

Attachment No. 48

EPASD correspondence with
EPA City Manager, including
email dated December 13, 2021



CITY OF EAST PALO ALTO

City Manager's Office

December 13, 2021

Akin Okupe
General Manager
East Palo Alto Sanitary District
901 Weeks Street
East Palo Alto, CA 94303
Email: aokupe@epasd.com

**Re: October 13, 2021 Request for Supplemental Environmental Impact Report
for the City of East Palo Alto 2035 General Plan**

Dear Mr. Okupe:

This acknowledges receipt of your letter dated October 13, 2021, wherein the East Palo Alto Sanitary District (the "District") requests that the City of East Palo Alto (the "City") prepare a supplemental environmental impact report for the City's 2035 General Plan, based on your allegation that the original report prepared did not sufficiently address sewer capacity for future development. I have consulted with the City Attorney's Office on the legal issues presented and the City disagrees with your request for the reasons set forth below.

Nonetheless, the City may process amendments and/or updates to its 2035 General Plan in the near future – which amendments may or may not require additional environmental review – and of course the District may participate in that public process. The City further understands that the District may be in the process of updating its 2015 Master Plan, and the City looks forward to working with the District to provide it with City information necessary to complete that update.

- I. **The comment period for the 2035 General Plan EIR ended in 2016, and the deadline to challenge the EIR was 30 days after the City filed the Notice of Determination in 2016.**

The City certified a final environmental impact report for the 2035 General Plan update (the "EIR") and adopted the 2035 General Plan on October 4, 2016. The EIR explained that the District was operating below its system dry-weather flow capacity (Draft EIR, p. 4.15-11), that "[p]lanning efforts by the [District] ... account for both current and future flows" (Draft EIR, p. 4.15-20), and as follows:

The General Plan Update would allow for an increment of new residential and non-residential growth that would be expected to result in an increase in wastewater generation over existing conditions. The [District] and [West Bay Sanitary District] estimate that future average dry- and wet-weather flows at the levels expected with growth projected in the General Plan Update will be below permitted capacities. Future dry-weather flows from the [District] would be limited to its 2.9-MGD capacity unless [the District] were to purchase additional capacity from the PARWQCP. (Draft EIR, pp. 4.15-28-29.)

The EIR concludes that the goals and policies included in the EIR and the General Plan would “ensure that adequate water and wastewater infrastructure is provided to support anticipated General Plan Update growth,” but that since the sizing, extent, and location of improvements that may be needed to serve the growth is unknown, the General Plan’s impact is considered significant and unavoidable. (Draft EIR, p. 4.15-21.) Notably, much of the EIR’s analysis regarding the District’s capacity to serve the General Plan buildout is based on communications with the District’s own contract engineer and the San Mateo County LAFCo’s adopted Municipal Services Review. (See, e.g., footnotes 15-17, 27-28, and 29-31 in Draft EIR pp. 4.15-10-12.)

Pursuant to CEQA Guidelines section 15082, the City issued the Notice of Preparation on September 3, 2014 which indicated that the City was going to prepare the EIR and would assess the 2035 General Plan’s potential environmental impacts, including impacts to utilities and service systems. The Draft EIR was released for public review for 48 days from April 29, 2016, through June 15, 2016. The City received and responded to 32 oral and written comments on the Draft EIR, none of which came from the District. The City adopted the General Plan and certified the EIR on October 4, 2016 and filed a Notice of Determination on April 29, 2016. The California Environmental Quality Act (“CEQA”) provides that (i) any alleged grounds for noncompliance with CEQA must be presented to the City prior to issuance of the Notice of Determination, and (ii) any challenge to the sufficiency of the EIR must be filed within 30 days of the Notice of Determination. (Pub. Res. Code §§ 21177 and 21167(c).)

Again, the District did not comment on the EIR nor did any of the comments received raise any questions or concerns about the District’s ability to serve the General Plan buildout. Yet the District’s letter now asserts that the EIR failed to “sufficiently disclose or evaluate whether there is adequate sewer capacity to accommodate and serve future development in the City.” If the District believed that the EIR’s analysis was incorrect or inadequate, it should have submitted comments to that effect during the comment period. Finally, the District did not challenge the EIR within the 30 days required by CEQA, so it is currently barred from doing so.

II. Once an EIR has been prepared, CEQA states that a subsequent or supplemental EIR should be prepared only under limited circumstances, none of which are present.

The District's letter states that CEQA Guidelines section 15162 requires the City to prepare a "subsequent or supplemental EIR ... because major revisions are required to the 2035 General Plan EIR to adequately address sewer capacity deficiencies." The District is both legally and factually incorrect.

CEQA guidelines section 15162 expressly prohibits preparation of a subsequent EIR where one has already been prepared for a project unless certain limited circumstances exist. (CEQA Guidelines § 15162.) Those circumstances are:

- (1) Substantial changes are proposed in the project that will require revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified impacts;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified impacts; or
- (3) New information of substantial importance demonstrates that the project will have one or more significant effects or substantially more severe effects, or that mitigation measures or alternatives that were not feasible are now feasible, or that mitigation measures or alternatives that are different than those analyzed would reduce one or more significant effects.

(CEQA Guidelines § 15162(a).)

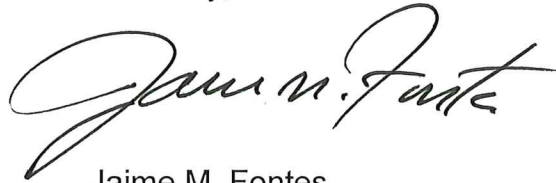
Additionally, CEQA Guidelines section 15163 states that if any of the section 15162 conditions are present but only minor changes to the EIR are required, then an agency may choose to prepare only a supplemental EIR rather than a subsequent EIR that contains only the information necessary to make the previous EIR adequate for the changed project. (CEQA Guidelines § 15163.)

The District's letter generally refers to CEQA Guidelines section 15162, but does not assert that any of the prescribed circumstances exist that would require the City to prepare a subsequent (or a supplemental) EIR. That is because these circumstances do not exist. The City is not presently processing any amendments or updates to the 2035 General Plan (the "project" for purposes of section 15162). However, the City may do so in the future (including with regard to the Ravenswood Business District area), and the District is welcome to participate in that process. Further, should any development proposal require an amendment to the 2035 General Plan, such a proposal would be subject to CEQA review.

III. The City will work cooperatively with the District if the District updates its Master Plan.

The City understands that the District is in the process of updating its 2015 Master Plan. This update will likely require its own CEQA process. The City will work cooperatively with the District to ensure that it has up-to-date development proposal information and any other information necessary for the District to complete the update.

Sincerely,

A handwritten signature in black ink, reading "Jaime M. Fontes". The signature is written in a cursive style with a large, sweeping initial "J".

Jaime M. Fontes
City Manager
City of East Palo Alto