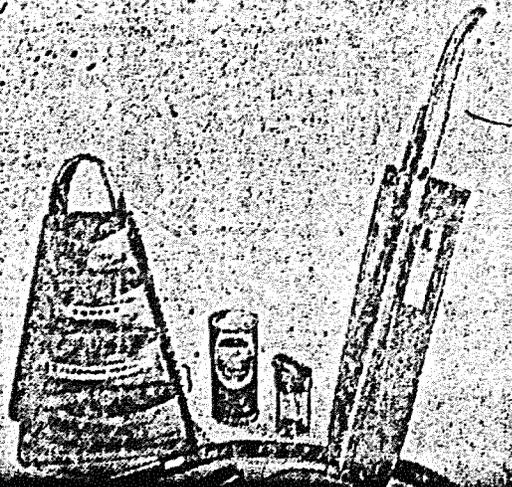
This week the Bradys disclosed that they would not contest the suit, and accepted the original appraised price for the land, \$9,920.

Condemnation proceedings against Vivian Gleason have been dropped and only two property owners are still holding out, H. B. McDonald and Luke Tigue.

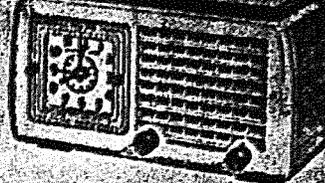
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MENLO PARK RADIO

# MENLO PARK



ESTABLISHED 19

and Gazette

TWENTY-FOURTH YEAR—No. 53

MENLO PARK, SAN MATEO COUNTY

## Councilmen Rhode

### Actual Paving Begins On Improvement Jobs

Half of Santa Cruz Ave., which has been undergoing improvement and widening as part of the off-street parking project, is paved today, and the other half is expected to be completed next week, barring more unfavorable weather.

The street has been torn up for several months, causing dust and mud that have brought many complaints from merchants and citizens.

The half of the roadway that has been completed is the north side. The south half soon will be graded, and sidewalks already are being laid.

After finishing Santa Cruz Ave., paving equipment, weather permitting, will move on to Oak Grove Ave. and then to Chestnut and Crane Streets between Oak Grove and Santa Cruz Aves., Olive Armitage, member of City Engineer Ed Smith's staff, declared this week. Then the crew will continue, respectively, to Menlo Ave., to side streets between Menlo and Santa Cruz Aves., and to University Drive.

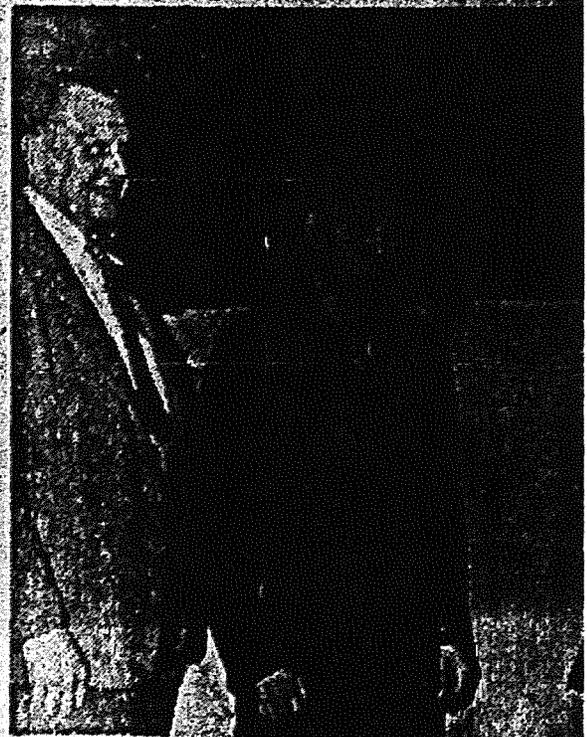
He emphasized that paving can continue only as long as the weather is dry, as the pavement, asphaltic concrete, cannot be laid under wet conditions, and base rock cannot be

### Clifford's Pharmacy To Open Officially Tomorrow Morning

After a few months of rather tedious remodeling of the former Harris Drug Store, Bob Clifford will have his "official" opening of CLIFFORD'S PHARMACY tomorrow. The new and efficient drug store is located at 1076 El Camino Real, carrying (besides drugs) a wide list of cosmetics and men's toiletries.

Something unusual in the way of a prescription room is to be found at Clifford's, as all prescriptions are filled where the customer may watch the compounding.

Ann's Fountain-Lunch will also "open" tomorrow at the same address, which is somewhat of a technical statement in as much as Ann Gilberg's many friends who know her home cooking have been lined up at her counter (sometimes two



HERE YOU SEE ART SMITH AND LYMAN N. Smith-Nichols order, as they stand with a customer of the 5000 and more samples of wallpaper to be at NICHOLS paint and wallpaper store at 1020 El Camino Real, Menlo Park.

### KNOW YOUR MENLO MERC

Just a year ago SMITH-NICHOLS to sing. He is opened their paint and wallpaper store in the new building at 1020 El Camino Real, since when the

parking project is completed today, and the other half is expected to be completed next week, barring more unfavorable weather.

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He emphasized that paving can continue only as long as the weather is dry, as the pavement, asphaltic concrete, cannot be laid under wet conditions, and base rock cannot be laid when the ground underneath is soft and muddy.

Pavement on Santa Cruz Ave. is heavier than that planned for the other streets, as Santa Cruz is more of a thoroughfare. It is being paved with 100 per cent asphaltic concrete, 2 1/2 inches in depth, plus 2 1/2 inches of surfacing. Other streets will be covered with 2 inches of asphaltic concrete and 5 inches of base rock.

The off-street parking plaza planned as part of the Santa Cruz Ave. Improvement Project probably won't be completed until the streets are paved. Land has been cleared for the plaza but grading has not been started.

A 25-foot community Christmas tree was erected late yesterday afternoon in the center of Santa Cruz Ave. near El Camino Real. The tree was donated and delivered by the California Water Service Co.

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## Days Numbered For School Fence

The old rickety board fence along the south side of the Central School playground will be torn down and a five-foot wire fence will replace it, Supt. Mel Homfeld announced this week.

The new chain-link cyclone fence is the result of an agreement between the school board and Ed Derry, owner of adjoining property. Derry will pay for removal of trees and grading, and the school will absorb cost of the fence. The fence will cost less than \$500.

HERE YOU SEE ART SMITH-NICHOLS order as they stand of the 1000 and more samples of WALLPAPER and NICHOLS paint and wallpaper store

## KNOW YOUR MEN

Just a year ago SMITH-NICHOLS opened their paint and wallpaper store in the new building at 1029 El Camino Real, since when they have been proving how well competitors can get along as partners.

Art Smith was born in Eureka, California, where he went to school and worked seventeen years for a paint and wallpaper firm. From Eureka he went to Oakland and from there to San Jose, always engaged in his chosen work with paint companies except during the war when he was doing brush and spray work in a food machinery plant.

Art and Eleanor Smith still live in San Jose, but hope to make their residence in Menlo. They have a little girl of eight named Bonnie. Art is a Rotarian.

Lyman Nichols, who was born in Chicago, has been in the painting business the last thirty years, eleven of them in California. While he was with the Farmers Union of San Jose he met Smith who was with Friedman Co. of that city. Lyman is a popular entertainer with his ability to play piano and violin and

# December 13 Is Deadline for Registration In \$375,000 School Bond Issue Election

## Citizens Will Ballot January 23, On Financing of New Facilities

December 13 will be the last day for voters to register in the Menlo

40 cents lower, because the special \$1.10 pay-as-you-go tax will be

## Lomitas OK's Plans

Preliminary plans for the latest

# The San Francisco News

Editorials—Columnists  
Sports—Financial  
Comics—Want Ads

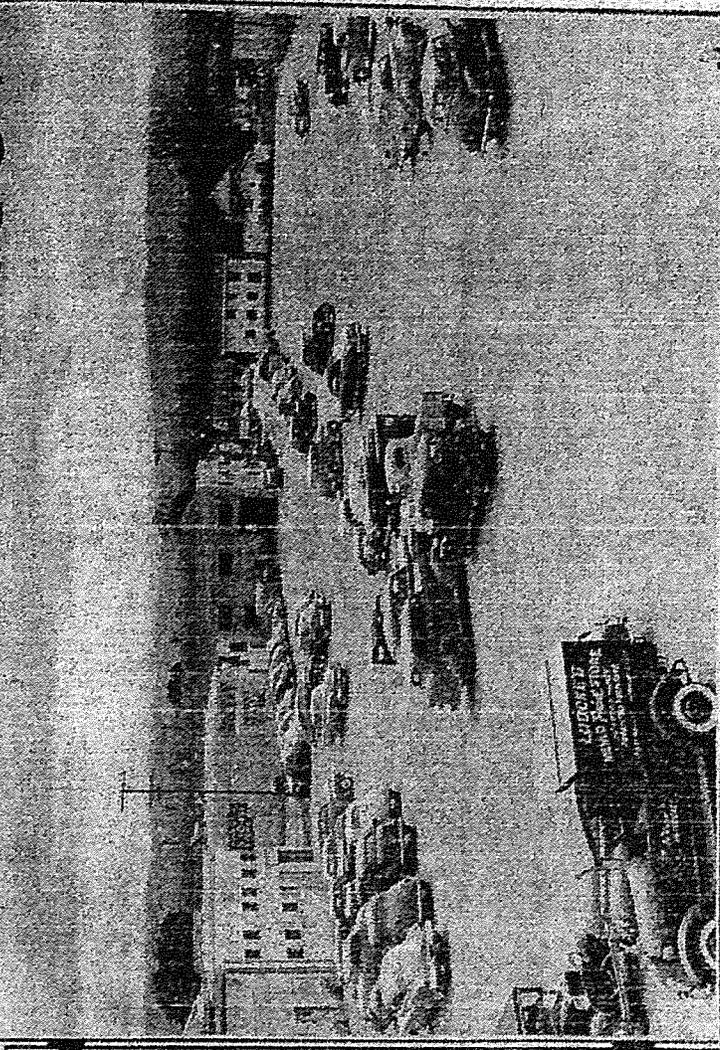
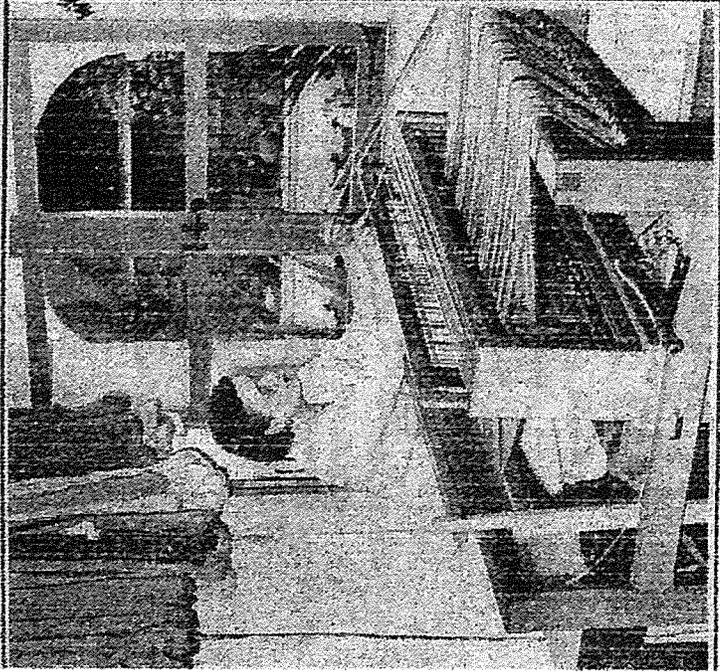
SECOND SECTION

SAN FRANCISCO, TUESDAY, APRIL 3, 1951

Page 13

## MEET THE

## NEIGHBORS!



—Photos by Corwin Hansen. The News Staff cameraman Mildred Garnett sits behind one of the many looms in her weaving shop in the Allied Arts Guild in Menlo Park. The guild's thick walled buildings designed in Spanish architecture and a small patch of its gardens can be seen through the window. "Every one comes to Menlo Park," Mrs. Garnett says. In photo at right is Menlo Park's

By Hall

# Progress Report Due on Fair Employment Program Supervisors to Learn How Voluntary Plan Is Working Out After One-Year Trial

By Dick Chase

The Board of Supervisors will hear a first-anniversary progress report April 16 on the voluntary fair employment practices program they voted last year to sponsor as a substitute for a compulsory program. Supervisor Marvin E. Lewis inspired the action at yesterday's regular board meeting. In the past he has asked for short-term reports on how the program was doing, and after a year, he told his colleagues, it's time to take full stock of the situation.

## THE SITUATION

Supervisor Don Pezackeuley, an eye board observer, for minority groups said there has been tremendous improvement in the situation for minorities since a voluntary program was started. Now, unions and employers' organizations will be invited to give their versions, orally or in writing, how the program was fared. Controversy over the purported interest of Communists in the topic led several members in lively debate. Supervisors Lewis and away Mead, continuing the argument in the corridor after the meeting had ended.

"Who tips them off?" asked Supervisor John J. Sullivan in reference to Communist attendance at meetings where the issue is discussed. Mr. Mead declared he could walk out of any future meeting where Communists put in an appearance. Supervisor Lewis said it was unfair to limit communism and fair employment practices.

# Dairymen Ask Higher Prices

By Earl Richard

State-Howard dairy writer WASHINGTON, April 3. — The dairy industry is trying to get the Government to underwrite much

By Mary Crawford

Mrs. Mildred Garnett who sits behind a loom six out of seven days in Menlo Park says, "Just sitting here, I see everyone I ever knew — everyone stops in Menlo Park."

One of the reasons why everyone stops in Menlo Park, as Mrs. Garnett says, is because the city makes it so easy to stop there. No parking meters. And to make it still easier for the shoppers, the city has lowered out the core of a business district block to make room for parks.

This block is bounded by El Camino Real and Santa Cruz-av. which have stores facing in the lot on two sides; and Oak Grove-av and Chestnut-st where stores will be built. Two more parking lots are in the planning stage.

## The Shortest Way

Many of the store owners invite parkers to shortcut through their back doors to the thoroughfares. Mrs. Garnett has her weaving shop in one of the city's big attractions, the Allied Arts Guild. The guild, at Arbor-rd and Creek-dr, lies on the banks of San Francisco Creek, which borders Menlo Park on the south.

The guild was organized in 1930 to help finance the Stanford Convalescent Home for Children in Palo Alto. Resembling a hacienda, the guild buildings were designed by Gardner Dalley in 17th century Spanish Colonial style, except for the nursery and a few wooden studios.

The guild maintains a popular tea shop (serving 38,000 lunches last year), gift shops, studios for weaving, block printing, photog-

# 'Everyone Stops in Menlo Park'

raphy, metal and wood craft, ceramics, oil painting and water colors and cabinet making. The potter, cabinet maker, photographer and weaver rent their shops from the guild, and the others operate on a non-profit basis, many of them living in the guild quarters.

## Neighborhood Work

Mrs. Garnett, however, lives in a duplex at 1002 Roble-st nearby where she has everything she wants including a fireplace, which she also has in her shop, a garden growing onions and chives.

She says, "I took up weaving in 1933 as a hobby and then it became my vocation in 1936, no. . . " she interrupts herself to look at her retail license nailed on the inside of a yarn cupboard, "it was in 1937."

A customer opens the heavy door of the weaving room and before she asks her question Mrs. Garnett shakes her head saying, "Not yet," she explains, "Particularly in our fine quality, what we call 64s from a breed of sheep, mostly from Australia."

## Double Population

The guild, like the city, attracts visitors and shoppers from all over the Peninsula. Some of them are like the lead character in the comedy, "The Man Who Came to Dinner. . . they just stay on. For this reason the city has almost doubled its population since 1946. The 1950 U. S. census totaled up 13,537 residents in Menlo Park, compared to 7180 in 1946.

Santa Cruz-av is being interwoven with new stores west of

El Camino Real. Perhaps the step most significant to the city's future was the creation of a new "professional and executive" zone, first in the West, lying in a large area in the Linfield Oaks subdivision, along Middlefield-rd. The zone provides for garden-type office buildings of limited height and land coverage on large blocks of ground and retail trade is prohibited. Several large insurance companies and a magazine are building in this area. Two of the companies spending about \$300,000 each on their buildings.

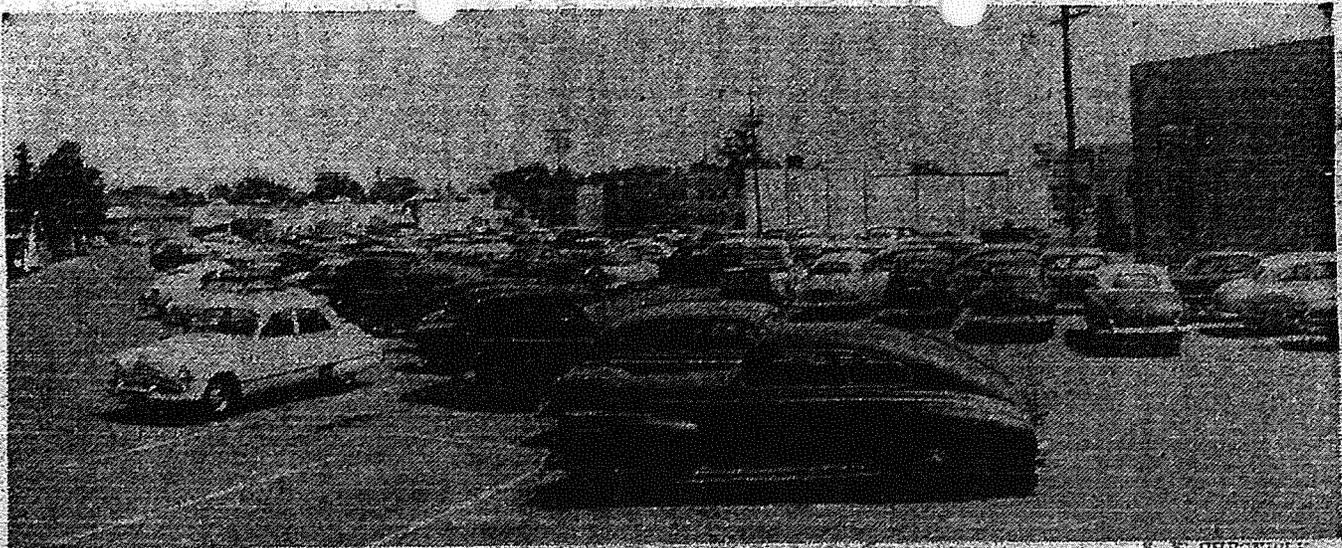
In 1948 the city bought a 26-acre portion of the former Dibble General Hospital of the Army from the War Assets Admin. for \$79,667. The city converted the buildings into a recreation center and a civic center as well. Buildings include the police department, city hall, council chambers and combined court room, maintenance building for the street department, gymnasium and little theater. The civic center and park lie south of Laurel-av, east of the railroad tracks.

## Proud of Climate

But of all its assets Menlo Park counts its climate as most valuable, and the city notes with pride a paragraph from the Dibble Hospital publication: "We have Government charts which conclusively prove that the climate is one of the healthiest in the world.

"The abundance of sunny days makes it ideal for sports and outdoor living. An odd side-light on the weather of this particular spot shows that Menlo Park is the center of a perfect climate belt, and the only other such belts are in the Canary Island and in Africa." (Next: Half Moon Bay.)

LITTLE KEFAUVER



A parking plaza in the downtown district of Menlo Park

H. F. OBERG  
APR 26 1953

## Millbrae and School Unit in Playground Deal

Millbrae has entered into partnership with the Capuchino Elementary School District to operate jointly a school and municipal playground in the Peter Loftis recreation park.

The City Council, in a resolution consummating the deal, said the move was made to save money by eliminating duplication of play facilities.

Portions of the park were turned over to the school district in return for a guarantee that the city recreation department could continue operation of a municipal playground on the land.

## Menlo Parking Plan Cited as Example

The city of Menlo Park is to be held up as an example to the Nation for its work in solving the downtown off-street parking problem.

The United States Chamber of Commerce will feature the Menlo Park plan, which set up downtown assessment districts to purchase parking lots, in a forthcoming issue of its nationally circulated publication.

Chamber officials heard of the Menlo Park plan at a recent parking clinic held in Stockton, where representatives from 40 cities with population of 100,000 or less gathered to discuss their mutual problem.

Bonnie Heard, secretary-manager of the Menlo Park Chamber of Commerce, is furnishing

pictures and material for the article. Planning Consultant Harold F. Wise, who drew up the Menlo Park master plan,

explained its workings to the clinic. He has been hired by Stockton to work on their parking problem.

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# New MP lot for parking is proposed

Menlo Park soon will have to tackle the problem of providing an off-street parking area east of El Camino Real, between Glenwood and Santa Cruz avenues, City Councilman Charles P. Burgess said today.

He said the existing Southern Pacific commuter lot soon will prove inadequate to handle parking in that area.

The proposed new parking lot, he said, would have to be sufficiently large to accommodate shoppers of the portion of the business section east of the highway.

Provisions for an off-street lot east of El Camino Real was included in Menlo Park's master plan.

Although new stores in the central business district east of the highway must provide parking areas equal to twice their floor space, Burgess said it would be preferable to establish a central off-street lot to serve the entire area. In a central business district, there should be a co-ordinated parking program rather than individual lots, he said.

Meanwhile, the proposal for a 400-car parking "plaza" south of Santa Cruz Avenue and west of El Camino Real still is before the city council.

Burgess suggested that owners of homes in the proposed site be paid according to a formula that might give them a slightly better return than if the property were assessed on a residential basis.

Since the property eventually is destined to become commercial as the business district grows, he said, the assessment should be based on commercial zoning. The assessment then should be divided in half, since new commercial structures in the area must be accompanied by an equal amount of off-street parking space.

Such a formula, he said, would assure a fair return to the home owners who would have to give up their property for the parking "plaza."

Downtown merchants are still awaiting a report from City Attorney James O'Keefe who has been asked to investigate the possibility of financing the parking project with 30-year bonds instead of bonds to be retired in 15 years. The longer term bonds would require smaller monthly payments of the downtown area.

## MP parking plaza plan may depend upon 30-year bond

Success of the 400-car off-street plaza plan for Menlo Park may hinge on whether it is possible to obtain a 30-year bond, the city council was told last night.

Possibility of financing the off-street parking plan with the long-term bonds is a crucial point in the minds of many downtown merchants, according to Gene Hammond, secretary-manager of the chamber of commerce.

City Attorney James O'Keefe said he had not yet determined whether it is possible to sell the bonds on a 30-year retirement basis. The city council instructed him to continue his investigation.

Previous estimates showed that a 30-year bond would involve an expense of about \$11 per year per front foot for merchants on the south side of Santa Cruz Avenue.

The estimate showed that the 15-year bond would be retired at a cost of more than \$17 per front foot.

The proposed parking plaza extends five blocks, from Doyle to University Drive in a strip between Santa Cruz and Menlo Avenue.

Hammond said the property owners and merchants are waiting for a report on the bonds before deciding what their next step will be.

The possibility that a new petition seeking formation of an assessment district may be required arose when City Engineer Edwin Smith reported that owners of only 25 per cent of the property signed a previous petition. Another 25 per cent signed letters conditionally asking for formation of the assessment district.

11-3-55 P.A. TIMES

# Court action to clear snag in MP parking

A six-month delay in Menlo Park's \$200,000 off-street parking program will be resolved on Nov. 14 when the condemnation issue opens for trial in San Mateo County Superior Court.

At issue will be the purchase price for 7 of the 18 lots condemned by the City of Menlo Park for parking plazas on the south side of Santa Cruz Avenue.

The parking program has been held up pending a decision in court because the disputed lots are scattered throughout the parking zone. Improvement of the lots would be virtually impossible until title to all of them is acquired by the city.

The City of Menlo Park has purchased 10 of the 18 lots for prices close to the appraisals given by David Ingram, appraiser hired by the city. The other property owners feel the

appraisals are too low, however.

Buildings have been removed from four of these lots. They are being graded for temporary parking.

One remaining unacquired lot will not be at issue in court. The lot, on Evelyn Street, is owned by Donald Graham, who lives in Alaska. The city has been unable to obtain legal service on him, City Attorney James O'Keefe said.

Title to the disputed property will be acquired soon after value is fixed by the courts O'Keefe said.

Clearance of the title will enable the city to call for bids to improve the parking lots, which will provide space for some 22 cars.

Two large parking plazas already are established on the north side of Santa Cruz Avenue, Menlo Park's chief business artery.

WORLD LIFE PUBLISHING  
Rochester, NY

# Council Okay Bond Bid for Parking Plazas

More parking plazas for the southerly side of Santa Cruz avenue were brought a step nearer reality at Tuesday night's city council meeting when \$126,696 worth of improvement bonds were awarded to the Stone and Youngberg municipal bond firm of San Francisco.

The plazas, which probably will be prepared for temporary parking within the next several weeks, are expected to be permanently paved sometime in the spring, according to city officials. They will be located, in part, on five parcels of land which were awarded to the city in November in condemnation suits, but which the city has been unable to purchase until receipt of the bond money.

The parcels include the Artino property facing Curtis street; the Garibaldi property facing Curtis street; the Bishop property facing Chestnut street; the Garibaldi property facing Crane street; and the Leong property facing Evelyn street.

## 4 PER CENT

Stone and Youngberg's low bid for the sale of the 24-year bonds included an interest rate of 4 per cent between July 2, 1957 and July 2, 1975; and a rate of 3½ per cent between July 2, 1976 and July 2, 1980. A premium of \$29 was offered on the bonds.

Two other San Francisco firms submitting bids to the council were Blair and Company, and Haunaford and Talbot.

Still a subject of negotiation in the city's acquisition of property for the project is a single lot facing Evelyn street, owned by D. D. Graham who until recently was in Alaska.

# Plea to City: More Parking

At the request of a group of affected property owners, Menlo Park Mayor George S. Ford Tuesday night named a five-man citizens' committee to meet with the city engineer to discuss possibility of adding 100 new parking spaces to the city's parking plaza Number 1.

Plaza Number 1, first opened in 1948, holds 170 autos at the pres-

ent time. The current request for added parking constitutes the first public admission that present parking for the block surrounded by Santa Cruz avenue, Chestnut street, El Camino Real and Oak Grove avenue is not all it could be.

Mayor Ford appointed William O. Felkner, Keith Garner and D. P. McKelvey, property owners whose land abuts the present plaza, to serve on the committee. He named Myron Alexander, president of the Chamber of Commerce, to represent that group on the panel and Albert J. Giannotti to represent property owners on the south side of Santa Cruz avenue.

## SIGNERS

The petition urging "immediate consideration of increasing the size of parking plaza Number 1 by 100 cars," was signed by:

Giannotti, F. Otto Koenig, Felkner, Horace F. Siino, McKelvey, Emily S. Steiner, Albert DeVincenti, the American Trust Co., Garner, Joseph Horn, C. D. Culbertson, Daniel Rost and Ernest Sultan.

In naming members of the committee, Mayor Ford observed that he felt a larger group "would get less work done." He suggested that the five-man group set its own time and place of meeting.

Alexander, speaking for the Chamber of Commerce, noted that "Menlo Park has always been a leader in providing convenient parking." He said that the C. of C. "would look with favor on every opportunity" to increase it.

Customarily, the city government has cooperated with merchants and property owners in the formation of assessment districts.

## Parking Plaza Paving to Start

Actual paving of Menlo Park's new municipal parking plazas south of Santa Cruz avenue must begin within two weeks, it was indicated before the City Council Tuesday night.

City Manager C. L. Longson reported that a representative of Bahr and Ledoyen, Palo Alto contracting firm which had been awarded the job, signed the contract Tuesday. It calls for start of work in 15 days.

Meanwhile, a representative of the firm indicated that commitments of equipment on other jobs will delay start of work here until after the July 4 holiday. The job will cost \$25,322.30, according to the bid submitted by the contractors.

*M. P. Recorder*

# See New Plazas Ready in August

## City Wins New Round In Court Fight

Actual paving of parking plazas south of Santa Cruz avenue in the downtown business district may start early in July. The new areas may thus be completed and in use by mid-August.

This possibility was raised Tuesday with the issuance of a decision from the state district court of appeals, which granted the city possession of four contested parcels of property.

The last contested parcel on which a court action is due is the D. D. Graham property facing Evelyn street. A motion in which the city asks that it be granted possession will be heard before Judge Murray Draper Monday in Redwood City.

If the city gets possession of the lots next week, contracts can be called almost immediately and bids for the work can be let a month later, City Attorney James T. O'Keefe Jr. explained. This would mean the laying of pavement could start as soon as six weeks from today. The actual work should not take longer than six weeks, according to City Manager C. L. Longson.

## Merchants Study Use of Present Parking Areas

How offstreet parking is being used in downtown Menlo Park will be the subject of a report to be submitted by the merchants' committee of the Menlo Park Chamber of Commerce, before the city council, on May 29.

Chamber Secretary - Manager Fred Simon this week told the city council that such a report has been in preparation for the past several months, with merchants showing growing concern as some of the parking plazas regularly are filled to capacity.

Off street parking may soon be in short supply, he added.

City Manager C. L. Longson added that the problem will be temporarily alleviated when new parking plazas south of Santa Cruz avenue are opened.

O PARK

# Order

ton, Woodside and Portola Valley

TEO COUNTY, CALIF., THURSDAY, JANUARY 31, 1963 10c



resents its cert. But calling at n. Shown summary sounds are drummer Vicki Pickering and Trombonist Maple Enouf while Clarinetist Short Odom waits her turn. —Staff photo

## Town Okays Streets

They knew what they wanted but the Atherton Town Council didn't know exactly how to say it so they turned it all over to town attorney Willard S. Johnston at its regular monthly meeting Monday night.

To say what? That the councilmen would like to go along with the idea of the \$35 million first phase of the new San Mateo County highway master plan, but they had three things they'd like to see changed first.

The three were: A four-lane right-of-way for the Alameda de las Pulgas through Atherton, instead of the called-for six lanes; inclusion of 200 feet of four-laning of Middlefield. The latter already is included in the master plan — the council wanted to make sure their feelings were known.

It is hoped by the master plan backers that the issue will be put before the voters this April. The \$35 million first stage will take care of construction until 1970. About \$6 million of that is slated to be spent in the south county area. The costs would be distributed according to assessed valuation in the area, prompting Mayor Henry Kuechler to comment that "We're going to get clobbered."

The Atherton proposals, if accepted, would cut the Alameda right-of-way from 120 to 90 feet, requiring property acquisition of only 15 feet on each side to widen from its present 60 feet. The proposed divider strip also would act as a traffic guide, preventing left turns at all intersections.

The Marsh Road widening would consist primarily of covering over the drainage ditch

## Offstreet Sites Cost Is Studied

Maps and figures on a new parking plan for Menlo Park's central business district were unveiled Tuesday night before the city council. Total estimated cost of land acquisition and construction is \$630,000.

The new plan, if approved, would bring private and public parking facilities to a total of 1256 spaces. The area involved is bounded by El Camino Real and University, Oak Grove and Menlo avenues.

City Engineer Edwin H. Smith, author of the plan, told the council that a proposed assessment district to finance the added parking would be based on two criteria. The assessment would be spread half on the value of square footage and half on the value of front footage.

The council agreed to consider the plan at a general session in late March. City Planner Robert Ironside, scheduled it for the planning commission on Feb. 18.

Parking committee of the Menlo Park Chamber of Commerce has informally approved of the plan and is now putting out feelers to get the reaction of property owners and tenants involved.

Mayor William Lawson stressed that there should not be just a release of facts and figures. "We want a program of development," he said.

Under the new set-up, 345 spaces would be added to the present 620 public spaces and 165 spaces to the 126 in the private lots.

## Valley Schools Bond Date Near

The Portola Valley School District will hold a special bond election next Tuesday in a bid for four additional classrooms at its new Ormondale School. The bond proposal is for \$140,000.

The one polling place in the Portola Valley School multi-use room will be open from 7 a.m. to 8 p.m.

The construction of the four classrooms is necessary to maintain the district's present class size of 25-28 pupils per room. One of the classrooms will be built to serve as a school library at a later date.

"The vote of every citizen interested in education is needed on Feb. 5," stressed Dr. Arthur E. Banta, school superintendent. "To maintain the fine educational program which has characterized Portola Valley schools, class size must not become excessive. The bond money is needed to keep class size at the level which has been traditional for Portola Valley."

Approval of the bonds will mean that the Ormondale and Corte Madera schools can become neighborhood schools serving children in kindergarten through fifth grades. Thus,

School board chairman Dr. Milton Flocks issued the following statement on the election:

"The board of trustees is unanimous in urging the voters to approve the bond measure at the election of Feb. 5. Our three schools are full. Every classroom is being utilized this year. With the expected continued growth of the district, all classrooms are essential in September if class size and educational standards are to be maintained within the bounds of district policy. Although in order to pass, it is necessary that twice as many people vote for this measure as against it, I am confident that this election will be successful. I believe that the people of Portola Valley want good education for their own children and for their neighbors' children and will therefore come out and vote in favor of these bonds."

apoc

### Good School District Studies Teacher Pay

is good for the trustees that he will be

### Fire Damages Atherton Home Mandav

# City Publishes Map of Proposed Downtown Parking District

Assessors' Office, Menlo Park  
 Division of Assessments  
 1000 University Avenue  
 Menlo Park, California 94025

EXISTING PUBLIC PARKING LOTS	670 SPACES
PROPOSED PUBLIC PARKING LOTS	345 SPACES
EXISTING PRIVATE PARKING (ZONED)	126 SPACES
PROPOSED PRIVATE PARKING (ZONED)	165 SPACES
<b>TOTAL</b>	<b>1256 SPACES</b>
<b>PROPOSED ASSESSMENT</b>	<b>\$33234</b>

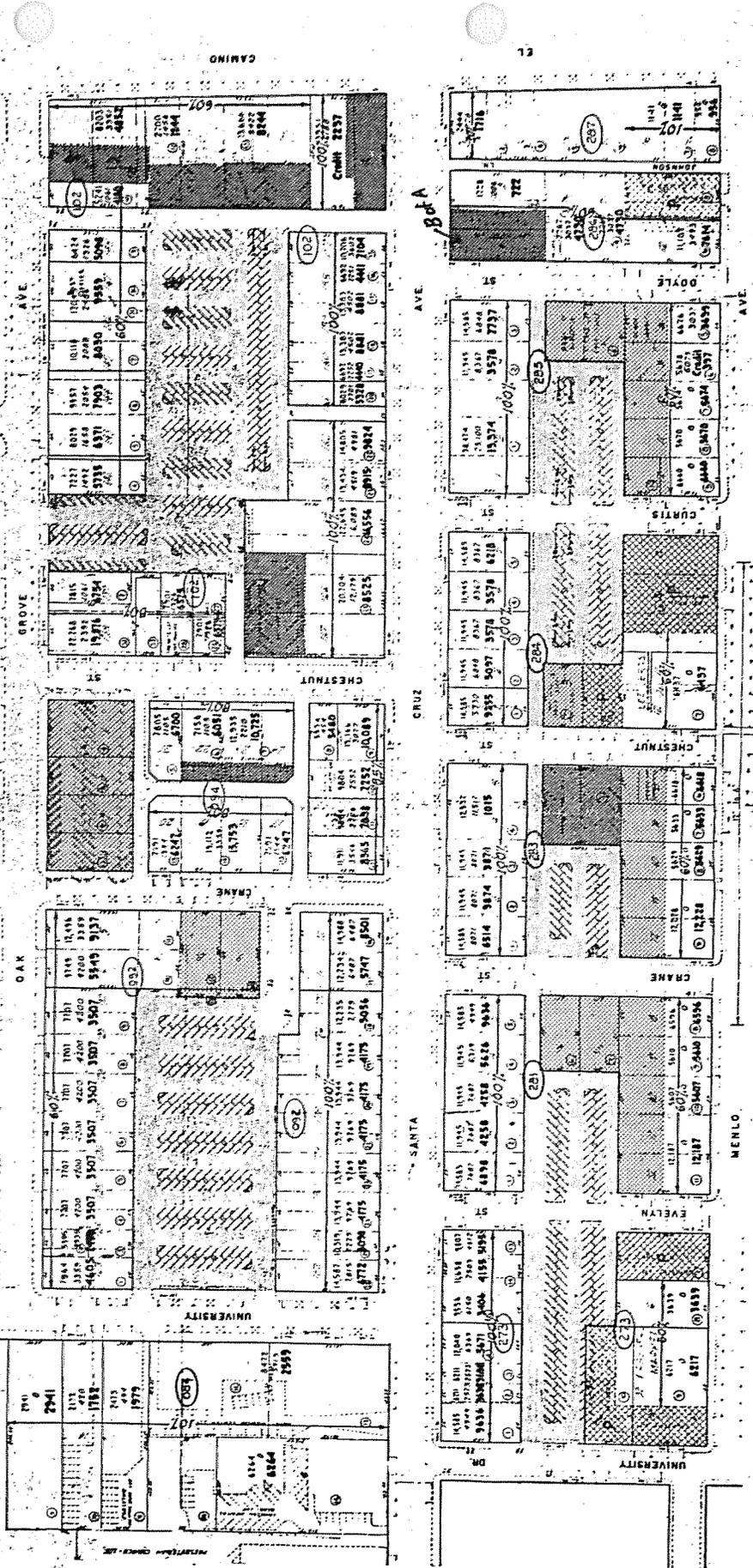
**DOWNTOWN ASSESSMENT STUDY MAP**  
 City of Menlo Park, California  
 MAY 1960  
 Scale: 1"=60'

ASSIGNMENT IN BUILDING ON LOT AREA WITH CREDIT ALLOWED FOR PRIVATE PARKING AT THE RATE OF 1.5% OF PARKING SPACES IN FT. OF LOT AND 10% OF FRONT YARD AREA FOR THE PROPOSED ASSESSMENT. APPLICABLE TO ALL PROPERTIES IN THE DISTRICT.

7207 DEMOTES ASSESSMENT ALLOWED ON FRONT YARD AREA FOR PRIVATE PARKING AT THE RATE OF 1.5% OF PARKING SPACES IN FT. OF LOT AND 10% OF FRONT YARD AREA FOR THE PROPOSED ASSESSMENT.

7200 DEMOTES ASSESSMENT ALLOWED ON FRONT YARD AREA FOR PRIVATE PARKING AT THE RATE OF 1.5% OF PARKING SPACES IN FT. OF LOT AND 10% OF FRONT YARD AREA FOR THE PROPOSED ASSESSMENT.

7207 DEMOTES ASSESSMENT ALLOWED ON FRONT YARD AREA FOR PRIVATE PARKING AT THE RATE OF 1.5% OF PARKING SPACES IN FT. OF LOT AND 10% OF FRONT YARD AREA FOR THE PROPOSED ASSESSMENT.



**HERE IT IS . . .**  
 . . . Under study by city officials and soon to be presented to merchants and property owners in the affected area is this map of a new proposed offstreet parking district, which would add 345 public parking spaces to the city's plazas and also supplement private offstreet parking. Assessments are based on projected benefits received and are noted with percentage figures on lots in the various blocks. Map shown is the most recent revision of one drawn in 1960.

Lyman Wear, long-time resident of Menlo Park, submitted this article for the Newsletter.

### **A MAN OF VISION, CHARLES P. BURGESS**



The modern history of Menlo Park really starts in 1942 when Charles P. Burgess was elected to the City Council. He served there until 1957, when he died of cancer at the age of 52. During that time he was mayor from 1945 to 1953 and again during 1954-55.

A summary of those years was printed in the Palo Alto Times in December 1962, under the headline "Charles Burgess Given Credit for Shaping City." The article read:

"The dominant figure in Menlo Park civic affairs and the man chiefly credited for shaping the city in the post-war years was Charles P. Burgess.

"Menlo Park was a tiny crossroads town of 3,000 residents when Burgess joined the City Council in 1942. The Council was split into warring factions and lacked the leadership to get things done. The town's commercial district was strung along El Camino Real, with a few stores on Santa Cruz Avenue, which was a two-lane residential street.

"Burgess took the leadership in revitalizing the downtown area. Through his efforts, the city in 1947 widened and improved Santa Cruz Avenue west of El Camino Real, making it the main downtown street. Also established was one of the first extensive municipal off-street parking lot programs on the Peninsula.

"Burgess also led the way in other areas. Under his leadership the City adopted a Council/City Manager form of government and in 1947 hired its first city manager, Cecil Longson.

"In 1948 Burgess believed Menlo Park should acquire a part of the Dibble General Hospital grounds for a civic center. He undertook negotiations with the federal government and the City acquired 28 acres from the proceeds of a \$99,000 bond issue that the local citizens had passed. The price was less than \$4,000 an acre," about 50% of its then appraised value. In addition, buildings and improvements were included.

"After the City Council established a recreational center on the newly purchased land that included the swimming pool, gymnasium and other hospital recreation facilities, the park was named for Burgess, over his protests, for spearheading the acquisition.

"Burgess was a municipal bond analyst and broker with offices in San Francisco. He graduated from Stanford University in 1928 with an A.B. degree in economics.

At his funeral on June 19, 1957, at the Menlo Park Presbyterian Church, The Rev. Don Emerson Hall, pastor, said in his eulogy: 'He is the best example I've seen of the effect of one man's life upon a community. More than to any other man, we owe the advantages of this community to Chuck Burgess.'"

(Mr. Burgess's story will continue in the next Gate Post.)

**ATTACHMENT C**

## Los Altos shopper is no fan of downtown plan

Editor:

1-5-11

I've always found Menlo Park a great place to shop. There are many fine stores and restaurants on Santa Cruz Avenue. My house has been furnished almost entirely by Flegel's and all our rugs come from The Oriental Carpet.

It's always possible to find a parking spot in the city's open lots, making it convenient to drive downtown and easily get to any business. This is one of the big advantages over Palo Alto.

The current downtown plan is unrealistic and a waste of taxpayer money at a time of recession and tight budgets. Shrinking the number of parking spaces is counter to attracting people. I refuse to park in a parking garage. They feel threatening, particularly at night, and even more so as the crime rate rises.

A central plaza in the middle of Santa Cruz Avenue — the main access street — would be a huge obstacle for getting into the downtown area. Walkability is important, but most people get to town in a car, then walk.

According to a report in the Wall Street Journal, Menlo Park

## Downtown plan a bust

Dear Editor: I can't speak for everyone who believes the Menlo Park plan for the downtown area is a bust, I can only speak for myself. The plan sucks!

In reality it takes away parking for the public, it eliminates parking lots for "mini parks" (read: homes for homeless), it adds space to sidewalks that aren't crowded and doesn't create more access via widened roads for the increased density.

I haven't mentioned what will happen to existing parking or existing businesses. It destroys them. This plan is definitely driven by the City Council and the "Planning Commission" (the quotes are in place because I question their validity after watching Morris Brown stopping the Derry Project and leaving only squalor).

The council knows the cost of the plan (\$1.2 million) and cannot back away from such a large expenditure without losing face.

Pat White  
Menlo Park

## VIEWPOINT

is already the eighth most successful walk-able suburb in the U.S. And there's a lovely little park near Draeger's for people to congregate. I find it unbelievable that this plan is still under con-

sideration when so many business owners, who will lose customers like me, are against it.

Pat Moran  
Los Altos

NEWS

# Parking changes urged

BY DAVID DeBOLT  
Daily Post Staff Writer

The leader of a group of downtown business and property owners upset with a city plan to replace street parking spaces with multi-level parking structures said she's open to a garage — as long as it resembles one in Palo Alto.

Nancy Couperus, co-founder of Menlo Park Downtown Alliance, said a two-story parking garage like the one on Cambridge Avenue in Palo Alto would be ideal for downtown Menlo Park.

### Group opposed

Couperus' group is opposed to a city plan that, in part, would remove 105 street parking spaces and build two parking structures — one off University Drive, north of Santa Cruz Avenue near the Menlo Park Presbyterian Church and the other in the parking lot behind Cheeky Monkey Toys, near Maloney Street.

In an attempt to "find common ground" with the city, Couperus sent the City Council a compromise, a plan that includes "a mod-

est" parking structure on the Oak Grove Plaza.

Building at that plaza bordered on three sides by streets — Oak Grove Avenue, Chestnut Street and Crane Street — would be less harmful to businesses, Couperus said. The garages suggested in the city's draft version of the downtown specific plan, which was released in April, are surrounded by businesses, she said.

### Disruption feared

"It would be a major disruption to downtown and it would eliminate a lot of the smaller businesses," Couperus told the Post.

The Downtown Alliance has sent a petition to the City Council signed by 118 downtown business and property owners listing concerns with the plan. But Thomas Rogers, an associate planner for

the city, said that location would result in a more visible parking garage. Essentially, the city would be reducing height in exchange for prominence, he said.

Rogers, who oversees the plan, said that reducing the garages in size could mean the city would have to build additional garages. Currently, the plan calls for a mixed-use building on the Oak Grove Plaza.

### What's ahead

The plan is not finalized and will be brought back to the public after the city finishes an environmental impact report and fiscal analysis, which are tentatively scheduled to be released in late July. The plan will go before the City Council in the fall and could be approved by the end of the year.

While the overall project, which includes El Camino Real, the Civic Center and the downtown, won't be realized for another 20 or 30 years, Rogers said one of the garages could be completed five years after the project is approved.

terday. "It seems so ridiculous but that was so important to me."

Kirby planted the white rose bush at the corner of Jefferson and Edgewood drives 18 years ago. She watched the bush blossom

# Woman's rose bushes stolen

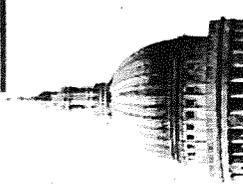
BY DAVID DeBOLT  
Daily Post Staff Writer

A Palo Alto woman yesterday said her prized rose bush, which she planted nearly two decades ago, was stolen from the front yard

also took a smaller pink rose bush. No one witnessed the theft and police yesterday said they have no leads.

### Sad aftermath

Facing Foreclosure?  
Repossession?  
Wage Garnishments?  
High Credit Card Bills?



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David  
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## San Jose Mercury News (CA)

### SUNNYVALE TOWN CENTER PROJECT A GLARING REMINDER OF THE TIMES

CITY IS LOSING ABOUT \$2 MILLION A YEAR ON LOST RETAIL  
SALES FROM STALLED COMPLEX February 6, 2010

Section: Local

Edition: Valley Final

Page: 1B

Joe Rodriguez, jrodriguez@mercurynews.com

**Caption:** PHOTO: KAREN T. BORCHERS -- MERCURY NEWS.

Business is way down at the **Sunnyvale Town Center** as street and sidewalk work disrupts commerce in the huge, financially shaky project.

PHOTO: SUNNYVALE HISTORICAL SOCIETY.

Murphy Avenue, looking north from Washington Avenue, in an undated photo. Murphy Avenue was the first street built in Sunnyvale in the 1800s.

PHOTO: KAREN T. BORCHERS -- MERCURY NEWS.

Road construction workers take their lunch break on Murphy Avenue in Sunnyvale on Friday. Sunnyvale Mayor Melinda Hamilton said it would cost about \$300 million to finish the Town Center project.

MAP: MERCURY NEWS.

#### **Sunnyvale Town Center**

Murphy Avenue, barely saved from the bulldozers a generation ago, is now surrounded by a behemoth commercial project that went bust in the financial crisis.

Sunnyvale Mayor Melinda Hamilton ordered a hot chocolate--in a porcelain cup, not a Styrofoam impostor--at a cafe on Murphy Avenue and looked at the contradictory scene outside: As some workers placed new bricks on the old street's sidewalks by hand, others were boarding up the new **Sunnyvale Town Center**, a trendy mega-project gone bust from the global financial crisis.

"The irony is, the best part of the whole project is a street that's over 100 years old," Hamilton said.

Back in 2002, she was an outsider shooting BBs at a six-story condominium slated to go up next to her house. She and other slow-growth advocates

managed to defeat that behemoth. But even after winning election to the City Council a year later, she couldn't fend off plans for the new town center.

That's what cities tend to call downtowns after destroying them.

"I lost that battle a long time ago," Hamilton said.

Murphy Avenue was the first street built in Sunnyvale in the 1800s, and it anchored a downtown that thrived with small shops, banks, a J.C. Penney and J.J. Newberry, soda fountains and Sunday concerts in the plaza. But like others, the downtown declined during the stampede to the new suburbs after World War II.

In the 1970s, Sunnyvale razed its downtown and built a shopping mall, complete with a Macy's. It kept one block of Murphy Avenue intact, and that street--crowded with cafes and boutiques--thrived, becoming one of the valley's coolest hangouts while people bypassed the sun-starved mall.

Oblivious to the lessons of Murphy Avenue, City Hall in the late 1990s decided to raze the mall and start anew, only with a much bigger scheme this time: a gigantic 34-acre square in the heart of Sunnyvale, with about 300 condominiums, a hotel and movie theater, three office buildings and about a million square feet of shops and restaurants. Estimated cost: \$750 million.

It might have worked had the housing bubble not burst, setting off a global financial panic and the Great Recession. Now the mayor and council have to deal with one of the largest redevelopment fiascos after the half-completed project fell into foreclosure proceedings and contractors walked off the job last year.

Today, Murphy Avenue sits next to a mishmash of vacant lots, nearly completed buildings and the steel skeletons of others. Orange tape stops shoppers from pulling into never-finished parking lots.

"The problem was the project was conceived when housing was the big thing, when retail was the big thing," said Hamilton, "and then came the financial crisis."

Developer Peter Pau's main investor, a global German money manager, Rreef, declined to invest any more in the project. Wells Fargo, Wachovia and Bank of America--three lenders backing the new town center construction--decided not to lend any more. Pau and Rreef defaulted last September. Construction had stopped in April.

"I'm stuck in the middle," Pau said, adding that he'd like to return to the project and is working with the banks and the city to "stabilize" the property. Elise Wilkinson, a spokeswoman for Wells Fargo, now the lead lender, declined to talk about what the bank might do with the center if the foreclosure goes through. However, she said the bank is weatherproofing and protecting the site from vandalism.

None of this is any comfort to Hamilton. She said the city is losing about \$2 million a year from lost retail sales. She said it would cost about \$300 million to finish the town center.

If there's a silver lining, Hamilton said, the project could be downsized and focused more on the expansion of Murphy Avenue. Currently, the city is paying for new streets and sidewalks.

Meanwhile, some Murphy Avenue shop owners say business is down from 35 percent to 50 percent because of all of the road construction going on around them.

At Leigh's Favorite Books, owner Leigh Odum said her husband has trouble getting his high-tech colleagues to join him for lunch on Murphy Avenue.

"They tell him they don't want to deal with the trouble," Odum said.

A few doors down at Jerdon stationery store, manager Sylvia Gleason said longtime customers have kept the business going.

"Our customers are loyal to us and loyal to Sunnyvale," she said. Then she pointed to the stalled condos and office buildings. "We're not holding our breath for that."

Contact Joe Rodriguez at 408-920-5767.



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# Downtown alters strategy

## Redwood City council gives go-ahead to fill empty storefronts with offices

BY SHAUN BISHOP  
Daily News Staff Writer

Next door to Jigsaw Java in downtown Redwood City, there used to be a dance studio that drew customers who also would drop into the puzzle shop.

But since the studio on Main Street closed 1 1/2 years ago, the building has remained empty, said Jigsaw Java owner Mary Albitz. Two other ground-floor retail shops on her block are vacant, and that has

taken a toll on her business.

"The more retail you have next to each other, the more it attracts people to stop in and out" of different stores, Albitz said.

Despite its palm tree-lined streets and trendy new restaurants, downtown is still struggling to fill numerous ground-floor vacancies, almost four years after the city cut the ribbon on the revitalized shopping district.

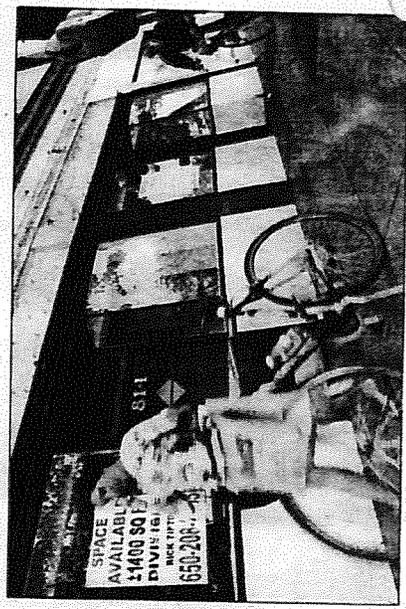
It's struggling so much, in fact, that city officials are retreating from an earlier strat-

egy of reserving ground floors mostly for retail and settling for offices there as well.

On Monday, the city council agreed to relax the city's zoning restrictions on some downtown streets so offices could move into ground-floor spots that restaurants and retail stores are staying away from.

The problem is evident — officials say 115,000 square feet of ground-floor retail space in downtown buildings is vacant.

That's more than a quarter of the entire **VACANCIES**, page A5



Kirstina Sangsachart / Daily News  
People walk by vacant ground-floor spaces on Main Street in downtown Redwood City on Tuesday.

Business owners have long complained that the downtown has too many restaurants and not enough retail. Ideally, rather have retailers fill empty spots than offices.

But given the economic recession and the length of the vacancies, Irene Bryant said property owners shouldn't turn down a small business that comes knocking.

"At this point, fill up the stores," Bryant said. "It's not a good thing to have more banks or to have more offices in a retail area, but when it's this bad, it's better than nothing."

Other merchants have mixed feelings about the change. Peter Cuschieri, owner of Angelica's Bistro across the street from Jigsaw Java, said office workers could provide a boost at lunchtime, but he worried with storefront office space.

"Especially on the weekends, it'll be dead," Cuschieri said.

Cuschieri said he thinks the city should set up a marketplace with permanent booths along Main Street to create foot traffic. And, like other business owners, he says a big reason for the vacancies is property owners who continue to insist on high rents.

"The rent drives people out," agreed Larry Thacker, who owns Young Auto Parts on Main Street.

Planning Manager Jill Ekas said the city will monitor the zoning change to see how it affects downtown.

"We're going to observe this very carefully and if there's any concern over time, we'll be tracking it," Ekas said.

Council Member John Seybert said the new zoning reflects an effort by the city to "respond in a responsible way to changes in the market and be nimble and flexible." He hopes offices will create new customers for downtown.

"The city can't do everything, but we can set the table for things to happen," Seybert said. "These people open up companies and people that work there go out to lunch."

E-mail: Shaun Bishop at sbishop@dailynewsgroup.com

# VACANCIES

stock of 406,000 square feet. "We were hoping that the economy didn't bust and things would be rolling along, but they didn't, so we want to help the property owners," said Nancy Radeffice, a planning commissioner and board member of the Downtown Business Group, which supports the changes. "I think it'll be really good for the restaurants and the businesses that are down there to just have more people."

The council's move came at the request of Radeffice, who on behalf of the downtown business group asked the city in December to allow offices to fill downtown vacancies.

Previously, offices were allowed there only in special circumstances, such as for travel agencies or insurance brokers that depend on walk-in customers.

The zoning change approved Monday will also allow for general office uses, such as small startup companies. But the offices must manage employee parking and maintain a front facade "consistent with the retail character of the district."

The new zoning, which goes into effect in mid-July, does not apply to Broad-ay and Theater Way in the heart of downtown, which officials want to keep reserved for retail and restaurant uses.

That means it won't be of direct help to Bob's Courthouse Coffee Shop on Broadway, which has two boarded-up buildings in its neighbors. Irene Bryant, who has run an old-fashioned diner with her husband for 20 years, says there once used to be more small retailers like cleaners, shoe merchants and appliance repair shops than vacancies.

"They're small businesses, but they attract customers," said Bryant, taking a break from serving late lunch to a handful of customers. "By having empty stores, people have no interest in coming downtown."

The zoning change is aimed at Main Street, which has at least nine vacant retail locations ranging from 1,000 to 5,000 square feet, some of which have been empty since 2005. But the change will affect streets around downtown, in-

From page A1

## **Parts of downtown plan conflict with Farmers' Market – Almanac, May 25, 2011**

Following publication of the environmental impact report, I am writing to express my continued concern with specific aspects of Menlo Park's downtown plan.

As a member of the Menlo Park Live Oaks Lions Club and a longtime supporter and volunteer at the Sunday Farmers' Market, I wish to make the following comments.

I fear that the proposed partial closure of Chestnut Street along with a 4,000-square-foot marketplace structure will disrupt traffic and make access to and from the Sunday market a problem, both for the farmers' vehicles and the general public.

Developments on this scale are bound to negatively affect the smooth running of this very successful market and could in the long term put the market at risk. It puzzles me as to why the plan still wants to introduce more retailers, through the covered market, when we have vacant sites on Santa Cruz Avenue.

On the question of a general increase in traffic, forecast under the present downtown plan, I have serious concerns regarding the proposal to reduce the through lanes on El Camino Real from two to one at the Santa Cruz crossing. (*Editor note: this change to one "through lane" affects El Camino from Cambridge to Valparaiso*) I regularly use El Camino to visit downtown or to travel to Palo Alto from Loyola Avenue and it is already a bottleneck at certain times of the day. With the increase in traffic and a reduction to one lane, I dread to think what it will be like trying to drive through Menlo Park. Please reconsider this plan.

Finally, the recommendation of the EIR to make changes on a temporary basis is a good one, as this will allow both the public and the city to assess their effectiveness before changes become permanent.

**John Hickson, Secretary of Menlo Park Live Oak Lions Club (sponsor of the Sunday Farmers Market)**