

Section 3

Master Responses

INTRODUCTION

This section contains Master Responses to address comments that were raised repeatedly and provide information in a comprehensive, easily-located discussion that clarifies and elaborates upon the analysis in the Draft EIR. The Master Responses presented below address the following topics.

Master Responses

- Master Response 1: Baseline
- Master Response 2: Segmentation and Piecemealing
- Master Response 3: Transportation Demand Management (TDM) Program
- Master Response 4: Trip Cap
- Master Response 5: Bicycle and Pedestrian Improvements
- Master Response 6: City of Menlo Park Housing Element
- Master Response 7: East Palo Alto Housing Needs Analysis

MASTER RESPONSE 1: BASELINE

The following Master Response addresses the comments related to concerns about the baseline choice of full occupancy of the East Campus's permitted density of 3,600 employees, in light of the fact that Sun/Oracle's occupancy was below 3,600 at the time the Notice of Preparation (NOP) was published. The City exercised its discretion to use this baseline in order to provide information to the decision makers and the public so that the environmental consequences of the Project (the increase in the number of employees from 3,600 to approximately 6,600 on the East Campus and the development of the West Campus) could be weighed intelligently.

In looking at City records for occupancy at the East Campus, the average occupancy for the years 2002-2010 was 3,121, with some years above 3,600 and others below.¹ The East Campus has not been vacant at any time in the past 10 years, including the time the NOP was issued. The East Campus occupancy declined in 2011 after Oracle acquired Sun Microsystems and then began to increase after Facebook leased the premises and began moving into the East Campus from its Palo Alto campus. Even including the transitional reduced occupancy of Sun to Oracle to Facebook in 2011, the average occupancy of the East Campus over a 10-year horizon from 2002-2011 was 2,854 employees.

¹ Information provided by City staff based upon confidential business license information.

Furthermore, upon leasing the East Campus in 2011, Facebook could occupy it with up to 3,600 employees at any time under the existing permit without any additional approvals or environmental review. As such, in early 2011, Facebook undertook Tenant Improvements (TIs) to do just that and completed its move from Palo Alto to the East Campus in December 2011 and anticipates having 3,600 employees on site by the end of 2012. For these reasons, the realistic and appropriate “existing” condition at the time the Project is approved would be full occupancy and the intelligent impact comparison is to that baseline.

The law supports this conclusion. A case frequently cited by commentators, *Sunnyvale West Neighborhood Association v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, is distinguishable from the factual situation presented in this EIR. The Final EIR in the *Sunnyvale* case used projected traffic conditions in the year 2020 as its baseline to evaluate the project’s traffic and related impacts. This baseline date was based on “assumption” and “guesstimate” regarding when the project would be constructed. The baseline date was set more than a decade after the expected date of approval. The court held that this baseline was inadequate.

In this EIR, however, there is no assumption or “guesstimate” as to when the Project will be constructed. The East Campus is already built. Facebook has already moved existing employees on site. There is data to show that the East Campus has been fully occupied in the past 10 years and is currently occupied at approximately 2,450 employees, with full occupancy anticipated in late 2012. The baseline is not a set decade out from the expected date of approval; rather, the baseline reflects the site’s existing conditions—both past and present. Therefore, unlike the inadequate speculative, far-forward looking baseline in the *Sunnyvale* case, this baseline is adequate and accurately represents existing conditions. See also *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 126 “traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impacts of a project.”

Another case cited by commentators is *Communities For A Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, in which the District erred in using maximum permitted operational levels as a baseline. The Court in *Communities For A Better Environment* determined that maximum permitted operational levels were not an appropriate baseline because, as the District acknowledged, operation of the boilers simultaneously at their collective maximum was not the norm. Actual emissions at the site had not reached the maximum permitted level. By comparing the proposed project to what could happen, rather than to what was actually happening, the District set the baseline not according to established levels of a particular use, but by merely hypothetical conditions. 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 directly at odds with CEQA’s intent.

That is not the case here. Maximum permitted capacity of 3,600 employees on the East Campus has occurred and, in fact, is the norm. The baseline is, therefore, not a hypothetical condition, but an existing condition and is, therefore, distinguishable from the *Communities For A Better Environment* case. The Court in the *Communities For A Better Environment* case stated “the proper baseline should

rest on ‘realized physical conditions on the ground’ instead of ‘merely hypothetical conditions.’ See also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, “established levels of a particular use have been considered to be part of an existing environmental setting.” By relying on the full permitted occupancy, this EIR uses the proper baseline because full occupancy is an actual realized physical condition on the ground and is an established level of use.

Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of existing baseline conditions. Since environmental conditions may vary from year to year, the baseline might take into consideration conditions that have existed over a range of time. In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval rather than conditions at the time the analysis is begun. In *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, the Court agreed that “the date for establishing baseline cannot be a rigid one. ... In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project’s impacts will be significant.”

The actual number of employees on the East Campus has varied from year to year. The peak number of employees on the East Campus in any one year in the past 10 years included more than 3,600 employees. There are currently approximately 2,450 employees on site and that number is anticipated to grow toward full occupancy. As a result, there is no reason to set an inflexible rule that would require “existing” conditions to be those on the date the NOP was issued. Such a rule would contradict the practical realities of an existing development being transferred from use by one company to use by another company. Thus, the baseline appropriately took into account not a single snapshot on a particular date, but the normal conditions of the property.

Upholding a similar flexible approach to baseline, the Court in *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, reasoned that the ongoing mining operation was an existing facility and the Final EIR appropriately assumed that existing conditions were the traffic generated when the mine operated at full capacity pursuant to the entitlement previously permitted. This is similar to the situation here. Full occupancy has been experienced at the existing East Campus and, therefore, use of such a baseline is appropriate.

The word “normally” as used in CEQA Guidelines Section 15125 is most reasonably understood as recognizing with respect to individual projects that the physical conditions existing exactly at the time the NOP is published or at the time the environmental analysis begins may not be representative of the generally existing conditions and, therefore, an agency may exercise its discretion to apply appropriate methodology to determine the existing baseline conditions. The *Sunnyvale* case citing *Communities For A Better Environment* provided that, for example, if traffic congestion and vehicular travel has temporarily decreased due to an unusually poor economy so that traffic conditions at the time of the NOP are inconsistent with the usual historic condition, a lead agency might use historical data and traffic modeling to determine the generally existing traffic conditions. Similarly, where evidence

shows traffic levels are expected to increase significantly during the environmental review process due to other development actually occurring in the area, the projected traffic levels as of the expected date of project approval may be the appropriate baseline. It is unquestionable that our economy has been unusually poor in recent years. It is not surprising that the occupancy level at the East Campus may have dipped in recent years. However, as recently as 2009 the East Campus was extremely close to full occupancy. It is also the case that as of the expected date of Project approval, the projected number of employees and, therefore, traffic is expected to increase to something akin to full occupancy. As a result the City's decision to use historical data and traffic modeling to determine generally existing traffic conditions is both reasoned and supported.

A recent case upheld this approach. In *Pfeiffer v. City of Sunnyvale* (2011) 2011 WL 5138637, the Court held that the EIR properly used data that realistically described traffic conditions that would exist in the area with the new medical office buildings and not existing conditions as the traffic baseline. The Court struck down the argument that a traffic baseline is limited to existing conditions because the Supreme Court has instructed that predicted conditions may serve as an adequate baseline where environmental conditions vary. The *Sunnyvale* case, discussed above, did not compel a different conclusion and was distinguishable because it set a baseline more than a decade after approval. In the *Pfeiffer* case, "existing" conditions were obtained from 2007 traffic counts and then background or baseline conditions were calculated based on the 2007 conditions multiplied by a growth factor plus traffic from approved, but not yet constructed developments in the area. The Court held this was an appropriate and legally adequate baseline. This is similar to the analysis that was conducted in the Draft EIR which used traffic counts from DKS Associates and then calculated the baseline of full occupancy that has historically been on the site and that is anticipated shortly.

Another important baseline case, not cited by commentators is *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316. In the *Cherry Valley* case, the EIR used Sunny-Cal's adjudicated right to draw 1,484 acre feet annually (afa) of groundwater as the baseline rather than the much lower 50 afa that Sunny-Cal was actually using. The Court held that the baseline used was the realistic and proper baseline to use in measuring the impacts on area water resources. The figure used as the baseline was not substantially higher than the average use of 1,340 afa between 1997 and 2001. Furthermore, "[t]hough...Sunny-Cal was using only 50 afa on the site after it ceased operating the egg farm in late 2005, its right to use its full 1,484 afa entitlement on the project site was wholly unaffected by its cessation of the egg farm operations. A lower baseline would have been misleading, given Sunny-Cal's right to pump 1,484 afa of groundwater." As a result, the court held the maximum permitted amount was a legally appropriate baseline.

Plaintiffs in the *Cherry Valley* case argued, much like some commentators, that decisions like *Communities For A Better Environment* support the claim that a lower figure is the appropriate baseline. The *Cherry Valley* court disagreed: "Each of these cases involved the erroneous use of hypothetical or allowable conditions as baselines—that is, conditions that were permissible pursuant to an existing plan or regulation but that were not being employed or that did not exist 'on the ground' at the time environmental review commenced. Sunny-Cal's 1,484 afa entitlement to Beaumont Basin

groundwater was not a hypothetical or allowable condition, but a condition that existed on the ground and that had existed on the project site.” *Cherry Valley*, 190 Cal.App.4th at 338. The court found that comparisons to these cases “fails because Sunny-Cal not only had a history of pumping substantially the same amount of Beaumont Basin groundwater in its egg farm operations (an average of 1,340 afa between 1997 and 2001), but was entitled to pump up to 1,484 afa on the 200-acre project site. The 1,484 afa entitlement was not a hypothetical amount of water that Sunny-Cal had never used or had no right to use on the project site.” *Cherry Valley*, 190 Cal.App.4th at 340.

Sunny-Cal’s factual situation is analogous to Facebook’s situation. The existing entitlements allow 3,600 employees on site regardless of whether there were fewer employees on site at the time of the NOP. The baseline is not substantially higher than the average use in the nine or 10 years prior to the year the NOP was issued. Therefore, using a lower baseline would be misleading given Facebook’s right to occupy the site with 3,600 employees.

For all of the above reasons, the decision to use full permitted occupancy is appropriate and reflects the “existing” conditions on the East Campus. There is no prejudice to the public or the decision makers from this baseline choice. Facebook or any other business is entitled to occupy the East Campus with 3,600 employees. The Project that is proposed and analyzed in the Draft EIR is the increase in the number of employees on the East Campus to approximately 6,600 and the development of the West Campus. Requiring a baseline of the number of employees on the East Campus as of the day the NOP was issued would be misleading and would misrepresent the Project’s actual impacts to the environment.

MASTER RESPONSE 2: SEGMENTATION AND PIECEMEALING

There is no dispute that CEQA forbids “piecemeal” review of the significant environmental impacts of a project. A large project should not be chopped up into smaller projects, each with a minimal potential impact on the environment. The CEQA Guidelines define a “project” broadly as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines Section 15378(a))

In the seminal case of *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable second phase of a multi-phased project. That case involved a plan by the University of California, San Francisco (UCSF) to move its School of Pharmacy basic science research units to a new building, of which only about one-third was initially available to UCSF. Although the EIR acknowledged that UCSF would eventually occupy the remainder of the building once that space became available, the EIR only discussed the environmental effects relating to the initial move. The court concluded that the EIR should have analyzed both phases and was deficient for omitting the expansion plans. In so holding, the court announced the following test: “[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably

foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Laurel Heights*, 47.Cal.3d at 396.

In this case, the “initial” activity taking place is Facebook’s TIs in preparation for its move into the East Campus with up to 3,600 employees, as allowed by the existing CDP. These tenant improvement activities are exempt from CEQA pursuant to Guidelines Sections 15301 and 15303. Therefore, no environmental review is required for these activities.

The “future expansion” here is the increase in density beyond the 3,600 permitted employees at the East Campus and the eventual development of the West Campus. Such “expansion” is not a reasonably foreseeable consequence of the TIs, which merely sought to re-purpose the Sun Microsystems individual office modality for Facebook’s more modern, open and collaborative office culture. In fact, it is this future expansion, both the increase in employee density at the East Campus and the development of the West Campus that is appropriately the subject of this Draft EIR. In applying the test outlined in *Laurel Heights*, the TIs are not part of the “project” because the increased employee density at the East Campus and the development of the West Campus are not a reasonably foreseeable consequence of the TIs done to upgrade the East Campus to be more hospitable to the Facebook culture under the existing CDP. Therefore, there is no illegal segmentation.

Some courts have concluded that a proposed project is part of a larger project for CEQA purposes if the proposed project is a crucial functional element of the larger project such that, without it, the larger project could not proceed. For example, in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, the court concluded the description of a residential development project in an EIR was inadequate because it failed to include expansion of the sewer system, even though the developer recognized sewer expansion would be necessary for the project to proceed. Because the construction of additional sewer capacity was a “required” or “crucial element” without which the proposed development project could not go forward, the EIR for the project had to consider the environmental impacts from such construction.

In this case, the Project applicant has undertaken TIs to occupy the East Campus with its existing employees under the existing entitlements. The existing interior of the East Campus included hard-walled, individual offices, server rooms, and laboratories. This office setting did not fit Facebook’s need for a modern work environment, which envisions large horizontal open shared spaces that facilitate collaboration between employees in furtherance of Facebook’s culture. The exterior courtyard too, with its formal amphitheater lacked the pedestrian friendly and smaller collaborative outdoor spaces desired by existing Facebook employees. Therefore, even if the Project, with increased density and the West Campus, were never envisioned or approved, Facebook would have undertaken these TIs to personalize the East Campus to fit the company’s needs. While the TIs may be related, they are not a crucial, functional element of the Project before the City for approval and, therefore, their omission from the Draft EIR does not rise to piecemealing for purposes of CEQA.

More recently, in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, the Court held that a proposed home improvement center and a planned realignment of the adjacent road were improperly segmented as two separate projects in light of the dispositive fact that the road realignment was included by the City as a condition of approval. The court held that this was really one project, not two, because “[t]heir independence was brought to an end when the road realignment was added as a condition to the approval of the home improvement center project.” *Tuolumne County*, 155 Cal.App.4th at 1231. Similarly, if two projects are not interdependent, then they can be legally separated. The court in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, found that the construction of the pipeline and the refinery upgrade, were independently justified, separate projects—not piecemealed components of the same project.

The same is true here. The TIs are independent of the increased density on the East Campus and development of the West Campus. The TIs take the existing campus and modify it for the unique culture and work environment prized by Facebook. In addition, the TIs are not a condition of approval for the Project. Consequently, because the TIs stand alone and would be done regardless of the Project, their exclusion from the Draft EIR does not constitute piecemealing.

The cases cited by commentators are distinguishable. *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145 involved the issuance of a building permit to demolish an historic structure that “from the outset” was considered part of the project. *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 149 also involved the demolition of historic structures as part of the project. In this case, the TIs have never been considered part of the Project and the East Campus has no historic value. Furthermore, arguably CEQA does not apply to interior modifications. See *Martin v. City and County of San Francisco* (2006) 135 Cal.App.4th 392.

In *Nelson v. County of Kern* (2010) 190 Cal.App.4th 25, there was a law that required the reclamation plan and the mining operations to come as a single project and failure to do so was determined to be piecemealing the project. There is no similar law in play here with respect to TIs and future expansion.

Arviv Enterprises, Inc. v. South Valley Area Planning Commission (2002) 101 Cal.App.4th 1333 involved a developer who tried to build 21 houses without environmental review by pulling separate permits for the houses. The court determined the developer did this to disguise cumulative environmental impacts. Unlike the developer in *Arviv*, Facebook is not attempting to avoid CEQA’s scrutiny. As discussed at length in Master Response 1, regarding the Baseline, Facebook can move into the East Campus with 3,600 employees without any additional permits or environmental review. Undertaking TIs to make the East Campus “its own” is no different and is allowable without any environmental review.

Unlike *Association for a Cleaner Environment v. Yosemite Community College District* (2004) 116 Cal.App.4th 629, where the closure of the firing range had potential to spread lead contamination and was not CEQA exempt, the TIs by themselves would neither have significant environmental impacts nor be subject to CEQA. The Draft EIR, therefore, appropriately does not include these TIs and

analyzes only the environmental impacts of the increase in density at the East Campus and the development of the West Campus.

MASTER RESPONSE 3: TRANSPORTATION DEMAND MANAGEMENT PROGRAM

The following Master Response addresses the comments related to Facebook's transportation demand management program and the use of transportation demand management to reduce the number of vehicle trips generated by the East Campus and West Campus.

Transportation demand management (TDM) is a group of strategies that promotes, encourages, and incentivizes people to travel by means other than driving solo in their vehicle. For Facebook, a robust TDM program is an important consideration in terms of minimizing the amount of employee and visitor travel to and from the East Campus and West Campus. The TDM program allows Facebook to maximize the number of employees working on site at the East Campus, while minimizing the potential environmental impacts/disturbance generated by the increased density and staying within the proposed Trip Cap.

The TDM program allows Facebook to achieve employee density levels that are critical to its operations. Facebook views a collaborative work environment as crucial to developing innovative ideas, so they have adapted the physical work environment around clustering employees together in close proximity. In a traditional office environment there would be one employee per 300 square feet of space; however, in many of the new high technology firms, there is one employee per 150 square feet of space, or double the employee density of a typical office building. This higher employee density leads to the need to achieve a higher TDM goal in order for Facebook to reduce commute trips and meet the proposed Trip Cap (Trip Cap is discussed in detail in Master Response 4).

TDM programs historically achieve modest gains at suburban office sites and campuses. However, Facebook's collaborative culture naturally supports and promotes its TDM program, which has been shown to outpace many long-established programs in the Bay Area. Because the company culture supports social activity, shuttle riding and vanpooling provide for the opportunity to socialize with colleagues who may be in a different division/group, thus enabling employees to develop relationships with each other. Employees also are enthusiastic about their smaller carbon footprints due to their minimized impacts on the environment. Between three and five percent of employees also bicycle to work regularly. Facebook has proposed several investments in bicycling infrastructure (improving the undercrossing of Bayfront Expressway and refreshing the striping of the bicycle lanes on Willow Road), as well as ongoing collaboration with the Silicon Valley Bicycle Coalition to improve cycling routes in the area.

Facebook's existing TDM program includes Caltrain Go-Passes and Caltrain Station Shuttles, employee commuter shuttle bus service, intern shuttles, a campus bike share program, a bike room for indoor bicycle parking, bicycle amenities, vanpool program, educational and promotional campaigns,

Zimride program, emergency ride home, carshare, participation in activities such as the Great Race for Clean Air, and hosting Bike to Work Day Energizer Stations.

Since Facebook does not create physical products, work schedules and hours of business operation are more flexible than traditional office uses. Therefore, many Facebook employees arrive and depart the Campus outside of typical commute hours. This schedule flexibility decreases peak hour vehicle traffic, extends the commute traffic over the mid-morning and late-evening hours, and spreads out traffic in off-peak times when roadways are less congested. Therefore, over the course of the day, the proportion of peak hour to daily traffic is lower than a typical office building with more traditional office hours.

Several of the commentors state that the East Campus and West Campus are located further from the urban core of the Peninsula, and farther from the majority of transit service, including Caltrain, VTA and SamTrans bus lines, as well as Stanford's Marguerite shuttles, and, therefore, the location is expected to make commuting by walking, bicycling, or transit more difficult. Nevertheless, Facebook has proposed a Trip Cap, which essentially will ensure its current mode share with the appropriate level of investment for the program on both campuses, regardless of location.

Some commentors also have requested that additional TDM strategies be added as part of the TDM program, including limiting the parking supply, parking pricing, parking cash-out programs, and financial incentives. As a key element to the success of the TDM program, both campuses are proposed to have a limited parking supply for the number of employees and visitors estimated to be on-site. While these programs are not currently being used today, Facebook may consider them as potential strategies for the TDM program in the future if necessary to comply with the Trip Cap. As proposed, the Trip Cap requires Facebook to meet an approximately 40 percent non-drive alone mode share. This is an ambitious target, but is expected to be obtainable. Commentors should note that few employers outside of the urban core areas are able to achieve similar success with their TDM programs; thus, a higher level of TDM program was not evaluated in the Draft EIR, because Facebook's robust TDM program is believed to be aggressive yet achievable.

The Trip Cap will be enforced through the penalty fee structure to be drafted into the Development Agreement and included in the Conditions of Approval. As described in Appendix 3.5-F of the Draft EIR, the City has outlined the key components of the monitoring and enforcement proposal. This proposal would maximize Facebook's flexibility such that it would not require a specific target for each mode, but rather would require a limit on the number of vehicle trips as set forth in the Trip Cap (see Master Response 4 for more information on the Trip Cap, including proposed the monitoring program). Therefore, Facebook would have the discretion to adapt the TDM program to include strategies that are most successful in reducing vehicle trips.

MASTER RESPONSE 4: TRIP CAP

This Master Response addresses comments related to the development, implementation and enforcement of the Trip Cap.

During design development of any new building, limitations on occupancy are often placed in order to ensure that the demands of the building and its occupants on the surrounding environment can be reasonably controlled. In the case of the Sun Microsystems Campus development in the 1990s, a cap on the number of employees on the campus at any one time was established at 3,600 employees. One of the primary effects of this employee cap was to limit the amount of traffic that would be generated by the site.

Facebook's operating style and culture support a higher employee density than Sun's operation at its peak occupancy. However, Facebook recognizes that, with the proposed increase in employee occupancy, a mechanism is needed to ensure that traffic and parking demand does not break down the surrounding transportation network. Thus, Facebook developed a self-imposed "vehicle trip cap" to limit the total number of vehicle trips (autos, trucks, buses, etc.) entering and leaving the East Campus during the morning and afternoon peak hours, as well as an overall trip cap for daily trips to and from the East Campus (Trip Cap).

The method used to prepare the Trip Cap was initially developed by Facebook, peer reviewed by a third-party transportation consultant team for Facebook, and accepted for use by City of Menlo Park staff and the environmental consultant team. While Facebook did not originally propose a Trip Cap for the West Campus, the City of Menlo Park included a mitigation measure to impose a Trip Cap for the West Campus as well, following the same methodology as for the East Campus (see TR-6.1 on page 3.5-81 of the Draft EIR). However, the Trip Cap for the West Campus only sets a limit on peak period trips and does not include daily trip cap.

The Trip Cap was developed using data from the operating conditions at Facebook's Palo Alto campuses in 2010. As proposed, the Trip Cap requires Facebook to meet an aggressive 40 percent non-drive alone mode share. This is an ambitious target, which is expected to be obtainable. Few employers outside of the urban core areas are able to achieve such success with TDM programs; thus, it is expected that additional investments in the shuttle, bicycle, and transit programs (and potentially others) would be needed to meet the same mode share targets in Menlo Park that were achieved at the Palo Alto campuses.

Facebook is committed to operating within the Trip Cap and is working cooperatively with the City of Menlo Park to develop a monitoring and enforcement policy and program (included in Appendix 3.5-F of Draft EIR). While the specific details of the program will be developed as part of the CDP Amendment for the Project, several program elements have been developed to provide an idea of how the program will work. Facebook would be responsible for funding the cost of the on-going monitoring, including development, installation, maintenance, and repair of monitoring equipment (see page 2 in Appendix 3.5-F of the Draft EIR). Compliance with the Trip Cap will be monitored by the

City of Menlo Park as lead agency by tracking the number of trips entering and leaving the campuses on weekdays. Each of the two driveways serving the East Campus and three driveways serving the West Campus will be counted daily, and real-time data will be accessible to both City staff and Facebook for tracking and monitoring traffic patterns. Periodic review and calibration of the monitoring equipment will be needed to ensure that the system is counting properly. Monitoring the number of trips entering and leaving the two campuses and requiring compliance with the Trip Cap will be sufficient to ensure Facebook is in compliance with its Conditional Development Permit (CDP).

Several commentors described the need to prepare ongoing TDM program monitoring reports, or conduct monitoring traffic surveys on public streets in adjacent jurisdictions. The Trip Cap monitoring program does not require ongoing TDM program monitoring in order to maximize Facebook's flexibility in most effectively reducing vehicle trips (see Master Response 3 for more information on the TDM program), but does require monitoring of peak period and daily trip numbers. The Trip Cap monitoring program also includes a clause that allows the City of Menlo Park to require Facebook to monitor neighborhood parking intrusion if it is observed or suspected that Facebook employees or visitors are parking off-site to avoid violating the Trip Cap. No traffic volume counts are proposed on public streets within the City of Menlo Park or in adjacent jurisdictions as part of the Trip Cap monitoring program. Monitoring only the five driveway locations reduces the overall cost and resources needed to sustain the program, so that the Trip Cap may be monitored daily instead of through annual or bi-annual surveys.

If the Trip Cap is exceeded, monetary penalties will be assessed. The penalty cost will escalate based on the frequency and/or severity of each violation. The City of Menlo Park is considering a program to use potential penalty fees within the City of East Palo, should violations of the Trip Cap occur.

Consequently, the Trip Cap provides several fail-safe mechanisms to ensure traffic conditions are not exacerbated by the increased density on the campus. As mentioned above, monetary penalties will be assessed for violating any of the trip caps. As Facebook grows, if it fails to meet the Trip Cap, it may not be able to achieve its projected employee densities (headcount) on site. Thus, in order to achieve the projected headcount, operate within the Trip Cap, and avoid progressive penalties, Facebook must continue to operate a successful TDM program to facilitate travel by means other than driving alone. Ultimately, if Facebook has continual violations of the Trip Cap, the City reserves the right to revoke Facebook's CDP.

MASTER RESPONSE 5: BICYCLE AND PEDESTRIAN IMPROVEMENTS

Commentors requested that bicycle and pedestrian improvements be included as mitigation measures or part of the Project within the Draft EIR to improve connectivity, safety, and encourage the use of bicycling to offset vehicle traffic and the resulting noise and air quality impacts that would be created by the Project. However, it should be noted that the Draft EIR determines that impacts to pedestrian and bicycle facilities would be less than significant and would not require mitigation measures. Some of the pedestrian and bicycle improvements suggested by the commentors are part of the Project

Sponsor's proposal. If they are not included as part of the Project, these improvements may be considered as part of the negotiations between the City of Menlo Park and Facebook as community benefits in the Development Agreement. In general, the pedestrian and bicycle-related comments fall into the following categories:

- Bay Trail: Completion of gaps in the existing Bay Trail through East Palo Alto and Menlo Park.
- Pedestrian and Bicycle Facilities: Requested bicycle and pedestrian improvements, including:
 - Bicycle lane striping improvements on University Avenue, Willow Road, and Pulgas Avenue, Bay Road, Newbridge Street;
 - Decreasing the number of vehicle trips generated by the Project by incentivizing and increasing the amount of bicycle trips generated by improving bicycle facilities on the Project site and in the study area; and
 - Creation of bicycle boulevards and bicycle-friendly neighborhoods in Belle Haven.
- Interchange Crossings and Improvements: Striping of bicycle lanes across the US 101 interchanges at University Avenue and Willow Road; support for a proposed US 101 pedestrian/bicycle overcrossing in East Palo Alto (potential alignment at Euclid Avenue or Clarke Avenue).

Further discussion regarding these requested improvements is provided below.

Bay Trail

As described on page 3.2-5 of the Draft EIR, the Bay Trail is a multiuse trail accommodating bicycles and pedestrians and is intended to encircle the entire Bay. The Bay Trail is a vital facility for recreation and commuting needs for area residents. Currently, approximately 300 miles of trail have been completed. The San Francisco Bay Trail Project Gap Analysis Study published in September 2005, identifies existing gaps and discontinuations in the Bay Trail. Near the Project site, three gaps are identified by the study. Gap 2091 is a 1,863-foot gap in Menlo Park along University Avenue between Bayfront Expressway and the railroad tracks, which would most likely be completed with public funding, and is considered a short term project (with a zero to five-year completion date). Gap 2092 is also within Menlo Park and is a railroad alignment between University Avenue and the Ravenswood Open Space Preserve. This segment is 3,025 feet in length, is considered a long-term project (11- to 15-year completion date), and would be completed with public funding. Lastly, Gap 2096 is in East Palo Alto on a Pacific Gas and Electric (PG&E) parcel and is 1,804 feet in length. This segment is a short term project with public fund identified as the source of funding.

In the Draft EIR, the City has required construction of a segment of the Bay Trail, an approximately 1,800 feet section of the existing one-mile gap through East Palo Alto and Menlo Park, as a partial mitigation measure for traffic level of service impacts at the University Avenue/Bayfront Expressway intersection (see page 3.5-56 through 3.5-57). Facebook would be responsible for leading and funding

the planning, design and construction of this segment, working collaboratively with the Cities of Menlo Park and East Palo Alto, as well as Caltrans and the San Francisco Bay Trail Project (a project of the Association of Bay Area Governments [ABAG]).

Bicycle Facilities

The Draft EIR analyzes the existing system and potential impacts to bicycle and pedestrian facilities on pages 3.5-14 through 3.5-16 (Existing Conditions), 3.5-66 through 3.5-67 (2015 Near Term East Campus Only analysis), and 3.5-92 through 3.5-93 (2018 Near Term East and West Campus analysis). As described on these pages, potential impacts to bicycle and pedestrian facilities were evaluated per the Standards of Significance as described on page 3.5-43 of the Draft EIR. The impacts to bicycle and pedestrian facilities were found to be less than significant (see pages 3.5-66 through 3.5-67 and 3.5-92 through 3.5-93). However, there are several bicycle improvements that Facebook has included as part of their Project proposal, which are described in the following paragraphs.

Facebook has made significant on-campus investments to facilitate and encourage bicycling as a commuter mode of transportation. The East Campus and West Campus would include bicycle support programs through provision of secured bicycle parking, bicycle racks, showers and changing rooms, and a bicycle share program. The East Campus central courtyard has been redesigned to incorporate small plazas and public gathering spaces that would encourage bicycle and pedestrian use. New sidewalks and crosswalks to connect the proposed undercrossing with the front door of the East Campus are planned and would serve as an amenity for use by the general public. Additionally, as part of the Project, design features such as access points, pedestrian-scale design and lighting features, and landscaping, would be provided to encourage pedestrian and bicycle travel to and around the Campus.

In addition, Facebook has collaborated with the City and Caltrans to restripe the existing bicycle lanes on Willow Road between US 101 and Bayfront Expressway in the fall of 2011 and spring of 2012. The striping had worn away over time; thus, this needed maintenance refreshed the bicycle lanes and made them more visible to motorists and cyclists on Willow Road.

The existing undercrossing of Bayfront Expressway at Willow Road would be improved to provide a grade separated crossing of Bayfront Expressway for pedestrians and cyclist. Additionally, pathways to connect from the Willow Road frontage (from the existing sidewalk that ends between Hamilton Avenue and the railroad crossing) to the undercrossing and from the undercrossing to the Bay Conservation and Development Commission (BCDC) Shoreline Trail, to link to the Bay Trail, would be constructed. These projects are both identified as Long-Term needs in the City's Bike Plan. When constructed, they would reduce bicycle and pedestrian exposure that exists within the at-grade signalized intersection at Willow Road, improve bicycle and pedestrian safety, and provide improved access and connectivity to the Bay Trail.

Interchange Crossings and Improvements

Commentors requested that bicycle improvements be included as mitigation measures or part of the Project within the Draft EIR to improve connectivity and safety for US 101 overcrossings along Willow Road and University Avenue. However, it should be noted that the Draft EIR determined that impacts to bicycle facilities would be less than significant and would not require mitigation measures. Bicycle lane striping over US 101 along Willow Road and University Avenue are long-range capital improvement program (CIP) projects under the jurisdiction of Caltrans and may be considered by Caltrans at a future date.

Additionally, commentors also suggested a bicycle and pedestrian overcrossing of US 101 at Euclid Avenue/Clarke Avenue in East Palo Alto. The Draft EIR determined that impacts to bicycle and pedestrian facilities would be less than significant and would not require mitigation measures. A bicycle and pedestrian overcrossing of US 101 at Euclid Avenue/Clarke Avenue would be under the jurisdiction of East Palo Alto and Caltrans and may be considered at a future date.

MASTER RESPONSE 6: CITY OF MENLO PARK HOUSING ELEMENT

As noted in the Draft EIR, California law requires a City's General Plan to have an updated Housing Element that provides for a specified number of housing units to meet the City's share of its regional housing needs. As of February 28, 2012, the City Council has revised its "Goals and Deliverables for 2012" to accelerate the priority and timing for updating the Housing Element. To that end, the City has initiated the preparation of an updated Housing Element, which will include associated amendments to the other elements of the General Plan and accompanying zoning changes. Although a specific schedule is still being refined, these deliverables are anticipated to be completed in early 2013, with periodic check-ins with the City Council. In addition to this prioritization, the City has re-allocated \$150,000 of the City's current budget for consultant and legal support for this Housing Element update effort.

The Draft EIR's analysis in Section 3.14, Population and Housing, was not based on information in the City's current Housing Element. As noted in the Draft EIR, the analysis was based on population, employment and housing data published in Projections 2009 by ABAG, and other recent demographic data. The Draft EIR also presents the ABAG Regional Housing Need Allocation (RHNA) for 2007-2014 for the City, San Mateo County, and the Region. This RHNA will be incorporated into the City's Housing Element update. Therefore, the Draft EIR's Population and Housing analysis is legitimately based on up to date and accurate data.

As several commentors have noted, meeting the demand for affordable housing for all different ranges of income levels is a significant socio-economic goal and assuring that such housing could be provided is an important public policy goal for the City. However, as stated in the Draft EIR, the demand for affordable housing generated by the Project does not give rise to physical impacts that are subject to CEQA.

The City recognizes the importance of updating its Housing Element to provide for affordable housing in Menlo Park. To the extent that the Project generates a need for lower income housing in the City, the housing opportunities identified in the updated Housing Element could help meet that demand.

Commentors also have suggested several mitigation measures that might accommodate the asserted housing demand created by the Project. However, neither State Housing Element law nor CEQA provides any mandate that requires new employment generators to provide affordable housing to serve a project. Rather, the City requires developers of new commercial space to pay an in lieu fee to satisfy the City's Below Market Rate (BMR) requirement in order to address the affordable housing demand that may arise from such a project. Although this BMR fee does not apply to the East Campus because there is no new construction, the development of the West Campus will trigger Facebook's contribution of over \$4 million to the City's BMR fund for the production of affordable housing, consistent with the City's then-updated Housing Element.

One commentor claimed that, because the City lacks an updated Housing Element, it should have analyzed the Project's overall 78.9 acres as available land for housing that would be needed to accommodate the City's mandated RHNA share. However, no such analysis is required under CEQA. First, the City has sufficient sites that could be rezoned to accommodate the City's RHNA requirements. Thus, neither the East Campus or West Campus are "needed" to meet the City's housing needs. Second, neither the East Campus or West Campus is even reasonably feasible for residential development. The East Campus is a fully developed campus that would be extremely difficult to convert to residential use. Due to hazardous substances at the West Campus, a land use covenant precludes residential use. Consequently, neither site would be necessary for consideration in the City's housing stock analysis for the updated Housing Element, nor would either site be reasonably feasible for residential use.

MASTER RESPONSE 7: EAST PALO ALTO HOUSING NEEDS ANALYSIS

On December 21, 2011, the City of Menlo Park released a memorandum that addresses the potential housing displacement impacts of the Project on the City of East Palo Alto. The memorandum (referred to in this Master Response as the EPA Analysis)² assembled information to assist in evaluating the potential for the Project to result in displacement of existing residents or exacerbate conditions of overcrowding in EPA. However, this stand-alone memorandum is an informational document provided in response to concerns regarding housing affordability raised by the City of East Palo Alto expressed in the letter they submitted to the City of Menlo Park in response to the NOP prepared for the Project. It is important to note that housing affordability is a socioeconomic issue and is not related to a physical impact on the environment. Per CEQA Guidelines Section 15131, the focus of the EIR is on the physical environmental effects rather than social or economic issues, except where social or economic

² Keyser Marston Associates, Inc, Memo to the City of Menlo Park, "Menlo Park Facebook Campus Project: Evaluation of Potential Impacts to Housing Conditions in East Palo Alto," December 21, 2011, available at: http://www.menlopark.org/departments/pln/facebook/facebook_east-palo-alto-housing_affordability-analysis.pdf.

issues are known to have demonstrable physical impacts. As such, this issue is not addressed in the Draft EIR and will not be reflected in the Final EIR.

Nonetheless, this Master Response addresses concerns raised by agencies and the public during the Draft EIR comment period. This Master Response addresses comments on the EPA Analysis; no changes regarding this subject have been made to the Draft EIR.

The EPA Analysis cites a range of factors that influence how employees in general, not Project-specific employees, select a neighborhood or city to live in. The discussion is contained on page 5, in the third paragraph of the EPA Analysis. This discussion has been expanded to add clarity to the subject and the intentions of the authors, which have been misconstrued. No implication of superiority or inferiority of any one community over another was intended. The EPA Analysis simply intended to show that people seeking housing are influenced by a combination of factors.

As such, page 5, third paragraph, of the EPA Analysis is restated as follows:

East Palo Alto is unlikely to see more than a 5 percent share of the Facebook workforce, in KMA's judgment. While East Palo Alto offers the dual advantages of proximity and relative affordability, it represents only a minor percentage of the housing stock within commuting distance of the Project.

In any metropolitan region such as the Bay Area, numerous individual factors influence how workers, in general, select their neighborhoods or communities in which to live. Social scientists and marketers have been studying the subject for decades. They build models and write books to guide developers and others on how to deliver housing that people want to live in. Following are factors contained in such analyses, usually with the explanation that choices are complex and rarely do single factors in isolation influence choice. No hierarchy is implied by the order on the listing.

- Type of unit – people tend to look for specific kinds of housing – an apartment, a condo, a detached home. These choices are tied to stage of life, as well as affordability and other factors.
- Affordability – cost of housing weighed against resources.
- Commute to work – a notable study found that people are willing to commute for a half hour to 45 minutes, but obviously this varies by metropolitan area and options. In most households, more than one household member works, so a residential location may be a compromise to make commuting in multiple directions acceptable.
- Accessibility to recreational resources – this can be general like proximity to parks and playgrounds, or specific to certain recreational interests, ranging from jogging trails, to golf, to just about any recreational pursuit.

- Quality of schools – either indicated by specific measures or purely perception. Obviously, this is a factor of concern mostly to those with children or seeking housing with future children in mind.
- Accessibility to culture and entertainment – for some people this means access to the metropolitan center and for others the local library and cineplex might be satisfying.
- Public safety – like schools either based on hard data or simply on perceptions and reputation which may not be supported by hard data.
- Air quality – a commonly cited factor in the Los Angeles basin but far less so in the Bay Area.
- Weather – microclimates in the Bay Area dictate communities of choice for many. People tend to either hate the cool fog near the ocean or love it.

In summary, many factors influence how people select a neighborhood or community in which to live. Proximity to place of work may be highly influential, but other factors often prove ultimately more compelling. Taking the many factors into account, combined with the past experience with respect to Facebook workers' choice of residential location, KMA has projected the share of Project worker households that will seek housing in East Palo Alto at modest levels.

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