



July 11, 2016

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Via electronic mail

RE: Facebook Campus Expansion Project Draft EIR, State Clearinghouse No. 2015062056

Dear Mr. Perata:

Public Advocates and the ACLU of Northern California submit these comments on the Facebook Campus Expansion Draft Environmental Impact Report. We are joined in these comments by the Envision Transform Build East Palo Alto Coalition, Youth United for Community Action, El Comite de Vecinos del lado Oeste East Palo Alto, Faith in Action Bay Area, Urban Habitat, and Community Legal Services in East Palo Alto.

This deeply flawed document fails to comply with the California Environmental Quality Act's basic mandate to provide complete and accurate information about the foreseeable environmental impacts of the project and to consider and adopt mitigation measures to avoid or reduce these impacts.¹

This massive Project would add 6,550 new employees at the project-site by 2018, increasing the Menlo Park workforce by more than 20 percent,² exceeding 2020 job growth projections by 296 percent,³ and outstripping the total number of jobs the entire city is projected to add by 2040.⁴ Meanwhile, Menlo Park already suffers from an extreme affordable housing shortage that forces well over 90 percent of the city's existing workforce to commute in from outside the city.⁵ This pattern

¹ The DEIR must contain sufficient information to inform "public agency decision-makers and the public generally of the significant environmental effect of a project." Cal. Code of Regs. tit. 14, §15121(a); *Ass'n of Irrigated Residents v. County of Madera*, 107 Cal. App. 4th 1383, 1390 (2003). 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 required by CEQA. *Napa Citizens for Honesty Gov't v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 355-56 (2001).

² The City has 31,920 employees as of 2015. DEIR at 3.12-6.

³ DEIR at 3.12-9.

⁴ See Menlo Park General Plan Housing Element 2014, p. 68.

⁵ See Menlo Park General Plan Housing Element 2014, p. 67; see also US Census Longitudinal Employee Household Dynamics Dataset 2014; Housing element at 66 ("[T]here are close to twice as many jobs in Menlo Park as employed residents but, regardless, the share is low compared to most other cities in the Bay Area and is attributable to a range of factors such as affordability and availability of housing that limits the ability to find housing within the City.").

of inadequate affordable housing and long commutes has recognized environmental impacts, including traffic and greenhouse gas emissions.⁶

Given employment growth of this magnitude, the DEIR's conclusions that the project would not result in substantial induced population growth⁷ or a significant increase in housing demand⁸ are implausible, lack substantial evidence, and are clearly legally flawed. Moreover, the DEIR wholly fails to consider the indirect and induced jobs that will result from the project, which means that the job-growth analyzed in the document is far lower than what will foreseeably result from the project. The DEIR also omits any analysis of the displacement impacts that the project is likely to cause as demand from highly paid Facebook employees drives up housing costs in the neighboring Belle Haven neighborhood and in East Palo Alto, thereby forcing low-income residents to move far away and increase their auto usage and relating environmental impacts.

*The DEIR's methodology for evaluating growth-inducing impacts would render CEQA's mandate to study such impacts meaningless, as there is almost no imaginable project for which it would yield a finding of significant impacts.*⁹ Through legally impermissible sleights of hand, such as dividing substantial growth inducing impacts into dozens of pieces and then wishing them away, cherry-picking growth projection data, and failing to address impacts outside the city's geographic boundaries, the DEIR obscures substantial environmental impacts in numerous areas, including transportation, air quality, and climate change.

In addition, the DEIR suffers from multiple other legal deficiencies discussed in this letter, as well as in comments submitted by the Envision Transform Build East Palo Alto Coalition, Professors Chris Benner and Alex Karner, and other parties, including the failure to evaluate the project against existing zoning and planning standards, the failure to evaluate a reasonable range of alternatives, and the failure to consider and implement mitigation measures to address identified significant environmental impacts.

Given the fundamental nature of the DEIR's flaws and the massive scale of this project and its foreseeable environmental impacts, we request that the DEIR be revised and recirculated in order to provide members of the public and decision makers with the accurate and transparent analysis to which they are entitled under CEQA.

1. The DEIR Fails to Consider the Thousands of Indirect and Induced Low-Wage Jobs that will Foreseeably Result from the Project

Properly assessing the employment growth that will result from the project is a bedrock issue on

⁶ See Housing Element at 81 ("There are a number of consequences of the lack of affordable housing in Menlo Park and Silicon Valley. People who work in the community are forced to commute long distances. . . . And the long commutes clog our highways and contribute to climate change.").

⁷ DEIR at 3.12-9.

⁸ DEIR at ES-68, 3.12-11.

⁹ See Cal. Code of Regs., tit. 14, §15126.2(d) (An Environmental Impact Report must study "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.").

which numerous other aspects of the DEIR rests, including an assessment of growth inducing impacts, traffic, air quality, and greenhouse gas emissions. Yet the DEIR dramatically under-states the number of jobs that will result from the project by completely failing to consider the indirect and induced job growth that it will cause.

Environmental Impact Reports must consider all impacts of a project, including “[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁰

The DEIR fails to comply with this standard with regard to job growth, explicitly limiting its analysis to “[o]nly direct employees within the Project.”¹¹ The DEIR omits any analysis of indirect and induced jobs, even though the DEIR itself concludes doing so will “result in an understatement of total and lower-end housing demand.”¹² Indeed, the DEIR gives examples of how this dynamic works: “the cafeteria will make purchases from food wholesalers, the hotel will purchase a variety of supplies, and Facebook will expand the transportation services for its growing workforce, all generating additional employment.”¹³

The Bay Area Council Economic Institute recently quantified this multiplier effect, finding that “*the creation of one job in the high-tech sector of a region is associated with the creation of 4.3 additional jobs in the local goods and services economy.*”¹⁴

Given the massive scale of new *direct* high-wage job growth, the reasonably foreseeable and indirect job growth that will be created by the project and that is *wholly ignored by the DEIR* is likely to be substantial. The DEIR states that the project would generate 6,550 new jobs at full buildout, consisting of 6,400 employees in Facebook Offices and 150 employees at the hotel.¹⁵ *Based on the Bay Area Council Economic Institute’s findings, this means that more than 25,000 additional indirect and induced jobs will foreseeably result from the project.* The DEIR offers no reasoning or evidence to support the decision to exclude these jobs from its analysis.

This incomplete housing analysis renders inadequate the DEIR’s analysis of growth inducing impacts, housing, transportation, air quality, greenhouse gas emissions, and other environmental impacts.

¹⁰ Cal. Code Regs. tit. 14, § 15358(a)(2).

¹¹ See Keyser Marston Associates, Housing Needs Analysis (“HNA”), Appendix 3.12 at 39.

¹² See HNA at 39.

¹³ HNA at 37.

¹⁴ Technology Works: Hi-Tech Employment and Wages in the United States, 2012, p. 5 (emphasis added), *available at* <http://documents.bayareacouncil.org/TechReport.pdf>, and attached as Exhibit 1.

¹⁵ HNA at 10.

2. The DEIR Erroneously Assumes that Exceeding the Anticipated Employment Growth by 296% Will Not Have a Growth-Inducing Impact

Even using the DEIR's under-estimate of 6,550 new jobs, the project would result in "296 percent of anticipated employment growth in the city's sphere of influence from 2015 to 2020."¹⁶ According to ABAG 2013 projections, incorporated into the city's General Plan Housing Element, Menlo Park hosts 31,920 jobs as of 2015 and is projected to host 34,130 as of 2020, and 36,150 by 2035.¹⁷ Thus, the project would add substantially more jobs by 2018 than are currently projected for the entire city by 2035. The project's 6,550 new jobs would amount to a 20% increase in the number of current jobs in the city. It is facially implausible to conclude that adding an army of new employees amounting to one-fifth of the existing workforce would have no growth-inducing impact. Yet the DEIR attempts to do just this.

Analysis of the jobs-housing ratio is instructive. According to ABAG data, the jobs-housing ratio in the city is 2.20 in 2015 and will be 2.30 in 2020.¹⁸ In other words, under *existing* projections—including the employment projections that the project is anticipated to exceed by 296 percent—the job-housing ratio is already slated to worsen between 2015 and 2020. The DEIR acknowledges as much. "According to ABAG's projections, *which do not include Facebook's expected growth*, the jobs/housing ratio is anticipated to worsen in 2020."¹⁹ The severe existing housing shortage pervades the Silicon Valley: "[t]he data suggests a shortage of nearly 25,000 units in Silicon Valley (Santa Clara and San Mateo Counties) since 2007."²⁰

Moreover, the housing shortage for lower-income workers is even more acute, as described in the comments of Drs. Benner and Karner and their research on Jobs-Housing Fit. For the 2007-2014 period, for example, Menlo Park produced less than 20 percent of its share of the Bay Area's Regional Housing Need for lower-income households.²¹ San Mateo County as a whole did only slightly better, producing less than 22 percent of its lower income housing need.²² This has created an extreme existing deficit in housing that would be affordable to lower-income workers both at the project site and in the induced jobs it will create, further exacerbating the strain that these additional workers will place on the housing market.

There is no dispute that no existing local or regional plan considered the environmental impacts of adding more than 6,550 new jobs to Menlo Park by 2018. The ABAG housing growth figures that

¹⁶ DEIR at 3.12-9.

¹⁷ Menlo Park General Plan Housing Element at 68.

¹⁸ DEIR at 3.1-4.

¹⁹ *Id.* at 3.1-4.

²⁰ 2016 Silicon Valley Index 2016, p. 58, available at <http://www.jointventure.org/images/stories/pdf/index2016.pdf>, attached as Exhibit 2.

²¹ Association of Bay Area Governments, San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA) (2015), p. 5, available at http://www.abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf, attached as Exhibit 3.

²² *Id.*

the DEIR relies on are based on job growth projections that the project will admittedly exceed by 296 percent: “The job growth forecast determines the population and number of households, as well as household income levels.”²³ The assumption that project-induced housing need resulting from a dramatic increase in Menlo Park’s projected job growth can be accommodated within projected housing growth for the region fails, because all available housing growth is already required to accommodate the previously-projected employment growth. Given the existing lack of available housing, particularly affordable housing, to meet projections that do *not* include the massive expansion of Facebook’s campus, the DEIR’s assertion that the housing needs of the project’s workforce can be absorbed by currently anticipated growth is clearly erroneous.

Because the project will add thousands upon thousands of new jobs that have not been previously accounted for in any plans or growth projections, it will necessarily drive housing demand and induce growth that has not been accounted for and that will necessitate the construction of additional housing to accommodate.

For these and other reasons, the DEIR lacks a legal or factual basis for concluding that the project would not directly induce substantial population growth.

3. The DEIR Attempts to Hide Enormous Growth Inducing Impacts through an Impermissible “Divide and Conquer” Approach

While we discuss below many flaws in the DEIR’s treatment of growth inducing impacts and increased housing demand, we note at the outset that there is a fundamental structural flaw that pervades the DEIR’s entire analysis of these issues. 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 attempts to minimize the impacts of this housing demand 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 adding an unplanned increase of many thousands of workers to Menlo Park’s workforce.

While the DEIR understates the housing demand that will be created by the project, as discussed throughout this letter and in the comments of Drs. Benner and Karner, it nonetheless admits that the project would create a demand for 3,638 new housing units.²⁴ This is an enormous number of homes that will be required to meet the demand generated by a single project in a two-year period. For example, it is equivalent to 45 percent of the housing growth in the entire county of San Mateo between 2007 and 2014.²⁵

²³ Plan Bay Area 2013, Final Forecast of Jobs, Population and Housing, p. 2, available at http://planbayarea.org/pdf/final_supplemental_reports/FINAL_PBA_Forecast_of_Jobs_Population_and_Housing.pdf, attached as Exhibit 4.

²⁴ DEIR at 3.12-11.

²⁵ See ABAG RHNA Progress Report, p. 5.

The DEIR attempts to hide the enormity of this induced housing demand by dividing it into dozens of smaller chunks, and then concluding that each chunk is of insignificant size.²⁶ Planning to export the project's induced housing need to many other cities and counties does not eliminate those impacts, however. As the California Supreme Court has held "no statute (in CEQA or elsewhere) imposes any per se geographical limit on otherwise appropriate CEQA evaluation of a project's environmental impacts."²⁷

This divide and conquer approach to evaluating the significance of the project's growth inducing and housing impacts would render analysis of these impacts meaningless for almost any imaginable project. The relevant required CEQA analysis is of the significance of the aggregate induced growth a project will generate, not of a number of artificially divided smaller portions of that growth. Total impact may still be significant even if distributed across a large geography.

4. The DEIR's Conclusion that Project-Induced Housing Demand in Menlo Park Would be Less than Significant is Without Substantial Evidence and Contrary to Law

The DEIR concludes that the project's impact on housing demand is less than significant.²⁸ The assumption that demand for a mere 175 housing units in the city would result from the project and that this demand could be accommodated within existing and planned housing rests on multiple assumptions that are not supported by substantial evidence.

First, it is based on the aforementioned estimate of 6,550 jobs, which ignores indirect job growth created by the project.

Second, the DEIR's conclusion about housing demand erroneously assumes that only 4.8 percent of new employees will want to live in the City of Menlo Park.²⁹ The 4.8 percent figure is substantially driven by the assumption that *existing* Facebook housing patterns are an appropriate indicator of future Facebook housing trends.³⁰ The low rate of Menlo Park employees who live in the city, however, is attributable to the lack of adequate or affordable housing stock.³¹ Relying on the poor track record of Menlo Park in permitting housing development, which has artificially limited the ability of workers to find affordable housing, is not a valid measure of induced *demand* for housing that will result from the project.³² Moreover, Facebook has promoted various policies to encourage

²⁶ See HNA at 34-35.

²⁷ See *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* 41 Cal. 4th 372, 387 (2007) ("no California locality is immune from the legal and practical necessity to expand housing due to increasing population pressures.").

²⁸ DEIR at 3.12-11.

²⁹ Cf. DEIR at 3.12-10.

³⁰ According to the DEIR, 4.6% of existing Facebook employees live in Menlo Park, and 7.6% of the city's overall workforce lives locally. The 4.8% figure was derived from a "weighted" average that assumes that 4.6% of the project's new 6,400 Facebook employees would live in the city, while 7.6% of the hotel employees would live locally. DEIR at 3.12-10 fn. 18.

³¹ DEIR at 3.12-7.

³² Association of Bay Area Governments, San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA) (2015), p. 5, available at http://www.abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf, attached as Exhibit 3.

employees to live locally.³³ The figure thus ignores initiatives by the company that are intended to, and likely will result in, more employees choosing to live in Menlo Park and nearby cities, such as East Palo Alto.

Third, the DEIR assumes that 1.8 new project employees would live in each household.³⁴ But the DEIR cites no evidence to support the reasonableness of the assumption that a significant number of new project employees would choose to have a co-worker as a roommate. Indeed, if households with two Facebook worker households are assumed, *90 percent* of the new employees would need to choose another new employee as a roommate. The 1.8 figure derives from Census bureau data about the total number of workers in each household in San Mateo County where at least one person is employed. Those households have on average 1.8 workers.³⁵ In other words, the 1.8 figure reflects the number of working people in households where at least one person works. It does not reflect the number of people in such households who work for *the same employer*. Nor does it reflect the number of Facebook employees in the average Facebook household. For other portions of its analysis, the DEIR relies on Facebook-specific housing data (in particular, the percentage of Facebook employees who live in Menlo Park). To be methodologically consistent, the DEIR should ascertain the average number of Facebook employees in the average Facebook household. The DEIR cannot selectively rely on Facebook-specific data to underestimate the impacts of the project.

Fourth, the DEIR assumes the demand for 175 housing units in Menlo Park can be accommodated by vacant units or within anticipated new housing construction.³⁶ This analysis is unsupportable. The DEIR offers no evidence to support its assumption that the current 738 vacant units in the city would be enough to accommodate the project-created demand for 175 housing units. Menlo Park's vacancy rates do not represent an available supply of un-occupied housing, but rather an extraordinarily tight housing market that has no capacity to absorb additional residents. According to the city's 2014 Housing Element, "Vacancy rates in Menlo Park are low. Approximately 4.0 percent of rental units were vacant in 2011, which is considered a tight market based on routine turnover of apartments."³⁷

Also, it is unreasonable to assume the needed 175 housing units in the city can be accommodated within anticipated housing construction. Because the 175 housing units would devour *half* of all the new housing projected to be built in the city over the next five years, project-induced housing demand has a significant impact on local housing.³⁸ And as discussed above, Menlo Park has consistently failed to actually produce housing to meet the needs identified in its Housing Element.

³³ See, e.g., Reuters, Facebook pays employees \$10,000 bonus to live near office (December 17, 2015), available at <http://nypost.com/2015/12/17/facebook-pays-employees-10000-bonus-to-live-near-office/>.

³⁴ See DEIR at 3.12-10 & 3.12-11 n. 32 (6,550 / 1.8 persons per household = 3,638 units).

³⁵ See HNA at 15.

³⁶ See DEIR at 3.12-11.

³⁷ Housing Element at 76.

³⁸ The DEIR acknowledges that project-induced housing demand would amount to "46 percent of housing growth in the city." DEIR at 3.12-12 (emphasis added).

The DEIR's analysis also ignores the fact that that projected housing growth is already fully subscribed based on jobs projections that the project would far exceed.³⁹

In *Defend the Bay v. City of Irvine*, 119 Cal. App. 4th 1261 (2004), the court of appeal addressed an EIR that analyzed a project that would “create more jobs than housing units.”⁴⁰ The petitioner argued that the project's jobs-housing ratio of 1.44 was adverse, in light of the city's already strained ratio of 3.29.⁴¹ The court concluded that the EIR supported the conclusion that the impact was not adverse because under the project, “[n]eeded housing will be added, the city-wide imbalance of more jobs than housing will be ameliorated” (the court reasoned that the project's job-housing ratio of 1.44 would “bring down” the city's ratio of 3.29), “and the shortfall in housing within the city will be made up by plentiful housing in adjacent communities.” *Id.* Here, the project would exceed employment projections by 296 percent. But unlike the project in *Defend the Bay*, “[n]eeded housing” will *not* be added, “the city-wide imbalance of more jobs than housing will be” dramatically *exacerbated* (the project's job housing ratio is actually infinity given that the project will add *zero* housing units), and surrounding communities, like Menlo Park, lack “plentiful housing.”⁴² The project-induced housing demand will simply exacerbate the city's housing shortfall and affordable housing crisis.

In short, the DEIR rests on a number of factually and legally unsupported assumptions to conclude that the project's impact on housing in Menlo Park would be less than significant. It simply defies common sense to conclude that a project that (1) would exceed projected employment growth by 296 percent, (2) in a community where the jobs-housing ratio is already slated to worsen, (3) that already suffers from an affordable housing crisis, and (4) would consume half of all new projected housing units could somehow have an impact on the city's housing that is “less than significant.”

5. The DEIR Fails to Address the Direct and Indirect Impacts of Project-Induced Demand for Housing Outside Menlo Park

The DEIR's cursory discussion of housing impacts outside the city is inadequate.

In *Napa Citizens for Honesty Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342 (2001), the court addressed a project involving development of an unincorporated area surrounding an airport. The FSEIR “found that the Project would create a need and opportunity for employment” and “would result in a need for additional housing units outside the Project area.” *Id.* at 370. But the FSEIR “simply declined to consider the possible effects the Project might have on surrounding

³⁹ As the DEIR acknowledges, project-induced employment exceeds ABAG's projections for employment growth in the city by 296 percent. *See* DEIR at 3-12.9. The DEIR further acknowledges that even under ABAG projections, the jobs-housing ratio in the City is projected to worsen between 2015 and 2020. *See id.* at 3.12-11.

⁴⁰ *Defend the Bay*, 119 Cal. App. 4th at 1266.

⁴¹ *Id.*

⁴² *Id.*

communities.”⁴³ The court found this discussion inadequate.⁴⁴ It explained that “in order to fulfill its purpose as an informational document, the FSEIR should at a minimum,” do the following:

- (1) “identify the number and type of housing units that persons working within the Project area can be anticipated to require”;
- (2) “identify the probable location of those units”;
- (3) “consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in population”; and
- (4) “If it is concluded that the communities lack sufficient units and/or services, the FSEIR should identify that fact and explain that action will need to be taken to provide those units or services, or both.”⁴⁵

Although the DEIR here offers a token discussion of the indirect impacts of the project outside Menlo Park, that discussion is wholly inadequate and does not satisfy the requirements of *Napa Citizens*. The DEIR estimates that the project would generate demand for a total of 3,638 units in the region. It estimates that 4.8 percent of employees would seek to live in the city and that “[t]he remaining employees would very likely find housing throughout the region, with the majority living in San Mateo, Santa Clara, and San Francisco Counties.”⁴⁶ It then states that the number of households in the Bay Area region and San Mateo County will grow from 2015 to 2020, and that the project-induced housing demand is less than significant because it would make up only 3.1 percent of projected growth in the Bay Area and 8.3 percent of growth in San Mateo.⁴⁷

This discussion offers no factual support for the assertion that new employees would “very likely found housing” in San Mateo, Santa Clara, and San Francisco. These are all communities with a major overall housing shortage and a lack of *affordable* housing in particular. The leading report on Silicon Valley demographics concluded in 2016 that there is already a dramatic shortfall of housing stock to meet existing needs: “[t]he data suggests a shortage of nearly 25,000 units in Silicon Valley (Santa Clara and San Mateo Counties) since 2007.”⁴⁸ Moreover, just 25 percent of the projected housing need for very-low, low, and moderate income households was produced from 2007-14 and 39 percent of renters are “rent burdened,” spending more than 35 percent of income on rent.⁴⁹ The DEIR fails to address by income-category the type of housing that the new employees who are unable to find housing in Menlo Park will need, or explain how these new employees will be able to

⁴³ *Napa Citizens*, 91 Cal. App. 4th at 370.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See DEIR at 3.12-11.

⁴⁷ See *id.*

⁴⁸ 2016 Silicon Valley Index, p. 58.

⁴⁹ See *id.* at 60, 66.

find housing in the region at all, let alone affordable housing.⁵⁰ Even setting aside affordability considerations, the project will clearly exacerbate the already bad jobs-housing ratios in these jurisdictions.⁵¹

6. The DEIR Fails to Study the Environmental and Health Impacts of Economic Displacement Caused by The Project

The DEIR provides a wholly inadequate analysis of displacement, concluding simplistically that because there are currently no residents in the project area, no displacement will occur. In fact, displacement in the surrounding neighborhood is likely to occur as thousands of new workers, many of whom will be both highly compensated and receive additional financial incentives to live near the Facebook Campus, flood the already-tight housing market in neighboring Belle Haven and East Palo Alto. A recent UC Berkeley Study concluded that both East Palo Alto and Menlo Park have neighborhoods undergoing displacement,⁵² and additional high-wage job growth nearby is likely to accelerate this trend. This displacement will have environmental impacts⁵³ and health impacts⁵⁴ that are completely absent from the DEIR's analysis.

CEQA requires analysis of direct and indirect impacts, including impacts resulting from social and economic consequences of the project.⁵⁵ The DEIR must therefore evaluate the physical, environmental, and health consequences associated with economic displacement. For example, among other steps, the DEIR should model displacement and identify likely trends in displacement,

⁵⁰ See *Napa Citizens*, 91 Cal. App. 4th at 370.

⁵¹ Cf. *Defend the Bay*, 119 Cal. App. 4th at 1266.

⁵² See The Urban Displacement Project, available at www.urbandisplacement.org. Census tract data compiled by the Project demonstrates that two census tracts in East Palo Alto are at risk of gentrification or displacement; two in Menlo Park are at risk of gentrification or displacement; three are currently undergoing displacement and one is classified as advanced exclusion. See http://www.urbandisplacement.org/sites/default/files/images/ci_rews_data_2015-08-21.xlsx (excerpts attached as Exhibit 8).

⁵³ See TransForm and California Housing Partnership Corporation (CHPC), *Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy* (2014), available at <http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>, attached as Exhibit 5.

⁵⁴ See City and County of San Francisco Department of Public Health, *The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice* (May 2004), available at http://www.sustainablecommunitiesindex.org/etc/004_HIAR-May2004.pdf, at 5-11 (noting that “[r]esidential displacement or the permanent loss of area affordable housing can be expected to lead to diverse health effects,” including increased psychological and physiological stress, poverty, job loss, overcrowding, homelessness, segregation, and demand for transportation systems and social services, as well as decreased housing safety, indoor air quality, social support, and social cohesion), attached as Exhibit 6; Shireen Malekafzali and Danielle Bergstrom, *Healthy Corridor for All: A Community Health Impact Assessment of Transit Oriented Development Policy in St. Paul, Minnesota*, Technical Report, PolicyLink (2011), available at http://www.pewtrusts.org/~media/Assets/0001/HealthyCorridorTechnicalReport_FINAL.pdf?la=en, at 61 (“Displacement can have several negative health outcomes, including increases in infectious disease, chronic disease, stress, and impeded child development...”), attached as Exhibit 7.

⁵⁵ Cal. Code of Regs. tit. 14, §15064(e); see *El Dorado Union High Sch. Dist. v. City of Placerville*, 144 Cal. App. 3d 123, 132 (1983) (social effects of increased student enrollment and potential for overcrowding could lead to construction of new facilities and were thus relevant under CEQA; see also *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1215 (2004) (EIR improperly dismissed possibility that large shopping center could drive other retailers out of business as an economic effect when urban decay and other blight-like conditions could result).

including areas likely to face pressure, number of households affected, the communities expected to absorb these households, and the location and quantity of resulting demand for additional housing construction.

Moreover, to analyze the impacts of displacement only on the project area, as the DEIR does here, is unlawful, inconsistent and illogical. CEQA requires that “[t]he EIR shall ... analyze any significant environmental effects the project might cause by bringing development and people into the *area affected*.”⁵⁶ Specifically, an EIR must “[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.”⁵⁷

Clearly, a project of this scale would have impacts on the surrounding area, especially given the vulnerability of surrounding low-income tenants who are clinging to homes in two of the last neighborhoods in Silicon Valley in which lower-income households are able to find housing. A foreseeable impact of the project is that market pressures will lead to displacement and an ongoing shortage of homes affordable to low-income households in the adjacent communities. This will force lower-income residents to move to far-flung areas where housing is more affordable, potentially requiring the building of new housing, and almost certainly resulting in an increase in auto trips and vehicle miles traveled (VMT) as displaced residents drive to work, school, worship, social services and other necessities of life, thus inducing “changes ... in population distribution.”⁵⁸

By ignoring displacement, the DEIR omits an important analysis of environmental impacts. Replacement of low-income residents who are high-propensity riders with higher-income residents who are not may increase GHG emissions, VMT, traffic, and air pollution.⁵⁹ CEQA requires that these impacts be fully analyzed and mitigated.

7. The DEIR Incorrectly Bases its Conclusion that Cumulative Project-Induced Growth will be Less than Significant on Population Projections that Fail to Take Into Account Jobs Associated with the Project

The DEIR concludes that the project would have less than significant cumulative impacts on the city’s population. The DEIR estimates that the project would add 457 new residents to the city, and that in addition to other projects, would result in cumulative growth of 2,320 residents by 2040.⁶⁰ The DEIR then states that this would result in a population of 51,929 by 2040. Significantly, the DEIR acknowledges that “[t]his would be above ABAG’s projections of 43,200 by 2040, resulting in a potentially significant cumulative impact.”⁶¹ But the report then focuses on the project’s contributions to the population: “However, the 457 new residents resulting from the project would represent 2.4 percent of the total population growth projected for the city between 2015 and 2040.

⁵⁶ Cal. Code of Regs. tit. 14, §15126.2(a) (emphasis added).

⁵⁷ Cal. Code of Regs. tit. 14, §15126.2(d).

⁵⁸ See Cal. Code of Regs. tit. 14, §15126.2.

⁵⁹ See TransForm and CHPC Study.

⁶⁰ See DEIR at 3.12-14.

⁶¹ See *id.*

This percentage is not considered to be a cumulatively considerable contribution to this impact. Impacts are *less than significant*.⁶²

First, this purported discussion of the project's *cumulative* impacts focuses on the *project's* impacts in isolation from cumulative development. After acknowledging that the cumulative impact of the project is potentially significant, the DEIR then states that the impact is less than significant by focusing solely on the project's impacts. In other words, the DEIR concludes that the project's cumulative impact on the city's population are less than significant by ignoring its cumulative impact.

Second, without any effort at justification, the DEIR uses the 2015 to 2040 horizon, rather than the 2015 to 2020 horizon used elsewhere in the chapter on population and housing. Because the population will obviously increase by a greater number of residents in a 25-year than a 5-year period, this sleight of hand dilutes the impact of project-induced population growth. The 2015 to 2040 horizon is also illogical because full buildout and occupancy will occur in 2018.⁶³ Comparing the DEIR's estimate of project-induced population growth (457 residents) to projected growth from 2015-2020 (1,000 residents, *see* DEIR at 3.12-4, Table 3.12-2), the project will amount to 46 percent of anticipated growth. A project that would amount to almost half of the city's total projected growth is significant.

8. The DEIR Incorrectly Concludes that the Cumulative Impact on Housing Demand in the City is Less than Significant

The DEIR incorrectly concludes that the project's cumulative impacts on housing demand in the city is less than significant. The DEIR estimates that cumulative projects would lead to a demand for 714 new housing units. Coupled with the DEIR's estimate of 175 new project units, there would be cumulative housing demand for 889 additional units. The DEIR then states that "the additional residential development anticipated by ConnectMenlo ... could accommodate the demand for housing units from the cumulative employment-generating projects" and thus "would not result in an increase in housing demand beyond current development projects."⁶⁴ The DEIR thus concludes that the project's cumulative impacts are less than significant.⁶⁵ This analysis repeats many of the legal and methodological flaws discussed above.

First, the DEIR concludes that the cumulative housing impacts are not significant because they can be accommodated within the proposed additional housing in ConnectMenlo. But ConnectMenlo is the city's proposed general plan that has not yet been adopted.⁶⁶ "[A]n EIR predicated on a draft general plan is fundamentally flawed and cannot pass CEQA muster."⁶⁷ "By proceeding without the

⁶² *See id.*

⁶³ *See* DEIR at 3.12-10.

⁶⁴ *See* DEIR at 3.12-14.

⁶⁵ *See id.*

⁶⁶ *See* DEIR at 3.1-10.

⁶⁷ *County of Amador v. El Dorado County Water Agency*, 76 Cal. App. 4th 931, 951 (1999).

benefit of the general plan in place, and by developing projects predicated on needs described in an unadopted plan, the CEQA process is stood on its head.”⁶⁸

Second, elsewhere the DEIR compares project-induced growth to ABAG projections.⁶⁹ Methodological consistency would require comparing the cumulative housing impacts to ABAG projections, which anticipate 380 new housing units in Menlo Park between 2015 and 2020. The cumulative housing demand for 889 additional dwellings represents *234 percent of the ABAG-projected increase in housing units*. This is clearly a very significant cumulative impact.

Third, the project-induced housing demand (175 units) amounts to 19 percent of cumulative housing demand (889 units). The DEIR’s discussion of the *population* growth cumulative impacts focuses on the project’s share of cumulative growth.⁷⁰ Applying a similar analysis to housing, project-induced housing demand amounts to *one-fifth of cumulative housing demand from 2015 to 2020*. This is a significant contribution to the cumulative housing impact of new development in the city.

9. The DEIR Entirely Fails to Address the Cumulative Impacts of Project-Induced Demand for Housing Outside Menlo Park

The DEIR then discusses the cumulative impacts on population and housing, and concludes that neither would be significant.⁷¹ But the DEIR expressly confines its cumulative impacts analysis to the City of Menlo Park. The DEIR entirely fails to identify the cumulative impacts on housing *outside the City of Menlo Park*.⁷² Even if the DEIR correctly assumes that only 4.8 percent of new project employees would live within the city’s geographic boundaries, the DEIR fails to identify in its cumulative impacts analysis *95.2 percent of project-induced housing demand*.

The DEIR “is mistaken in its suggestion that agencies have no obligation under CEQA to consider geographically distant environmental impacts of their activities.”⁷³ “[T]he area that will be affected by a proposed project[] may be greater than the area encompassed by the project itself. ...Indeed, ‘the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area.’”⁷⁴ Like the FSEIR in *Napa Citizens*, the DEIR’s discussion of cumulative impacts is inadequate because it “simply declined to consider the possible effects the project might have on surrounding communities.”⁷⁵

⁶⁸ *Id.* at 950.

⁶⁹ *See, e.g.*, DEIR at 3.12-12 (“the Project’s demand for housing would not be a significant share of the total housing growth *projected by ABAG*”) (emphasis added).

⁷⁰ *See* DEIR at 3.12-14 (calculating new project residents as a percentage of total projected population growth).

⁷¹ *See* DEIR at 3.12-13-14.

⁷² *Cf.* DEIR 3.12-13 (“The city represents the geographic context for cumulative analysis of the Project.”).

⁷³ *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm’n*, 41 Cal. 4th 372, 387-88 (2007).

⁷⁴ *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 173-74 (2011) (citations omitted).

⁷⁵ *Napa Citizens*, 91 Cal. App. 4th at 370.

10. The DEIR's Fails to Analyze the Projects Impacts Relative to Existing Land Use Plans and Zoning

Aspects of a project that “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect” are likely to have significant environmental impact, and must be evaluated against these existing plans.⁷⁶ This analysis must be performed in light of existing plans at the time the Notice of Preparation was published.⁷⁷ Courts have explicitly considered this issue and concluded that “an EIR predicated on a draft general plan is fundamentally flawed and cannot pass CEQA muster.”⁷⁸ This is so because 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.”⁷⁹ “By proceeding without the benefit of the general plan in place, and by developing projects predicated on needs described in an unadopted plan, the CEQA process is stood on its head.”⁸⁰

Here the DEIR fails to meet this legal standard because it admittedly evaluates the project against proposed general plan amendments that have not yet been subject to full environmental review, let alone been adopted by the city. The DEIR, however, “considers the draft goals and policies of ConnectMenlo, *even though they are not yet adopted.*”⁸¹ Based on this improper analysis, the DEIR concludes that a number of features of the project will have no significant impact, including more than doubling existing height limits and deviating from currently allowable uses.⁸² By doing so, the DEIR avoids any analysis of the potential environmental impacts of the ways in which the project deviates from the existing general plan, potential alternatives, or appropriate mitigation measures.

The DEIR also declines to study the environmental impacts of the project’s inconsistencies with Plan Bay Area, a land use plan adopted for the purpose of avoiding or mitigating greenhouse gas emissions in the region. Plan Bay Area, prepared under the authority and requirements of Senate Bill 375 (2008), establishes job and housing growth patterns that are essential to the achievement of regional and state greenhouse gas reduction targets set by Assembly Bill 32 (2006). In order to meet these targets, Plan Bay Area depends on a pattern of focused housing and employment growth: “almost 40 percent of the jobs added from 2010 to 2040 will be in the region’s three largest cities — San Jose, San Francisco and Oakland — which accounted for about one-third of the region’s jobs in

⁷⁶ CEQA Guidelines Appendix G.

⁷⁷ See Cal. Code of Regs., tit. 14, §15125(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....”).

⁷⁸ *County of Amador v. El Dorado County Water Agency*, 76 Cal. App. 4th 931, 951 (1999).

⁷⁹ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 321 (citation omitted).

⁸⁰ *County of Amador*, 76 Cal. App. 4th at 950.

⁸¹ DEIR at 3.1-10 (emphasis added).

⁸² See DEIR at 3.1-11 to 12.

2010. Two-thirds of the overall job growth is anticipated to be in PDAs throughout the region.”⁸³ The project would both substantially exceed Plan Bay Area’s assumed employment total growth for Menlo Park and locate these jobs outside of a PDA and away from any existing or planned public transportation. For these and other reasons, the project is inconsistent with Plan Bay Area, and is likely to cause substantial additional environmental impacts related to greenhouse gas emissions and transportation. Yet this inconsistency—and its substantial environmental impacts—are ignored by the DEIR.

11. The DEIR Fails to Disclose the Additional Significant Environmental Impacts that will Result from the DEIR’s Inadequate Treatment of Jobs, Population Growth, and Housing

Together, the errors detailed above and issues raised in comment letters by Envision Transform Build East Palo Alto, Drs. Benner and Karner, and others have pervasive effects throughout the DEIR that undermine its discussion of numerous impacts. In many respects, the DEIR either fails to identify significant impacts or understates the severity of identified impacts because of these insufficiencies. These include the chapters on Land Use, Transportation/Traffic, Air Quality, Greenhouse Gas Emissions, Noise, Public Services, and Utilities and Service Systems. They should also be considered with regard to the project’s impacts on health, which do not appear to be discussed in a clear and central location within the DEIR or may be omitted altogether in contradiction to CEQA’s requirements.⁸⁴ *See supra* Section 6.

At root, one of the most grave and recurring flaws is that the DEIR assumes that a very low percentage of new project employees will reside in the city, given current residency patterns of the city’s workforce. But the reason that a small portion of the city’s current workforce lives locally is that Menlo Park suffers from a severe housing shortage in general and a lack of affordable housing in particular. This local affordable housing deficit has substantial environmental impacts, as Menlo Park’s workers—particularly low-income workers—are forced to commute long distances to their jobs. The city’s longstanding and existing housing crisis is not a free pass to do nothing. Rather, it is the very reason the DEIR must either address housing or the significant environmental impacts that result when the overwhelming portion of the workforce commutes, and often from great distances. But the DEIR does neither.

⁸³ Plan Bay Area 2013 at 53.

⁸⁴ An EIR “should include” “health and safety problems caused by the physical changes” that may result from the proposed project. Cal. Code Regs. tit. 14, § 15126.2(a) *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs*, 91 Cal. App. 4th 1344, 1367, 1370-71 (2001) (holding EIR inadequately discussed the health risk resulting from proposed airport expansion project’s potential degradation of air quality); *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1219-20 (2004) (holding EIR failed to “acknowledge[] the health consequences that necessarily result from the identified adverse air quality impacts”).

12. The DEIR Fails to Consider a Reasonable Range of Alternatives

One of the core purposes of an EIR is to identify alternatives to the project.⁸⁵ An EIR must analyze a “reasonable range of alternatives to the project,” with an emphasis on alternatives which “offer substantial environmental advantages over the project proposal.”⁸⁶ “[P]ublic agencies should not approve projects as proposed if there are feasible alternatives.”⁸⁷ The purpose of analyzing alternatives is to assess options for attaining the basic objectives of the project while avoiding or substantially lessening environmental impacts and to evaluate the comparative merits of each alternative.⁸⁸ Specifically, “[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects” in order to “permit a reasoned choice” and “foster informed decisionmaking and public participation.”⁸⁹

Alternate locations for a project should generally be considered among the alternatives if doing so would avoid or substantially lessen any environmental impacts or the location of a project is dictated by some natural phenomenon, such as geothermal activity or a mineral deposit.⁹⁰

Here, the DEIR analyzes just two alternatives to the proposed project, a No Project alternative and a “Reduced Intensity Alternative” that simply reduces project build-out by 30 percent. No alternative locations were studied.

The DEIR’s explanations for rejecting study of an alternative location essentially boil down to an assertion that Facebook would prefer not to accommodate its future employment growth elsewhere.⁹¹ None of the reasons given, however, are supported by the rule of reason. Facebook certainly has the resources to acquire an alternative site, many similar technology companies operate from offices that are nearby but not physically connected, and the impacts of the project on the neighborhoods adjacent to the project’s proposed locations will be predominantly burdens rather than benefits (*e.g.*, traffic, housing demand pressures, etc.).

Moreover, an alternative project location would likely reduce a number of significant environmental impacts. Specifically, a location well served by public transit and near existing amenities would dramatically reduce transportation-related environmental impacts, including traffic, air quality, and greenhouse gas emissions.⁹² Moreover, an alternative location could permit the development of substantial on-site affordable workforce housing, which would further reduce environmental impacts.

⁸⁵ Cal. Pub. Res. Code § 21002.1(a).

⁸⁶ Citizens of *Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 566 (1990).

⁸⁷ Cal. Pub. Res. Code, § 21002.

⁸⁸ Cal. Code Regs. tit. 14, § 15126.6.

⁸⁹ *Id.*; see also *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 406- 07 (1988).

⁹⁰ Cal Code Regs. title 14, § 15126.6(a), (f)(2).

⁹¹ DEIR at 5-6.

⁹² See DEIR at 3.1-4 (“the Project site is not located within a TPP-eligible area.”).

13. The DEIR Fails to Consider and Implement Feasible Mitigation Measures

Public agencies are required to describe and discuss mitigation measures that could minimize each significant environmental effect identified in an EIR.⁹³ Mitigation measures are “the teeth of the EIR” because “[a] gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.”⁹⁴ Such measures must be at least “roughly proportional” to the impacts of the project, and must not be remote or speculative.⁹⁵ Indeed, a project should not be approved “as proposed if there are feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.”⁹⁶

Mitigation measures or alternatives that address the proportion of affordable housing and the risk of displacement are feasible and should be discussed.⁹⁷ Because, as described above, housing affordability and displacement will cause significance of environmental impacts identified in the DEIR as well as additional impacts likely to be identified with a proper analysis, it follows that concrete measures addressing housing affordability and anti-displacement measures are feasible methods for alleviating the identified environmental impacts.

Here, the DEIR fails to consider or implement mitigation measures that would address the host of significant environmental impacts that will result from the induced housing demand caused by the project, displacement of existing low-income households, and lengthy auto commutes by tens of thousands of workers to direct, indirect, and induced jobs caused by the project. Among the mitigation measures that should be considered and incorporated into the project are: substantial financial contributions to existing affordable housing trust funds for the development of lower-income housing in Menlo Park, East Palo Alto, and surrounding cities; acquiring land to dedicate for lower-income housing development in Menlo Park, East Palo Alto, and surrounding cities; direct financing of affordable housing development; and financial, legal, or other assistance that will allow low income residents in Menlo Park and neighboring communities to remain in their homes or, if necessary, relocate within their existing neighborhoods.

⁹³ See Pub. Res. Code §§21002.1(a)-(b), 21081.6(b); see also 14 CCR §15126.4.

⁹⁴ *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal. App. 4th 1018, 1039.

⁹⁵ See 14 CCR §15126.4(a)(2)(B) (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994)); see also *Fed'n of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261.

⁹⁶ Cal. Pub. Res. Code §21002; see also 14 CCR §15002(a)(3) (agencies must prevent avoidable damage “when [it] finds [mitigation measures] to be feasible”).

⁹⁷ See 14 CCR §15131(c) (“Economic, social and particularly housing factors shall be considered by public agencies ... in deciding whether change in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR.”).

* * *

For the foregoing reasons, we urge you to revise and recirculate the DEIR.

Respectfully submitted,



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Exhibit List

1. Bay Area Council Economic Institute Report, “Technology Works: High-Tech Employment and Wages in the United States” (December 2012), available at <http://documents.bayareacouncil.org/TechReport.pdf>.
2. 2016 Silicon Valley Index, available at <http://www.jointventure.org/images/stories/pdf/index2016.pdf>.
3. Association of Bay Area Governments, Regional Housing Need Allocation (2015), available at http://www.abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf.
4. Plan Bay Area 2013, Final Forecast of Jobs, Population and Housing, available at http://planbayarea.org/pdf/final_supplemental_reports/FINAL_PBA_Forecast_of_Jobs_Population_and_Housing.pdf.
5. TransForm and California Housing Partnership Corporation (CHPC), Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy (2014), available at <http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>.
6. City and County of San Francisco Department of Public Health, The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice (May 2004), available at http://www.sustainablecommunitiesindex.org/etc/004_HIAR-May2004.pdf.
7. Shireen Malekafzali and Danielle Bergstrom, Healthy Corridor for All: A Community Health Impact Assessment of Transit Oriented Development Policy in St. Paul, Minnesota, Technical Report, PolicyLink (2011), available at http://www.pewtrusts.org/~media/Assets/0001/HealthyCorridorTechnicalReport_FINAL.pdf?la=en.
8. Urban Displacement Project, Excerpts of Census Tract Data. Full data set available at http://www.urbandisplacement.org/sites/default/files/images/cci_rews_data_2015-08-21.xlsx.