Attachment No. 5

From Crisis to Solutions A Case Study of East Palo Alto's Water Supply, Fran M. Layton, Allison A Johnson, Winter 2019

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Fran M. Layton
Allison A. Johnson

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SILICON VALLEY community foundation®

Unbelievably, in the Bay Area we have communities whose economic growth and prosperity are constrained by the availability of water. Such was the case in East Palo Alto, where decades of racial and economic injustices in the allocation of water has had an adverse impact on its development.

As this report shows, East Palo Alto's water crisis arose out of racial, economic, and political factors in the mid-20th century. The people of unincorporated East Palo Alto – historically a low-income community of color – lacked a strong enough voice in the land-use and water-allocation decisions made by its neighbors. As surrounding jurisdictions steered toxic industrial uses into East Palo Alto, the unincorporated area was unable to pursue economic development, which lead to all the predictable social consequences. Without the water supply needed to attract new investments, the city struggled to generate the tax base necessary for growth and to respond to community needs. Even with its 1983 incorporation, East Palo Alto continued to face many bureaucratic and political obstacles to securing more water until very recently.

The research for this report was completed in 2017 and since then, the City of East Palo Alto has taken a number of steps to secure additional water and drive its own economic development. East Palo Alto leaders worked with neighboring jurisdictions beginning in 2016, sharing their vision with other community leaders and demanding action to rectify the past. Many of East Palo Alto's neighbors do not use their full water allocations, and after months of work, two of those communities, Mountain View and Palo Alto, committed to transferring some of their "surplus" to East Palo Alto.

We hope this case study offers critical insight for other communities working to overcome decades-old injustices. It is a key example of why SVCF continues to research critical local issues. Whether the problem is traffic gridlock, educational inequities or spiraling housing costs, we believe that if this uniquely visionary region applies itself, Silicon Valley will fulfill its responsibility to tackle even the toughest problems.

Sincerely,
Erica Wood

Chief Community Impact Officer
Silicon Valley Community Foundation

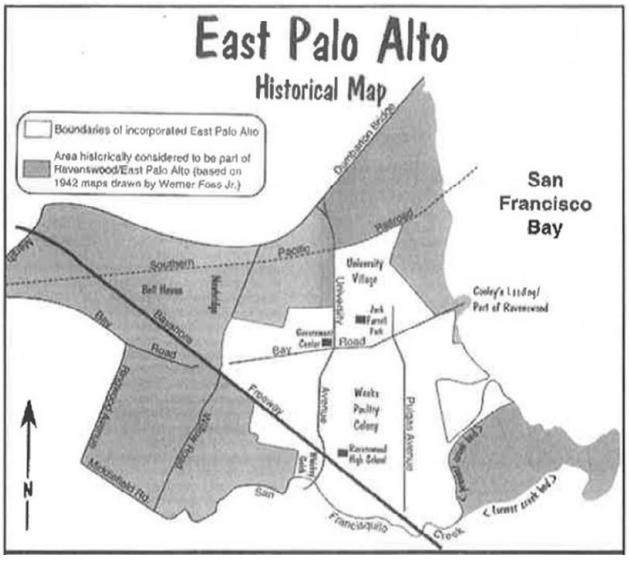
I. Introduction

"If you don't have water, you don't have affordable housing. If you don't have water, you can't grow." Carlos Martinez, East Palo Alto city manager.[1]

Until very recently, East Palo Alto was in the throes of a severe water shortage, a decades-old situation that could not be easily remedied. The city's water demand exceeded its available supply several times since 2001 and, without access to more water, the city could not continue to develop. Even though East Palo Alto's per capita water consumption was among the lowest in the region and the state, its allocation from the San Francisco Regional Water System (SFRWS), the city's primary water source, did not provide nearly enough water to meet East Palo Alto's needs. Meanwhile, nearby jurisdictions had more than enough water to meet demand and would benefit from projects proposed to be developed in East Palo Alto. However, agreements governing the allocation of water from the SFRWS made it difficult for these neighbors to share resources.

This report explores the historical factors that led to East Palo Alto's water supply shortfall, the impacts of the city's water crisis, and efforts to increase access to this critical resource. It concludes by detailing the steps taken by the city and partners, including first-time collaborators, to address some of the structural and human obstacles that stand in the way of providing East Palo Alto residents with affordable housing, economic opportunities and adequate municipal services. These strategies may be useful in addressing resource struggles in similar communities throughout the state.

II. Origins of East Palo Alto's water crisis



Source: Haas Center for Public Service, Community Profile: East Palo Alto (October 2002).

East Palo Alto's history of inadequate resources is grounded in racial, economic and political factors that disadvantaged East Palo Alto throughout the 20th century. Early land use decisions in San Mateo and neighboring counties directed toxic industrial uses to East Palo Alto, while neighboring jurisdictions captured the lion's share of the region's economic development. As a result, East Palo Alto has struggled for decades to build a sustainable tax base and establish a healthy jobs-housing balance. Water allocations dating back to the middle of the 20th century exacerbated these problems by limiting the city's capacity to support economic development.

A. Pre-incorporation land use and demographics in East Palo Alto

East Palo Alto is San Mateo County's newest city, and its unincorporated status directly affected its population and resources for much of the 20th century. In the six decades since its first incorporation efforts in the 1920s to its incorporation in 1983,[2] the area that is now East Palo Alto lost important resources to state development projects and neighboring cities.[3] In the early 1930s, a new state highway that would become Highway 101 (illustrated in the East Palo Alto historical map above) cut through East Palo Alto, dividing the community.[4] Subsequent highway widening displaced more than 50 businesses that had served East Palo Alto residents, and few reopened within the city's current borders.[5] Neighboring cities, including Palo Alto and Menlo Park, selectively annexed virtually all of the region's industry by the early 1960s, decreasing East Palo Alto's population and property values.[6]

San Mateo County sited a disproportionate number of harmful industrial projects in East Palo Alto, including the county landfill, the regional hazardous waste recycling plant, auto dismantling facilities and pesticide and herbicide producers.[7] These activities benefitted the county but imposed substantial local economic and environmental burdens on East Palo Alto.[8] For example, the Romic hazardous waste plant operated in East Palo Alto from 1964 until 2007,[9] when it was shut down in response to community pressure, including advocacy from Youth United for Community Action, a local youth environmental justice organization.[10] Soil and groundwater contamination from the plant extended 80 feet below ground level; it was one of the most contaminated sites in the city.[11] [i, ii]

These land use decisions were inextricably connected to race.[12] After World War II, the predominantly white cities that surrounded East Palo Alto used property tax rates, land use laws, municipal services and racial covenants to facilitate development of Silicon Valley's tech industry, "clean" manufacturing and high-end suburbs, while excluding "undesirable" populations and land uses.[13] In addition, the redevelopment of "blighted areas" of San Francisco resulted in the "expulsion of Blacks" from its small neighborhoods.[14] However, because they lived in an unincorporated area, East Palo Alto residents were not able to make social and economic choices. The county, not the residents, controlled land use decisions. While some white East Palo Alto residents attempted to shut Black and Asian Pacific American families out of East Palo Alto, they did not have the power to enshrine their biases in local law.[15] As a result, many of the people and the industries excluded from neighboring cities settled in East Palo Alto.[16]

"Block-busting" real estate agents also contributed to the significant demographic shift in East Palo Alto in the 1960s.[17] Warning that an influx of minority residents would collapse property values, real estate agents scared white homeowners into selling their homes and moving to new subdivisions in cities like Mountain View and Sunnyvale.[18] At the same time, these agents offered Black potential home buyers free bus rides through East Palo Alto neighborhoods to encourage Black families to move in.[19] Real estate agents profited at both ends of housing transactions, and East Palo Alto's population shifted from about 70 percent White

i The former Romic plant is the site of one of the proposed development projects discussed later in this report.
ii *SVCF Note:* Since completing research for this report, active remediation has begun at the site.

in 1960 to over 60 percent Black in 1970.[20]

East Palo Alto's racial composition and unincorporated status put the city at an economic disadvantage relative to its neighbors. The area's racially diverse population was considered commercially undesirable.[21] For example, after the expansion of Highway 101 displaced East Palo Alto's commercial district, the area had trouble attracting businesses to relocate to the "rapidly integrating community."[22] In addition, while new cities in the region could attract private investors and developers, East Palo Alto could not benefit from development resources that were reserved for cities.[23]Discriminatory federal policies deprived East Palo Alto of access to federal funds, such as Federal Housing Administration-backed mortgages, that nearby cities were using to support growth.[24]

These factors combined to leave East Palo Alto with an extremely limited tax base and few economic development opportunities.[25]

B. East Palo Alto joins the San Francisco Regional Water System

In the early 20th century, the area that is now East Palo Alto largely relied on individual wells and tanks for water.[26] However, in the mid-1920s, as individual wells went dry or suffered from saltwater contamination, neighborhoods began to form their own water districts.[27] Thus, the East Palo Alto County Waterworks District (EPACWD) formed in 1927.[28] EPACWD merged with a neighboring district in 1961[29] and served most of the area that would become East Palo Alto, as well as part of Menlo Park, until it dissolved in 2000.[30]

East Palo Alto was still unincorporated and served by the EPACWD when SFRWS became the area's primary water source.[31] San Francisco began to develop a municipal water system in 1900, pursuant to the city's new charter.[32] In the following decades, San Francisco built the Hetch Hetchy Water and Power System and bought the city's major private water supplier, the Spring Valley Water Company.[33] As San Francisco's water supply grew, it began to sell water wholesale to other municipal water suppliers.

In 1932, San Francisco adopted a new charter that created the San Francisco Public Utilities Commission (SFPUC) and placed Hetch Hetchy and the San Francisco Water Department under

I. The Raker Act of 1913

A significant portion of the SFRWS water comes from the Tuolumne River, via the Hetch Hetchy Water and Power System, pursuant to San Francisco's pre-1914 water rights and the Raker Act of 1913. The Raker Act granted San Francisco rights of way on federal lands, including Yosemite National Park and Stanislaus National Forest, to develop water and power resources for the Bay Area's growing population. Under the Raker Act, San Francisco may sell Hetch Hetchy water and power to wholesale buyers, but only if those buyers are public entities. Construction on the Hetch Hetchy system began immediately after Congress ratified the Raker Act, and San Francisco has supplied water from this system to City of San Francisco retail customers and Bay Area wholesale customers since the 1930s.

its jurisdiction.[34] The five-member commission (appointed by the mayor of San Francisco and subject to confirmation by a majority of the San Francisco Board of Supervisors) has exclusive control of the SFRWS.[35] The SFPUC has the sole authority to enter into agreements to buy water and to sell it to wholesale customers from the Hetch Hetchy system.[36]

In the 1960s, San Francisco entered into the first round of long-term agreements with many of its wholesale customers, including EPACWD,[37] in order to ensure that it had a sufficiently stable customer base to fund planned expansions of the SFRWS.[38] The terms of these contracts reflected the areas where Bay Area industries were located at the time and were the foundation of many of today's wholesale customer allocation levels. For example, the SFRWS contracts did not anticipate the region's Silicon Valley future. Cities with water-dependent commercial development contracted for larger allotments from the SFRWS than the significantly smaller share of the system's water resources allotted to the EPACWD, given its comparatively limited water needs at the time.

Around the same time these long-term contracts were adopted, the Bay Area Water Users Association, which later became the Bay Area Water Supply and Conservation Agency (commonly recognized as BAWSCA), formed to advocate on behalf of San Francisco's wholesale customers.[39] State law later granted BAWSCA the authority to represent the interests of these wholesale customers.[40] The map in Appendix A identifies the agency's wholesale customers and their geographic location.

C. Incorporation of East Palo Alto

While East Palo Alto was transitioning to water supplied by the SFRWS, East Palo Alto residents were focused on other issues. In the late 1960s, in response to calls by East Palo Alto activists for self-governance and local control, San Mateo County established a five-member East Palo Alto Municipal Council to advise county supervisors on local issues.[41] However, the municipal council's power was limited. Its recommendations did not bind San Mateo County, which funded the council.[42] In response to the community's interest in greater autonomy and control, the council formed the East Palo Alto Citizens' Committee on Incorporation, which eventually led the successful incorporation campaign.[43]

From the outset, support for incorporation was sharply divided.[44] A predominantly African-American group of East Palo Alto residents advocated for incorporation to address three key issues: local control of their community's land uses, budget and resources; economic development; and community control of police.[45] These advocates recognized that without self-governance, East Palo Alto had no authority to direct its development and it was not eligible for federal and state funding reserved for cities.[46] By incorporating, East Palo Alto would no longer be within the jurisdiction of the San Mateo County sheriff and would control its own policing, thereby alleviating historic tensions with the sheriff's office.[47] On the other side of the debate, a group of mostly Black homeowners and White absentee landlords strongly opposed incorporation, citing potential threats to property values and East Palo Alto's unstable tax base, as well as concerns about future efforts to establish rent control.[48]

In 1981, the San Mateo Local Agency Formation Commission approved a petition from the Citizens' Committee requesting East Palo Alto's incorporation and the dissolution of several service districts,[49] including EPACWD.[50] The San Mateo Local Agency Formation Commission ordered an election on these issues.[51] Due to how the election was structured, incorporation would only be allowed if voters also agreed to dissolve all the service districts,[52] including a sanitation district serving much of East Palo Alto and a small part of Menlo Park.[53] Menlo Park voters rejected the dissolution of the sanitation district, thereby dooming the incorporation measure.[54]

Incorporation advocates tried again and ultimately prevailed, by just 15 votes (1,782 to 1,767), in a second incorporation election in 1983.[55] [iii] However, as discussed below, the East Palo Alto County Water District did not dissolve until many years after East Palo Alto's incorporation.

D. 1984 Settlement Agreement and Master Water Sales Contract

Shortly after East Palo Alto incorporated, SFRWS wholesale customers in Alameda, San Mateo and Santa Clara counties entered into a joint water sales contract with San Francisco (1984 Agreement) to settle a water rates dispute that had begun in the 1970s.[56] Wholesale customers, including EPACWD, had sued San Francisco in response to a significant rate increase.[57] The wholesale customers faced a 20.5 percent increase, while the rate for San Francisco retail customers would increase by only 14.5 percent.[58] The wholesale customers argued that the federal Raker Act entitled them to water at cost and claimed that the rate hike violated the act because the discrepancy between retail and wholesale rates was discriminatory and not related to San Francisco's cost of serving the wholesale customers.[59] The wholesale customers later expanded the lawsuit to broadly attack San Francisco's historic method for setting wholesale rates and sought a declaration of their rights as "co-grantees" under the Raker Act. [60] [iv] The 1984 Agreement ended that litigation and established a new framework for wholesale water purchases from the SFRWS.[61] [v]

Under the 1984 Agreement, San Francisco guaranteed its wholesale customers (excluding the cities of San José and Santa Clara[vi]) a collective minimum water supply of 184 million gallons per day.[62] This perpetual "Supply Assurance" would continue indefinitely, even after the 1984 Agreement terminated in 2009.[63]

The 1984 Agreement also assigned each wholesale customer a permanent minimum Individual Supply

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iii In subsequent litigation, the margin narrowed to 13 votes, but the incorporation vote was upheld. Wilks, 42 Cal.3d at 403; Pang Chen, African American and Hispanic Communities in East Palo Alto at 4.

iv The Raker Act grants various water and energy-related rights, including rights for the purpose of conveying water to San Francisco "and such other municipalities and water districts as , with the consent of the city and county of San Francisco, or in accordance with the laws of the State of California in force at the time application is made, may hereafter participate in the beneficial use of the rights and privileges granted may [] participate in the beneficial use of the rights and privileges granted by [the Raker Act.]" Raker Act, 38 Stat. 242 (1913). The Ninth Circuit's opinion in Palo Alto states that the wholesale customers "are intended to be direct beneficiaries of the Raker Act." 528 F.2d at 1376. No other published decision addresses the rights of the wholesale customers under the Raker Act.

v As discussed later, the settlement did not resolve many legal issues related to the Raker Act.

vi The 1984 Agreement allowed San Francisco to decide whether to provide water to the cities of San José and Santa Clara permanently, on a temporary and interruptible basis, or not at all. 1984 Agreement § 9.03 at 60-62. San Francisco chose the "temporary and interruptible basis" option. *See* Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County (July 2009) [2009 WSA] § 9.06(A) at 88.

Guarantee, based on the water allocation specified in the customer's earlier contract with San Francisco.[64] [vii]

The EPACWD District received an Individual Supply Guarantee of 1.812 million gallons a day while its neighbor Menlo Park, with a similar size population, received 3.576 million gallons a day.[65] Three cities – Mountain View, Sunnyvale, and Palo Alto – received more than 10 million gallons a day.[66] Palo Alto topped the list of city allocations with 15.536 million gallons a day.[67]

The combined wholesale customers' Individual Supply Guarantees totaled less than the 184 million gallons a day San Francisco agreed to provide, so the 1984 Agreement further stipulated that either (1) the wholesale customers could determine how to divide the "residual water" among themselves, or (2) the water would be allocated to the wholesale customers based on their average use.[68] While the wholesale

Source: Draft 2040 WaterMAP at 19[i]

customers initially took the latter approach, they quickly realized that allocating water based on past use discouraged conservation – a customer that reduced its water use would be eligible to receive less residual water in the future.[69]

As a result, in 1994, the Bay Area Water Users Association, BAWSCA's predecessor organization, assisted the wholesale customers in reaching an agreement (or 1994 Individual Supply Guarantee Agreement) to amend the 1984 Agreement to include new fixed Individual Supply Guarantees based on existing allocations, recent use and special circumstances facing particular wholesale customers.[70] [viii] This 1994 Agreement created an opening for potential changes to the new Individual Supply Guarantees in the future if the wholesale customers and San Francisco took additional action to allow partial transfers.[71]

Under the 1994 Agreement, the EPACWD's Individual Supply Guarantee increased from 1.812 million gallons to 2.183 million gallons a day.[72] Several other cities received larger increases, based on their projected growth.[73]

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vii Individual Supply Guarantees may be reduced under certain, limited circumstances, such as drought. 1984 Agreement § 7.01 at 41.

viii Because this involved an amendment to the 1984 Agreement, the 1994 Individual Supply Guarantee Agreement required each wholesale customer to adopt a resolution by June 30, 1994, approving the new Individual Supply Guarantees. *See, e.g.*, San Mateo County Resolution No. 58195 (April19, 1994).

E. Dissolution of the East Palo Alto County Waterworks District

After East Palo Alto's attempt to dissolve the EPACWD failed in 1981, the district served the area for nearly two more decades.[74] However, in 1997, San Mateo County developed a capital improvement master plan for the district that identified about $12 million in needed improvements (which would require a 20 percent rate increase over four years).[75] Faced with this large financial burden, the county began to explore options for passing the torch.[76]

East Palo Alto initially decided not to acquire the Waterworks District,[77] but after the county applied to the San Mateo County Local Agency Formation Commission in late 1998 to dissolve the district, East Palo Alto changed course.[78] In June 1999, East Palo Alto notified the county that the city planned to apply to the Local Agency Formation Commission for reorganization of the district.[79] In preparation for this transition in governance, East Palo Alto staff noted that "the city's continuous expansion will make future water supply an issue of extreme importance" and that the city would need "some form of control of the water system in order to ensure that it will not be an obstacle for future development."[80] However, because the water system was in need of significant improvements, East Palo Alto decided to lease the system to California American Water Company or Cal-Am, to operate, improve and maintain the system at Cal-Am's cost.[81] This allowed East Palo Alto to avoid the initial high cost of investing in an aging water system.[82]

Not everyone supported the proposed transition. EPACWD served more than 100 Menlo Park connections, including several business parks.[83] The owners of the business parks objected to East Palo Alto's proposed acquisition of the water district. Rather, they sought instead to detach their properties from the district and join the Menlo Park Water District.[84]

Finally, in October 2000, after extensive negotiations between the public agencies, the Menlo Park property owners and Cal-Am, East Palo Alto submitted a proposal to the Local Agency Formation Commission to dissolve EPACWD and divide the District's assets between East Palo Alto and Menlo Park.[85] The cities agreed to distribute the EPACWD's funds based on the revenue generated by water customers in each city's jurisdiction – 90 percent to East Palo Alto and 10 percent to Menlo Park.[86] They also divided the East Palo Alto district's Individual Supply Guarantee based on the same percentages.[87] Accordingly, the 10 percent (0.22 million gallons a day) of EPACWD's Individual Supply Guarantee (2.183 million gallons a day) that served Menlo Park customers was transferred to Menlo Park, leaving East Palo Alto with an Individual Supply Guarantee of 1.963 million gallons a day.[88] San Francisco approved these contract amendments in 2001.[89]

F. Changes in the San Francisco Regional Water System

Around the time that the EPACWD dissolved, local and state legislation directed San Francisco to pursue substantial updates to the SFWRS' infrastructure, including improvements to prepare the system for major earthquakes.[90] In 2008, San Francisco started to implement those updates and address other water

system issues and service goals (including aging infrastructure, water quality needs, customer demand, etc.) by adopting the comprehensive and costly Water System Improvement Program (WSIP.)[91]

The Environmental Impact Report for that improvement program recognized that water demand in the region was increasing and would exceed the Supply Assurance by the time the improvement program was to be completed in about 2030.[92] Instead of deciding in 2008 how to meet the region's water supply needs through 2030, the SFPUC established an interim planning deadline of December 31, 2018.[93]

To avoid drawing additional water from the SFRWS' watersheds during this interim planning period, San Francisco established a temporary cap on retail and wholesale water deliveries.[94] This Interim Supply Limitation allowed for total deliveries of only 184 million gallons a day to all of San Francisco's wholesale customers, including San José and Santa Clara (as compared to the 184 million-gallons-a day minimum Supply Assurance established by the 1984 Agreement, which does not cover those two cities).[95] If the wholesale customers collectively exceed the Interim Supply Limitation (which to date, they have not done), they may be subject to a surcharge.[96] [ix]

East Palo Alto opposed this approach because WSIP would impose additional costs on city residents without ensuring that the city's water needs would be met.[97] The cost of the system improvements would be shared by the wholesale customers, which would translate to rate increases for East Palo Alto water users.[98] In addition, because East Palo Alto was already using almost all of its water allotment, the city was at risk of incurring penalties if the collective Interim Supply Limitation was exceeded.[99] At the 2008 meeting where the SFPUC approved the water system improvements, East Palo Alto's city manager commented that securing a reliable water supply was one of the city's "greatest challenges."[100] He told the SFPUC that the added expense of the improvements, coupled with inadequate supply, would place East Palo Alto residents in "an unacceptable position."[101]

The initial proposal for dividing the Interim Supply Limitation among the wholesale customers gave East Palo Alto an interim allocation of 3.45 million gallons a day, based on the city's expected growth.[102] However, after wholesale customers whose Individual Supply Guarantees far exceeded their demand objected that this approach unfairly disadvantaged them, the SFPUC limited East Palo Alto's interim allocation to its existing 1.963 million gallon daily Individual Supply Guarantee.[103] A commission memo acknowledged "concerns" regarding the adopted allocation approach, including that "some agencies such as East Palo Alto are restricted to their [Individual Supply Guarantee] despite being apparently efficient water users based on their per capita consumption."[104] Nonetheless, the commission did not increase East Palo Alto's short-term allocation.[105] [x]

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ix In contrast, there is no penalty if a wholesale customer exceeds its Individual Supply Guarantee; as the name suggests, the Individual Supply Guarantee is merely a guarantee of supply for each individual wholesale customer.

x *SVCF Note:* According to SFPUC staff in a subsequent interview, the SFPUC has no authority to reallocate the wholesale share of the Interim Supply Limitation. That decision was made solely by the wholesale customers allocating the Interim Supply Limitation volume among themselves. Meeting with Joshua D. Milstein, Office of the City Attorney, City and County of San Francisco (July 10, 2018) [Milstein Interview].

G. 2009 Water Supply Agreement

When the 1984 Agreement expired in 2009, shortly after the WSIP was approved, San Francisco and its wholesale customers entered into a new 2009 Water Supply Agreement that will remain in effect until 2034.[106] [xi] The 2009 Agreement retains key provisions of the 1984 Agreement, including the Supply Assurance, as well as the modified Individual Supply Guarantee adopted in 1994. It also recognizes the Interim Supply Limitation established as part of the improvement plan and indicates that San Francisco will update its water supply plans by December 31, 2018.[107] [xii] East Palo Alto's guaranteed supply remained 1.96 million gallons a day.[108]

Under the 2009 Water Supply Agreement, the wholesale customers have limited opportunities to increase their water supply. Portions of their Individual Supply Guarantees may be transferred between wholesale customers on a permanent basis if the SFPUC finds that the transfer complies with the Raker Act[xiii] and that the regional water facilities have sufficient capacity to accommodate the transfer.[109][xiv] In addition, a transfer between wholesale customers must be for a minimum of 100,000 gallons a day.[110] Not surprisingly, municipalities had been hesitant to permanently give up their contract rights to water.[111] [xv] Nonetheless, as discussed below, Mountain View and Palo Alto recently agreed to the first of such transfers to East Palo Alto[xvi].

The 2009 Agreement also prohibits most purchases from outside the San Francisco Regional Water System without the consent of the commission.[112] [xvii] This limitation ensures both that there will be sufficient purchases from the system to cover the costs of improvements and maintenance, and that the SFRWS's high-quality water will not be mixed with other water sources and conveyed through the water system's infrastructure without commissioners' approval. These limitations leave wholesale customers little flexibility to adjust to changing conditions.

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xi The parties may agree to extend the 2009 Water Supply Agreement for up to ten years. 2009 Water Supply Agreement §§ 2.01, 2.02 at 4.

xii *SVCF Note:* Although originally scheduled to be completed at the end of 2018, as of this publication's writing the SFPUC had deferred making these decisions until after 2018. Milstein Interview.

xiii It is not clear what this review will entail because no transfers have occurred to date and the Raker Act covers a broad range of issues.

xiv *SVCF Note:* The SFPUC maintains its approval authority under WSA section 3.04 only extends to whether the proposed transfer affects operation of the Regional Water System or implicates the prohibition. Milstein Interview.

xv Customers may temporarily transfer portions of the short-term Interim Supply Limitation, but any such transfers will terminate by the end of 2018. 2009 WSA § 4.03 at 27-28. Because this is not a viable long-term solution for East Palo Alto, it is not discussed here.

xvi The SFPUC approved a transfer of 1 million gallons a day from Mountain View to East Palo Alto in a letter to both cities and BAWSCA, dated June 26, 2017. The cities' Individual Supply Guarantees is now 2.963 million gallons a day (East Palo Alto) and 12.460 million gallons (Mountain View). In May 2018, Palo Alto also agreed to a water transfer to East Palo Alto.

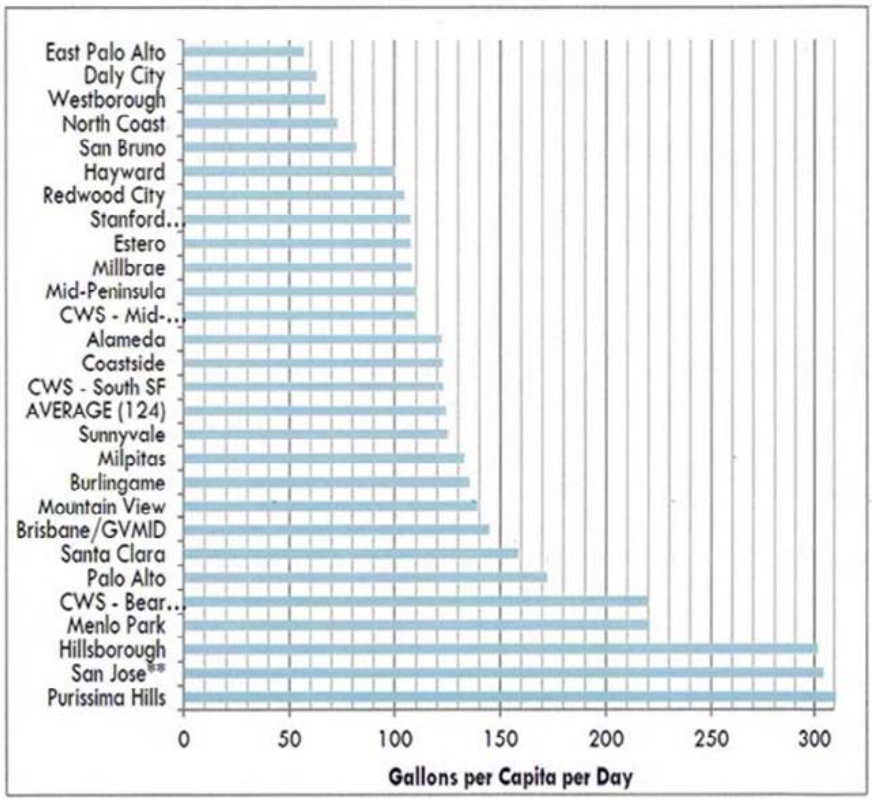
xvii *SVCF Note:* WSA section 3.07 prohibits the purchase of water from other sources by wholesale customers without SFPUC written consent, except for the four customers listed in that section who are subject to minimum purchase requirements as a result of their authority to purchase water from others. To date none of the other wholesale customers has requested permission to purchase other sources of water under section 3.07. The restrictions in section 3.07 do not apply to purchases of recycled water or short term emergency water supplies. WSA section 3.12 allows transfers of water from agricultural districts (an action called "wheeling") from outside the SFRWS by wholesale customers consistent with California Water Code section 1810 et seq. Wheeling of water has been proposed for large scale developments in Redwood City and Brisbane, but these proposals have not been pursued to date. Milstein Interview.

H. East Palo Alto outgrows its Individual Supply Guarantee

East Palo Alto has grown significantly since the 1960s, when the EPACWD entered into the original long-term Water Supply Agreement with San Francisco that influenced its initial guaranteed supply.[113] When the city incorporated in 1983, East Palo Alto's population was about 18,000.[114] The population increased by 25 percent from 1990 to 2000 – nearly double the statewide growth rate and three times San Mateo County's growth rate for the same period.[115] Today, East Palo Alto's reported population is about 30,000 residents,[116] and the city has one of the highest population densities in Silicon Valley.[117]

And yet, SFRWS' water allocation to East Palo Alto changed little. Until recently, East Palo Alto relied almost entirely on the SFRWS to provide water to the approximately 5,100 residential, commercial and industrial connections the city serves.[118] [xviii] As illustrated in the table depicting wholesale customers' 2013-14 gross per capita consumption, East Palo Alto's per capita water consumption (54.1 gallons per capita a day in fiscal year 2014-15) is the lowest among the SFRWS's wholesale customers and significantly lower than their

Figure 7B: Gross Per Capita Consumption(in gpcd) – FY 2013-14



Source: East Palo Alto Water Moratorium Staff Report, Attachment 2 (citing BAWSCA Annual Survey, Figure 7b)

average per capita consumption (105.7 gallons per capita a day).[119] [xix]

Despite being the most efficient wholesale customer, East Palo Alto used far more of its Individual Supply

xviii The city also has several wells that are briefly discussed later in this report. In addition, two small mutual water companies, Palo Alto Park Mutual Water Company and O'Connor Tract Co-Operative Water Company, provide water to a few hundred properties in East Palo Alto and Menlo Park.

xix These numbers reflect several years of drought cutbacks. The previous year, East Palo Alto used 56.9 gallons per capita a day, and the wholesale customer average was 124.3 gallons per capita a day. EPA 4.19.16 Agenda Report at 3.

Guarantee than most other wholesale customers. Collectively, the wholesale customers do not use the full 184 million gallons a day Supply Assurance. They used less than 70 percent of it in FY 2014-15 (in part because of drought-related cutbacks), and use has averaged about 83 percent over the past decade.[120] In contrast, since 2001, East Palo Alto has used nearly its full Individual Supply Guarantee and has exceeded it four times.[121] The city also lacks a secondary or emergency water source.[122]

Further, East Palo Alto's water needs are expected to continue to increase.[123] Under recent projections, the population will rise to nearly 38,000 by 2040, and this growth will increase water needs.[124] Specifically,

CITIES	1980 U.S. CENSUS	1984 INDIVIDUAL SUPPLY GUARANTEE (MILLION GALLONS A DAY)[123]	1990 U.S. CENSUS	1994 INDIVIDUAL SUPPLY GUARANTEE (MILLION GALLONS A DAY)[124]	2010 U.S. CENSUS	2009 INDIVIDUAL SUPPLY GUARANTEE (MILLION GALLONS A DAY)[125]
EPACWD		1.812**		2.183		N/A
East Palo Alto	18,191	N/A	23,451	N/A	28,155	1.963
Menlo Park	26,396	3.576	28,001	4.236	32,026	4.456
Mountain View	58,655	10.508	67,460	13.460	74,066	13.460
Sunnyvale	106,618	11.772	117,229	12.580	140,081	12.580
Palo Alto	55,225	15.536	55,900	17.075	64,403	17.075
Stanford***	11,045	2.382	18,097	3.033	13,809	3.033
San José	629,442	N/A	782,225	N/A	945,942	N/A
Santa Clara	87,746	N/A	93,613	N/A	116,468	N/A

*U.S. Census data is from MTC/ABAG: http://www.bayareacensus.ca.gov/
**U.S. Census data is from MTC/ABAG: http://www.bayareacensus.ca.gov/ includes 100 connections in Menlo Park
***1980, 1990, 2010 U.S. Decennial Census population for Stanford CDP

East Palo Alto's Vista 2035 General Plan directs the city to plan for anticipated water demands of 2.01 million gallons a day by 2020 and 3.05 million by 2040.[125] This meant that in a nondrought scenario, East Palo Alto would need about half a million more gallons a day by 2020 and 1.5 million a day by 2040.[126]

I. East Palo Alto Prior to 2018

The many factors that gave rise to East Palo Alto's early economic and environmental woes – factors that disproportionately disadvantage low-income communities of color across the country[127]– continue to plague the city.[xx] East Palo Alto has San Mateo County's highest unemployment rate[128] and double the poverty rate.[129] Only 20 percent of its residents have graduated from college. About a third have not completed high school and another 45 percent do not have an associate or bachelor's degree.[130] In addition, there are only about 2,700 jobs in East Palo Alto, which amounts to about 0.2 jobs per employed resident,[131] compared with a ratio of 3.04 in Palo Alto.[132] These jobs tend to pay less than those in other parts of the county.[133] As a result, many residents travel out of East Palo Alto for work, which unfortunately contributes to traffic congestion, poor air quality and reduced physical activity for these commuters.[134]

xx East Palo Alto underwent another major demographics shift near the end of the last century. From 1990 to 2000, the Hispanic or Latino population more than doubled. Haas Center for Public Service, *Community Profile: East Palo Alto* (October 2002). Now over 90 percent of community members are people of color, and the largest ethnic groups are Hispanic or Latino, Black/African American, and Pacific Islander. EPA Demographics; Heather Cooley et al., Pacific Institute and Environmental Justice Coalition for Water, Drought and Equity in the San Francisco Bay Area (June 2016) at 24.

The city's lack of commercial development limits its ability to collect revenue from property, sales and transient occupancy taxes.[135] Property tax and other sources of municipal revenue lag behind neighboring jurisdictions.[136] Due to limited options, residents shop outside the community for food, apparel, gasoline and other retail goods, amounting to a substantial loss of sales revenue each year.[137]

In addition, a jobs explosion in the region surrounding East Palo Alto, without a commensurate increase in housing, puts new pressure on East Palo Alto's housing market. In the years leading up to 2016, San Mateo County added 55,000 jobs but less than 3,000 new homes.[138] About 40 percent of East Palo Alto's housing stock is affordable (income restricted, rent stabilized or below market rate) and, when controlled for size, the city provides more affordable housing than any other in Silicon Valley.[139] Nonetheless, housing prices increased dramatically in response to recent growth.[140] High housing prices force many East Palo Alto residents to live in tight quarters and unfinished spaces, where they risk exposure to diseases, pests and mold.[141]

Facebook's growing campus in neighboring Menlo Park, in particular, has been a major factor in East Palo Alto's housing woes.[142] [xxi] For example, at one time, Facebook offered a $10,000 bonus to its employees who lived within 10 miles of its campus[143]; East Palo Alto provides a relatively affordable option, compared to Menlo Park and Palo Alto, where the average sale price for homes is several million dollars.[144] East Palo Alto residents, whose median income was just over $50,000 in 2016 (43 percent less than the rest of the county), cannot compete.[145] Facebook is currently expanding its office complex to support as many as 17,500 employees (a 12,000 person increase from about 5,500 in Menlo Park).[146] [xxii] Palo Alto and Menlo Park continue to resist building new housing to accommodate this growth, thus exacerbating the pressures on East Palo Alto's housing and water resources.[147]

III. A turning point in East Palo Alto's water crisis

At the beginning of 2016, East Palo Alto was in a precarious position. U.S. Rep. Jackie Speier was not exaggerating when she characterized East Palo Alto's efforts to secure more water as "the latest chapter in a civil rights struggle."[148] Then and now, the city urgently needed more affordable housing, as well as economic development that would provide local employment opportunities and expand the city's tax base.[149] However, both require access to more water.[150]

East Palo Alto leaders recognized that water planning was a critical component of development. "To address the city's lack of water supply, and institute long-term strategies to sustainably manage limited water resources," the East Palo Alto general plan sets forth a goal of ensuring "a sustainable, clean, long-term water supply."[151] To further this goal, the general plan requires any "new or intensified development" to demonstrate that adequate water is available before it may be approved.[152] It also directs East Palo Alto to

xxi Litigation addressing the impacts of growth on East Palo Alto is discussed later in this report.

xxii The former Sun Microsystems building that is now Facebook headquarters was originally proposed as a development project in East Palo Alto. However, the city council rejected the project in the late 1980s. Satterwhite Interview.

consider adopting policies to ensure new projects or intensified developments have adequate water supplies and to allow East Palo Alto to require a water supply assessment for any development project.[153] Likewise, East Palo Alto's 2012 Ravenswood/4 Corners Specific Plan, which governs development in the northeastern portion of the city, requires developers to demonstrate that proposed projects will be served by new water sources or "will create no net increase in total water demand" in East Palo Alto.[154]

Since East Palo Alto was already using its full water allotment from the SFRWS, these land use policies amounted to a de facto moratorium on new construction in East Palo Alto.[155] East Palo Alto made this implicit moratorium explicit in July 2016 by adopting an ordinance that established a two-year development moratorium.[156] [xxiii] The moratorium prohibits new or expanded connections to East Palo Alto's water system.[157] The city made its water constraints clear to developers. Projects could not be approved without either proof of water supply or confirmation that the project would lead to no net increase in water usage.[158]

The development moratorium affects several pending projects that had to thus secure water supplies, including:

- A 100- to 120-unit affordable housing development on a city-owned site at 965 Weeks St.;
- The Primary School, a 500-student tuition-free private school at the end of Weeks Street that will provide health care and family services in addition to education;[xxiv]
- The Sobrato project, a 200,000 square-foot office project at 2111 University Ave.; and
- The 2020 Bay Road project, a 1.4 million square-foot office project at 2020 Bay Road (the highly contaminated former site of the Romic hazardous waste facility).[159]

As discussed in more detail later in this report, these four developments figured prominently in East Palo Alto's efforts to secure more water.

The moratorium created an important window of time for the city to study the water shortage.[160] East Palo Alto activists and public officials were acutely aware that past efforts to bring development to the city resulted in displacement of local community members.[161] For example, in the late 1990s, East Palo Alto redeveloped the downtown Whiskey Gulch area, replacing older buildings with a Four Seasons Hotel, Class A offices and retail chains.[162] While the project brought economic benefits to the city, it also displaced residents, multifamily housing and small, locally owned businesses.[163] Longtime East Palo Alto residents had not forgotten this and other local development stories, and many hoped to avoid repeating that history.

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xxiii *SVCF Note:* At the time of publication, the moratorium was anticipated to soon be lifted.

xxiv The school is currently operating at a temporary site.

In a 2016 letter to the SFPUC, a community advocate captured the tensions that the city would need to address in the following years.[164] Tameeka Bennett, executive director of Youth for United Community Action, acknowledged that the community is "fighting every single day to create our space within Silicon Valley," and "[a]n addition to our water supply … would greatly aid in our fight to belong."[165] However, she also noted that "keeping [East Palo Alto's] supply where it stands now greatly discourages the rapid gentrification taking place, because development is halted due to the lack of water."[166] The halt in development gave the city an opportunity to determine how to allocate any new water it secures.[167]

IV. Addressing East Palo Alto's water crisis: tools and opportunities

East Palo Alto engaged in several strategies to address its water crisis. This section discusses East Palo Alto's initial actions and describes a range of local, transactional, legal, and political options, many of which may be available in the future to East Palo Alto or to any community facing similar resource limitations.

A. East Palo Alto's initial actions

East Palo Alto's 2035 Vista General Plan acknowledges that addressing the water shortage was a "critical step" toward strengthening the city's economy and achieving fiscal stability.[168] It notes that the city could: secure additional water from the SFPUC, neighboring cities and groundwater sources; diversify its water sources; establish a water offset policy for developments; increase groundwater recharge; and improve implementation of and education about water efficiency/conservation measures.[169]

East Palo Alto actively pursued two of these strategies to increase its water supply: The city sought more water from the SFRWS, via a supply increase or transfer, and took steps to develop its own groundwater supplies.[170] East Palo Alto also secured funding from private developers to expedite these efforts.[171]

1. Advocating for increased supply

In April 2016, East Palo Alto adopted a resolution that set forth the actions the city would take to obtain more regional water.[172] The resolution authorized several specific actions.[173] It directed the city manager to work with BAWSCA and the SFPUC to secure up to an additional 1.5 million gallons a day from SFRWS. It requested that the SFPUC incorporate this increase into its long-term plan, the Water Management Action Plan.[174] The resolution also requested that the SFPUC and BAWSCA "create mechanisms that would empower and incentivize" agency members that are not using their full Individual Supply Guarantees to transfer a portion of their allocations to cities like East Palo Alto.[175]

When developing the WSIP in 2008, the SFPUC decided to wait ten years before evaluating options for increasing wholesale customers' Supply Assurance and offering permanent status for San José and

Santa Clara, which would likely require an increase in the Supply Assurance.[176] [xxv] To meet the requirements of the WSIP and the 2009 Agreement, and to address recent changes in in-stream flow requirements and demand projections, the SFPUC also began to develop its long-term plan, the Water Management Action Plan, covering 2019-2040.[177]

In anticipation of the SFPUC completing this Supply Assurance evaluation by the end of 2018, East Palo Alto sent its resolution and a request for a 1.5 million-gallon-a-day increase to the SFPUC in May 2016, noting that the city needs the additional water "to support the balanced and equitable growth" envisioned in its land use plans.[178] Ten other individuals and organizations submitted letters in support of East Palo Alto's request, including U.S. Rep. Jackie Speier, the San Mateo County Health System, Facebook, Youth United for Community Action, The Primary School and other developers proposing projects in East Palo Alto.[179]

As East Palo Alto and its supporters requested, the draft of the long-term plan released in May 2016 recommended that the SFPUC consider options to increase East Palo Alto's water supply by 1.5 million gallons a day to meet projected demand.[180] The SFPUC discussed the issue at meetings in June and August 2016.[181] At the June meeting, the commission's then president, Francesca Vietor, "expressed a desire to make East Palo Alto whole."[182] Seven parties made public comments in support of East Palo Alto's request,[183] including a BAWSCA representative who urged immediate action.[184] At the August meeting, staff recommended making East Palo Alto's request a priority in the planning process (second only to meeting existing obligations).[185]

Nonetheless, demand projections and other competing needs presented significant barriers to East Palo Alto's proposed increase. The SFPUC was to also consider whether to commit to permanent supply guarantees for the cities of San José and Santa Clara (which were requesting Individual Supply Guarantees of 9.5 million gallons a day and 5 million gallons a day respectively) and how to meet newly established in-stream flow requirements that will result in a net loss of 3.5 million gallons a day for the SFRWS.[186] The long-term plan estimated that the SFRWS would have sufficient water to meet its existing obligations in nondrought years,[187] but if it met all the proposed additional obligations, the system would face a nondrought shortfall of up to 19.5 million gallons a day by 2040.[188] [xxvi] Wholesale customers will likely face even more significant shortfalls in drought years.[189] [xxvii]

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xxv *SVCF Note:* This decision was prescient because water demands during the most recent drought were much lower than forecasted in 2008, and the full volume of the 184 million gallons per day Supply Assurance is not forecast to be delivered until well after the term of the WSA expires in 2034. Milstein Interview.

xxvi The Water Management Action Plan identifies transfers from outside the SFRWS desalination, and potable reuse as ways the SFPUC could increase its water supply to meet its anticipated needs. Draft 2040 WaterMAP at 2, 41-42.

xxvii *SVCF Note:* Two other regulatory proceedings currently underway may cause shortfalls for wholesale customers in drought years. The State of California is updating its Water Quality Control Plan for the San Joaquin River, which could substantially reduce the water available to the SFRWS due to changes in the operation of Don Pedro Reservoir where the SFPUC has a water bank. (The Don Pedro Reservoir is owned and operated by the Modesto and Turlock Irrigation Districts, or "Districts").

The Districts are also renewing their Federal Energy Regulatory Commission (FERC) license for the Don Pedro Reservoir, and proposed increases of water from that reservoir for downstream fisheries could also reduce supplies available to San Francisco under its agreement with the Districts for operation of the water

2. Collaborating with developers to fund water supply strategies

In parallel with East Palo Alto's efforts at the SFPUC, East Palo Alto took other actions to pursue new water supplies. Three of the developments described above (the Sobrato project, the 2020 Bay Road project, and The Primary School) would require about 0.306 million gallons of new water every day.[190] East Palo Alto did not allow these projects to move forward unless the project developers demonstrated that they had access to the necessary water.[191]

Concerned about the inability to proceed with their proposed developments, in July 2016, the developers and East Palo Alto entered into a Water Supply Implementation Agreement, under which the developers agreed to provide funding to expedite East Palo Alto's efforts to secure new water supplies.[192] The Agreement provided for legal consultants to advise the city on obtaining water transfers from other SFRWS wholesale customers as well as consultants to pursue development of and permits for two local groundwater well projects.[193] In exchange, the Agreement gave the developers priority access to a portion of any new water supplies that resulted from these efforts.[194] However, the city made it clear that the Agreement did not guarantee project approvals.[195]

The city's approval of the Agreement was not without controversy. Other developers with projects pending in East Palo Alto opposed the Agreement, as did one member of the city council.[196] [xxviii]

a. Water transfers within the San Francisco Regional Water System

As noted above, the 2009 Water Service Agreement allows permanent transfers of at least 0.1 million gallons a day between wholesale customers, subject to commission approval.[197] East Palo Alto's April 2016 resolution identified transfers from wholesale customers that are not using their full Individual Supply Guarantees as a possible way to meet the city's need for additional water.[198] In the Water Supply Implementation Agreement, East Palo Alto specifically agreed to seek a permanent water transfer of no less than 0.5 million gallons a day from wholesale customers with surplus water supplies.[199] Such a transfer would provide the city with sufficient water to serve the three developers' projects and the city's affordable housing project at 965 Weeks St.[200]

After adopting the Water Supply Implementation Agreement with developers, East Palo Alto took several steps toward securing transfers. In August 2016, city staff members began to meet with a consultant to discuss transfer options.[201] Then in September, the City Council appointed two council members to a water allocation transfer subcommittee to work with city staff members.[202] As a result of these efforts, Mountain View and East Palo Alto approved a 1 million gallon-a-day transfer, and Palo Alto and East Palo Alto approved a 0.5 million gallon-a-day transfer.[203]

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bank. Both the Water Quality Control Plan and the FERC licensing renewal create additional ambiguity for wholesale customers in drought years. Milstein Interview.

xxviii Councilmember Carlos Romero opposed the Water Supply Implementation Agreement because it gave certain developers priority over others and he stated that it was not necessary to the city's efforts to procure more water. Phone call with Carlos Romero (March 2, 2017).

i. Mountain View

Mountain View, which holds one of the largest Individual Supply Guarantees under the 2009 Water Supply Agreement, had a financial interest in transferring water to East Palo Alto.[204] The 2009 Agreement requires Mountain View to purchase a minimum of 8.93 million gallons a day annually.[205] [xxix] However, on average, Mountain View uses less than 10 million gallons a day of its 13.46 million guarantee[206]; after drought reductions, the city used only 6.78 million gallons a day in FY 2015-16.[207] Mountain View had to pay for water it did not need, including a total of $444,000 in FY 2010-11 and 2011-12, and it estimated that its minimum purchase costs would total $8.5 million over the next four years.[208] A payment from East Palo Alto for a water transfer would offset these costs.[209]

East Palo Alto first contacted Mountain View staff members in 2015 regarding a possible transfer,[210] and in August 2016, Mountain View communicated its interest in working with East Palo Alto to address East Palo Alto's water supply issues.[211] Members of the two cities' staffs met several times, including a meeting with staff members from the SFPUC and the Bay Area Water Supply and Conservation Agency.[212] The cities discussed transfer amounts ranging from 0.5 to 1 million gallons a day.[213]

In May 2017, the Mountain View City Council voted to transfer 1 million gallons a day of its Individual Supply Guarantee to East Palo Alto in exchange for a one-time $5 million payment.[214] [xxx] East Palo Alto's then Mayor, Larry Moody, City Manager Carlos Martinez and several other East Palo Alto community members spoke in favor of the transfer at that council meeting.[215] Most Mountain View council members enthusiastically supported the transfer, including then Mayor Ken Rosenberg, who acknowledged that access to clean water is a human right and described the transfer as an example of the city doing human rights work.[216]

East Palo Alto's City Council unanimously approved the Mountain View transfer in June 2017.[217] East Palo Alto planned to obtain the initial $5 million for the transfer from four sources:

- An update to the Water Supply Implementation Agreement, under which the developers each pay a pro rata share of the transfer price based on their projects' projected water use (for example, the three projects would use 30 percent of the total 1 million gallons a day, so the three developers would contribute 30 percent of the $5 million) or $1.5 million;
- A reimbursement agreement from the Sobrato project developers of $1 million;

xxix Only three other wholesale customers – Alameda County Water District and the cities of Milpitas and Sunnyvale – have minimum purchase requirements. 2009 Water Service Agreement § 3.07(C) at 14.

xxx The council approved the transfer by a 6-1 vote. The single council member who voted against the transfer indicated that he was unsure if the proposed transfer would disadvantage Mountain View in the future. Mark Noack, *Mountain View sells water to East Palo Alto,* Mountain View Voice (May 24, 2017), https://www.mv-voice.com/news/2017/05/24/mountain-view-sells-water-to-east-palo-alto; City of Mountain View, City Council Meeting Audio (May 23, 2017) at 1:09:50.

- A gift from the Chan Zuckerberg Initiative Donor Advised Fund of $2.5 million (to support the water transfer and development of affordable housing, including the salary for an affordable housing manager for the City of East Palo Alto for five years[xxxi]); and
- $0.5 million from the East Palo Alto general fund.[218]

In the future, the city plans to establish a water capacity fee to spread the costs of this transfer and the city's other water supply improvements among developers.[219] As developments are approved, their water capacity fee payments will be used to repay Sobrato, the Chan Zuckerberg Initiative, and East Palo Alto's general fund.[220] The developers' payments under the Water Supply Implementation Agreement will be credited against those fees if their projects are approved.[221]

The gift from the Chan Zuckerberg Initiative is helping East Palo Alto address housing issues in tandem with other developments.[222] As the initial $2 million contribution is repaid, the funds will be used to support affordable housing.[223]

At the same meeting where it approved the transfer, East Palo Alto also approved a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for the potential transfer of up to 1.5 million gallons a day, finding that the transfer would not have significant impacts on the environment.[224] The Negative Declaration covered both the Mountain View transfer and a potential transfer of an additional 0.5 million gallons a day from another wholesale customer in the future.[225]

Menlo Park filed comments objecting to the Negative Declaration, claiming that the transfer would require infrastructure updates that require environmental review.[226] East Palo Alto responded that existing infrastructure has sufficient capacity to accommodate the transfer and that any infrastructure projects would undergo environmental review when they are proposed.[227]

The agreement between Mountain View and East Palo Alto was approved by the SFPUC on June 26, 2017.[228]

ii. Palo Alto

In May 2018, Palo Alto's city council voted to give East Palo Alto .5 million gallons of water per day from its own water supply. In recommending the council approve the transfer, Palo Alto city staff noted the original discrepancy in allocations and blamed legacy inequities. While East Palo Alto receives just 2 million gallons of water per day from the SFPUC and has exhausted its supply, Palo Alto receives 17 million gallons and only uses 10 million gallons.[229]

xxxi The Chan Zuckerberg Initiative Donor Advised Fund is administered by Silicon Valley Community Foundation.

The Palo Alto City Council also concluded it was unnecessary to charge East Palo Alto for the transfer. While other jurisdictions (such as Mountain View) are obligated to a payment structure that requires a guaranteed minimum purchase from the SFPUC, Palo Alto does not have to pay for unused water. The council also noted they hoped the transfer enabled East Palo Alto to avoid conducting large-scale groundwater extraction from the aquifers shared by the two cities, but did not make that expectation a transfer requirement.[230]

b. Developing local water supplies

East Palo Alto's City Council also directed its staff to investigate augmenting the city's water supply with groundwater from two wells at city-owned sites: the Gloria Way Well, an existing well with high levels of naturally occurring iron and manganese that can stain plumbing fixtures and cause odor[231]; and Pad D, a new well next to Highway 101.[232] A 2012 analysis of potential groundwater sources recommended that East Palo Alto invest in a water treatment system for Gloria Way and pursue further testing at Pad D.[233] The city estimated that Gloria Way could produce 0.173 million gallons daily and Pad D could produce 0.576 million gallons a day.[234]

The Gloria Way Well could provide a small supplement to East Palo Alto's water supply, at a relatively low cost, in the near future.[235] The well was installed in 1979 as a potential source of potable water but currently only serves limited nonpotable uses, such as street cleaning and construction.[236] The well has high levels of dissolved solids, nitrates, arsenic, iron and manganese, and it exceeds several U.S. Environmental Protection Agency secondary standards for drinking water.[237] It has not been used for drinking water since the 1980s because high levels of iron and manganese led to taste and odor complaints.[238] However, these water quality issues are currently being resolved by installing a new water treatment system.[239]

East Palo Alto has taken a number of steps toward reactivating the Gloria Way Well. The city completed environmental review for the project in 2013[240] and contracted with an engineering consultant to design a treatment system in 2014.[241] In October 2016, the city approved the design for the Gloria Way Well treatment system and authorized the city manager to seek construction bids.[242] On March 21, 2017, the city awarded a contract and anticipated completing the project by the end of 2017.[243] With the water transfers from Mountain View and Palo Alto now secured, East Palo Alto can reserve any extracted water for future emergency needs.[244]

B. Strategies for further increasing East Palo Alto's water supply

With the water transfers from Palo Alto and Mountain View, East Palo Alto now has a sufficient water supply to meet immediate development needs. This section details additional transactional, legal, political, and local approaches East Palo Alto or other similarly positioned communities may consider in the future.

1. Long-term water transfers

Temporary, long-term water transfers could also provide reliable water supplies for several decades, without requiring a water-rights holder to give up an entitlement. The 2009 Water Supply Agreement prohibits nonpermanent transfers, but East Palo Alto could seek an amendment to the contract to allow this compromise solution. This would allow wholesale customers to transfer portions of their Individual Supply Guarantees to other wholesale customers without permanently decreasing them. Alternatively, if East Palo Alto's water needs exceed its water supply, the city may source water from outside the SFRWS. While there are hurdles to both of these approaches, they should be recognized as options in the suite of tools available to the wholesale customers.

a. Amendment to 2009 Water Supply Agreement

The 2009 Water Supply Agreement allows only permanent transfers of Individual Supply Guarantees.[245] Because it is difficult to project long-term growth, wholesale customers are understandably reluctant to agree to a permanent water transfer. The parties to the 2009 Agreement could agree to address this barrier by amending it to allow long-term, nonpermanent transfers. Such a long-term transfer option could make wholesale customers more willing to agree to transfer water to East Palo Alto because they would retain flexibility for the future. [xxxii]

b. Transfers from outside the San Francisco Regional Water System

A voluntary water transaction with a water rights holder outside the SFRWS could also help the city meet its water needs, while providing benefits to the transferring party with excess water. The 2009 Agreement generally limits water purchases from outside the SFRWS,[246] but it includes an exception for water in excess of a wholesale customer's Individual Supply Guarantee.[247] [xxxiii]

BAWSCA has begun to explore water transfers from interested sellers on behalf of the wholesale customers,[248] but infrastructure issues may limit such opportunities. In 2012, the agency and the East Bay Municipal Utility District (EBMUD) agreed to develop a short-term pilot plan to evaluate the feasibility of long-term transfers from willing sellers that would be moved through the East Bay system to the BAWSCA service area.[249] However, the pilot has encountered a key hurdle: the City of Hayward has identified potential operational concerns with any long-term, nonemergency use of the existing infrastructure that moves water from the EBMUD system through Hayward to the SFRWS.[250] BAWSCA may also explore a similar pilot with the Santa Clara Valley Water District (SCVWD) but it anticipates infrastructure hurdles similar to Hayward's.[251] Because neither BAWSCA nor the SFRWS has priority

xxxii *SVCF Note:* As mentioned above, hurdles do exist. CEQA requires those hoping to develop large projects show the project has a sufficient water supply. In the case of seeking a long-term water transfer, the SFPUC believes applicants would be hard pressed to provide assurances after the long-term transfer ceases. Milstein Interview.

xxxiii It also includes exceptions for recycled water, discussed elsewhere in this report and water necessary on an emergency or temporary basis. 2009 Water Service Agreement § 3.07(B)(1), (2) at 14.

rights to available capacity in state or federal facilities that move water through the Sacramento-San Joaquin River Delta, BAWSCA may not be able to access SCVWD's water consistently.[252] [xxxiv]

Nonetheless, a water transfer from outside the SFRWS could eventually be necessary. California water law continues to evolve, and the "reasonable use" doctrine may increasingly incentivize long-term water transfers.[253] The California Constitution declares that water resources must "be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented."[254] This has been interpreted to mean that no one has the right to waste water or use it unreasonably.[255] Water rights holders may agree to long-term transfers to avoid such waste claims.[xxxv] While transfers from outside the San Francisco Regional Water System may ultimately be quite costly, they are likely to become more important in the future, as in-stream flow requirements and development continue to put pressure on the state's water supplies.[xxxvi]

c. Risks of nonpermanent approaches

Reliance on long-term water transfers comes with risks. If a long-term water transfer were not renewed at the end of its term, East Palo Alto would find itself with even more development and inadequate supply to support it. On the other hand, if the city secures a nonpermanent supplemental supply that lasts several decades, it would help East Palo Alto further develop its economic base and diversify its water supply during that time period. A temporary solution would also prevent a repeat of the conundrum East Palo Alto faced previously: a permanent water allocation that did not fit the region's development trajectory and flexible water sources would help the region adjust.

2. Additional permanent water transfers within the San Francisco Regional Water System

Additional permanent water transfers within SFRWS — such as those from Mountain View and Palo Alto — may continue to be the most reliable solution for a community like East Palo Alto. Known as an "intrasystem transfer," this kind of transfer may be especially helpful when it comes from a community that uses less than its water allocation and does not seek or anticipate significant future growth requiring additional water.[256]

For example, even after committing to transfer .5 million gallons of water per day to East Palo Alto, the City of Palo Alto's long-term water use forecast does not exceed its Individual Supply Guarantee. In their report recommending Palo Alto make the .5 million gallons per day transfer to East Palo Alto, City of

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xxxiv *SVCF Note:* The proposed enlargement of Contra Costa Water District's Los Vaqueros Reservoir is planned to include a connection to the South Bay Aqueduct, which was used previously to transfer Sacramento–San Joaquin River Delta water to the SFPUC system during the 1987-1992 Drought. Milstein Interview.

xxxv For example, the Imperial Irrigation District agreed to long-term water transfers as part of its response to an unreasonable use determination in the 1980s. Hanak, Managing California's Water at 332-33.

xxxvi *SVCF Note:* Water transfers from agricultural users are frequently cited as a solution to urban water supply shortages, but transfers that require passing through the Sacramento–San Joaquin River Delta are exceedingly difficult to pursue because of environmental concerns. To avoid that, the SFPUC has tried to obtain a water transfer from certain agricultural water districts south of the Delta, starting in 2008. However, the agricultural water districts have refused approving small transfers of two million gallons a day. In another instance, the Modesto Irrigation District refused to permit neighboring Oakdale Irrigation District to transfer an exchange of water to SFRWS that would have to pass through Modesto facilities. Milstein Interview.

Palo Alto staff noted, "Palo Alto uses far less than its entitlement and does not anticipate using its full entitlement in the future."[257]

3. Public participation and litigation

Where other efforts alone prove insufficient, public engagement processes and litigation are available to secure more water. As discussed below regarding Menlo Park's development, submitting well-documented comment letters that identify the legal and factual inadequacies in a proposed project can bring parties to the negotiating table. And, if necessary, litigation can result in a judgment setting aside project approvals or drive parties to settle a dispute on mutually acceptable terms.

a. California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires public agencies to review the environmental effects of proposed projects and to mitigate those effects when feasible.[258] If a project may have significant environmental impacts, the reviewing agency must prepare an Environmental Impact Report that discloses the project's impacts and analyzes alternatives.[259] This process involves multiple opportunities for public engagement, including engagement by other affected jurisdictions.[260] Public comments and, if necessary, lawsuits challenging an agency's compliance with CEQA can result in improved mitigation measures and/or settlement agreements with community benefits.

Recent engagement in the CEQA process for projects in Menlo Park provides a model for addressing the impacts of development on neighboring community resources. Efforts of East Palo Alto and community groups (including a coalition called Envision Transform Build – East Palo Alto[261]) resulted in two settlement agreements that provide up to $18.5 million toward the development of affordable housing in East Palo Alto and the surrounding area.[262] Similar public participation in other CEQA processes might help East Palo Alto further increase its available water supply.

i. Recent Menlo Park activity

In 2015, Menlo Park released two Draft Environmental Impact Reports: one for a proposed expansion of Facebook's facility in Menlo Park and one for a revision to Menlo Park's general plan.[263xxxvii] East Palo Alto and a number of community groups submitted comments on the reports, identifying potential impacts of each proposed project.[264] Separately, East Palo Alto filed a lawsuit against Menlo Park, alleging that the Environmental Impact Report for the Menlo Park General Plan Update failed to comply with CEQA.[265]

A. Facebook settlements Facebook proposed in 2015 to expand its corporate headquarters in Menlo Park, including construction of almost 1 million square feet of office space and a 200-room hotel.[266] East Palo Alto and community groups raised objections in comments on the

xxxvii Shute, Mihaly & Weinberger LLP represents East Palo Alto in connection with both of these projects.

draft Environmental Impact Report.[267] As a result, East Palo Alto and the community groups each reached a settlement with Facebook without litigation.[268] The 2016 agreements address the impacts of the project on East Palo Alto and the neighboring area. These agreements commit Facebook to provide community benefits in exchange for the city and community groups dropping their objections to Facebook's expansion.[269]

The heart of these settlements is a "Catalyst Housing Fund" to "identify and finance opportunities for the development and preservation of long-term affordable housing."[270] Facebook will contribute up to $18.5 million to the fund under the settlement.[271] [xxxviii] The agreement requires $10 million of this funding to be used to support and finance affordable housing development opportunities in East Palo Alto.[272] [xxxix] [xl]

The settlements also include specific goals and projects, including directing Facebook to establish and fund a training program in science, technology, engineering and math (or STEM) for residents in East Palo Alto and Menlo Park. Facebook must also work closely with the community, with establishment of a community jobs liaison, so that residents will be hired by the social media giant.[273] The agreement also directs Facebook to provide a grant for a commercial kitchen incubator similar to La Cocina in San Francisco.[274] The compact allows the community groups to direct $500,000 from the fund to be used for housing-related policy initiatives.[275] Finally, Facebook must contribute $500,000 to a tenant assistance fund and $250,000 to support rehabilitation, modification, or reconstruction of homes in East Palo Alto and Belle Haven (in Menlo Park) for low-income and very low-income residents.[286]

B. General plan litigation

While East Palo Alto and Facebook entered into the East Palo Alto Agreement without litigation, East Palo Alto separately filed a lawsuit challenging the Environmental Impact Report for Menlo Park's General Plan update. The lawsuit directly addressed the connection between commercial development in Menlo Park and housing availability and costs in East Palo Alto. It noted that growth in Menlo Park's tech industry "has resulted in a significant imbalance between the number of jobs located in [Menlo Park] and the housing available to employees, particularly affordable housing."[276] East Palo Alto claimed Menlo Park's updated general plan,

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xxxviii The compact with the community groups commits them to refrain from challenging the general plan update. Community Compact at 3, Attachment A at 2-3. The East Palo Alto Agreement does not have this restriction, and East Palo Alto's general plan litigation, discussed later, could prevent the community groups from receiving a portion of the funds required by the compact, unless the general plan litigation is resolved in a manner acceptable to Facebook. *Id.*, Attachment A at 3.

xxxix The settlement agreements do not address East Palo Alto's water shortage, so the city's efforts to secure more water will affect whether this housing can be developed.

xl *SVCF Note:* After some delays, Catalyst Housing Fund representatives hosted their first meeting with potential developers and community members in early 2018. The Fund's goal is to financially support affordable housing projects within the next five to eight years. This approach is not without its critics; at least one advocacy organization believes much more funding is necessary to materially address the housing shortage. Marisa Kendall, Facebook Housing Fund Gets Cash Boost, Now Ready to Start Backing Projects, The Mercury News (March 6, 2018).

which calls for a "massive increase in office and commercial development in Menlo Park without adequate housing for the substantial number of new employees anticipated with this development," would exacerbate this imbalance.[277] Further, the lawsuit alleged "Menlo Park has reaped the economic benefit of substantial job growth," leaving its neighbors to deal with the impacts, including displacement of existing residents and increased housing costs that drive people further from jobs, boosting traffic congestion and air pollution.[278]

East Palo Alto claimed that the Environmental Impact Report did not comply with CEQA for numerous reasons: it underestimated the impacts of employment growth on the region, in part because it did not analyze the proposed Facebook expansion that was proceeding at the same time; it failed to address impacts on housing and population displacement; and it excluded analysis of certain traffic and related air-quality impacts.[279] [xli]

ii. Addressing East Palo Alto's deficient water supply through the California Environmental Quality Act Process

Participation in the CEQA public comment process, and litigation, if necessary in the future, would help East Palo Alto secure water. If a decision by a public agency, including another city, is likely to put additional pressure on East Palo Alto's housing and/or water supplies, and these impacts are not recognized in the impacting jurisdiction's own environmental review process or not adequately mitigated, CEQA provides an opportunity to bring these issues to the attention of decision-makers and the public.

For example, changes to land use plans and project approvals in neighboring communities may attract more people to move to the region, increase traffic impacts, and draw on East Palo Alto's water supply. These are environmental impacts that CEQA requires local agencies to consider. Public comments can help those agencies understand the connections between development, housing and the environment. Even if water is not explicitly at issue in the review of particular projects, public comments may be a vehicle for settlement agreements that provide for water transfers or funding for water development. Subsequent litigation could also result in court orders requiring local agencies to address and mitigate such impacts to the fullest extent feasible.

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xli *SVCF Note:* In December 2017, the two cities settled the suit, agreeing to several measures to alleviate the impact East Palo Alto would experience from Menlo Park's future large-scale development projects. Both cities committed to requiring developers to conduct housing-needs assessments to evaluate residential displacement risk and study a project's "multiplier effect," the demand for affordable housing that new market-rate housing projects create. In this case, the multiplier effect occurs when the inhabitants of a new residential project increase demand for services, which increases the demand for workers for those services and housing they can afford.

Menlo Park also committed to requiring developers conduct full Environmental Impact Reports for any project that had at least one of three high-impact development features in the City's Bayfront area, a portion of the community which borders East Palo Alto and includes Facebook's headquarters and proposed development, Willow Campus. The three high-impact development features were chosen because they were most likely to predict when a project in Menlo Park would impact East Palo Alto. The three project traits chosen to trigger a full report are those that: seek "bonus" density allowances, add more than 250,000 net new square feet, or include a master plan such as the Willow Campus proposal.

Both communities also agreed to pay "fair share" mitigation fees for any project that has a significant impact on a traffic intersection located in the other's community. Kate Bradshaw, Menlo Park settles development-related lawsuit with East Palo Alto, The Almanac, (December 7, 2017).

The SFPUC's long-term water planning process provides an opportunity for stakeholders to engage. At the outset of the process, SFPUC will complete its CEQA review of the program.[280] There should be opportunities for public comment, including comments addressing impacts on East Palo Alto, and CEQA may require consideration of alternatives to the SFPUC's proposed course of action.[281] East Palo Alto and community advocates should closely monitor this process.

b. State planning and zoning laws

California's planning and zoning laws require cities to adopt general plans to guide their development,[282] and land use decisions must be consistent with a city's general plan and zoning ordinances.[283] Public engagement in land use planning processes can ensure that public agencies comply with state and local land use mandates. When necessary, a lawsuit may challenge a city's compliance with planning and zoning laws when it updates its general plan, zoning ordinances or other land use plans.

For example, before a city approves a large commercial development, it must first determine whether that approval conforms to the city's general plan and zoning ordinance. A city's failure to ensure that a decision is consistent with land use requirements makes it vulnerable to lawsuits.

As with the CEQA process, public comments and litigation addressing consistency with local land use plans and rules can bring parties to the negotiating table, where they may reach creative solutions to resolve conflicts. Such solutions may include funding for water supplies or water transfers.

In addition, a little-used anti-discrimination statute in the state's planning and zoning laws could serve as a tool to address inequities, particularly for decisions that impact housing. Government Code Section 65008 prohibits zoning and planning actions that deny any individual or group "the enjoyment of residence, landownership, tenancy or any other land use" because of race, national origin, income, occupation, familial status, age, sex, religion or numerous other attributes.[284] The few published court cases that have addressed this statute concern access to housing. However, the statute appears to apply broadly to local land use decisions,[285] and a case could demonstrate the linkage between inadequate water supply and access to housing. Significantly, Section 65008 requires only that the petitioner demonstrate that the challenged decision will have a discriminatory effect (rather than requiring proof of intentional discrimination).[286] Specifically, the protection for "enjoyment of residence" appears to create an opening for challenges to planning and land use actions that impact existing communities.[287] If, for example, a city neighboring East Palo Alto made a policy or decision that interfered with housing for a particular class or group of East Palo Alto residents, those residents or an organization or agency acting on their behalf[288] could potentially sue that city based on

Government Code Section 65008.[289]

c. Raker Act

As noted above, the 1984 Agreement settled the wholesale customers' water rates lawsuit but left interpretation of key legal questions regarding the Raker Act unanswered.[290] For example, the 1984 Agreement did not resolve whether any of the wholesale customers are "co-grantees" under the Raker Act or what rights, benefits and privileges they may have.[291] The 2009 Water Supply Agreement echoes this uncertainty and identifies several claims reserved by the wholesale customers.[292]

One of these reserved claims relates to long-term supply: the wholesale customers claim that the Raker Act obligates San Francisco to supply them with water in excess of the Supply Assurance.[293] A claim under Water Supply Assurance section 8.07.B.2 can only be asserted if San Francisco decides not to meet projected demands of the wholesale customers in excess of the Supply Assurance.[294]

Accordingly, if, at the close of its long-term planning process, San Francisco decides that it will not increase the Supply Assurance to meet East Palo Alto's projected water needs, East Palo Alto could assert this Raker Act claim. However, such a lawsuit would likely be costly, time-consuming and politically risky, in that it might jeopardize the city's relationship with San Francisco.

4. Political pressure

While a number of tools are available to East Palo Alto and its allies, political pressure is always a potential lever for change. Indeed, political "nudging" from state and federal governments, in the form of informal pressure or incentives, has encouraged past water reforms in California.[295] Community organizing, coalition building, and certain political strategies could generate the political will necessary for the success of other strategies described in this report.

a. Community organizing and coalitions

East Palo Alto and its supporters have engaged in powerful community organizing and formed political coalitions in recent years that provide a strong foundation for any future efforts that might be needed to address East Palo Alto's water needs. For example, Envision Transform Build – East Palo Alto brought together a wide range of community groups to negotiate the community compact with Facebook.[296] East Palo Alto also worked with U.S. Rep. Jackie Speier to urge the SFPUC to increase East Palo Alto's Individual Supply Guarantee[297] and caught the attention of state Sen. Jerry Hill, who supported the Mountain View transfer.[298] Further collaboration with these allies could build additional support for East Palo Alto if needed.

East Palo Alto could also work with environmental and social justice advocates who have achieved significant water equity successes at the state level in recent years. California officially recognized

the human right to water in 2012[299] and passed legislation in 2015 to establish a statewide low-income water affordability program.[300] [xlii] Pacific Institute and Environmental Justice Coalition for Water's recent reports on the impacts of drought on water equity highlight communities across the state struggling with water issues, including East Palo Alto, and suggest a variety of next steps.[301]

In addition, numerous organizations, including the Leadership Council for Justice & Accountability,[302] the Center on Race, Poverty and the Environment,[303] and Community Water Center[304] are working to address water supply, safety, quality and affordability issues. Although urban and rural communities face different water challenges, the state human right to water framework provides a uniting narrative.

b. Media campaigns

A concerted media strategy would also aid East Palo Alto efforts by increasing public awareness and support for the city and influencing decision makers at the SFPUC and/or neighboring jurisdictions. Media strategies tend to be most effective when there is a cohesive, consistent message to deliver.

5. Local changes

Finally, East Palo Alto could also consider what it could do internally to stretch its water supply. These changes would not solve the water problems, but they could help the city get the most out of the water it has and build resiliency.

a. Local water supply

Numerous wholesale customers of the SFRWS have augmented their supply by developing wells, improving conservation and other means. Although the 2009 Water Supply Agreement strictly limits sourcing water from outside the regional system, this provision does not apply to recycled water.[305] Thus, to conserve water, many municipalities have incorporated recycled water into their water portfolios, particularly for irrigating public property.[306]

East Palo Alto does not have large parks, industrial uses or golf courses where recycled water can make the biggest contribution, so recycled water would not likely have a significant impact on its supply issues.[307] Likewise, with the lowest per capita water use among the SFRWS' wholesale customers, East Palo Alto has limited room for conservation gains.[308] Even so, it would be in East Palo Alto's interest to consider implementing every measure possible.

b. Ensure local allocations support East Palo Alto goals

Even after securing the recent water allocations, the city will continue to face allocation decisions with

xlii Shute, Mihaly & Weinberger LLP represents the Environmental Justice Coalition for Water in connection with this program.

big effects on future community growth. The Water Supply Implementation Agreement only allots a portion of the recently secured water transfer to three developers,[309] ensuring that the remaining water is available for future projects, as well as "exponentially increase[ing]" the city's emergency water supply.[310] However, it is not clear how the city would allocate the remaining water.[311]

Even now that East Palo Alto has secured the full 1.5 million gallon daily increase it was seeking, the city will continue to have limited water supplies. To support future projects that will best serve the community's needs, East Palo Alto could consider updating its land use and planning documents or establishing freestanding policies that explicitly prioritize water for projects that provide affordable housing or build the community's tax base. As a first step, East Palo Alto could convene community workshops to talk about how its water supplies should be allocated.

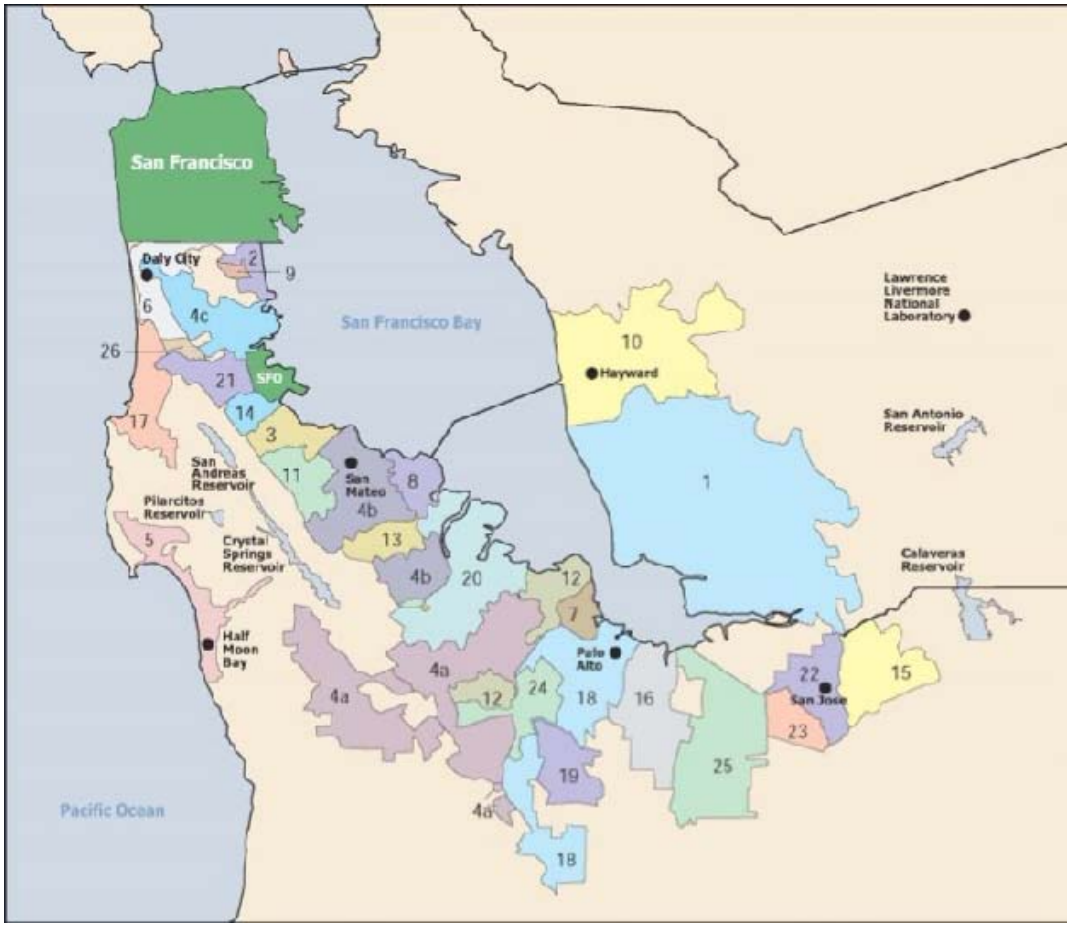
V. Conclusion

Discriminatory land use decisions at critical moments in the Bay Area's development placed East Palo Alto at a disadvantage relative to its neighbors, and have consequences that persist today. The SFRWS's early, permanent water allocations reflect a time when East Palo Alto was an unincorporated area of San Mateo County with a small population, limited economic development and a community navigating ubiquitous racial discrimination. The history of East Palo Alto's water deprivation illustrates the profound effects of racism and wealth inequality on community health and welfare.

Ultimately, it has been the voice gained by East Palo Alto as a result of incorporation and strategic leveraging of the private sector's development ambitions within the city and surrounding communities that have provided the city with the resources needed to chart its own course. The recent influx of considerable financial resources and entrepreneurs to the Bay Area as well as the persistence of the city's resident activists and city council leadership has helped lead the community to social and environmental improvements that are healing past wounds. However, the battle to secure more water is just the first step – the city's allocations of that water will determine the direction of East Palo Alto's growth for decades to come. For now, the intrasystem water transfer pioneered by East Palo Alto and its neighbors can serve as a model for communities both locally and throughout California.

Appendix

BAWSCA MEMBERS			
Agency Name	**Number**	**Agency Name**	**Number**
Alameda County Water District	1	Mid-Peninsula Water District	13
City of Brisbane	2	City of Millbrae	14
City of Burlingame	3	City of Milpitas	15
Cal Water Service CO. - Bear Gulch	4a	City of Mountain View	16
Cal Water Service CO. - Mid Peninsula	4b	North Coast County Water District	17
Cal Water Service CO. - SSF	4c	City of Palo Alto	18
Coastside County Water District	5	Purissima Hills Water District	19
City of Daly City	6	City of Redwood City	20
East Palo Alto	7	City of San Bruno	21
Estero Municipal Improvement District	8	City of San José	22
Guadalupe Valley Municipal Improvement District	9	City of Santa Clara	23
City of Hayward	10	Stanford University	24
Town of Hillsborough	11	City of Sunnyvale	25
City of Menlo Park	12	Westborough Water District	26



Source: BAWSCA, http://www.bawsca.org/docs/BAWSCA_Mem_Agencies_Map_June2009.pdf.

Endnotes

[1] Tara Lohan, *East Palo Alto's Economic Future Tied to Water*, KQED Science (Mar. 22, 2016), *available at* http://ww2.kqed.org/science/2016/03/22/east-palo-altos-economic-future-tied-to-water/.

[2] Alan Michelson & Katherine Solomonson, *City of East Palo Alto Historic Resources Inventory Report* (Feb. 1994) [Historic Resources Inventory Report] at 73.

[3] Historic Resources Inventory Report at 72; Michael B. Kahan, *Reading Whiskey Gulch: The Meaning of Space and Urban Redevelopment in East Palo Alto, California*, Occasion, Vol. 8 (Aug. 31, 2015) at 6-7, *available at* http://arcade.stanford.edu/occasion/reading-whiskey-gulch-meanings-space-and-urban-redevelopment-east-palo-alto [Kahan, *Reading Whiskey Gulch*].

[4] Historic Resources Inventory Report at 60-62, 70-75 (noting East Palo Alto had trouble fighting the highway because it was "a populated but unincorporated area that was not regarded as a town"); Kahan, *Reading Whiskey Gulch* at 6-7.

[5] Historic Resources Inventory Report at 66; Vicky Anning, *Reversal of Misfortune*, Stanford Alumni Magazine (Jan./Feb. 1998).

[6] Historic Resources Inventory Report at 72; Kahan, *Reading Whiskey Gulch* at 7; Jack Fuller, Municipal Advisory Councils (June 1977) at 37.

[7] Kahan, *Reading Whiskey Gulch* at 6; Memorandum from Steven R. Ritchie, Assistant General Manager, Water Enterprise, to SFPUC, re Establishment of Interim Supply Allocations (Nov. 4, 2010) [Water Enterprise Memo], Attachment (Letter from David Woods, East Palo Alto Mayor to Steve Ritchie, SFPUC Assistant General Manager (Oct. 25, 2010) at 1-2).

[8] Kahan, *Reading Whiskey Gulch* at 6.

[9] U.S. Environmental Protection Agency, Romic Environmental Technologies, East Palo Alto, California, https://www3.epa.gov/region9/waste/romic-eastpaloalto/ (last visited Feb. 23, 2017).

[10] Youth for Community Action, Mission/History, http://youthunited.net/mission/history/ (last visited July 11, 2017).

[11] City of East Palo Alto University Plaza Phase II Project, Notice of Preparation Environmental Impact Report (May 18, 2017).

[12] Kahan, *Reading Whiskey Gulch* at 6-7; *see* Anne Bellows, *Holding Local Governments Accountable for Environmental Discrimination: the Promise of California Government Code § 65008* (2014) 41 ECOLOGY L.Q. 1, 18-19 ("National evidence shows that locally undesirable land uses are over-concentrated in communities of color, betraying a pattern of siting and land use decisions with racialized impacts."); Michelle Wilde Anderson, *Cities Inside and Out: Race, Poverty, and Exclusion at the Urban Fringe* (2007-2008) 55 UCLA L. REV. 1095, 1101-06 (noting most low-income unincorporated urban areas "trace[their] origins to laws or norms enforcing racial segregation" and exclusion of Black populations from incorporated cities was motivated by race).

[13] Kahan, *Reading Whiskey Gulch* at 6.

[14] Historic Resources Inventory Report at 70; Kahan, *Reading Whiskey Gulch* at 2.

[15] Historic Resources Inventory Report at 71; Kahan, *Reading Whiskey Gulch* at 6; Kim-Mai Cutler, *East of Palo Alto's Eden: Race and the Formation of Silicon Valley*, TechCrunch (Jan. 10, 2015), https://techcrunch.com/2015/01/10/east-of-palo-altos-eden/.

[16] Kahan, *Reading Whiskey Gulch* at 6.

[17] Historic Resources Inventory Report at 71.

[18] Historic Resources Inventory Report at 71.

[19] Historic Resources Inventory Report at 71; Carilee Pang Chen, Wildflowers Institute, *African American and Hispanic Communities in East Palo Alto* (2003) at 2, *available at* http://www.wildflowers.org/data/download/EPA-report.pdf.

[20] Kahan, *Reading Whiskey Gulch* at 6-7.

[21] Kahan, *Reading Whiskey Gulch* at 6.

[24] Kahan, *Reading Whiskey Gulch* at 6.

[25] Historic Resources Inventory Report at 69, 72; Lohan, *East Palo Alto's Economic Future Tied to Water*; Anning, *Reversal of Misfortune*.

[26] Historic Resources Inventory Report at 44-46, 51.

[27] Historic Resources Inventory Report at 51.

[28] Dissolution, Assignment and Assumption Agreement between East Palo Alto and Menlo Park (2001) [EPACWD Dissolution Agreement] at 1 (EPACWD formed pursuant to the County Waterworks District Act, Act 5505 Hennings General Laws of California, as approved June 13, 1913, and as amended June 5, 1915); Menlo Park, City Council Meeting (Aug. 1, 2000), Agenda Item F-5, Staff Report, Dept. of Public Works, Engineering Division [Menlo Park 8.1.00 Staff Report] at 2.

[29] Menlo Park 8.1.00 Staff Report at 2 (new EPACWD formed under Water Code section 55000 et seq.).

[30] EPACWD Dissolution Agreement at 1.

[31] *See* Letter from J.H. Turner, General Manager and Chief Engineer, SFPUC, SF Water District, to Don S. Wilson, County Engineer and Road Commissioner, County of San Mateo (Mar. 22, 1962) (noting application for water supply to EPACWD was approved and became a contract).

[32] Charter of the City and County of San Francisco (Jan. 8, 1900) at 124, *available at* https://archive.org/stream/charterofcitycou1900sanf#page/124/mode/2up/search/water+works; Brian Gray, The Battle for Hetch Hetchy Goes to Congress, 6 Hastings W.-N.W. J. Env. L. & Pol'y 199, 203 (2000); San Francisco Public Utilities Commission, A History of the Municipal Water Department & Hetch Hetchy System (2005) [SFPUC Water History] at 14, *available at* http://www.sfwater.org/index.aspx?page=794.

[33] SFPUC Water History at 14, 50.

[34] SFPUC Water History at 52.

[35] San Francisco City Charter §§ 4.112 (a), 8B.120, 8B.121(a).

[36] San Francisco City Charter § 8B.127.

[37] Letter from J.H. Turner, San Francisco Water Department, to Don S. Wilson, County of San Mateo (Mar. 22, 1962) (confirming that SFPUC entered into a long-term water supply contract with EPACWD); Letter from J.H. Turner, San Francisco Water Department, to Don S. Wilson, County of San Mateo (Sept. 12, 1961) (requesting that EPACWD apply for a 20-year contract).

[38] Letter from J.H. Turner, San Francisco Water Department, to Carroll Da Mant, Ravenswood Water District (Feb. 25, 1960) (noting improved contracts with San Francisco wholesale customers were needed "to present a proper financial picture" in support of bonds for capital improvements to the water system); Bay Area Water Supply & Conservation Agency, History, http://bawsca.org/about/history (last visited Feb. 17, 2017) [BAWSCA History].

[39] Wat. Code § 81300 et seq.; BAWSCA History; BAWSCA Annual Survey, Fiscal Year 2014-2015 (Apr. 2016) [BAWSCA FY14-15 Survey] at 1-1.

[40] BAWSCA FY14-15 Survey at 1-1.

[41] Historic Resources Inventory Report at 74; Pang Chen, *African American and Hispanic Communities in East Palo Alto* at 2-3.

[42] Historic Resources Inventory Report at 74; Phone call with Omowale Satterwhite (Mar. 6, 2017) [Satterwhite Interview].

[43] Jeffrey Golden, *East Palo Alto Voters to Decide Community Status*, 181 The Stanford Daily 27 (Mar. 30, 1982).

[44] Historic Resources Inventory Report at 75-76; Satterwhite Interview.

[45] Historic Resources Inventory Report at 75; Satterwhite Interview.

[46] Satterwhite Interview.

[47] Satterwhite Interview.

[48] Historic Resources Inventory Report at 74-75; Satterwhite Interview.

[49] *Horwath v. LAFCO* (1983) 143 Cal.App.3d 177, 179 (recounting history of East Palo Alto incorporation attempts and rejecting action to block the 1983 incorporation election).

[50] East Palo Alto Information, Local Agency Formation Commission Factsheet, *available at* http://eastpaloaltoinformation.com/wp-content/uploads/2012/11/The-Local-Agency-Formation-Commission.pdf.

[51] *Horwath*, 143 Cal.App.3d at 180.

[52] *Horwath*, 143 Cal.App.3d at 179; East Palo Alto Information, East Palo Alto Tidbits, http://eastpaloaltoinformation.com/east-palo-alto-tid-bits/ (last visited Mar. 6, 2017) [EPA Tidbits].

[53] *Horwath*, 143 Cal.App.3d at 179; EPA Tidbits; Satterwhite Interview.

[54] *Horwath*, 143 Cal.App.3d at 179; EPA Tidbits; Satterwhite Interview.

[55] *Wilks v. Mouton* (1986) 42 Cal.3d 400, 403 (upholding 1983 incorporation election), *cert. denied Wilks v. Mouton* (1987) 479 U.S. 1066; Pang Chen, *African American and Hispanic Communities in East Palo Alto* at 4. Subsequent litigation narrowed the margin to 13 votes. *Wilks*, 42 Cal.3d at 403.

[56] Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County and Alameda County (1984) [1984 Agreement]; Water Supply Contract between City and County of San Francisco and East Palo Alto County Waterworks District (May 22, 1984) [1984 EPACWD Individual Agreement]; *see Palo Alto*, 548 F.2d 1374 (upholding a preliminary injunction against a water rate increase for SFRWS wholesale customers).

[57] *Palo Alto*, 548 F.2d at 1375.

[58] *Palo Alto*, 548 F.2d at 1375; 1984 Agreement at 1.

[59] *Palo Alto*, 548 F.2d at 1375-78; 1984 Agreement § 5.05(a) at 28.

[60] 1984 Agreement at 1, § 2.04 at 8.

[61] 1984 Agreement at 1.

[62] 1984 Agreement § 7.01 at 41.

[63] 1984 Agreement § 7.01 at 41.

[64] 1984 Agreement § 7.02(a) at 42.

[65] 1984 Agreement § 7.02(a) at 41, Appendix K-1 at 1.

[66] 1984 Agreement § 7.02(a) at 41, Appendix K-1 at 1-2.

[67] 1984 Agreement § 7.02(a) at 41, Appendix K-1 at 1-2.

[68] 1984 Agreement § 7.02(b) at 42-43.

[69] Letter from Douglas M. Short, BAWUA, to Anson Moran, SFPUC (July 15, 1994); Letter from Ray E. McDevitt, Law Offices of Hanson, Bridgett, Marcus, Vlahos & Rudy, to Thomas M. Berliner, City of San Francisco, re Settlement Agreement; Override of Section 7.02(b) Besting Procedure (Dec. 9, 1993) [McDevitt Letter] at 1.

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[71] San Mateo County Resolution No. 58195 (Apr. 19, 1994) at 4.

[72] San Mateo County Resolution No. 58195 (Apr. 19, 1994); *Id.*, Exhibit A; BAWUA ISG Memo, Table B at 1.

[73] BAWUA ISG Memo, Table B at 2.

[74] EPACWD's 1984 contract with San Francisco recognized that the newly formed City of East Palo Alto could assume control of EPACWD at some point in the future. 1984 EPACWD Individual Agreement at 4 (EPACWD may assign its rights to EPA in the future).

[75] San Mateo County, Inter-departmental Correspondence from Neil R. Cullen, Director of Public Works, to Board of Supervisors, re Proposed Dissolution of EPACWD (Nov. 17, 1998) [San Mateo 11.17.98 EPACWD Memo] at 1.

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[77] Menlo Park 8.1.00 Staff Report at 3; San Mateo County, Inter-departmental Correspondence from Neil R. Cullen, Director of Public Works, to Board of Supervisors, re Proposed Dissolution of EPACWD (Nov. 17, 1998) at 1.

[78] Menlo Park 8.1.00 Staff Report at 3.

[79] Letter from R.B. Jones, Mayor, East Palo Alto, to Mary Griffin, President, San Mateo Board of Supervisors, re: Water Service for the City of East Palo Alto (June 15, 1999) at 1.

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[83] Menlo Park 8.1.00 Staff Report at 6; Proposed Detachment of the Menlo Business Park from the East Palo Alto County Water District (June 21, 2000); Menlo Park, City Council Meeting (Oct. 17, 2000), Agenda Item F-1, Staff Report, Dept. of Public Works, Engineering Division at 2.

[84] Proposed Detachment of the Menlo Business Park from the East Palo Alto County Water District (June 21, 2000); Menlo Park, City Council Meeting (Oct. 17, 2000), Agenda Item F-1, Staff Report, Dept. of Public Works, Engineering Division at 2.

[85] EPA, Resolution No. 1815 (Oct. 16, 2000); Inter-Departmental Correspondence from Neil R. Cullen, Director of Public Works, to San Mateo Board of Supervisors, re Dissolution of East Palo Alto County Waterworks District (EPACWD) in East Palo Alto (Apr. 2, 2001) at 2-3.

[86] EPACWD Dissolution Agreement at 3.

[87] EPACWD Dissolution Agreement at 3.

[88] SFPUC Minutes (Mar. 13, 2001) (including SFPUC Resolution No. 01-0052); SF Res. 854-01 at 1.

[89] SF Res. 854-01.

[90] Water Code § 73500 et seq.; BAWSCA, San Francisco Public Utilities Commission Water System Improvement Program, http://bawsca.org/water/supply/improvement (last visited Feb. 21, 2017); East Palo Alto Resolution No. 09-2910A (June 16, 2009).

[91] SF Bay-Delta Comments at 6; San Francisco Public Utilities Commission, Resolution No. 08-0200 (Oct. 30, 2008) [SFPUC Res. 08-0200]; SFPUC Meeting Recording (Oct. 30, 2008) at 1:36 [WSIP Meeting Recording], *available at* http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=22&clip_id=6576&meta_id=134008 (WSIP would cost $1.924 billion).

[92] Final Project Environmental Impact Report, San Francisco Public Utility Commission's Water System Improvement Program (Oct. 30, 2008) [WSIP PEIR] at S-5; San Francisco Public Utilities Commission, Staff Recommendation for WSIP Adoption (Sept. 30, 2008) [WSIP Staff Report] at 7.

[93] SFPUC Res. 08-0200; WSIP Staff Report at 1, 7.

[94] SFPUC Res. 08-0200; WSIP PEIR at S-73; WSIP Staff Report at 1, 6-7; 2009 WSA, Article 4 at 27-28.

[95] SFPUC Res. 08-0200.

[96] 2009 WSA § 4.04(B) at 28; Water Enterprise Memo at 1.

[97] WSIP Meeting Recording at 43:45-45:40.

[98] WSIP Meeting Recording at 43:45-45:40.

[99] WSIP Meeting Recording at 43:45-45:40.

[100] WSIP Meeting Recording at 43:45-45:40.

[101] WSIP Meeting Recording at 43:45-45:40.

[102] Water Enterprise Memo at 2, Attachment 2.

[103] Water Enterprise Memo at 2, Attachment 3.

[104] Water Enterprise Memo at 2.

[105] Water Enterprise Memo at 2, Attachment 3.

[106] 2009 WSA §§ 2.01, 2.02 at 4.

[107] *See* 2009 WSA §§ 3.01 at 8, 3.02 at 9, Attachment C.

[108] 2009 WSA, Attachment C; SFPUC Minutes (Mar. 13, 2001); SF Res. 854-01 at 1.

[109] 2009 WSA § 3.04 at 12.

[110] 2009 WSA § 3.04(B) at 12.

[111] East Palo Alto, Resolution No. 4723 (Apr. 19, 2016) [EPA Res. 4723]; East Palo Alto, City Council Agenda Report, Advocate for securing up to an additional 1.5 million gallons per day of water (Apr. 19, 2016) [EPA 4.19.16 Agenda Report] at 4.

[112] 2009 WSA § 3.07(A) at 14.

[113] *See* Letter from J.H. Turner, San Francisco Water Department, to Don S. Wilson, County of San Mateo (Mar. 22, 1962); 1984 Agreement § 7.02(a) at 42.

[114] Paul Baer, *East Palo Alto Should Incorporate*, 187 The Stanford Daily 57 (May 11, 1983).

[115] Pang Chen, *African American and Hispanic Communities in East Palo Alto* at 4.

[116] BAWSCA FY14-15 Survey at 6-1; East Palo Alto, Demographics, http://www.ci.east-palo-alto.ca.us/index.aspx?NID=94 (last visited Feb. 14, 2017) [EPA Demographics].

[117] EPA 4.19.16 Agenda Report at 5.

[118] City of East Palo Alto Pad D Municipal Groundwater Well, Notice of Preparation/Initial Study (Sept. 2016) [Pad D NOP] at 1-1 to 1-2; EPA 4.19.16 Agenda Report at 1.

[119] BAWSCA FY14-15 Survey at 7-4; EPA Res. 4723 at 2.

[120] BAWSCA FY14-15 Survey at 2-2.

[121] EPA 4.19.16 Agenda Report at 9, Attachment 2 at 3 (allocation exceeded in 2003-04, 2006-07, 2007-08, 2012-13).

[122] Pad D NOP at 1-1.

[123] BAWSCA Long-Term Reliable Water Supply Strategy, Phase II A Final Report, Vol. II (July 3, 2012) at Appendix A, Table A-1; 2015 Urban Water Management Plan for the City of East Palo Alto (June 2016) [EPA 2015 UWMP] at 25 (Table 3-3).

[124] BAWSCA FY14-15 Survey at 6-1; EPA 2015 UWMP at 4 (Table 1-2), 25 (Table 3-3).

[125] BAWSCA FY14-15 Survey at 3-7, 6-1; EPA 2015 UWMP at 4 (Table 1-2), 25 (Table 3-3).

[126] East Palo Alto, City Council Agenda Report, Update on Water Supply Activities (Nov. 1, 2016) [Water Supply Update 11.1.16] at 2.

[127] Juliet Christian-Smith et al., *A Twenty-First Century U.S. Water Policy* (2012) at 52, *available at* http://www2.pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf (noting that, as documented in environmental justice research, low-income communities and communities of color face disproportionate environmental burdens); Anderson, 55 UCLA L. REV. at 1101-06.

[128] East Palo Alto, General Plan 2035 (Jan. 2016) [EPA General Plan] at 5-1.

[129] EPA 4.19.16 Agenda Report at 5.

[130] EPA General Plan at 5-2.

[131] EPA General Plan at 5-1.

[132] Palo Alto Comprehensive Plan Update, Draft Existing Conditions Report, Population, Housing, and Employment (Aug. 29, 2014) at 10-16, *available at* http://www.paloaltocompplan.org/wp-content/uploads/2017/01/DECR_10_PopulationHousing.pdf.

[133] EPA General Plan at 5-1.

[134] Letter from Shireen Malekafzali, Senior Manager for Policy, Planning and Equity, San Mateo County Health System, to Francesca Vietor, SFPUC President (June 13, 2016).

[135] EPA 4.19.16 Agenda Report at 7-8.

[136] EPA General Plan at 5-3.

[137] EPA General Plan at 5-2 (noting loss of sales revenue in excess of $100 million in 2009).

[138] Letter from Evelyn Stivers, Executive Director Housing Leadership Council of San Mateo County, to Francesca Vietor, SFPUC President, re East Palo Alto's request for an additional 1.5 mgd in water supply (June 14, 2016) [Stivers Letter].

[139] EPA Res. 4723 at 1.

[140] Alexei Kosoff, *Can East Palo Alto Weather the Tech Boom and Increasing Gentrification?*, KQED News (July 18, 2013), *available at* https://ww2.kqed.org/news/2013/07/18/104008/ (noting that after the crash in 2007, the market became dominated by absentee landlords and Chinese investors). *See also* Trulia, Real Estate Data for East Palo Alto, https://www.trulia.com/real_estate/East_Palo_Alto-California/market-trends/ (last visited Mar. 8, 2017) (noting East Palo Alto median sales price has increased from $280,000 in 2000 to $610,000 in 2017, and peaked at $850,000 in 2016; the recent downward shift appears to coincide with the development moratorium discussed in section IV.A.2).

[141] Sue Dremann, *East Palo Alto Runs Out of Water, Development on Hold*, Palo Alto Online (June 19, 2016), *available at* http://paloaltoonline.com/news/print/2016/06/19/east-palo-alto-runs-out-of-water-development-on-hold.

[142] Dremann, *East Palo Alto Runs Out of Water, Development on Hold*.

[143] Dremann, *East Palo Alto Runs Out of Water, Development on Hold*.

[144] Lohan, *East Palo Alto's Economic Future Tied to Water*.

[145] Dremann, *East Palo Alto Runs Out of Water, Development on Hold*; Lohan, *East Palo Alto's Economic Future Tied to Water*; Letter from Jackie Speier, U.S. Representative, 14th District, California, to Francesca Vietor, SFPUC President (June 6, 2016) [Speier Letter]; Satterwhite Interview.

[146] Kevin Kelly, *Facebook Leasing More Space in Menlo Park for Even More Employees*, The Mercury News (May 18, 2017), *available at* http://www.mercurynews.com/2017/05/18/facebook-leasing-more-space-in-menlo-park-for-even-more-employees/.

[147] Cutler, *East of Palo Alto's Eden: Race and the Formation of Silicon Valley.*

[148] Speier Letter.

[149] East Palo Alto, City Council Agenda Report, Executing a Water Supply Implementation Funding Agreement with the Sobrato Organization, 2020 Bay Rd., and the Primary School (July 19, 2016) [EPA Water Supply Implementation Agreement Agenda Report] at 4.

[150] EPA Water Supply Implementation Agreement Agenda Report at 4. The city's 2016 General Plan acknowledges that "[a]dding new housing and jobs in the City is constrained by a lack of water to support development." EPA General Plan at 1-7.

[151] EPA General Plan at 9-8 (Goal ISF-2).

[152] Final Environmental Impact Report, EPA General Plan Update (Aug. 2016) at 3-15 (Mitigation Measure UTL-1). The language "intensified development" is taken directly from East Palo Alto's general plan and a definition or clarifying language does not accompany it.

[153] EPA General Plan at 9-8 (Policy ISF-2.4).

[154] Ravenswood/4 Corners Specific Plan (Policy UTIL-2.2).

[155] East Palo Alto, City Council Agenda Report, Approving an Ordinance Prohibiting New or Expanded Water Connections to the City of East Palo Alto Water System (July 19, 2016) [EPA Water Moratorium Agenda Report] at 6.

[156] East Palo Alto, Ordinance No. 399 (July 19, 2016) [EPA Ord. 399].

[157] EPA Ord. 399.

[158] EPA Water Moratorium Agenda Report, Attachment 4.

[159] EPA Water Supply Implementation Agreement Agenda Report at 3; EPA 4.19.16 Agenda Report at 9-10.

[160] EPA Water Moratorium Agenda Report at 6.

[161] Lohan, *East Palo Alto's Economic Future Tied to Water*.

[162] Kahan, *Reading Whiskey Gulch* at 9-17.

[163] Kahan, *Reading Whiskey Gulch* at 11-12.

[164] Letter from Tameeka Bennett, Executive Director, Youth for United Community Action, to Francesca Vietor, SFPUC President, re East Palo Alto's Request for an additional 1.5mgd in water supply (June 13, 2016) [Bennett Letter].

[165] Bennett Letter.

[166] Bennett Letter.

[167] *See* EPA Water Supply Implementation Agreement Agenda Report at 8.

[168] EPA General Plan at 1-7.

[169] EPA General Plan at 1-7, 9-8 to 9-9, 12-8, 12-14.

[170] EPA Water Supply Implementation Agreement Agenda Report at 2.

[171] *See* EPA Water Supply Implementation Agreement Agenda Report.

[172] EPA Res. 4723; EPA 4.19.16 Agenda Report at 11.

[173] EPA Res. 4723 at 4.

[174] EPA Res. 4723 at 4.

[175] EPA Res. 4723 at 4.

[176] Milstein Interview.

[177] Draft 2040 WaterMAP at 1, 3.

[178] Letter from Donna Rutherford, East Palo Alto Mayor, to Francesca Vietor, SFPUC President, re East Palo Alto's request for an additional 1.5 mgd in water supply (May 17, 2016) [Rutherford Letter].

[179] SFPUC, Letter Summary, Water Management Action Plan, Agenda Item #10 (June 14, 2016).

[180] Draft 2040 WaterMAP at 1; Rutherford Letter; SFPUC, Agenda Item No. 10, Letter Summary Water Management Action Plan (June 14, 2016).

[181] SFPUC, Staff Report, Agenda Item No. 10 (June 14, 2016); SFPUC, Staff Report, Agenda No. 10 (Aug. 9, 2016).

[182] SFPUC, Minutes (June 14, 2016) at 7.

[183] SFPUC, Minutes (June 14, 2016) at 8.

[184] BAWSCA, Statement from Chief Executive Officer Nicole Sandkulla about the Request from the City of East Palo Alto (EPA) for More Water (Aug. 5, 2016).

[185] SFPUC, Staff Report, Agenda No. 10 (Aug. 9, 2016) at 3; Water Supply Update 11.1.16 at 7.

[186] Draft 2040 WaterMAP at 1, 12.

[187] Draft 2040 WaterMAP at 17, 22.

[188] Draft 2040 WaterMAP at 17, 22, 41.

[189] BAWSCA FY14-15 Survey at 2-1, 2-6 to 2-10.

[190] EPA Water Supply Implementation Agreement Agenda Report at 5.

[191] EPA Water Moratorium Agenda Report at 9.

[192] East Palo Alto, Resolution No. 4762 (July 19, 2016) [EPA Res. 4762].

[193] EPA Water Supply Implementation Agreement Agenda Report, Exhibit A, Water Supply Implementation Agreement, at 1.

[194] EPA Water Supply Implementation Agreement Agenda Report at 5-7.

[195] EPA Water Supply Implementation Agreement Agenda Report at 7.

[196] *East Palo Alto Imposes Development Moratorium Due to Lack of Water*, The Mercury News (July 20, 2016), *available at* http://www.mercurynews.com/2016/07/20/east-palo-alto-imposes-development-moratorium-due-to-lack-of-water/.

[197] 2009 WSA § 3.04 at 12.

[198] EPA Res. 4723 at 4.

[199] Water Supply Implementation Agreement at 6.

[200] Water Supply Implementation Agreement at 6.

[201] Water Supply Update 11.1.16 at 7.

[202] East Palo Alto, City Council Meeting Minutes (Sept. 6, 2017) at 8; East Palo Alto, City Council Agenda Report, Formation of Water Allocation Transfer Sub-Committee (Sept. 6, 2017).

[203] Palo Alto, City Council Meeting Minutes, (May 7, 2018) at 6A.

[204] 1984 Agreement § 7.02(a) at 41, Appendix K-1 at 1-2; City of Mountain View, Council Report, Water Supply Transfer Agreement with the City of East Palo Alto (May 23, 2017) at 2 [Mountain View Transfer Council Report].

[205] 2009 WSA § 3.07(C) at 14, Attachment E.

[206] BAWSCA FY14-15 Survey at 2-2.

[207] Mountain View Transfer Council Report at 2.

[208] Mountain View Transfer Council Report at 2.

[209] Mountain View Transfer Council Report at 8.

[210] Mountain View Transfer Council Report at 1.

[211] Letter from Daniel H. Rich, Mountain View City Manager, to Carlos Martinez, East Palo Alto City Manager, re City of East Palo Alto Water Supply Concerns (Aug. 2, 2016).

[212] Water Supply Update 11.1.16 at 6-7.

[213] City of Mountain View, City Council Meeting Audio (May 23, 2017) at 31:45; Letter from Daniel H. Rich, Mountain View City Manager, to Carlos Martinez, East Palo Alto City Manager, re City of East Palo Alto Water Supply Concerns (Aug. 2, 2016).

[214] City of Mountain View Action Details, File 17-168, https://mountainview.legistar.com/MeetingDetail.aspx?ID=546589&GUID=1C7A6B5F-98A6-4989-93FB-F352CABA4BDF&Options=info&Search=; Mountain View Transfer Council Report at 6-7.

[215] City of Mountain View, City Council Meeting Audio (May 23, 2017) at 45:00.

[216] City of Mountain View, City Council Meeting Audio (May 23, 2017) at 1:13:15.

[217] Sue Dremann, East Palo Alto Accepts Mountain View Water, Palo Alto Online (June 22, 2017), *available at* https://paloaltoonline.com/news/print/2017/06/22/east-palo-alto-accepts-mountain-view-water.

[218] East Palo Alto, City Council Agenda Report, Water Transfer Agreement with the City of Mountain View for 1 million gallons per day (MGD) of SFPUC ISG; and associated funding actions with the Sobrato Organization, 2020 Bay Road, the Primary School, and the Silicon Valley Community Foundation (June 20, 2017) [Mountain View Transfer Agenda Report] at 1, 7-11.

[219] Mountain View Transfer Agenda Report at 11.

[220] Mountain View Transfer Agenda Report at 11-12.

[221] Mountain View Transfer Agenda Report at 8.

[222] Mountain View Transfer Agenda Report at 9-10.

[223] Mountain View Transfer Agenda Report at 9.

[224] East Palo Alto, City Council Agenda Report, Adoption of a Negative Declaration for the Transfer of up to 1.5 million gallons of water per day (MGD) of Individual Supply Guarantee under the San Francisco Public Utility Commission water supply agreement (June 20, 2017) [ISG Transfer ND Agenda Report].

[225] ISG Transfer ND Agenda Report at 3.

[226] ISG Transfer ND Agenda Report at 5.

[227] ISG Transfer ND Agenda Report at 5-7.

[228] 2009 WSA § 3.04 at 12.

[229] Sue Dremann, Palo Alto grants water to East Palo Alto, Palo Alto Weekly, (May 8, 2018), available at https://www.paloaltoonline.com/news/2018/05/08/palo-alto-grants-water-to-east-palo-alto.

[230] Dremann, Palo Alto grants water to East Palo Alto.

[231] East Palo Alto, Water System Master Plan (October 7, 2010) at 18.

[232] EPA Water Moratorium Agenda Report at 4; Engineers, *Gloria Way Water Well Production Alternatives Analysis and Water Security Feasibility Study* (Nov. 2012) at 45; Water Supply Assessment, City of East Palo Alto General Plan Update (Dec. 29, 2015) at 25 (EPA 2015 Water Supply Assessment).

[233] Todd Engineers, *Gloria Way Water Well Production Alternatives Analysis and Water Security Feasibility Study* (Nov. 2012) [Todd Gloria Way Study] at 3; East Palo Alto, City Council Agenda Report, Gloria Way Well Water Treatment Plant Project (Oct. 4, 2016) [EPA 10.4.16 Agenda Report] at 1.

[234] EPA Water Supply Implementation Agreement Agenda Report at 6.

[235] Todd Gloria Way Study at 67.

[236] Todd Gloria Way Study at 5, 24.

[237] EPA 2015 Water Supply Assessment at 21, 25; Todd Gloria Way Study at 27-28.

[238] Todd Gloria Way Study at 5, 24.

[239] Todd Gloria Way Study at 67; Contract Documents for the Gloria Way Well Water Treatment Plant, http://www.ci.east-palo-alto.ca.us/documentcenter/view/2949 (last visited Nov. 20, 2017).

[240] EPA, Resolution No. 4406 (June 4, 2013).

[241] EPA 10.4.16 Agenda Report at 2.

[242] EPA, Resolution No. 4783 (Oct. 4, 2016); EPA 10.4.16 Agenda Report.

[243] Water Supply Update 11.1.16 at 4; City of East Palo Alto, City Council Agenda Report, Gloria Way Well Project Construction Award - Integrated Water Service (IWS) (Mar 21, 2017).

[244] City of East Palo Alto, Gloria Way Well, http://www.ci.east-palo-alto.ca.us/index.aspx?NID=449 (last visited June 15, 2018); City of East Palo Alto, Pad D New Municipal Water Well, http://www.ci.east-palo-alto.ca.us/index.aspx?NID=611 (last visited June 15, 2018).

[245] 2009 WSA § 3.04(B) at 12.

[246] 2009 WSA § 3.07(A) at 14.

[247] 2009 WSA § 3.07(B)(3) at 14.

[248] Phone calls with Nicole Sandkulla, BAWSCA (Mar. 23 and July 5, 2017) [Sandkulla Interviews]; *see* BAWSCA-EBMUD Short-Term Pilot Water Transfer Plan (September 2013) [BAWSCA-EBMUD Pilot Plan].

[249] BAWSCA-EBMUD Pilot Plan at 1.

[250] Sandkulla Interviews.

[251] Sandkulla Interviews.

[252] Sandkulla Interviews.

[253] Ellen Hanak et al., Managing California's Water from Conflict to Resolution (2011) at 332.

[254] Cal. Const., art. X, § II.

[255] *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,1242; *National Audubon Society v. Superior Court* (1983) 22 Cal.3d 419, 443, fn. 23.

[256] Milstein Interview.

[257] Milstein Interview; Palo Alto, City Council Meeting (May 7, 2018), Agenda Item 6A, Attachment D, City Council Staff Report, Transfer of Individual Supply Guarantee to East Palo Alto [Palo Alto 5.7.18] at 2.

[258] Pub. Resources Code § 21002; Cal. Code Regs., tit. 14 [CEQA Guidelines] § 15092.

[259] CEQA Guidelines §§ 15063, 15121.

[260] CEQA Guidelines § 15201.

[261] Public Advocates, Community Organizations Win Ground-Breaking Agreement with Facebook, http://www.publicadvocates.org/our-work/housing-justice/community-organizations-win-ground-breaking-agreement-with-facebook-to-create-affordable-homes-protect-tenants-prevent-displacement-and-increase-jobs-access/ (last visited May 5, 2017).

[262] Compact to Increase Equity, Opportunity and Access in Silicon Valley (Nov. 23, 2016) [Community Compact]; Memorandum of Agreement by and between the City of East Palo A lot and Hibiscus Properties, LLC Regarding the Menlo Park Facebook Campus Expansion Project (Nov. 30, 2016) [EPA Agreement].

[263] Petition for Writ of Mandate (Case No. 16CIV03062) at 3-4.

[264] Petition for Writ of Mandate (Case No. 16CIV03062) at 4; Community Compact at 2; EPA Agreement at 1.

[265] Petition for Writ of Mandate (Case No. 16CIV03062).

[266] EPA Agreement at 1.

[267] Community Compact at 2; EPA Agreement at 1.

[268] Community Compact.

[269] Community Compact at 2; EPA Agreement at 1.

[270] Community Compact, Attachment A at 1; EPA Agreement at 5.

[271] Community Compact, Attachment A at 1.

[272] EPA Agreement at 5.

[273] Community Compact, Attachment A at 10; EPA Agreement at 10.

[274] EPA Agreement at 11.

[275] EPA Agreement at 11.

[276] Petition for Writ of Mandate (Case No. 16CIV03062) at 1.

[277] Petition for Writ of Mandate (Case No. 16CIV03062) at 1.

[278] Petition for Writ of Mandate (Case No. 16CIV03062) at 1.

[279] Petition for Writ of Mandate (Case No. 16CIV03062) at 7-9.

[280] SFPUC, Staff Report, Agenda No. 10 (June 14, 2016) at 2. As of May 24, 2017, the SFPUC has not released preliminary CEQA documents.

[281] *See* CEQA Guidelines §§ 15063, 15121.

[282] Gov. Code § 65300.

[283] Gov. Code § 65800 et seq.; *Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957, 959 (land-use decisions must be consistent with controlling land-use legislation); *Robison v. Oakland* (1968) 268 Cal.App.2d 269, 274 (a city is "obviously bound by the provisions of its own ordinance").

[284] Gov. Code §§ 65008(a), 12955(a), (d).

[285] Bellows, 41 ECOLOGY L.Q. at 3, 18, 20-21, 26; *see, e.g.*, *Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 770-71 (growth control initiative conflicted with section 65008 because affordable housing dramatically declined after approval of initiative).

[286] *Keith v. Volpe* (9th Cir. 1988) 858 F.2d 467, 485; *see also Building Industry Assn.*, 27 Cal.App.4th at 770-71; Bellows, 41 ECOLOGY L.Q. at 17.

[287] Bellows, 41 ECOLOGY L.Q. at 21.

[288] *Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1581 (affordable housing group had standing to bring a section 65008 claim because the challenged policies drained the group's resources and frustrated its mission).

[289] *See Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378, 1385, fn. 4 (noting a local ordinance increasing minimum room sizes, that would likely result in eviction of half the families in a predominantly Hispanic neighborhood, risked running afoul of section 65008).

[290] 1984 Agreement at 1.

[291] 1984 Agreement § 2.04 at 8.

[292] 2009 WSA § 8.07 at 77-79.

[293] 2009 WSA § 8.07(B)(2) at 77.

[294] 2009 WSA §§ 4.06 at 32, 8.07(B)(2) at 77-78.

[295] Hanak, Managing California's Water at 389-91.

[296] *See* Public Advocates, Community Organizations Win Ground-Breaking Agreement with Facebook.

[297] *See* Speier Letter.

[298] City of Mountain View, City Council Meeting Audio (May 23, 2017) at 57:35.

[299] Wat. Code § 106.3.

[300] Wat. Code § 189.5.

[301] Cooley et al., Pacific Institute, *Drought and Equity in the San Francisco Bay Area*; Laura Feinstein et al., Pacific Institute and Environmental Justice Coalition for Water, *Drought and Equity in California* (Jan. 2017).

[302] http://www.leadershipcounsel.org/?page_id=222.

[303] http://www.crpe-ej.org/our-work/.

[304] http://www.communitywatercenter.org/.

[305] 2009 WSA § 3.07(B) at 14.

[306] EPA 2015 Water Supply Assessment at 26.

[307] EPA Water Moratorium Agenda Report at 4.

[308] BAWSCA FY14-15 Survey at 7-4; EPA Res. 4723 at 2.

[309] Funding Agreement at 3-6.

[310] EPA Water Supply Implementation Agreement Agenda Report at 6-7.

[311] EPA Water Supply Implementation Agreement Agenda Report at 8.

Silicon Valley Community Foundation

facebook.com/siliconvalleycf twitter.com/siliconvalleycf youtube.com/TheSVCF

2440 W. El Camino Real, Suite 300 • Mountain View, CA 94040

T: 650.450.5400

info@siliconvalleycf.org

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