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January 30, 2012

VIA ELECTRONIC MAIL: JICMurphy@menlopark.org

Justin Murphy, Development Services Manager
City of Menlo Park
Community Development Department, Planning Division
701 Laurel Street
Menlo Park, CA 94025

Re: Draft EIR for Facebook Project /1601 Willow Road (10-19 Network Circle) East Campus and 312-314 Constitution Drive (West Campus)

Dear Mr. Murphy:

Thank you for the opportunity to comment on this draft Environmental Impact Report (DEIR) on behalf of Envision-Transform-Build East Palo Alto, a coalition comprised of Urban Habitat, Youth United for Community Action (YUCA) and Peninsula Interfaith Action (PIA).¹ These comments specifically address shortcomings in the analysis of population and housing in part 3.14, and the relationship of the environmental review of this project to the City's long-time failure to meet its affordable housing obligations under the Housing Element Law.

I. Legal Requirements concerning the General Plan and its Housing Element.

As the DEIR notes, "State Housing Element Law requires the General Plan of the City to have an updated Housing Element that provides for a specified number of housing units determined based on an allocation of regional housing needs" and "requires cities in California to plan for the future development of new housing units to meet their share of their regional housing needs." (DEIR at p. 3.14-1, 3.)

The local General Plan is a "comprehensive, long-term general plan" that each city and county must adopt to govern its future physical development. (Gov. Code § 65300.) It serves as "the basic land use charter" of a city, with which all of its planning and development decisions must be consistent. (*Leshar Communications Inc. v. City of*

¹ Envision-Transform-Build East Palo Alto is also submitting a separate set of comments, following up on its comments on the Notice of Preparation, dated May 25, 2011.

Walnut Creek (1990) 52 Cal.3d 531, 542; *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.) It is, in short, “a constitution for all future development within the city.” (*O’Loane v. O’Rourke* (1965) 231 Cal.App.2d 774, 782-3.) See also *Fonseca v. City of Gilroy* (2007) 148 Cal. App. 4th 1174, 1182 (“In the universe of local land use enactments, the general plan is ‘at the top of ‘the hierarchy of local government law regulating land use.’ ” (quoting *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.)

The Housing Element is one of seven mandatory elements (§ 65302) of the local General Plan. Each local government must adopt a new Housing Element at the start of each new five-year “planning period.” (Gov. Code § 65588, subd. (b).) This periodic update begins with the State’s allocation to each California region of a figure representing the number of new housing units needed to accommodate existing and projected housing needs in the region during the upcoming planning period. (Gov. Code § 65584.) The Association of Bay Area Governments (“ABAG”) is charged by statute with sub-allocating to each local Bay Area jurisdiction its share of the regional housing need. (Gov. Code § 65584.) (In the case of San Mateo County, ABAG’s allocation was sub-allocated to each local jurisdiction through a countywide process.)

The RHNA is broken down into four income categories: very-low, low, moderate, and above-moderate income. (*Id.*) “Very-low income” households are those with incomes below 50 percent of the area median income. (25 Cal. Code of Regs. § 6926.) “Low-income” households have incomes below 80 percent of area median income. (*Id.*, § 6928.) “Affordable” means that a household’s annual cost of housing does not exceed 30 percent of its annual income. (Health & Saf. Code § 50052.5; *see also* Gov. Code § 65583, subd. (a)(2).)

The ultimate objective of the local planning process envisioned by the Housing Element Law is to facilitate the development of the needed RHNA share of housing. To achieve this objective, the Legislature set out “detailed requirements” (*Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App. 3d 289, 296), among other things, requiring cities to:

- Prepare and analyze a complete inventory of vacant land in order to identify suitable sites, appropriately zoned and with necessary infrastructure to accommodate the new construction need at each income level;
- Identify and analyze governmental constraints that hinder the development of those sites; and
- Adopt specific programs of actions to (1) identify and rezone “adequate sites” to make up any shortfall indicated in the inventory between the available sites and sites needed to accommodate the RHNA, and (2) remove governmental constraints to the development of those sites.

(§ 65583.)

II. Menlo Park's Longstanding Failure to Comply With State Law Requirements

The City of Menlo Park, like every other local jurisdiction in the Bay Area, was required by state law to adopt a new housing element by June 30, 2009, covering the planning period running from 2007 through 2014.² It has not yet done so. Previously, Menlo Park was required to update its housing element by December 31, 2001; it failed to do so at that time, as well. In fact, according to the California Department of Housing and Community Development, Menlo Park has not adopted a housing element since September 8, 1992.³ In other words, Menlo Park failed to adopt an updated housing element in each of the past two planning cycles. Only one other jurisdiction in the entire State of California – the city of Cudahy – has been as delinquent.

This long-time failure to plan for affordable housing has resulted, predictably, in virtually no production of new affordable housing units. For the period from 1999 through 2006, Menlo Park's fair share of the region's need for new housing included 184 units affordable to very-low income, 90 to low income, and 245 to moderate income households. According to data provided by the Association of Bay Area Governments, Menlo Park issued permits for virtually none of these affordable units: zero very-low income, zero low-income, and only 11 moderate income units.⁴

For the current planning period, which runs through 2014, Menlo Park must accommodate 993 total new housing units, including 226 units affordable to very-low income, 163 to low income, and 192 to moderate income households.⁵ Under AB 1233, because it failed to plan to accommodate its RHNA need from the prior planning period, it must rezone sites to accommodate its share from the prior planning period in addition to its new share.⁶

This results in a need to plan for over 1,000 affordable units, as follows:

² The legislature set forth the schedule by which “each city, county, and city and county shall revise its housing element.” (see Gov. Code § 65588, subd. (e).) The following schedule was set for “[l]ocal governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2001, for the third revision, and June 30, 2007, for the fourth revision.” (*Id.*) At the request of ABAG, the HCD extended the due date for the fourth revision to June 30, 2009 for cities and counties in the Bay Area region. (*See* Gov. Code § 65584.02.)

³ HCD Housing Element Status Report of Jan. 3, 2012, at p. 9 of 11, available at <http://www.hcd.ca.gov/hpd/hrc/plan/he/status.pdf>.

⁴ ABAG, *A Place to Call Home: Housing in the San Francisco Bay Area 2007*, available at http://www.abag.ca.gov/planning/housingneeds/pdf/resources/A_Place_to_Call_Home_2007.pdf.

⁵ ABAG, *San Francisco Bay Area Housing Needs Plan 2007-2014*, p. 47, available at <http://www.abag.ca.gov/planning/pdfs/SFHousingNeedsPlan.pdf>.

⁶ AB 1233 (Jones) added Gov. Code § 65584.09 (a), which provides that “if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.”

	Very-low	Low	Moderate	Total
Unaccommodated portion of 1999-2007 RHNA	184	90	234	
2007-2014 RHNA	226	163	192	
Total	410	253	426	1,089

III. Legal Consequences of Menlo Park’s Noncompliance

While local land use power is broad, it is “subordinate to state law” (*Fonseca v. City of Gilroy, supra*, 148 Cal. App. 4th at 1181, citing Cal. Const., art. XI, § 7), and must be exercised within the “framework . . . provided by the state’s land use planning statutes.” (*Id.*) “Since consistency with the general plan is required, absence of a valid general plan, or valid relevant elements or components thereof, precludes enactment of zoning ordinances and the like.” (*Id. at* 1182, quoting *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806.)

“A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective [general] plan[.]” *Concerned Citizens of Calaveras County v. Bd. of Supervisors*, 166 Cal. App. 3d 90, 97 (1985). Moreover, a valid General Plan is absent if it does not include a mandatory element, such as a Housing Element, or if it is obsolete. The mandatory Land-Use Element, for instance, must be updated at least as regularly as the Housing Element,⁷ and a comprehensive update of the General Plan as a whole should occur at least every ten years.⁸

Menlo Park, as noted, has not updated its Housing Element since 1992. Its General Plan as a whole also appears to be obsolete. For instance, its Land-Use Element and Circulation Element last underwent a comprehensive update in 1994, nearly 20 years ago, and do not contemplate conditions or projections beyond 2010. (See, e.g., Land-Use Element at p. III-3,

⁷ “On or before the due date for the next adoption of its housing element pursuant to Section 65588, each city or county shall review and update the land use element of its general plan.” (Gov. Code § 65302.10 (b).)

⁸ The Governor’s Office of Planning and Research (OPR) “is required to notify a city or county when its general plan has not been revised within eight years. If a city or county has not revised its general plan within ten years, OPR must also notify the Attorney General.” (OPR, GENERAL PLAN GUIDELINES (2003), at p. 33.)

containing housing buildout projections through 2010.⁹) Other General Plan elements date back to the 1970s.

Absent a valid General Plan, the City must be directed to correct the inconsistency of its General Plan within 120 days. §65754(a). *See Concerned Citizens of Calaveras County, supra*, 166 Cal. App. 3d at 103-104 (remedy for inconsistency of General Plan elements is to invalidate inconsistent elements and require adoption of consistent ones). Pursuant to §65755, the Court must suspend the City's land-use authority (§65755(a), (b) and (c)) except for a development that meets the requirements of §65760 until the General Plan is brought into compliance. For instance, on remand in *Urban Habitat v. City of Pleasanton* (2008) 164 Cal. App. 4th 1561, the superior court issued an order that the city "cease issuing non-residential building permits . . . until the City brings its General Plan into compliance with the requirements of State Law."¹⁰ That injunction, which froze the city's ability to approve even new signage and tenant improvements, remained in effect for five months.

IV. The Project Will Have Significant Growth-Inducing Impacts and Cumulative Impacts that Are Not Analyzed in the DEIR.

The DEIR must contain sufficient information to inform "public agency decision-makers and the public generally of the significant environmental effect of a project." *See* Cal. Code of Regs. tit. 14, §15121(a); *Ass'n of Irrigated Residents v. County of Madera* (2003) 107 Cal. App. 4th 1383, 1390. The ultimate decision whether to approve a project is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 355-356. It is well established that significant environmental impacts often arise from the housing need created when a project will bring substantially more jobs and people into an area. *See, e.g., Defend the Bay v. City of Irvine* (2004) 119 Cal App. 4th 1261, 1266; *Napa Citizens, supra*, 91 Cal. App. 4th at 367.

Among the environmental issues that must be analyzed under CEQA are growth-inducing impacts and cumulative impacts. *See* Cal. Code of Regs. tit.14, §§15126.2(d); 15130. The DEIR lacks an adequate analysis of either the growth-inducing or the cumulative impacts that are likely to result from a dramatic increase in employment in the project area. The failure to identify significant impacts in these areas also contributes to the inadequate consideration of mitigation measures discussed below in Section V.

The DEIR acknowledges that the proposed project would result in 143% more job growth than ABAG projected for the entire city of Menlo Park over a 25 year period. The conclusion that such a massive influx of new employees to the project area would have neither growth-

⁹ Accessed at http://www.ci.menlo-park.ca.us/departments/pln/gp/mp_gp_land-use-and-circulation.pdf.

¹⁰ Order Granting Petition for Writ of Mandate, filed Mar. 12, 2010, p. 9, available at http://publicadvocates.org/sites/default/files/library/pleasantonordergrantingpetitionforwritofmandatefiled31210_0.pdf.

inducing nor cumulative impacts strains credulity, and fails to meet the required standards of analysis under CEQA. As discussed below, that conclusion rests on faulty analysis.

A. Growth-Inducing Impacts.

The DEIR correctly notes that “growth-inducing effects include ways in which a project could foster economic or population growth, or the construction of additional housing, either directly or indirectly.” (DEIR at p. 3.14-8.) However, it incorrectly concludes that the project will not have direct growth-inducing impacts, or any significant growth-inducing impacts at all. The conclusion that the addition nearly ten thousand employees to the project area would induce no growth rests on a misapplication of the proper legal standard, as well as a flawed analysis.

A project is growth-inducing if it “could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” Cal. Code of Regs. tit.14, §15126.2(d). The CEQA checklist (Title 14 of the California Code of Regulations, Appendix G) provides that a project may be growth-inducing if it would “a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure” or “c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere[.]”

The project clearly has direct growth-inducing effects within the meaning of CEQA. It will bring a total of 9,400 employees to two sites, which were not in use at the baseline state before the initiation of the project, by modifying the existing Conditional Development Permit to allow 5,800 “net new” jobs over the previously entitled cap for the East Campus before it was vacated by its prior owner. “The total net increase in employment would represent 143 percent of the total ABAG projected employment of 4,050 jobs” over the period from 2010 to 2025. (DEIR at p. 3.14-10.) As the DEIR acknowledges, “the increase in employment at the Project site would result in an increased housing demand, and an influx of new residents within Menlo Park and other jurisdictions in the region.” (DEIR at p. 3.14-11.)

The DEIR applies an erroneous analysis and an erroneous threshold of significance in concluding that this direct growth-inducing effect is insignificant. First, it fails to compare the project against the proper baseline conditions, leading to a dramatic understatement of the project’s impacts. Second, it under-estimates the housing demand that will be created by the project. Third, it addresses only the portion of that impact that it improperly attributes to Menlo Park. And fourth, it utilizes an improper standard of significance.

1. The DEIR Uses Improper Baseline Conditions to Underestimate Job Growth.

The impacts of a project should generally be measured against existing conditions. Cal. Code Regs. tit.14, §151245(a) (“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.”) (emphasis added). Moreover, courts have held consistently that baseline conditions must be the “‘real conditions on the ground’ rather than the level of development or activity that could or should have been

present according to a plan or regulation.” *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 321 (citations omitted).

We understand that, at the time the Notice of Preparation was issued last April, the site had been vacated by its prior owner and no employees were working on the site. A proper analysis must use this zero-employee figure as the baseline existing condition on the site against which to measure the impacts of the activities contemplated by the project.

Instead of using existing conditions at the initiation of the project as the baseline for quantifying the job growth proposed by the project, the DEIR improperly compares proposed jobs to the “net new” jobs that would be allowed by the proposed modification of the Conditional Development Permit, treating the theoretical jobs that the Conditional Development Permit currently allows as the baseline. That theoretically-permitted activity, however, is not the proper baseline for assessing the significance of environmental impacts under CEQA. “An approach using hypothetical allowable conditions as the baseline results in ‘illusory’ comparisons that ‘can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,’ a result at direct odds with CEQA’s intent.” *Communities for a Better Environment*, 48 Cal. 4th at 322 (citing *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 358). In connection with modifications to a general plan, analogous in this respect to the modification of a Conditional Development Permit, courts have emphasized that

an EIR is required to assess the impact of amendments to the general plan against existing conditions on the ground, not against the impact of the amendments on the previous version of the general plan. As one court put it: “CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area. The legislation evinces no interest in the effects of proposed general plan amendments on an existing general plan, but instead has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate.”

(*St. Vincent's School for Boys v. City of San Rafael* (2008) 161 Cal. App. 4th 989, quoting *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 709.)

The Project proposes an increase of 9,400 jobs over existing conditions prior to the initiation of the project. Because it uses improper baseline conditions, the DEIR reaches the erroneous conclusion that the project would represent an increase of only 5,800 jobs. This fundamental flaw invalidates not only the DEIR’s analysis of growth inducing impacts, discussed below, but also its treatment of traffic, air quality, greenhouse gas emissions, utilities, noise, public services and other issues.

2. The DEIR Underestimates the Growth that will be Induced by the Project.

The DEIR concludes that the housing demand that will be induced by the project will amount to only 3,257 housing units for 5,800 “net new” employees, of which 254 units will be located in Menlo Park. (DEIR at p. 3.14-11.) As discussed above, this conclusion is invalid based

on the failure to use proper baseline conditions of zero employment so as to analyze the growth inducing impacts of the full 9,400 jobs proposed by the project.

Even if 5,800 jobs were the proper figure to use when assessing growth inducing impacts, however, the DEIR's analysis would still be flawed in a number of respects. The translation of 5,800 net new jobs into 3,257 housing units is based on the unsubstantiated assumption that all but 714 of the new employees will live with another one of the new employees – the remaining 2,543 housing units are assumed to house two Facebook employees each. That assumption is particularly unfounded in light of the fact that very-low and low income employees together are assumed to account for 28% of all employees at the project (1,624 total lower-income employees, or 2,632 of the total 9,400 new jobs).

There is no factual basis for discounting the number of housing units required to house the new Facebook employees by assuming multiple-worker households at all. Even if there were, however, the DEIR adopts an internally inconsistent methodology. It applies a ratio of 1.78 workers per household, using the average worker-per-household figure for San Mateo County (DEIR 3.14-11),¹¹ to households that, according to the DEIR's own analysis, will mostly live in other counties. (See DEIR 3.14-12, concluding that just 13.2 percent of the project employees would live in San Mateo County.) This is not a valid assumption about the geographic distribution of the project employees, as we discuss below; but even if it were, the regional average of 1.23 workers per household¹² should be used, leading to a substantially higher number of housing units required to house project employees.

3. The DEIR Fails to Analyze the Impacts of Exporting Menlo Park's Affordable Housing Need.

After dramatically under-stating the jobs that will be created by the project and the number of housing units that will be needed to accommodate these workers, the DEIR further understates the impacts of this housing by assuming that it will be distributed throughout an enormous geographic area. This sleight-of-hand masks the true extent of the impacts that will be created by bringing nearly ten thousand jobs to a specific site in Menlo Park.

The DEIR allocates the assumed 3,257 induced housing units among nine Bay Area counties (and other unspecified counties outside the region), based on the residential locations of Menlo Park's overall workforce. (DEIR 3.14-13 to 14.) This assumption stands in direct conflict with the assertions in other chapters of the DEIR that half of the workers in the project area will commute to their jobs via bike or public transit, a projection that realistically assumes a much more locally-concentrated pattern of workforce housing.

While inconsistent with the DEIR's transportation assumptions, dividing the housing need among more than three dozen jurisdictions has the predictable result of making a very

¹¹ This figure appears to be in conflict with official figures from ABAG and MTC, and should be revised downward in any case. See April 21, 2011 report by Calthorpe Associates at http://assets.metroquest.com/img/eba/April212011_EnvisionBayAreaResultsReport_withAppendix.pdf.

¹² See report by Calthorpe Associates, *supra*; ABAG discussion at <http://www.bayareavision.org/bayarea/economy.html>.

substantial need for housing appear to be inconsequential. Menlo Park's "share," according to this methodology, will be only 254 housing units. (DEIR 3.14-13 to 14.) The DEIR concludes that in no city will the induced housing growth be significant when measured against long-term housing need projections by ABAG. That is the wrong standard of significance, as we discuss in Section 5, below. In addition, however, both the data and the methodology itself are deeply flawed: the data is not disaggregated by income, and the methodology ignores the physical impacts of Menlo Park's displacement of its workforce housing to other jurisdictions.

First, the data: the DEIR bases its conclusions on general data concerning not the residential location of current Facebook employees, but on current employees who work in Menlo Park. The DEIR provides no basis for its assumption that the residential dispersal of the City's overall workforce is a good proxy for that of Facebook's workforce.

Even the use of data based on where current Facebook employees now live would not be appropriate unless disaggregated by income. That is because low-wage workers are far more likely to be transit-dependent and to live closer to their jobs, than are higher-income employees; the latter not only have far higher auto-ownership rates, but much greater choice in where they can live. Because lower-income households are far less likely to own autos than higher-income households, moreover, those who cannot use transit, or for whom commutes by transit take too long, will be forced into buying cars, which in turn will be older cars that create more emissions. The DEIR does not take these impacts into account because of its failure to disaggregate by income.

As to methodology, it is a fact, though not discussed in the DEIR, that Menlo Park has engaged in a long-standing pattern and practice of exporting its workforce housing need throughout the region, and beyond. This fact is evident in numerous respects, not discussed in the DEIR:

- Menlo Park has failed to adopt an updated Housing Element of its General Plan since 1992. As discussed above, the Housing Element Law requires a periodic update of this Element of the General Plan to accommodate the local jurisdiction's "fair share" of the regional need for new housing affordable to all income levels.
- That fair share, or RHNA, as noted above, must be accommodated by making adequate sites available with zoning and development standards, and at densities, that will promote the development of housing at each level of affordability. Menlo Park has failed to accommodate its share of very-low, low-and moderate-income housing for two consecutive planning periods, and now has a rezoning obligation that exceeds 1,000 affordable units, as detailed above.
- Having failed to plan to meet its share of the region's affordable housing need, Menlo Park has not surprisingly failed to produce that housing. It permitted zero new very-low and low-income housing units during the entirety of the last planning period (1999-2006), during which time it produced only 11 units of moderate-income housing.

- Finally, Menlo Park's failure to provide affordable housing opportunities commensurate with the size of its low-wage workforce has resulted, according to a recent ABAG analysis, in its having one of the worst fits between jobs and housing in the entire Bay Area region: In Menlo Park, only 17% of low-wage worker households (below 80% AMI) can find housing affordable to them in the city.¹³

The DEIR implicitly assumes that Menlo Park will continue to fail to fulfill its obligations under State law, and continue to fail to house its lower-income workforce. It improperly fails to account, however, for the impacts of the housing growth that Menlo Park's exportation of its workforce housing need will create. To house the increased worker population that the project will create, the City would need to plan for more than 9,000 housing units, of which 46%, or 4,324 units, would be affordable to very-low, low and moderate income households. Planning to export that housing outside the city limits does not eliminate those impacts. As the California Supreme Court recently held, a ban on development in one area can reasonably be anticipated to displace development to other areas and such displacement is subject to analysis under CEQA. *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 383 ("no California locality is immune from the legal and practical necessity to expand housing due to increasing population pressures.").

That principle remains true whether the ban is de jure or de facto. And, as in *Muzzy Ranch*, the principle remains true here that "no statute (in CEQA or elsewhere) imposes any per se geographical limit on otherwise appropriate CEQA evaluation of a project's environmental impacts." (*Id.*, 41 Cal.4th at 387.) For the DEIR to employ a methodology that only "considers whether population and household growth would [be] within forecasts for the City and/or can be considered substantial with respect to remaining growth potential in the City" (DEIR at p. 3.14-7, emphasis added) is improper.

The DEIR incorrectly states that "Housing affordability . . . is considered to be a socioeconomic issue that need not be evaluated under CEQA. A shortfall of affordable units within the City is not considered a physical environmental impact." (DEIR, at p. 3.14-15.) That is incorrect. In fact, Facebook's low-wage workers cannot physically live in housing they cannot afford, and this creates a host of both direct and indirect impacts on the physical environment. Census data shows that 21,049 workers commute into Menlo Park, a city of just over 30,000 residents. Of those in-commuting workers, 6,046 earn under \$40,000, placing them in the very-low income category.¹⁴ If housing that is affordable to those workers is not available in Menlo Park, which already fails to house the vast majority of its low-wage workforce, then those workers will physically impact other communities. They will strain or deplete the existing supply

¹³ ABAG recently analyzed the "jobs-housing fit," i.e., how well the lower-income housing supply matches the labor pool of lower-income workers. A jobs-housing fit of 100% means that enough housing units exist within a city to house every worker earning lower-income wages in that city. A copy of ABAG's analysis is attached.

¹⁴ According to State income limits for 2011, a very-low income household of four earns up to \$53,400 in San Mateo County, while a 1-person household earning up to \$37,400 is in the very-low income category. HCD, Official State Income Limits for 2011 – Revised (July 13, 2011), available at http://www.hcd.ca.gov/fa/mprop/2011_IncomeLimits.pdf.

of affordable housing in Menlo Park and nearby communities, like East Palo Alto and North Fair Oaks/Redwood City, and will fuel pressures to develop new housing. In addition, the currently inadequate supply of lower-income housing in the vicinity of Menlo Park means that thousands of low-wage workers travel long distances from the housing they can afford to their jobs in Menlo Park. These physical impacts will, in turn, physically impact air quality, GHG emissions, transportation networks, traffic, noise, utilities, biological resources, and public services.

The DEIR must, in short, not simply make implicit assumptions about Menlo Park's continued failure to meet its affordable housing obligations, but must analyze the impacts of that failure. It may not simply assume without analysis that other jurisdictions, which already have a shortfall of affordable housing, will pick up the tab.

4. The DEIR Adopts an Inappropriate Standard of Significance for Evaluating Growth Inducing Impacts

The DEIR uses the ABAG Projections 2009 for regional growth over a 25 year period to assess the project's impacts, but fails to provide an adequate explanation of why this is a proper standard of significance to evaluate the project's growth inducing impacts. This standard is inappropriately overbroad in both its time horizon and its geography, masking housing impacts that are already under-stated as described above.

As to timeframe, the project contemplates a site buildout of between two and four years. By 2015 at the latest, 6,600 workers would be employed in the project area (DEIR 2-13), with an additional 2,800 by 2016 (DEIR 2-29). Most of these employees would be on the site well before this. Yet the DEIR uses 25 year growth projections to evaluate the significance of growth that will occur within the next 4 years. Employing such wildly disparate time horizons for evaluating significance is a fundamental flaw. Were it permitted, it would undermine the very core of CEQA, as the impacts of no conceivable project would ever appear to be significant under this standard.

If ABAG 2009 Projections are to be used at all to measure the significance of the project's growth-inducing impacts, the proper timeframe is ABAG's projections for the year 2015. According to ABAG, Menlo Park is projected to add just 450 jobs between 2010 and 2015 (2010 = 29,400 jobs, 2015 = 29,850, DEIR at p. 3.14-5, Table 3.14-3), while the project would create 9,400 new jobs by that date. Similarly, Menlo Park's population is projected to increase by only 1,700 from 2010 to 2015 (DEIR at p. 3.14-4, Table 3.14-2), a small fraction of the new housing units for which the project will induce demand in the local area.

The DEIR's standard of significance is also inappropriate in its geographic scope. The DEIR compares the projected housing needs generated by this project on a particular site in Menlo Park against the housing growth projected for the entire Bay Area. As discussed above, this is improper.

Even if ABAG's Projections 2009 figures might be valid to use for projects in some jurisdictions, they cannot be relied upon to evaluate projects built in Menlo Park, due to the City's invalid and obsolete General Plan. In generating regional and jurisdictional growth projections, ABAG relies on "General Plan policies for each particular jurisdiction" (DEIR at p.

3.14-1, n. 1). Since, as noted above, Menlo Park lacks a valid and current General Plan, any projections for Menlo Park are similarly invalid.

Finally, ABAG's projections are not self-fulfilling, but assume local compliance with California Law, including the Housing Element Law. Absent such compliance to accommodate the RHNA, the assumed levels of housing growth are unlikely to materialize. Menlo Park illustrates this principle: have failed to comply with its Housing Element obligations for the past 20 years, it has also failed to allow the development of more than a trickle of affordable housing, particularly at the lower-income levels. As a result, a workforce almost as large as its population commutes to jobs in Menlo Park each day.

B. Cumulative impacts.

Under CEQA, a project's impact must be evaluated in light of the combined effects of existing, concurrent, and future projects in the area: "Even though a project's impact may be "individually limited," such impact may be "cumulatively considerable." (Pub. Resources Code, § 21083, subd. (b)(2).) The CEQA Guidelines define "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355.)

“"[C]umulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Pub. Resources Code, § 21083, subd. (b)(2); CEQA Guidelines § 15065, subd. (a)(3).) "An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable...." (CEQA Guidelines § 15130, subd. (a).)" *Citizens for East Shore Parks v. California State Lands Comm'n* (2011) 202 Cal.Appl.4th 549.

Given the lack of affordable housing in Menlo Park, discussed above, and the precipitous increase in employment created by the project, the DEIR should analyze the cumulative impacts of land-use decisions and development approvals within the City over the past 11 years – the period during which the City has lacked an updated Housing Element – to determine if the project's impacts will be significant when viewed in connection with the impacts of these earlier actions. It should also analyze the cumulative impacts of increased lower-income housing demand in the surrounding area in aggregate. The analysis should consider the full range of cumulative environmental impacts that can be caused or intensified due to increased housing demand, including greenhouse gas emissions (GHG), traffic, noise, air quality, hydrology and water quality, biological resources, and other issues.

C. The Project is Inconsistent with General Plan

As discussed above, Menlo Park lacks a valid General Plan, both because it has failed since 1992 to update its Housing Element and because other mandatory elements of its General Plan are obsolete. The DEIR fails to analyze the impacts of development that is inconsistent with a valid General Plan. For instance, this project will occupy 78.9 acres of land that could potentially be needed to accommodate the City's share of affordable housing development, yet the DEIR lacks any analysis of whether sufficient land will be available within the City to

accommodate its current and past RHNA need for over 1,000 units of very-low, low and moderate income housing.

Even if the General Plan were not obsolete, this project is inconsistent with the Land-Use Element which, as the DEIR acknowledges, includes a Policy II.A.9 that provides:

The City will continue to require developers of employment-generating commercial and industrial developments to contribute to the provision of below market rate housing opportunities in the City. (DEIR at p. 3.14-3.)

In an apparent effort to create the impression of consistency with this Policy, the DEIR recites that “The 254 total housing units generated by the Project would contribute to satisfying the City’s RHNA of 993 total units, as shown in Table 3.14-1.” (DEIR, at p. 3.14-15) Of course, as the DEIR itself acknowledges, “The Project does not include any residential development, nor does it propose any housing.” (DEIR at p. 3.14-8.) It will not “generate” any housing, will not “contribute to satisfying” any portion of the City’s RHNA. It will only generate direct and indirect growth-inducing impacts.

V. The DEIR Ignores Crucial Project Mitigations

Identification and adoption of feasible measures to mitigate or avoid significant environmental impacts is one of the primary purposes of an EIR. *See* Pub. Resources Code, §21081.6 (b); *see also* Cal. Code Regs. tit. 14, § 15121 (a); *see also Fed’n of Hillside and Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1258. Where multiple measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Cal. Code of Regs. tit. 14, §15126.4 (a) (1) (B).

The DEIR identifies multiple significant impacts that are caused or exacerbated by the un-addressed housing need that will be generated by the project. These include traffic, air quality, and other impacts that the DEIR concludes are significant and unavoidable. Moreover, as discussed above, a proper analysis of the housing needs generated by the project would likely result in the identification of additional significant environmental impacts, not only in the areas of population and housing, but also related to traffic, air quality, GHG, noise, and public services and others. The complete failure to consider readily available housing-related mitigations that would reduce these identified impacts, perhaps below the level of significance, is a fundamental failing of the DEIR that requires revision.

The housing-related mitigation measures that could reduce both the significant impacts already identified in the DEIR and those likely to be found after a proper analysis of housing needs is performed include¹⁵:

¹⁵ Additional mitigations would involve action by the City of Menlo Park. Among other things, the City must update its Housing Element, and plan to accommodate its current RHNA plus its AB 1233 carryover, totaling 1,089 units of affordable housing, as set forth above. The City must also rezone sufficient acres to R4 (40 units per acre), with a density floor of 30 units per acre, to accommodate the lower-income share of the current and prior RHNA.

1. Facebook will comply with General Plan Policy II.A.9, by developing, or contributing the funds needed to develop, 1,034 units of very-low income housing, 1,598 units of low income housing and 1,692 units of moderate income housing. If these units cannot all be accommodated within Menlo Park, Facebook will make appropriate contributions to the County's affordable housing trust fund to cover the cost of developing that housing in neighboring communities.

2. Facebook will modify the proposed project to include on-site housing for lower-income employees.

3. Facebook will agree to targeted outreach and local hire requirements in filling new very-low and low income jobs so as to mitigate transit and housing pressure on existing development. Its outreach and hiring should extend to those communities, like East Palo Alto, that will be most directly impacted by the project.

Absent substantial revisions to the DEIR to address the concerns raised in this letter, and related concerns, the public and decision makers will have been deprived of the opportunity to assess the environmental impacts of the project and to consider potential mitigations. Thank you for the opportunity to raise these important issues.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Marcantonio', followed by a period.

Richard A. Marcantonio
Managing Attorney

Enclosure: ABAG Jobs-Housing Fit Analysis (2011).