

CITY COUNCIL SPECIAL AND REGULAR MEETING AGENDA

Tuesday, May 29, 2012
6:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

6:00 P.M. CLOSED SESSION (1st floor Council Conference Room, City Hall)

Public Comment on Closed Session item will be taken prior to adjourning to Closed Session

CL1. Conference with legal counsel pursuant to Government Code Section 54956.9(c) regarding potential litigation - 1 case

7:00 P.M. REGULAR SESSION

ROLL CALL – Cline, Cohen, Fergusson, Keith, Ohtaki

PLEDGE OF ALLEGIANCE

REPORT FROM CLOSED SESSION

ANNOUNCEMENTS

A. PRESENTATIONS AND PROCLAMATIONS

A1. Presentation by Police Department: Special Olympics Torch Run and Tip a Cop events

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS - None

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

Under "Public Comment #1", the public may address the Council on any subject not listed on the agenda and items listed under the Consent Calendar. Each speaker may address the Council once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Council cannot act on items not listed on the agenda and, therefore, the Council cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. CONSENT CALENDAR – None

E. PUBLIC HEARING

E1. Consider a request for an amended and restated Conditional Development Permit and Development Agreement for the property located at 1601 Willow Road (East Campus) and heritage tree removal permit and environmental review for the properties located at the 1601 Willow Road (East Campus) and 312 and 313 Constitution Drive (West Campus)
([Staff report #12-083](#))

F. REGULAR BUSINESS

F1. Consider state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

K. PUBLIC COMMENT #2 (*Limited to 30 minutes*)

Under "Public Comment #2", the public if unable to address the Council on non-agenda items during Public Comment #1, may do so at this time. Each person is limited to three minutes. Please clearly state your name and address or jurisdiction in which you live.

L. ADJOURNMENT

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COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: May 29, 2012
Staff Report #: 12-083

Agenda Item #:E-1

PUBLIC HEARING: Consider a Request for an Amended and Restated Conditional Development Permit and Development Agreement for the Property Located at 1601 Willow Road (East Campus) and Heritage Tree Removal Permit and Environmental Review for the Properties Located at the 1601 Willow Road (East Campus) and 312 and 313 Constitution Drive (West Campus)

RECOMMENDATION

Staff recommends that the City Council concur with the recommendation of the Planning Commission and approve the following actions related to the Facebook Campus Project, subject to the specific actions contained in Attachment A:

1. **Certify the Environmental Impact Report** which analyzes the potential environmental impacts of the proposed Project inclusive of the East Campus and West Campus;
2. **Adopt the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program**, which includes specific findings that the East Campus Project includes substantial benefits that outweigh its significant, and adverse environmental impacts, and establishes responsibility and timing for implementation of all required mitigation measures;
3. **Approve the Development Agreement** which results in the provision of overall benefits to the City and adequate development controls in exchange for vested rights in East Campus Project approvals;
4. **Approve the Amended and Restated Conditional Development Permit** which implements a vehicular trip cap that includes an AM and PM peak period and daily trip cap to accommodate an increase in employees at the East Campus Project site beyond the 3,600 employees permitted to occupy the site; and
5. **Approve Heritage Tree Removal Permits** to remove one heritage tree on the East Campus and seven heritage trees on the West Campus to facilitate

construction of improvements to the existing undercrossing of Bayfront Expressway.

If the Council votes to approve the Project on May 29, 2012, then the second reading of the ordinance for the Development Agreement is scheduled to occur on June 5, 2012. The Ordinance would go into effect 30 days thereafter.

BACKGROUND

On February 8, 2011, the City received a preliminary application from Facebook to commence the environmental review process for the Facebook Campus Project, inclusive of both the East Campus and West Campus Project components, as well an application for an Amended and Restated Conditional Development Permit (CDP) and Development Agreement for the East Campus component of the Project. The Project would include two phases, as discussed below. The Council's review of the Project on May 29, 2012, will focus on Phase I of the Project.

Facebook Incorporated (Facebook) seeks to develop an integrated, phased permanent headquarters in Menlo Park to accommodate the company's long-term growth potential. This phased approach includes the development of an East Campus located at 1601 Willow Road, followed by the development of a West Campus located at 312 and 313 Constitution Drive across Bayfront Expressway. Currently, Facebook is seeking land use entitlements for the East Campus, as well as environmental review for the entire Project, per the requirements of the California Environmental Quality Act (CEQA). The requested land use entitlements for the East Campus include amendment of the existing Conditional Development Permit (CDP) to convert the employee cap to a vehicular trip cap, as well as execution of a Development Agreement.

The 56.9 acre East Campus is currently developed with nine buildings, which contain approximately 1,035,840 square feet. The existing entitlements for the site allow up to 3,600 employees to occupy the site, and Facebook currently has approximately 2,200 employees at the site. The Project Sponsor has begun, and continues to complete tenant improvements at the site to convert the hardware-intensive laboratory spaces and individual hard-wall offices to a more open, shared workspace characteristic of the Facebook work environment, which is intended to foster innovation, teamwork, and creativity.

As part of the proposed Project, the Project Sponsor seeks to convert the existing employee cap into a vehicular trip cap. The proposed trip cap includes a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips. The trip cap would allow approximately 6,600 employees to occupy the East Campus.

The environmental review analyzes this proposal, as well as the build-out of the approximately 22-acre West Campus. This second phase of the Project contemplates construction of five buildings totaling approximately 440,000 square feet of gross floor

area, consistent with M-2 zone requirements, and an associated five-story parking structure. The proposed height of the buildings would exceed the 35-foot maximum height limit in the M-2 zone and a rezone to M-2-X plus approval of a CDP would be required to exceed the height limit. The Project Sponsor anticipates submitting land use entitlements for the West Campus this summer. A project location map illustrating the locations of Phase I and Phase II of the Project is included as Attachment M.

The second phase of the Project is anticipated to house approximately 2,800 employees for a total of approximately 9,400 employees occupying both the East and West Campuses at full occupancy. The proposed Project would result in approximately 5,800 more employees than are currently permitted under the existing land use entitlements for the East Campus. However, unlike the existing entitlements for the East Campus, the Project proposal does not include a cap on the number of employees.

Since the application submittal date, numerous meetings have been held and milestones achieved, which are specified in Attachment N.

Planning Commission Review, May 7, 2012

On May 7, 2012, the Planning Commission held a public hearing for the Facebook Campus Project to consider the five actions included in Attachment A. After considering all of the public comments and documents, including the EIR, draft Development Agreement and draft Conditional Development Permit, the Planning Commission made a unanimous recommendation (with Commissioner Yu absent) that the City Council approve the project, per the recommendations included in the Planning Commission staff report. In addition, the Commission recommendation included the insertion of three mitigation measures from the EIR into the Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program, and Amended and Restated Conditional Development Permit. Staff inadvertently omitted these mitigation measures from these three documents that were attached to the Planning Commission staff report. Finally, the Commission supported any necessary revisions of the Amended and Restated Conditional Development Permit and/or Development Agreement to incorporate applicable aspects of the separate agreement reached between Facebook and the City of East Palo Alto.

Prior to voting on the recommendation for the project, Commission discussion and questions focused on the following issue areas:

- Development Agreement: The Commission discussed the public benefits included in the Development Agreement and requested clarification regarding the financial benefit to the City resulting from the Project and the associated Development Agreement;
- Marsh Road and Middlefield Road Mitigation Measure: The Commission requested clarification regarding the mitigation measure included in the EIR for

this intersection, as well as an explanation of the difference between this mitigation measure and the improvements requested by the Town of Atherton;

- Intersection Impacts: The Commission discussed the intersections that would be impacted by the Project and the resulting impacts after implementation of mitigation measures; and
- Peak Periods of Traffic: The Commission requested clarification regarding how the peak periods included in the Trip Cap were chosen.

The approved transcript of the May 7, 2012 Planning Commission meeting is included as Attachment O.

ANALYSIS

Proposed Project

The Project components currently subject to land use entitlement review include Phase I of the Facebook Campus Project. Phase I is primarily related to the East Campus and includes amending and restating the CDP to implement a Trip Cap to accommodate an increase in employees at the site beyond the 3,600 employees currently permitted to occupy the site (coupled with a required Transportation Demand Management program to reduce vehicle trips by 25 percent), execution of a Development Agreement, and Heritage Tree Removal Permits for removal of eight heritage trees on both the East Campus and West Campus related to Phase I undercrossing improvements (discussed in more detail below).

Project Land Use Entitlements

The proposed Project requires various land use entitlements as summarized below.

Amended and Restated Conditional Development Permit

On May 19, 1992, the City Council approved a CDP and rezone of the Project site from M-2 (General Industrial) to M-2-X (General Industrial – Conditional Development). The CDP and “X” overlay allow for flexibility from zoning requirements, except maximum Floor Area Ratio (FAR), while providing greater certainty regarding the parameters of a particular development proposal. The existing CDP specifies development standards for the Project site, conditions of approval and a requirement for compliance with the Master Site Plan approved as part of the CDP. Specifically, the Master Site Plan, associated vested elements of Project approval, and conditions of approval establish the maximum permissible employment density on the Project site of 3,600 employees and include a Transportation Demand Management program that is required to attain a 25 percent reduction in drive alone commuting. Facebook seeks to amend the existing CDP to implement a Trip Cap to accommodate an increase in employees at the site beyond the 3,600 employees currently permitted to occupy the site.

The Trip Cap includes a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips. The Trip Cap would allow approximately 6,600 employees to occupy the East Campus. Specific parameters regarding the Trip Cap can be found in the Trip Cap Monitoring and Enforcement Policy, which is included as Attachment I. Since the May 7, 2012 Planning Commission meeting, minor edits have been made to the Trip Cap Monitoring and Enforcement Policy in order to clarify that the Trip Cap would apply not only to Facebook, but also the Owner pursuant to the terms of the Development Agreement, to provide an additional example fee calculation, and to specify the penalty sharing percentage of 25 percent with the City of East Palo Alto. This document addresses the following issue areas:

- Definitions – explanation of terminology utilized;
- Monitoring – discussion regarding how the trip cap would be monitored; and
- Enforcement – discussion regarding how the Trip Cap would be enforced, including penalties associated with any violations of the Trip Cap.

Key components of the proposed Project that would assist Facebook in achieving compliance with the Trip Cap include a Transportation Demand Management program and enhanced bicycle and pedestrian circulation on-site, and connecting to the Project site from the adjacent community.

The Project proposal for the East Campus Amended and Restated CDP does not include construction activities, except for improvements related to the completion of the Phase 1 improvements of the Bayshore Expressway (State Route 84) undercrossing and the associated access paths. The proposed improvements are intended to occur in three phases, beginning with approval of the land use entitlements for the East Campus and continuing with development and completion of the West Campus. The following is a summary of the proposed phasing plan for access improvements to the existing undercrossing to facilitate a connection for pedestrian and bicycle traffic, and ultimately a people mover under Bayfront Expressway.

- **Phase 1:** Approval of the land use entitlements for the East Campus - would include the following elements:
 - Provide pedestrian and bicycle multi-use path to connect from Willow Road to south side of existing undercrossing (proximate to Willow Road along West Campus);
 - Provide access to undercrossing on the East Campus (north) side. Provide pedestrian and bicycle multi-use path and connection to Bay Trail. Provide sidewalks and crosswalk improvements to connect from the undercrossing to the main entrance of Building 10 (across campus ring road);
 - Maintain existing undercrossing cross-section (with raised sidewalk), and provide access to a pedestrian and bicycle multi-use path;

- Provide new plantings, species to be selected from Save the Bay Plan list; and
- Install lighting improvements for the undercrossing and along pedestrian and multi-use paths on both sides of the undercrossing.
- **Phase 2:** During Construction of the West Campus – would include the following elements:
 - Reconfigure pedestrian and bicycle multi-use path to connect from Willow Road to south side of undercrossing proximate to West Campus (if necessary) to avoid construction areas;
 - Detour pedestrians and bicyclists to use the existing crosswalk crossing Bayfront Expressway and pedestrian signals at Willow Road/Bayfront Expressway intersection during certain phases of construction if temporary (to be defined) closure of undercrossing is necessary; and
 - Maintain existing undercrossing cross-section (with raised sidewalk) and provide access to a pedestrian and bicycle multi-use path.
- **Phase 3:** Build Out of the West Campus – would include the following elements:
 - Improve undercrossing to allow for use by pedestrians, cyclists and Facebook people-mover system;
 - Install pump system to address any potential flooding of undercrossing;
 - Reconfigure West Campus pedestrian and bicycle multi-use path from Willow Road to south side of the undercrossing, if necessary, to replace temporary construction path;
 - Install any final permanent pedestrian and bicycle improvements on Willow Road along West Campus frontage, including sidewalks or multi-use path; and
 - Install traffic control devices on both sides of the undercrossing for controlling ingress/egress from the people-mover system into the undercrossing.

Conceptual plans for Phase I undercrossing improvements are included in Attachment P on plan sheets EL.2, EL.3 and EL.4. If the Project is approved, per the conditions of approval in the Amended and Restated CDP, Facebook would be required to submit a complete set of plans for construction of the undercrossing improvement to the City within 60 days of the effective date of the Development Agreement.

The resolution approving the Amended and Restated CDP, the draft Amended and Restated CDP and the Trip Cap Monitoring and Enforcement Policy, which is an attachment to the Amended and Restated CDP, are included as Attachments G, H and I, respectively. The Amended and Restated CDP relies on the Project plans, inclusive of the conceptual Phase I undercrossing plans, and includes conditions of approval, along with all of the mitigation measures from the EIR. The conditions of approval that are not EIR mitigations are generally standard conditions of approval with more Project specific conditions of approval associated with the construction of the undercrossing improvements.

Development Agreement

A Development Agreement is a legally binding contract between the City of Menlo Park and an applicant that delineates the terms and conditions of a proposed development project. A Development Agreement allows an applicant to secure vested rights, and it allows the City to secure certain benefits. Development Agreements are enabled by California Government Code Sections 6584-65869.5. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements (Resolution No. 4159 is available upon request at City offices or on the City's website). Facebook is requesting a legally binding Development Agreement in concert with the requested CDP amendment.

On February 14, 2012, the City Council established a set of parameters for the City's negotiating team to commence negotiations with Facebook on the Development Agreement. After a series of negotiation sessions and input from the Council Subcommittee comprised of Mayor Keith and Council Member Cline, the City Council unanimously approved a term sheet for the Development Agreement on April 17, 2012. Since that meeting, the term sheet has been transformed into a 40 plus page Development Agreement, and all terms approved by the City Council are either included in the Development Agreement or in the Amended and Restated Conditional Development Permit, and in some cases, in both documents. In addition, some topics covered in the Development Agreement crossover into mitigations measures included in the EIR. The ordinance to approve the Development Agreement, and the Draft Development Agreement, are included as Attachments E and F, respectively.

Separately from the City's negotiations with the applicant, Facebook also negotiated an agreement with the City of East Palo Alto. The East Palo Alto City Council reviewed and approved the term sheet that has resulted from these negotiations at its meeting on May 1, 2012. The term sheet was utilized to develop a Memorandum of Agreement, which is attached to, and incorporated into the Development Agreement between the City of Menlo Park and Facebook. This, as well as other clean-up edits to the Development Agreement, have been incorporated since publication of the Draft Development Agreement included in the May 7, 2012 Planning Commission packet.

Heritage Tree Removals

The applicant is requesting approval for removal of eight heritage trees in order to construct Phase I undercrossing improvements, as discussed above. The proposed Heritage Tree removals include one tree on the East Campus and seven trees on the West Campus. All trees proximate to the undercrossing improvements, inclusive of those trees identified for removal are shown on plan sheet EL.5 and discussed in the East Campus and West Campus arborist reports, which are included as Attachments K and L, respectively. In summary, the requested eight tree removals include:

East Campus

- Blackwood Acacia, good health (tree 36).

West Campus

- Lombardy Poplar, fair health (tree 605);
- Lombardy Poplar, fair health (tree 606);
- Fremont Poplar, fair health (tree 607);
- Lombardy Poplar, good health (tree 613);
- Lombardy Poplar, good health (tree 614);
- Lombardy Poplar, good health (tree 619); and
- Lombardy Poplar, good health (tree 622).

The City Arborist has reviewed all requested tree removals, and recommends approval of the requested removals. His review of the requested tree removals indicated that the trees are in fair to good health and are of inferior species. The majority of the trees have extensive suckers and have not been properly maintained over time. The removal of heritage trees requires Heritage Tree Removal Permits and a minimum two-to-one replacement ratio. The applicant is proposing to plant a total of 28 replacement trees (12 on the East Campus and 16 on the West Campus), which will be consistent with the landscape palette provided on the Save the Bay Plant List.

FISCAL ANALYSIS

The City's independent economic consultant, Bay Area Economics (BAE), prepared a Fiscal Impact Analysis (FIA) projecting the potential changes in fiscal revenues and service costs directly associated with development of the proposed Project. The FIA also explores a number of related topics, including indirect revenues/costs from potential induced housing demand, as well as one-time/non-recurring revenues (such as impact fees), and potential additional opportunities for fiscal benefits. The Draft FIA was released on December 8, 2011 for a public comment period that ended on January 23, 2012. The Draft FIA was reviewed by the Planning Commission at its January 9, 2012 meeting, where verbal comments from the Commission and public comment were accepted on the Draft FIA, and transcribed for response as a component of the Final FIA. The January 31, 2012 City Council staff report for the Facebook Campus Project includes a summary of the Draft FIA.

The Final FIA, dated April 6, 2012, was prepared in response to comments on the Draft FIA, and to address the recent dissolution of the City's Community Development Agency (Redevelopment Agency). Given the fact that the ultimate fiscal implications of the State Supreme Court's actions to dissolve Redevelopment Agencies are not yet clear, the Final FIA only includes a qualitative analysis of this change. The quantitative findings regarding the Community Development Agency's revenues have been left in the Final FIA for informational purposes. The City and other agencies analyzed in the

FIA will receive additional funds from the dissolution of redevelopment agencies; however, the actual amounts are yet to be determined. A memorandum providing a response to comments for all comments received on the Draft FIA is a companion document to the Final FIA. Both the Final FIA and the memorandum were released for public review on April 23, 2012, and both documents are available for review on the City's website, at the Library and at the Community Development Department.

The FIA does not require action by the City Council; however, the City Council should consider the FIA in reviewing the Project proposal.

Correspondence

Since the April 17, 2012 City Council meeting, staff has received three comment letters. All letters, as well as City responses, if applicable, are included as attachments to this Staff report. Specifically, the following correspondence has been received:

1. **William Webster** – email dated Tuesday, May 1, 2012 to the City of East Palo Alto City Council (Attachment Q) regarding its review of the Draft Term Sheet with Facebook.
2. **Town of Atherton** – letter dated April 26, 2012 voicing its concerns about the traffic analysis prepared for the Project. This letter is included as Attachment R and the City's response to this letter dated May 7, 2012 is included as Attachment S. It should be noted that City staff did reach out to Town of Atherton staff prior to the release of the Draft EIR, and have subsequently met with them to discuss the Draft EIR and Final EIR, most recently on May 22, 2012. All past correspondence is on file at the Community Development Department.
3. **Caltrans** – letter dated May 7, 2012 regarding the Draft and Final Environmental Impact Report. This letter is included as Attachment T and the City's response to this letter dated May 21, 2012 is included as Attachment U. It should be noted that City staff did reach out to Caltrans staff prior to the release of the Draft EIR, and have subsequently reached out to them, most recently via telephone on May 16, 2012. Staff is currently in the process of scheduling a meeting with Caltrans in June to discuss the Facebook Campus Project. All past correspondence is on file at the Community Development Department.

Conclusion

The proposed East Campus Project would occupy an existing underutilized corporate campus and is projected to generate approximately 3,000 new jobs for the City. To minimize impacts to the community, the Project proposal includes a Trip Cap and robust Transportation Demand Management program, which would limit the increase in vehicular trips associated with the Project, and related air quality and noise impacts. As part of the review of the Project, an Environmental Impact Report was prepared, which determined that the Project would result in significant and unavoidable impacts related to transportation, air quality and noise. However, as identified in the Fiscal Impact Report prepared for the Project, implementation of the Project is projected to have a net

positive fiscal impact for the City. Finally, the Project would provide extensive public benefits as presented in the Development Agreement prepared for the Project, including monetary contributions to the City's General Fund, financial contributions to the community, and environmental stewardship.

The review of the Facebook Campus Project has been extensive with numerous public meetings and a significant amount of attention by staff, the public, Commissions and the City Council. It is now up to the City Council to make a decision on the policy issues involving the potential for an increase in employees with implementation of a vehicle trip cap, significant and unavoidable environmental impacts related to transportation, air quality and noise, and make a determination regarding whether the public benefits provided by the Project outweigh any impacts it may have. Staff believes that the Project includes substantial benefits that outweigh its significant and adverse environmental impacts and recommends that the Council approve the findings and take all the actions as outlined in Attachment A.

IMPACT ON CITY RESOURCES

The Project Sponsor is required to pay planning permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the Project. The Project Sponsor is also required to bear the cost of the associated environmental review and fiscal analysis. For the environmental review and fiscal analysis, the Project Sponsor deposits money with the City and the City pays the consultants.

POLICY ISSUES

The Project does not require an amendment to the City's General Plan. The primary policy issues for the City Council to consider while reviewing the Project relate to the significant and unavoidable environmental impacts and the appropriate level of public benefit based on the request to exceed the current employee cap of 3,600 people on the East Campus.

ENVIRONMENTAL REVIEW

A Notice of Preparation (NOP) for the Facebook Campus Project was released on April 21, 2011 and was circulated for a 36-day review period. The NOP was provided to responsible agencies and interested parties and was made available for public review on the City's web site, at the library, and at the Community Development Department. The Planning Commission held a scoping meeting on May 16, 2011 to receive comments from the public and interested public agencies and organizations on the issues that should be addressed in the EIR. The written and verbal comments received on the NOP were used to inform the issue areas reviewed in the Draft EIR.

The Draft EIR analyzes both the East Campus and West Campus components of the Project, and was released on December 8, 2011 for a 47-day public comment period that was specified to end on January 23, 2012. City staff received three requests to

extend the public comment period, and the City Council considered these requests at its meeting on January 10, 2012, and approved an extension of the public comment period until January 30, 2012. With this extension, the total public comment period provided for the Draft EIR was 54-days. The Planning Commission held a public hearing on January 9, 2012 to provide an opportunity for verbal public comment on the Draft EIR. In addition to the comments made at this meeting, 50 written comments were received on the Draft EIR. Both the verbal and written comments are included in, and responded to, in the Final EIR prepared for the Project.

The Final EIR, which includes responses to comments and revisions to the Draft EIR, was released on April 23, 2012 for public review. The Final EIR is available for review on the City's website, at the Library and at the Community Development Department.

The EIR analyzes the potential impacts of the Project across a wide range of impact areas. The EIR evaluates 16 topic areas as required by the California Environmental Quality Act (CEQA), as well as one additional topic area specific to the project site (Wind). The 16 required topic areas include: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use, Mineral Resources, Noise, Population and Housing, Public Services, Transportation, and Utilities. Given the phased nature of the Project, these topic areas were analyzed separately for both the East and West Campuses, and then collectively for the entire Project proposal. The EIR identifies significant and unavoidable impacts in the following categories: Air Quality, Noise, and Transportation. Except as updated by the Final EIR, these significant and unavoidable impacts were explained in detail in the January 9, 2012 Planning Commission staff report.

Differences between the Draft EIR and Final EIR

The key differences between the Draft EIR and the Final EIR are related to biological resources, transportation, and air quality, and are summarized below:

- **Biological Resources:** Additional analysis was completed relative to the potential for biological impacts on the East Campus related to the proposed increase in employee density, and the required tree removals for the undercrossing improvements. As a result of this analysis, an additional mitigation measure has been added for the East Campus requiring that nesting bird surveys be completed if work is done during the bird nesting period. Specific to the West Campus, as a result of additional analysis and public comments, mitigation measures have been added requiring preconstruction surveys for burrowing owls, and implementation of bird-safe design standards.
- **Transportation:** As the result of comments made by the City of Palo Alto, re-analysis of the potential for impacts at the intersection of Middlefield Road and Lytton Avenue determined that the Project would have a less than significant impact (previously significant and unavoidable) impact at this intersection. In addition, minor changes have been made to the mitigation measure at the intersection of Middlefield Road and March Road, based upon written comments

received and discussions with the Town of Atherton prior to the release of the Final EIR.

- **Air Quality:** To further address air quality impacts, an additional mitigation measure has been added, which requires the installation of a Cogenra combined heat and power system on building 11 on the East Campus. This mitigation measure will decrease the operational emissions of reactive organic gas (ROG), nitrogen oxide (NOx), and particulate matter (PM₁₀), but not to a less than significant level.

The responses and revisions in the Final EIR substantiate and confirm or correct the analyses contained in the Draft EIR. No new significant environmental impacts, no new significant information, and no substantial increase in the severity of an earlier identified impact have resulted from responding to comments.


Certification of the EIR, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program

In order to complete the EIR process and certify the document, CEQA requires the preparation of Findings for Certification of the EIR, adoption of a Statement of Overriding Considerations for significant and unavoidable impacts resulting from implementation of the Project, and adoption of a Mitigation Monitoring and Reporting Program (MMRP). The Findings for Certification are required to acknowledge that the EIR was completed in compliance with CEQA, the EIR was presented and reviewed by the decision making body, and the EIR reflects the City's independent judgment and analysis. The Statement of Overriding Considerations is required to include specific findings that the project includes substantial benefit that outweighs its significant, and adverse environmental impacts. Finally, the MMRP establishes responsibility and timing for implementation of all required mitigation measures.

As discussed previously, the EIR analyzed environmental impacts associated with both Phase I (East Campus) and Phase II (West Campus) of the Project. As such, the Findings for Certification of the EIR are applicable to both the East Campus and West Campus components of the Project. Adoption of a Statement of Overriding Considerations and MMRP are associated actions related to land use entitlements. As such, the Statement of Overriding Considerations and MMRP attached to this staff report are specific to the East Campus component of the Project. Similar documents would be prepared for the West Campus component of the Project and presented to the Planning Commission and City Council with the land use entitlement requests.

The resolution certifying the EIR, resolution adopting the Statement of Overriding Considerations and adopting the Mitigation Monitoring and Reporting Program, and the Mitigation Monitoring and Reporting Program are included as attachments B, C, and D, respectively. It should be noted that minor changes were made to the resolution adopting the Statement of Overriding Considerations and adopting the Mitigation Monitoring and Reporting Program and the MMRP since their publication in the May 7, 2012 Planning Commission report due to an inadvertent omission of three mitigation

measures. These are not new mitigation measures, and were previously included in both the Draft and Final EIR, and this change is merely to correct a mistake of omission.



Rachel Grossman
Associate Planner



Justin Murphy
Development Services Manager

PUBLIC NOTICE

Public notification consisted of publishing a legal notice in the local newspaper and notification by mail to all property owners and occupants within a quarter-mile (1,320 feet) radius of the Project site. The mailed notice was supplemented by an email update that was sent to subscribers of the project page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_fb.htm
In addition to allowing for interested parties to subscribe to email updates, the Project page provides up-to-date information about the Project, as well as links to previous staff reports and other related documents.

ATTACHMENTS

- A. [Draft Actions for Approval](#)
- B. [Resolution Certifying the Environmental Impact Report](#)
- C. [Resolution Adopting the Statement of Overriding Considerations and Adopting the Mitigation Monitoring and Reporting Program prepared for the Facebook Campus Project, East Campus](#)
- D. [Mitigation Monitoring and Reporting Program prepared for the Facebook Campus Project, East Campus](#)
- E. [Draft Ordinance approving the Development Agreement](#)
- F. [Draft Development Agreement](#)
- G. [Resolution Approving the Amended and Restated Conditional Development Permit](#)
- H. [Draft Amended and Restated Conditional Development Permit](#)
- I. [Trip Cap Monitoring and Enforcement Policy](#)
- J. [Resolution Approving the Heritage Tree Removal Permits](#)
- K. [Facebook East Campus Arborist Report prepared by SBCA Tree Consulting, dated April 6, 2012](#)
- L. [Facebook West Campus Arborist Report Survey Addendum prepared by SBCA Tree Consulting, dated July 19, 2011](#)
- M. [Location Map](#)
- N. [Project Meetings and Milestones](#)
- O. [Planning Commission Meeting Transcript, May 7, 2012](#)
- P. [Project Plans](#)

- Q. [Email from William Webster to the City of East Palo Alto City Council, dated April 31, 2012](#)
- R. [Letter from the Town of Atherton, dated April 26, 2012](#)
- S. [Letter from the City of Menlo Park to the Town of Atherton in response to their letter dated April 26, 2012, dated May 7, 2012](#)
- T. [Letter from California Department of Transportation, dated May 7, 2012](#)
- U. [Letter from the City of Menlo Park to Caltrans in response to their letters dated May 7, 2012, dated May 17, 2012](#)

Note: Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

EXHIBIT TO BE PROVIDED AT MEETING

None

DOCUMENTS AVAILABLE FOR REVIEW AT CITY OFFICES AND WEBSITE

- [Draft Environmental Impact Report \(EIR\) prepared by Atkins, dated December 2011](#)
- [Draft Fiscal Impact Analysis \(FIA\) prepared by BAE, dated December 2011](#)
- [Planning Commission Staff Report on the Draft EIR, Draft FIA and Project Study session, dated January 9, 2012](#)
- [Final Environmental Impact Report, including Response to Comments, dated April 2012](#)
- [Final FIA, dated April 2012](#)
- [FIA Response to Comments, dated April 2012](#)
- [City Council Staff Report on the Draft Term Sheet, dated April 2012](#)
- [Planning Commission Staff Report on the Project Proposal, dated May 7, 2012](#)

RECOMMENDED ACTIONS FOR APPROVAL

Facebook Campus Project

Environmental Review

1. Adopt a Resolution of the City Council of the City of Menlo Park, California, Certifying the Final Environmental Impact Report (EIR) for the Facebook Campus Project Located at 1601 Willow Road and 312 and 313 Constitution Drive (Attachment B).
2. Adopt a Resolution of the City Council of the City of Menlo Park, California, Adopting findings required by the California Environmental Quality Act, Statement of Overriding Considerations and Adopting the Mitigation Monitoring and Reporting Program for the property located at 1601 Willow Road (Attachments C and D).

Development Agreement

3. Introduce an Ordinance of the City Council of the City of Menlo Park, California approving the Development Agreement, with Facebook Inc. and Wilson Menlo Park Campus, LLC for the property located at 1601 Willow Road (Attachments E and F).

Conditional Development Permit

4. Adopt a Resolution of the City Council of the City of Menlo Park, California, Approving an Amended and Restated Conditional Development Permit for the property located at 1601 Willow Road (Attachment G, H and I).

Heritage Tree Removal Permits

5. Adopt a Resolution of the City Council of the City of Menlo Park, California, Approving the Heritage Tree Removal Permits for the properties located at 1601 Willow Road, and 312 and 313 Constitution Drive (Attachment J).

DRAFT**RESOLUTION NO.****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FACEBOOK CAMPUS PROJECT LOCATED AT 1601 WILLOW ROAD AND 312 AND 313 CONSTITUTION DRIVE**

WHEREAS, Facebook, Inc. ("Project Sponsor") proposes to develop a corporate campus on two sites ("East Campus" and "West Campus") that together make up the "Project site"; and

WHEREAS, on the East Campus located at 1601 Willow Road, the Project Sponsor seeks to occupy the existing office buildings, which include approximately 1,035,840 square feet, and modify the existing Conditional Development Permit ("CDP") to substitute the employee cap for a vehicle trip cap. The employee cap limits employee density to 3,600 individuals and includes a required Transportation Demand Management program to reduce vehicle trips by 25 percent ("Density Condition"). The vehicle trip cap includes a maximum of 2,600 trips during both the AM peak period from 7:00 a.m. to 9:00 a.m. and the PM peak period from 4:00 p.m. to 6:00 p.m., and a maximum of 15,000 daily trips ("Trip Cap"); and

WHEREAS, on the West Campus located at 312 and 313 Constitution Drive, the Project Sponsor proposes to demolish two existing office buildings totaling 127,246 square feet and construct approximately 440,000 square feet of office space, and 1,554 parking spaces in a combination of parking structures, and undercroft parking below two building. This development would be consistent with M-2 (General Industrial) district zoning requirements, however, the proposed height of the buildings would exceed the 35-foot maximum height limit in the M-2 zone and a rezone to M-2-X (General Industrial, Conditional Development) and approval of a CDP would be required to exceed the height limit; and

WHEREAS, for purposes of compliance with the provisions of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, on April 21, 2011, a Notice of Preparation ("NOP") was circulated for a 36-day review period notifying responsible agencies and interested parties that an Environmental Impact Report ("EIR") would be prepared for the Project; and

WHEREAS, the City held a scoping meeting before the Planning Commission of the City of Menlo Park during the NOP comment period, on May 16, 2011, to receive comments from the public and interested public agencies and organizations on the issues that should be addressed in the EIR; and

WHEREAS, a Draft EIR (SCH #2011042073) was published on December 8, 2011, for a 47-day public comment period, lasting until January 23, 2012, which was

subsequently extended by the City Council until January 30, 2012 for a public review period of 54-days; and

WHEREAS, the Draft EIR was filed with the California Office of Planning and Research and copies of the Draft EIR were made available at the Community Development Department, on the City's website, and at the Menlo Park Library; and

WHEREAS, the Planning Commission of the City of Menlo Park held a public hearing on the Draft EIR for the proposed project on January 9, 2012; and

WHEREAS, all comments on the Draft EIR concerning environmental issues received during the public comment period were evaluated and responded to in writing by the City as the Lead Agency in accordance with Section 15088 of the CEQA Guidelines; and

WHEREAS, the comments on the Draft EIR and the written responses were packaged into a Response to Comments Document that was published on April 23, 2012, and copies of the Response to Comments Document were made available at the Community Development Department, on the City's website, and at the Menlo Park Library; and

WHEREAS, the Draft EIR and the Response to Comments comprise the Final EIR; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a public hearing was held before the Planning Commission of the City of Menlo Park on May 7, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission of the City of Menlo Park having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter voted affirmatively to recommend to the City Council of the City of Menlo Park to find that the Final EIR was prepared in compliance with CEQA, and to certify the Final EIR pursuant to CEQA; and

WHEREAS, after notice having been lawfully given, a public hearing was held before the City Council of the City of Menlo Park on May 29, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, on May 29, 2012, the City Council of the City of Menlo Park reviewed and considered all the information in the Final EIR and all the testimony and evidence submitted in this matter found that the Final EIR was prepared in compliance with CEQA; and

WHEREAS, after closing the public hearing, the City Council acting on its independent judgment and analysis voted affirmatively to certify the Final EIR pursuant to CEQA.

NOW, THEREFORE, BE IT RESOLVED that the City of Menlo Park, acting by and through its City Council hereby certifies the Final EIR pursuant to the CEQA.

I, Margaret S. Roberts, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ____ day of _____, 2012, by the following votes:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ____ day of _____, 2012.

Margaret S. Roberts, MMC
City Clerk

DRAFT**RESOLUTION NO.****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, CALIFORNIA, ADOPTING FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PROPERTY LOCATED AT 1601 WILLOW ROAD**

WHEREAS, Facebook, Inc. (“Project Sponsor”) moved its operations from the City of Palo Alto to 1601 Willow Road (“East Campus”), which is located north of US 101 near the intersection of Bayfront Expressway and Willow Road, in the City Menlo Park (“City”); and

WHEREAS, the Project Sponsor proposes to occupy the existing buildings on the 56.9-acre East Campus, but modify the existing Conditional Development Permit (“CDP”) that applies to the East Campus by converting the 3,600 employee cap included in the CDP into a vehicle trip cap (“Project”); and

WHEREAS, the vehicle trip cap proposed by the Project Sponsor includes a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips (“Trip Cap”); and

WHEREAS, the Project Sponsor anticipates developing the property located across Bayfront Expressway from the East Campus at 312 and 313 Constitution Drive (“West Campus”). This second phase was considered in the Environmental Impact Report (“EIR”), but no application for land use entitlements for the West Campus is currently before the City Council for approval; and

WHEREAS, the Notice of Preparation (“NOP”) was released for the Project on April 21, 2011 for a 36-day public review period. A public scoping meeting was held on May 16, 2011 before the Planning Commission of the City of Menlo Park. Comments received by the City on the NOP and at the public scoping meeting were taken into account during preparation of the Draft EIR; and

WHEREAS, the Draft EIR was released on December 8, 2011 for a 54-day extended review period that ended on January 30, 2012. The public review period included one Commission hearing on January 9, 2012, which was open to the public. Comment letters on the Draft EIR were received from 11 public agencies, 14 organizations, and 25 individuals. On April 23, 2012, the City published a Response to Comments Document. The Draft EIR and Response to Comments Document, as well as all Technical Appendices, constitute the Final EIR; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a public hearing was held before the Planning Commission of the City of Menlo Park on May 7, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission of the City of Menlo Park having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter voted affirmatively to recommend to the City Council of the City of Menlo Park to make the findings required by the California Environmental Quality Act ("CEQA"), adopt the Statement of Overriding Considerations and adopt the Mitigation Monitoring and Reporting Program; and

WHEREAS, after notice having been lawfully given, a public hearing was held before the City Council of the City of Menlo Park on May 29, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, CEQA (Pub. Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require a written analysis and conclusions regarding the Project's environmental impacts, mitigation measures and project alternatives that, in the City's view, justify approval of the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park hereby makes the following findings with respect to the significant effects on the environment as identified in the Final EIR and adopts the Mitigation Monitoring and Reporting Program ("MMRP") for the Project:

I. Record of Proceedings

For purposes of CEQA and these findings, the record of proceedings consists of the following documents and testimony:

(a) The NOP and all other public notices issued by the City in conjunction with the Project;

(b) All applications for approvals and development entitlements related to the Project and submitted to the City;

(c) The Draft EIR for the Project (December 2011);

(d) All comments submitted by agencies or members of the public during the public comment period on the Draft EIR;

(e) The Final EIR for the Project, including comments received on the Draft EIR, responses to those comments, and the technical appendices (April 2012);

- (f) The MMRP for the Project;
- (g) All reports, studies, memoranda, maps, staff reports, or other planning documents related to the Project prepared by the City, or consultants to the City with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- (h) All documents submitted to the City (including the Commission and City Council) by other public agencies or members of the public in connection with the Project, up through the close of the public review period on January 30, 2012;
- (i) Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;
- (j) All matters of common knowledge to this Commission and Council, including, but not limited to:
 - (i) The City's General Plan and other applicable policies;
 - (ii) The City's Zoning Ordinance and other applicable ordinances;
 - (iii) Information regarding the City's fiscal status; and
 - (iv) Applicable City policies and regulations;
- (k) Any other materials required for the record of proceedings by Public Resources Code Section 21167.6(e).

The documents described above comprising the record of proceedings are located in the Community Development Department, City of Menlo Park, 701 Laurel Street, Menlo Park, California 94025. The custodian of these documents is the Community Development Director or his/her designee.

II. Findings for Significant Impacts Avoided or Mitigated to a Less-Than-Significant Level

The Final EIR for the Project concluded that there would be significant environmental impacts. The City finds that by incorporating into the Project all the mitigation measures outlined in the MMRP, the impacts discussed below are reduced to a less-than-significant level.

A. BIOLOGICAL RESOURCES

Impact BR-4: The removal of trees, shrubs, or woody vegetation with implementation of the Project would have a potentially significant impact on the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

Mitigation Measure BR-4.1: Identify and Protect Nesting Migratory Birds. The Project Sponsor, until the Project Sponsor Termination Date, and, thereafter, the Property Owner, shall implement the following measures to reduce impacts to nesting migratory birds:

a. To facilitate compliance with State and federal law (Fish and Game Code and the Migratory Bird Treaty Act (MBTA)) and prevent impacts to nesting birds, the Project Sponsor shall avoid the removal of trees, shrubs, or weedy vegetation February 1 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.

b. Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.

In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. The City finds that the pre-construction surveys are feasible and would reduce potential impacts to nesting birds to a less-than-significant level.

Remaining Impacts: Any remaining impacts related to nesting birds would not be significant.

B. UTILITIES

Impact UT-3: The existing sanitary sewer system serving the Project site would not have sufficient capacity to accommodate the Project.

Mitigation Measure UT-3.1: Sanitary Sewer System Improvements. The Project Sponsor shall upsize 114 linear feet of the existing 12-inch diameter pipeline that runs north along Hamilton Avenue, beginning at the Hamilton Avenue/Willow Road intersection, to a 15-inch diameter pipe. To ensure that this work is completed, as part

of the 1601 Willow Road Development Agreement, the Project Sponsor is agreeing to conduct these improvements and post a bond equal to 200 percent of the estimated cost of the work. In addition, the Project Sponsor shall purchase a third wastewater pump to be placed into reserve in case of pump failure at Hamilton Henderson Pump Station (HHPS). To ensure this work is completed, as part of the 1601 Willow Road Development Agreement, the Project Sponsor is agreeing to purchase the pump and post a bond equal to 120 percent of the cost of the wastewater pump.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. The City finds that the sanitary sewer system improvements are feasible mitigations that will reduce impacts related to insufficient wastewater conveyance capacity to a less-than-significant level.

Remaining Impacts: Any remaining impacts related to sewer system capacity would not be significant.

III. Findings and Recommendations Regarding Significant and Unavoidable Impacts

The Final EIR for the Project concluded that there would be significant environmental impacts. The City finds that by incorporating into the Project all the mitigation measures outlined in the MMRP, the impacts are reduced. However, even after mitigation, some impacts are significant and unavoidable. The City finds that there is no additional feasible mitigation that could be imposed beyond what is detailed herein. For the reasons set forth in the Statement of Overriding Considerations below, the City finds that there are economic, legal, social, technological or other benefits of the Project that override the significant and unavoidable impacts.

A. TRANSPORTATION

Impact TR-1: Increases in traffic associated with the Project under the Near Term 2015 East Campus Only Condition would result in increased delays at the following intersections: Willow Road and Bayfront Expressway; Willow Road and Middlefield Road; University Avenue and Bayfront Expressway; and Bayfront Expressway and Chrysler Drive.

Mitigation Measure TR-1.1: Intersection Improvements. The operations at several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however, others may require additional right-of-way when travel lanes are added.

a. Willow Road and Bayfront Expressway

The proposed partial mitigation measures for the intersection of Willow Road and Bayfront Expressway include an additional eastbound right turn lane with a right turn overlap phase from Willow Road to Bayfront Expressway, a new Class I bikeway between the railroad tracks and the existing Bay Trail, closing the outbound direction of the driveway at Building 10 to simplify maneuvering through the stop-controlled intersection (inbound access would still be provided), lengthening the existing right-turn pocket at the westbound approach to a full lane between Bayfront Expressway and the stop-controlled intersection, and ensuring the crosswalk at the stop-controlled intersection is accommodated safely.

Prior to the 1601 Willow Road 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Willow Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement for the East Campus, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way and on the egress approach, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, signage and striping modifications further west on Willow Road, and the design of the eastbound direction Class I bikeway from the railroad tracks to the intersection of Willow Road and Bayfront Expressway. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the on-site improvements within 180 days of City approval of the plans. The Project Sponsor shall construct the off-site improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City. Construction of this improvement by the Project Sponsor shall count as a future credit toward payment of the Transportation Impact Fee (TIF) payable by the Project Sponsor pursuant to the TIF Ordinance. In the event any portion of the intersection improvements is eligible for funding in whole or in part by

C/CAG, such improvements may be deferred by the City in its sole discretion to pursue such funding and the Project Sponsor may be relieved of its responsibility to construct such portion of the intersection improvements as may be funded by C/CAG, or such responsibility may be deferred until eligibility for funding is determined. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.

b. Willow Road and Middlefield Road

The proposed mitigation measure for the intersection of Willow Road and Middlefield Road includes restriping an existing northbound through lane to a shared through a right-turn lane. Implementing this improvement would require traffic signal modifications, removal of the existing triangular median on the southeast corner of the intersection, along with realignment of the crosswalks on the south and east side of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Willow Road and Middlefield Road for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director. Upon obtaining approval from the City, the Project Sponsor shall construct the improvements within 180 days of the encroachment permit approval date by the City. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. With the implementation of this mitigation measure, the impact would be reduced to a less-than-significant level.

c. University Avenue and Bayfront Expressway

The proposed mitigation measure for the intersection of University Avenue and Bayfront Expressway includes an additional southbound through lane and receiving lane. A revised signal timing plan would also be needed. The additional southbound through lane and southbound receiving lane are not feasible due to the right-of-way acquisition from multiple property owners, potential wetlands, relocation of the Bay Trail, and significant intersection modifications, which are under Caltrans jurisdiction. However, the installation of a Class I bikeway (portion of the Bay Trail from west of the railroad tracks to the intersection of University Avenue and Bayfront Expressway) is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require paving, grading, drainage and signing and striping improvements.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed partial mitigation measure along University Avenue between Bayfront Expressway and the railroad tracks for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement for the East Campus, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, and signage and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the proposed improvements within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements, and TDM programs throughout the City, with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.

d. Bayfront Expressway and Chrysler Drive

The proposed mitigation measures for the intersection of Bayfront Expressway and Chrysler Drive include restriping the existing eastbound right turn lane to a shared left-right-turn lane.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Bayfront Expressway and Chrysler Drive for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the

effective date of the Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.

The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements and TDM programs, throughout the City with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigation would fully mitigate the impact, it remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure TR-1.1 involves intersection improvements to mitigate or reduce the impacts of the Project under the Near Term 2015 East Campus Only Condition. However, intersection impacts would remain significant and unavoidable since many improvements require obtaining additional right-of-way and several intersections are not under the City's jurisdiction.

Remaining Impacts: The Project-specific impacts to congestion at the foregoing intersections would remain significant and unavoidable.

Impact TR-2: Increases in traffic associated with the Project under the Near Term 2015 East Campus Only Condition would result in significantly increased ADT volumes on the following roadway segments: Marsh Road between Bay Road and the railroad tracks; Willow Road between Durham Street and Chester Street; Willow Road between Nash Avenue and Blackburn Avenue; and Middlefield Road between Linfield Drive and Survey Lane.

Mitigation Measure TR-2.1: Roadway Segment Improvements. Roadways could be improved with additional travel lanes to accommodate the increase in net daily trips, but increasing the capacity of the roadway requires additional right-of-way, which can impact local property owners.

a. Marsh Road between Bay Road and the railroad tracks

An additional lane of travel would provide an increase in capacity and would mitigate the impacts to the roadway segment; however, the mitigation is not feasible because there is a lack of sufficient available right-of-way to construct the improvements. Therefore, the impacts to the roadway segment would remain significant and unavoidable.

b. Willow Road between Durham Street and Chester Street

An additional lane of travel would provide an increase in capacity and would mitigate the impacts to the roadway segment; however, the mitigation is not feasible because there is a lack of sufficient available right-of-way to construct the improvements. Therefore, the impacts to the roadway segment would remain significant and unavoidable.

c. Willow Road between Nash Avenue and Blackburn Avenue

An additional lane of travel would provide an increase in capacity and would mitigate the impacts to the roadway segment; however, the mitigation is not feasible because there is a lack of sufficient available right-of-way to construct the improvements. Therefore, the impacts to the roadway segment would remain significant and unavoidable.

d. Middlefield Road between Linfield Drive and Survey Lane

An additional lane of travel would provide an increase in capacity and would mitigate the impacts to the roadway segment; however, the mitigation is not feasible because there is a lack of sufficient available right-of-way to construct the improvements. Therefore, the impacts to the roadway segment would remain significant and unavoidable.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: To improve daily roadway operations a typical mitigation measure would seek to widen the road to add travel lanes and capacity. These roadway segments would still have significant and unavoidable impacts because much of the City and surrounding areas are built out, making roadway widening difficult because right-of-way acquisition impacts local property owners.

Remaining Impacts: The Project-specific impacts to congestion at the foregoing roadway segments would remain significant and unavoidable.

Impact TR-3: Increases in traffic associated with the Project under Near Term 2015 East Campus Only Condition would result in significant impacts to the following Routes of Regional Significance: SR 84 between US 101 and Willow Road; SR 84 between Willow Road and University Avenue; SR 84 between University Avenue and County Line; US 101 north of Marsh Road; US 101 between Willow Road and University Avenue; and US 101 south of University Avenue.

Mitigation Measure TR-3.1: Routes of Regional Significance Improvements. Routes of Regional Significance could be improved with additional travel lanes, but the routes are under the jurisdiction of Caltrans.

a. SR 84 between US 101 and Willow Road

Adding a travel lane would increase capacity, but adding an additional lane to the roadway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

b. SR 84 between Willow Road and University Avenue

Adding a travel lane would increase capacity, but adding an additional lane to the roadway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

c. SR 84 between University Avenue and County Line

Adding a travel lane would increase capacity, but adding an additional lane to the roadway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

d. US 101 North of Marsh Road

Adding a travel lane would increase capacity, but adding an additional lane to the freeway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

e. US 101 between Willow Road and University Avenue

Adding a travel lane would increase capacity, but adding an additional lane to the freeway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

f. US 101 between South of University Avenue

Adding a travel lane would increase capacity, but adding an additional lane to the freeway is not a feasible mitigation due to right-of-way constraints and because it is under Caltrans' jurisdiction. Therefore, the impact is significant and unavoidable.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: A typical mitigation measure would seek to widen the road to add travel lanes and capacity. However, impacts to Routes of Regional Significance would remain significant and unavoidable because these roadways are not under the jurisdiction of the City. In addition, freeway improvement projects, which add travel lanes are planned and funded on a regional scale and would be too costly for a single project to be expected to fund.

Remaining Impacts: The Project-specific impacts to congestion at the foregoing Routes of Regional Significance would remain significant and unavoidable.

Impact TR-6: Increases in traffic associated with the Project under the Cumulative 2025 East Campus Only Condition would result in increased delays at the following intersections: March Road and Bayfront Expressway; Marsh Road and US 101 NB Ramps; and Willow Road and Newbridge Street.

Mitigation Measure TR-6.2: Intersection Improvements. The operations at several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however, others may require additional right-of-way to add travel lanes.

a. Marsh Road and Bayfront Expressway

The proposed mitigation measures for the intersection of Marsh Road and Bayfront Expressway include restriping the westbound approach from a shared left-through-right lane to a shared left-through lane and a shared through-right lane.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Marsh Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other

transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigations would fully mitigate the impact, the impact remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.

b. Marsh Road and US 101 NB Ramps

The proposed mitigation measures for the intersection of Marsh Road and US 101 Northbound off-ramp include widening the northbound off-ramp on the western side of the approach and adding an additional left-turn lane along with adding a second right-turn lane by restriping one of the existing left-turn lanes. This improvement will require relocation of existing traffic signal poles, utility relocation and reconstruction of the curb ramp on the southwest corner of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Marsh Road and US 101 Northbound off-ramp for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible

for a Transportation Impact Fee (TIF) credit. Although the proposed mitigation would fully mitigate the impact, the impact remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.

c. Willow Road and Newbridge Street

The potential mitigation measures for the intersection of Willow Road and Newbridge Street includes an additional eastbound left-turn lane, an additional northbound receiving lane for the eastbound left turning traffic, an additional westbound through/right-turn lane, and an additional receiving lane for the westbound through traffic. The additional eastbound left-turn lane and northbound receiving lane are not feasible due to the right-of-way acquisition and property impacts required along Newbridge Street and at the southwest quadrant of the intersection, which is in the City of East Palo Alto. However, the additional westbound through/right-turn lane and westbound receiving lane is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require traffic signal modifications, the removal of at least one heritage tree in front of 1157 Willow Road in order to accommodate the receiving lane, and the removal and relocation of a portion of the concrete masonry wall and landscaping near 1221 Willow Road.

Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the feasible mitigation measure at the intersection of Willow Road and Newbridge Street for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a performance bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the 1601 Willow Road Development Agreement effective date, the Project Sponsor shall submit complete plans to construct a westbound through/right turn lane approximately 300 feet in length, and a westbound through receiving lane, from the Willow Road and Newbridge Street intersection to the beginning of the northbound US 101 on-ramp, based on impacts to the intersections of Willow Road and Newbridge Street.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the

Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. The partial mitigation improvements are not eligible for a Transportation Impact Fee (TIF) credit. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure TR-6.2 involves intersection improvements to mitigate or reduce the impacts of the Project under the Near Term 2018 East Campus and West Campus Condition. However, intersection impacts would not be reduced to less than significant because many improvements require obtaining additional right-of-way and several intersections are not under the City's jurisdiction.

Remaining Impacts: Impacts to intersections would remain significant and unavoidable.

Impact TR-11: Increases in traffic associated with the Project under the Cumulative 2025 East Campus Only Condition would result in increased delays at the following intersections: Marsh Road and Bayfront Expressway; Marsh Road and US 101 NB Ramps; Willow Road and Middlefield Road; Willow Road and Bayfront Expressway; Willow Road and Newbridge Street; University and Bayfront Expressway; and Bayfront Expressway and Chrysler Drive.

Mitigation Measure TR-11.1: Intersection Improvements. The operations at several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however, others may require additional right-of-way when travel lanes are added.

- a. Marsh Road and Bayfront Expressway
See Cumulative 2025 East Campus Only TR-6.2a.
- b. Marsh Road and US 101 NB Ramps
See Cumulative 2025 East Campus Only TR-6.2b.
- c. Willow Road and Bayfront Expressway
See Near Term 2015 East Campus Only TR-1a.
- d. Willow Road and Newbridge Street
See Cumulative 2025 East Campus Only TR-6.2d.

- e. Willow Road and Middlefield Road
See Near Term 2015 East Campus Only TR-1.1b.
- f. University Avenue and Bayfront Expressway
See Near Term 2015 East Campus Only TR-1.1c.
- g. Bayfront Expressway and Chrysler Drive
See Near Term 2015 East Campus Only TR-1.1d.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure TR-11.1 involves intersection improvements to mitigate or reduce the impacts of the Project under the Cumulative 2025 East Campus Only Condition. However, intersection impacts would not be reduced to less than significant because many improvements require obtaining additional right-of-way and several intersections are not under the City's jurisdiction.

Remaining Impacts: Impacts to intersections would remain significant and unavoidable.

Impact TR-12: Increases in traffic associated with the Project under the Cumulative 2025 East Campus Only Condition would result in increased volumes on the following roadway segments: Marsh Road between Bay Road and the railroad tracks; Willow Road between Durham Street and Chester Street; Willow Road between Nash Avenue and Blackburn Avenue; and Middlefield Road between Linfield Drive and Survey Lane.

Mitigation Measure TR-12.1: Roadway Segment Improvements. Roadways could be improved with additional travel lanes to accommodate the increase in net daily trips, but increasing the capacity of the roadway requires additional right-of-way.

- a. Marsh Road between Bay Road and the railroad tracks
See Near Term 2015 East Campus Only TR-2.1a.
- b. Willow Road between Durham Street and Chester Street
See Near Term 2015 East Campus Only TR-2.1b.
- c. Willow Road between Nash Avenue and Blackburn Avenue
See Near Term 2015 East Campus Only TR-2.1c.
- d. Middlefield Road between Linfield Drive and Survey Lane
See Near Term 2015 East Campus Only TR-2.1d.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure TR-12.1 involves roadway improvements to mitigate or reduce the impacts of the Project under the Cumulative 2025 East Campus Only Condition on daily roadway segment operations. However, to improve daily roadway operations, a typical mitigation measure would seek to widen the road to add travel lanes and capacity. These roadway impacts would not be reduced to less than significant because much of the City and surrounding areas are built out, making roadway widening difficult because right-of-way acquisition impacts local property owners.

Remaining Impacts: Impacts to daily roadway segment operations would remain significant and unavoidable.

Impact TR-13: Increases in traffic associated with the Project under Cumulative East Campus Only Condition would result in significant impacts to the following Routes of Regional Significance: SR 84 between US 101 and Willow Road; SR 84 between Willow Road and University Avenue; SR 84 between University Avenue and County Line; US 101 north of Marsh Road; US 101 between Willow Road and University Avenue; and US 101 south of University Avenue.

Mitigation Measure TR-13.1: Routes of Regional Significance Improvements. Routes of Regional Significance could be improved with additional travel lanes, but the freeways are under the jurisdiction of Caltrans.

- a. SR 84 between US 101 and Willow Road
See Near Term 2015 East Campus Only TR-3.1a.
- b. SR 84 between Willow Road and University Avenue
See Near Term 2015 East Campus Only TR-3.1b
- c. SR 84 between University Avenue and County Line
See Near Term 2015 East Campus Only TR-3.1c.
- d. US 101 North of Marsh Road
See Near Term 2015 East Campus Only TR-3.1d.
- e. US 101 between Willow Road and University Avenue
See Near Term 2015 East Campus Only TR-3.1e.
- f. US 101 between South of University Avenue
See Near Term 2015 East Campus Only TR-3.1f.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure TR-13.1 involves roadway improvements to mitigate or reduce the impacts of the Project under the Cumulative 2025 East Campus Only Condition on Routes of Regional Significance. A typical mitigation measure would seek to widen the road to add travel lanes and capacity. However, impacts to Routes of Regional Significance would not be reduced to less than significant because these roadways are not under the jurisdiction of the City. In addition, freeway improvement projects, which add travel lanes are planned and funded on a regional scale and would be too costly for a single project to be expected to fund.

Remaining Impacts: Impacts to Routes of Regional Significance would remain significant and unavoidable.

B. AIR QUALITY

Impact AQ-2: Operation of the Project would create new area and mobile sources of air pollutants that would generate emissions of ROG, PM10 and PM2.5, but would not exceed BAAQMD's significance thresholds. However, emissions of NOX from the East Campus operations would exceed BAAQMD's significance thresholds.

Mitigation Measure AQ-2.1: Install a Cogenra System on Building 11 at the East Campus. The Project Sponsor shall install a Cogenra Combined Heat and Power system at the existing Building 11 at the East Campus. The scale of the system shall be designed such that ROG, NOX and PM10 are reduced beyond the Operational Mass Emissions identified in the Draft EIR.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure AQ-2.1 would reduce impacts from criteria pollutants, but not to a less-than-significant level. Since site-specific silt loadings are not available at this time, the actual reduction in emissions is speculative.

Remaining Impacts: The impacts to air quality associated with NOx emissions would remain significant and unavoidable.

Impact C-AQ-2: The Project, in combination with other development within the City, would create new area and mobile sources of air pollutants that would generate emissions of ROG, NOX, and PM10 resulting in a violation of an Air Quality Standard.

Mitigation Measure: See above under Mitigation Measure AQ-2.1.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: Mitigation Measure AQ-2.1 would reduce impacts from criteria pollutants, but not to a less-than-significant level. Since site-specific silt loadings are not available at this time, the actual reduction in emissions is speculative.

Remaining Impacts: The impacts to air quality associated with NOx emissions would remain significant and unavoidable.

Impact C-AQ-5: The Project, in combination with other foreseeable development in the Project vicinity, would expose sensitive receptors to substantial Toxic Air Contaminants (TAC)s.

Mitigation Measure: No mitigation measures are available to reduce this significant and unavoidable impact.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: The City explored the option of relocating sensitive receptors further from freeways or other high traffic roadways. However, relocation is not a feasible option.

Remaining Impacts: The cumulative health impacts would remain significant and unavoidable.

C. NOISE

Impact NO-1: The increase in vehicular traffic associated with implementation of the East Campus could result in an increase in the exposure of off-site noise sensitive receptors to noise levels potentially in excess of the standards established in the General Plan or Municipal Code.

Mitigation Measure: No mitigation measures are available to reduce this significant and unavoidable impact.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: The Project includes a Transportation Demand Management (TDM) program that sets forth a variety of measures designed to reduce the number of daily trips. However, the TDM program may not reduce trips enough to reduce the Project's contribution to traffic noise to a less-than-significant level. The City explored the option of installing a noise wall along the roadway segments that would experience the greatest increase in traffic noise. However, due to various restrictions including, but not limited to access requirements for driveways, presence of local cross streets, underground utilities, and safety considerations, and aesthetics, it was determined that this mitigation was not feasible. There are no other feasible mitigation measures that could reduce or eliminate the impact related to traffic noise, other than reducing traffic.

Remaining Impacts: This exposure to excessive traffic noise levels would remain significant and unavoidable.

Impact NO-3: Operation of the Project would result in a substantial permanent ambient noise level increase in the Project vicinity due to an increase in traffic.

Mitigation Measure: No mitigation measures are available to reduce this significant and unavoidable impact.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: The Project includes a Transportation Demand Management (TDM) program that sets forth a variety of measures designed to reduce the number of daily trips. However, the TDM program may not reduce trips enough to reduce the Project's contribution to traffic noise to a less-than-significant level. The City explored the option of installing a noise wall along the roadway segments that would experience the greatest increase in traffic noise. However, due to various restrictions including, but not limited to access requirements for driveways, presence of local cross streets, underground utilities, and safety considerations, and aesthetics, it was determined that this mitigation was not feasible. There are no other feasible mitigation measures that could reduce or eliminate the impact related to traffic noise, other than reducing traffic.

Remaining Impacts: This permanent increase in ambient noise level would remain significant and unavoidable.

Impact C-NO-1: The Project, in combination with other development within the City, would result in a substantial increase in exposure of persons to noise in excess of the standards established in the General Plan or Municipal Code. The Project's contribution would be cumulatively significant.

Mitigation Measure: No mitigation measures are available to reduce this significant and unavoidable impact.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: The Project includes a Transportation Demand Management (TDM) program that sets forth a variety of measures designed to reduce the number of daily trips. However, the TDM program may not reduce trips enough to reduce the Project's contribution to traffic noise to a less-than-significant level. The City explored the option of installing a noise wall along the roadway segments that would experience the greatest increase in traffic noise. However, due to various restrictions including, but not limited to access requirements for driveways, presence of local cross streets, underground utilities, and safety considerations, and aesthetics, it was determined that this mitigation was not feasible. There are no other feasible mitigation measures that could reduce or eliminate the impact related to traffic noise, other than reducing traffic.

Remaining Impacts: This exposure to excessive traffic noise levels would remain significant and unavoidable.

Impact C-NO-3: Operation of the Project and other cumulative developments would result in a substantial permanent ambient noise level increase in the Project vicinity. The Project's contribution would be cumulatively significant.

Mitigation Measure: No mitigation measures are available to reduce this significant and unavoidable impact.

FINDINGS: Based upon the entire record before the City, the City Council finds that:

Effects of Mitigation: The Project includes a Transportation Demand Management (TDM) program that sets forth a variety of measures designed to reduce the number of daily trips. However, the TDM program may not reduce trips enough to reduce the Project's contribution to traffic noise to a less-than-significant level. The City explored the option of installing a noise wall along the roadway segments that would experience the greatest increase in traffic noise. However, due to various restrictions including, but not limited to access requirements for driveways, presence of local cross streets, underground utilities, and safety considerations, and aesthetics, it was determined that this mitigation was not feasible. There are no other feasible mitigation measures that could reduce or eliminate the impact related to traffic noise, other than reducing traffic.

Remaining Impacts: This permanent increase in ambient noise level would remain significant and unavoidable.

IV. Project Alternatives

CEQA requires that EIRs assess feasible alternatives or mitigation measures that may substantially lessen the significant effects of projects prior to approval (Public Resources Code §21002). With the exception of the "no project" alternative, the specific alternatives or types of alternatives that must be assessed are not specified. (CEQA Guidelines §15126.6) The CEQA Guidelines state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects" of the project (CEQA Guidelines §15126.6(a)). Thus, an evaluation of the project objectives is key to determining which alternatives should be assessed in the EIR.

The Project has been designed to meet the following objectives:

1. Establish Facebook's permanent headquarters in the City.
2. Develop an integrated, multi-phased campus that is sized to accommodate Facebook's long-term growth potential.
3. Maximize the opportunity for its employees and vendors to interact and meet, both formally and informally.

4. Provide multiple transportation options to employees to minimize traffic and greenhouse gas emissions.
5. Create a pedestrian-friendly, bicycle- and transit-enabled campus, which encourages reduction in private vehicle trips and use of transit solutions.
6. Increase connectivity of neighborhood paths and bikeways, and promote access to the Bay Trail from the Belle Haven neighborhood.
7. Minimize traffic flow to and from Bayfront Expressway and Willow Road.
8. Rejuvenate the industrial district along the Willow Road corridor near the Bayfront Expressway.
9. Increase occupancy of outdated, underutilized buildings on the East Campus with employees who rely on robust transportation alternatives consistent with the Project's sustainability goals, which seek to avoid sprawl.
10. Use "green" design practices and methods that promote energy efficiency and resource conservation.
11. Create a pedestrian-friendly environment that enhances connectivity between the north side and south side of Bayfront Expressway, including use of existing tunnel.
12. Provide new and diverse employment opportunities for the City's residents.
13. Generate revenue for the City and other public entities.

The City Council finds that the EIR incorporated the required "no project" alternative and all feasible alternatives that could accomplish most of the basic project objectives and could avoid or substantially lessen one or more of the significant effects. The City did not analyze alternative sites because no feasible site that was available, of similar size and under the Project Sponsor's control could be identified. As a result, the scope of alternatives analyzed in the EIR is not unduly limited or narrow. The City Council further finds that all reasonable alternatives were reviewed, analyzed, and disclosed in the review process of the EIR and for the ultimate decision on the Project. The City evaluated the alternatives listed below.

Alternative 1: No Project Alternative

Under the No Project Alternative, the existing site would remain as-is. The nine existing buildings at the East Campus that include 1,035,840 sf would remain. Based on the existing Conditional Development Permit ("CDP"), the No Project Alternative would allow a maximum of 3,600 employees at the East Campus. No daily trip cap would be implemented.

The No Project alternative would not allow for an increase in employees at the existing East Campus. Therefore, the No Project alternative would avoid several impacts that would result from the Project, including: certain traffic impacts and congestion on local roadways and intersections; violation of air quality standards; exposure to excessive noise; and permanent increase in ambient noise level.

While the No Project alternative is the environmentally superior alternative, it would not meet the majority of the Project objectives or provide any of the benefits associated with the Project.

FINDINGS: The No Project Alternative is rejected as infeasible because it would not achieve the majority of the Project objectives, maximize the utilization of the Project site, achieve the Project's benefits, or create substantial new tax revenue for the City's General Fund.

Alternative 2: Reduced Intensity Alternative

The Reduced Intensity Alternative would reduce daily trips for the East Campus by 25 percent. This Reduced Project Alternative could translate to fewer employees with approximately 4,950 employees for the East Campus (compared to approximately 6,600 with the Project). As with the Project, the Reduced Intensity Alternative would use the existing buildings at the East Campus and the square footages would remain the same.

Although the Reduced Intensity Alternative would result in fewer employees at the Project site, this alternative would result in the same significant and unavoidable impacts related to transportation, air quality, and noise, as the Project. The Reduced Intensity Alternative would meet several of the Project Sponsor's objectives. However, a reduction in employees would not accommodate Facebook's long-term growth projections. In addition, if Facebook had to seek space outside City limits to accommodate the overflow of employees who could not be housed at the Project site, the Reduced Intensity Alternative would also not fully meet the objective related to generating revenue for the City.

FINDINGS: The Reduced Intensity Alternative is rejected as infeasible because it would not substantially lessen all of the Project's significant environmental effects, would not achieve all of the Project objectives, would not maximize the utilization of the site, would not achieve the all of the Project's benefits or create substantial new tax revenue for the City.

V. Statement of Overriding Considerations

The City Council adopts and makes the following Statement of Overriding Considerations regarding the significant unavoidable impacts of the Project. After review of the entire administrative record, the City Council finds that, pursuant to CEQA section 21081(b) and CEQA Guidelines section 15093, specific economic, legal, social, technological and other benefits of the Project outweigh the Project's unavoidable adverse impacts and the City Council finds that the significant and unavoidable adverse impacts are acceptable in light of the Project's benefits.

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts that are included in the entire administrative record, the City has determined that the Project would result in significant unavoidable transportation impacts to intersections, roadway segments, and Routes of Regional Significance. Significant and unavoidable impacts would also occur associated with an increase in air pollutants due to an increase in

vehicle trips and an increase in ambient noise levels associated with an increase in vehicle trips.

The City hereby finds that, where possible, changes or alterations have been required in or incorporated into the Project that substantially lessen the significant environmental effects identified in the EIR. The City further finds that there are no additional feasible mitigation measures that could be imposed to reduce and/or eliminate the significant and unavoidable impacts listed above. These impacts could not be reduced to a less-than-significant level by feasible changes, mitigation measures or alterations to the Project.

B. Overriding Considerations

The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent ground for a finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project.

1. Use of an underutilized site for a global headquarter campus for the world's most prominent social networking company;
2. A high-density use in close proximity to major highways and transit routes and encouragement of alternative modes of transportation through aggressive Transportation Demand Management program;
3. A guaranteed revenue stream in lieu of sales tax for as long as the land use entitlement to exceed 3,600 employees remains in place;
4. Creation of a Local Community Fund with an initial contribution of \$500,000;
5. Development of a High School Internship Program;
6. Exploration of housing opportunities through potential investments in low income housing tax credits and possible financial contribution to a housing development project;
7. Cooperation in any effort to underground electrical transmission lines;
8. Participation in work to help close the Bay Trail Gap;
9. Participation in the Caltrans Adopt-a-Highway program for five years;
10. Provision of enhancements to the Bayfront Expressway undercrossing;
11. Exploration of creating a Willow Road business improvement business district and provision of seed funding up to \$50,000;
12. Ecologically sensitive improvements to the existing public trails around the perimeter of the East Campus;
13. Sponsorship of job training programs and events;
14. A guaranteed payment of \$1.1 million for funding of capital improvement projects;
15. Commitment to being sensitive to endangered species and other wildlife near the San Francisco Bay and adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge when considering landscaping, window treatments, lighting, levee maintenance, and storm water treatment measures;
16. Pursuit of Leadership in Energy and Environmental Design certification; and
17. Pedestrian and bicycle circulation improvements in the Cities of Menlo Park and East Palo Alto.

Having identified the significant environmental effects of the Project, adopted all feasible mitigation measures, rejected alternatives to the Project for the reasons set forth in these findings, identified all unavoidable significant impacts, and balanced the specific economic, legal, social, technological, and other benefits of the Project, the City Council has determined that the significant and unavoidable adverse impacts are outweighed by the benefits and may be considered acceptable, and therefore approves the Project as described herein.

VI. Adoption of the MMRP

The City Council hereby adopts the mitigation measures set forth for the Project in the Final EIR and the MMRP attached hereto as Exhibit A and incorporated herein by this reference.

VII. Severability

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Margaret S. Roberts, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ___ day of _____, 2012, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of _____, 2012.

Margaret S. Roberts, MMC
City Clerk

Mitigation Monitoring and Reporting Program

INTRODUCTION

The California Environmental Quality Act (CEQA) requires the adoption of feasible mitigation measures to reduce the severity and magnitude of significant environmental impacts associated with project development. The Environmental Impact Report (EIR) for the proposed Menlo Park Facebook Campus Project (Project) includes mitigation measures to reduce the potential environmental effects of the Project.

CEQA also requires reporting on and monitoring of mitigation measures adopted as part of the environmental review process (Public Resources Code section 21081.6). This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of Menlo Park in its implementation and monitoring of measures adopted from the Menlo Park Facebook Campus Project EIR.

The mitigation measures are taken from the EIR for the East Campus only. Mitigation measures in this MMRP are assigned the same number they had in the EIR. The MMRP is presented in table format and it describes the actions that must take place to implement each mitigation measure, the timing of those actions, the entities responsible for implementing and monitoring the actions, and verification of compliance.

**MENLO PARK FACEBOOK CAMPUS - EAST CAMPUS
MITIGATION MONITORING AND REPORTING PLAN**

Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
TRANSPORTATION				
IMPACT BEING ADDRESSED: <i>Increases in traffic associated with the Project under the Near Term 2015 East Campus Only Condition would result in increased delays at several intersections during peak hours causing a potentially significant impact to the operation of several of the study intersections. (TR-1)</i>				
<i>TR-1.1 Intersection Improvements.</i> The operations at several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however, others may require additional right-of-way when travel lanes are added.	See below	See below	See below	See below
<p><i>a. Willow Road and Bayfront Expressway</i> The proposed partial mitigation measures for the intersection of Willow Road and Bayfront Expressway include an additional eastbound right turn lane with a right turn overlap phase from Willow Road to Bayfront Expressway, a new Class I bikeway between the railroad tracks and the existing Bay Trail, closing the outbound direction of the driveway at Building 10 to simplify maneuvering through the stop-controlled intersection (inbound access would still be provided), lengthening the existing right-turn pocket at the westbound approach to a full lane between Bayfront Expressway and the stop-controlled intersection, and ensuring the crosswalk at the stop-controlled intersection is accommodated safely.</p> <p>Prior to 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Willow Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement,</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the intersection improvements</p> <p>Complete and submit an encroachment permit</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p> <p>Prior to construction of the intersection improvements</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>City of Menlo Park Public Works - Engineering and Transportation (Public Works)</p> <p>Public Works</p> <p>Public Works and Caltrans</p> <p>Public Works and Caltrans</p>

**MENLO PARK FACEBOOK CAMPUS - EAST CAMPUS
MITIGATION MONITORING AND REPORTING PLAN**

Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way and on the egress approach, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, signage and striping modifications further west on Willow Road, and the design of the eastbound direction Class I bikeway from the railroad tracks to the intersection of Willow Road and Bayfront Expressway. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the on-site improvements within 180 days of City approval of the plans. The Project Sponsor shall construct the off-site improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the</p>	<p>Construct on-site and off-site improvements</p>	<p>Within 180 days of City approval (on-site) and within 180 days of Caltrans approval (off-site)</p>	<p>Project Sponsor</p>	<p>Public Works (on-site) and Caltrans (off-site)</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>bond shall be released by the City. Construction of this improvement by the Project Sponsor shall count as a future credit toward payment of the Transportation Impact Fee (TIF) payable by the Project Sponsor pursuant to the TIF Ordinance. In the event any portion of the intersection improvements is eligible for funding in whole or in part by C/CAG, such improvements may be deferred by the City in its sole discretion to pursue such funding and the Project Sponsor may be relieved of its responsibility to construct such portion of the intersection improvements as may be funded by C/CAG, or such responsibility may be deferred until eligibility for funding is determined. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.</p>				
<p><i>b. Willow Road and Middlefield Road</i></p> <p>The proposed mitigation measure for the intersection of Willow Road and Middlefield Road includes restriping an existing northbound through lane to a shared through a right-turn lane. Implementing this improvement would require traffic signal modifications, removal of the existing triangular median on the southeast corner of the intersection, along with realignment of the crosswalks on the south and east side of the intersection.</p> <p>Prior to 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Willow Road and Middlefield Road for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the intersection improvements</p> <p>Construct improvements</p>	<p>Prior to the Development Agreement approval</p> <p>Within 90 days of the effective date of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p> <p>Within 180 days of encroachment permit approval</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p> <p>Public Works</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director. Upon obtaining approval from the City, the Project Sponsor shall construct the improvements within 180 days of the encroachment permit approval date by the City. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. With the implementation of this mitigation measure, the impact would be reduced to a less-than-significant level.</p>				
<p><i>c. University Avenue and Bayfront Expressway</i> The proposed mitigation measure for the intersection of University Avenue and Bayfront Expressway includes an additional southbound through lane and receiving lane. A revised signal timing plan would also be needed. The additional southbound through lane and southbound receiving lane are not feasible due to the right-of-way acquisition from multiple property owners, potential wetlands, relocation of the Bay Trail, and significant intersection modifications, which are under Caltrans jurisdiction. However, the installation of a Class I bikeway (portion of the Bay Trail from west of the railroad tracks to the intersection of University Avenue and Bayfront Expressway) is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require paving, grading,</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the Class I bike path</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p> <p>Public Works (coordination with the City of East Palo Alto, Association of Bay Area Governments, Bay Trail</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>drainage and signing and striping improvements.</p> <p>Prior to 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed partial mitigation measure along University Avenue between Bayfront Expressway and the railroad tracks for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the improvements.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, and signage and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the proposed improvements within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to</p>	<p>Complete and submit an encroachment permit</p> <p>Construct improvements</p>	<p>Prior to construction of the intersection improvements</p> <p>Within 180 days of Caltrans approval</p>	<p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Project, as necessary), Samtrans/JPB/CPUC and Caltrans Public Works, Samtrans/JPB/CPUC and Caltrans</p> <p>Public Works, Samtrans/JPB/CPUC and Caltrans</p> <p>Public Works, Samtrans/JPB/CPUC and Caltrans</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements, and TDM programs throughout the City, with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.</p>				
<p><i>d. Bayfront Expressway and Chrysler Drive</i> The proposed mitigation measures for the intersection of Bayfront Expressway and Chrysler Drive include restriping the existing eastbound right turn lane to a shared left-right-turn lane.</p> <p>Prior to 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Bayfront Expressway and Chrysler Drive for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the intersection improvements</p> <p>Complete and submit an encroachment permit</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p> <p>Prior to construction of the intersection improvements</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p> <p>Public Works</p> <p>Public Works and Caltrans</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the intersection improvements proposed within five years from the Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements and TDM programs, throughout the City with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigation would fully mitigate the impact, it remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.</p>	Construct improvements	Within 180 days of Caltrans approval	Project Sponsor	Public Works and Caltrans
<p>IMPACT BEING ADDRESSED: <i>Increases in traffic associated with the Project under the Cumulative 2025 East Campus Only condition would result in increased delays at several intersections during peak hours causing a potentially significant impact to the operation of the several study intersection. (TR-6)</i></p>				
TR-6.2 Intersection Improvements. The operations at	See below	See below	See below	See below

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however, others may require additional right-of-way to add travel lanes.</p>				
<p><i>a. Marsh Road and Bayfront Expressway</i> The proposed mitigation measures for the intersection of Marsh Road and Bayfront Expressway include restriping the westbound approach from a shared left-through-right lane to a shared left-through lane and a shared through-right lane.</p> <p>Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Marsh Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the intersection improvements</p> <p>Complete and submit an encroachment permit</p> <p>Construct improvements</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p> <p>Prior to construction of the intersection improvements</p> <p>Within 180 days of Caltrans approval</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p> <p>Public Works</p> <p>Public Works, Caltrans</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigations would fully mitigate the impact, the impact remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.</p>				
<p><i>b. Marsh Road and US 101 NB Ramps</i> The proposed mitigation measures for the intersection of Marsh Road and US 101 Northbound off-ramp include widening the northbound off-ramp on the western side of the approach and adding an additional left-turn lane along with adding a second right-turn lane</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the</p>	<p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>by restriping one of the existing left-turn lanes. This improvement will require relocation of existing traffic signal poles, utility relocation and reconstruction of the curb ramp on the southwest corner of the intersection.</p> <p>Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Marsh Road and US 101 Northbound off-ramp for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall submit complete plans to construct the intersection improvements.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Project Sponsor shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the intersection improvements proposed within five years from the 1601</p>	<p>improvements</p> <p>Submit complete plans to construct the intersection improvements</p> <p>Complete and submit an encroachment permit</p> <p>Construct improvements</p>	<p>effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p> <p>Prior to construction of the intersection improvements</p> <p>Within 180 days of Caltrans approval</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works, Caltrans</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigation would fully mitigate the impact, the impact remains significant and unavoidable because the intersection is under the jurisdiction of Caltrans and the City cannot guarantee the mitigation measure would be implemented.</p>				
<p><i>d. Willow Road and Newbridge Street</i> The potential mitigation measures for the intersection of Willow Road and Newbridge Street includes an additional eastbound left-turn lane, an additional northbound receiving lane for the eastbound left turning traffic, an additional westbound through/right-turn lane, and an additional receiving lane for the westbound through traffic. The additional eastbound left-turn lane and northbound receiving lane are not feasible due to the right-of-way acquisition and property impacts required along Newbridge Street and at the southwest quadrant of the intersection, which is in the City of East Palo Alto. However, the additional westbound through/right-turn lane and westbound receiving lane is a feasible, partial mitigation measure for the impact.</p>	<p>Prepare a construction cost estimate</p> <p>Provide a bond for improvements</p> <p>Submit complete plans to construct the intersection improvements</p>	<p>Prior to approval of the Development Agreement</p> <p>Within 90 days of the effective day of the Development Agreement</p> <p>Within 180 days of the effective date of the Development Agreement</p>	<p>Project Sponsor</p> <p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works</p> <p>Public Works</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>This partial mitigation measure would require traffic signal modifications, the removal of at least one heritage tree in front of 1157 Willow Road in order to accommodate the receiving lane, and the removal and relocation of a portion of the concrete masonry wall and landscaping near 1221 Willow Road.</p> <p>Prior to the 1601 Willow Road Development Agreement approval, the Project Sponsor shall prepare a construction cost estimate for the feasible mitigation measure at the intersection of Willow Road and Newbridge Street for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Project Sponsor shall provide a performance bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the 1601 Willow Road Development Agreement effective date, the Project Sponsor shall submit complete plans to construct a westbound through/right turn lane approximately 300 feet in length, and a westbound through receiving lane, from the Willow Road and Newbridge Street intersection to the beginning of the northbound US 101 on-ramp, based on impacts to the intersections of Willow Road and Newbridge Street.</p> <p>Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Project Sponsor</p>	<p>Complete and submit an encroachment permit</p> <p>Construct improvements</p>	<p>Prior to construction of the intersection improvements</p> <p>Within 180 days of Caltrans approval</p>	<p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works, City of East Palo Alto Public Works Department, Caltrans</p> <p>Public Works</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the intersection improvements. The Project Sponsor shall construct the improvements within 180 days of receiving approval from Caltrans.</p> <p>If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Project Sponsor demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Project Sponsor shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Project Sponsor submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. The partial mitigation improvements are not eligible for a Transportation Impact Fee (TIF) credit. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable.</p>				
<p><i>IMPACT BEING ADDRESSED: Increases in traffic associated with the Project under the Cumulative 2025 East Campus Only Condition would result in increased delays at several intersections during peak hours causing a potentially significant impact to the operation of the study intersections. (TR-11)</i></p>				
<p><i>TR-11.1 Intersection Improvements.</i> The operations at several of the intersections could be improved by modifying the intersection geometry to provide additional capacity. Some of these modifications may be made by restriping the existing roadway; however,</p>	<p>See above</p>	<p>See above</p>	<p>See above</p>	<p>See above</p>

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>others may require additional right-of-way when travel lanes are added.</p> <p>a. <i>Marsh Road and Bayfront Expressway</i> See Cumulative 2025 East Campus Only TR-6.2a.</p> <p>b. <i>Marsh Road and US 101 NB Ramps</i> See Cumulative 2025 East Campus Only TR-6.2b.</p> <p>c. <i>Willow Road and Bayfront Expressway</i> See Near Term 2015 East Campus Only TR-1a.</p> <p>d. <i>Willow Road and Newbridge Street</i> See Cumulative 2025 East Campus Only TR-6.2d.</p> <p>e. <i>Willow Road and Middlefield Road</i> See Near Term 2015 East Campus Only TR-1.1b.</p> <p>f. <i>University Avenue and Bayfront Expressway</i> See Near Term 2015 East Campus Only TR-1.1c.</p> <p>g. <i>Bayfront Expressway and Chrysler Drive</i> See Near Term 2015 East Campus Only TR-1.1d.</p>				
AIR QUALITY				
<p><i>IMPACT BEING ADDRESSED: Operation of the Project at the East Campus would create new area and mobile sources of air pollutants that would generate emissions of ROG, PM₁₀ and PM_{2.5}, but would not exceed BAAQMD's significance thresholds. However, emissions of NO_x from the East Campus operations would exceed BAAQMD's significance thresholds. (AQ-2)</i></p>				
<p><i>AQ-2.1 Install a Cogenra System on Building 11.</i> The Project Sponsor shall install a Cogenra Combined Heat and Power system at the existing Building 11. The scale of the system shall be designed such that ROG, NO_x and PM₁₀ are reduced beyond the Operational Mass Emissions identified in the Draft EIR.</p>	<p>Install a Cogenra System</p>	<p>Within 90 days of the effective day of the Development Agreement</p>	<p>Project Sponsor</p>	<p>City of Menlo Park Community Development Department (CDD)</p>
<p><i>IMPACT BEING ADDRESSED: The Project, in combination with other development within the City, would create new area and mobile sources of air pollutants that would generate emissions of ROG, NO_x, and PM₁₀ resulting in a violation of an Air Quality Standard. (C-AQ-2)</i></p>				
<p>See Mitigation Measure AQ-2.1.</p>				

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
BIOLOGICAL RESOURCES				
IMPACT BEING ADDRESSED: <i>The removal of trees, shrubs, or woody vegetation with implementation of the Project at the East Campus would have a potentially significant impact on the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.</i> (BR-4)				
<p><i>BR-4.1 Identify and Protect Nesting Migratory Birds.</i> The Project Sponsor, until the Project Sponsor Termination Date shall implement the following measures to reduce impacts to nesting migratory birds:</p> <p>a. To facilitate compliance with State and federal law (Fish and Game Code and the Migratory Bird Treaty Act (MBTA) and prevent impacts to nesting birds, the Project Sponsor shall avoid the removal of trees, shrubs, or weedy vegetation February 1 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.</p> <p>b. Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.</p> <p>In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the</p>	<p>Prepare nesting bird survey if trees, shrubs, or weedy vegetation will be removed between February 1 through August 31</p>	<p>Prior to grading/construction of the Bayfront Expressway undercrossing improvements</p>	<p>Project Sponsor</p>	<p>CDD</p>

**MENLO PARK FACEBOOK CAMPUS - EAST CAMPUS
MITIGATION MONITORING AND REPORTING PLAN**

Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
nest), the nest is vacated, and there is no evidence of second nesting attempts.				
UTILITIES				
IMPACT BEING ADDRESSED: <i>The existing sanitary sewer system serving the Project site would not have sufficient capacity to accommodate the Project.</i> (UT-3)				
<p><i>UT-3.1 Sanitary Sewer System Improvements.</i> The Project Sponsor shall upsize 114 linear feet of the existing 12-inch diameter pipeline that runs north along Hamilton Avenue, beginning at the Hamilton Avenue/Willow Road intersection, to a 15-inch diameter pipe. To ensure that this work is completed, the Project Sponsor is agreeing to conduct these improvements and post a bond equal to 200 percent of the estimated cost of the work. In addition, the Project Sponsor shall purchase a third wastewater pump to be placed into reserve in case of pump failure at Hamilton Henderson Pump Station (HHPS). To ensure this work is completed, as part of the 1601 Willow Road Development Agreement, the Project Sponsor is agreeing to purchase the pump and post a bond equal to 120 percent of the cost of the wastewater pump.</p>	<p>Post a bond and enter into an agreement with the City for upsize the existing 12-inch diameter pipeline that runs north along Hamilton Avenue to a 15-inch diameter pipe.</p> <p>Post a bond and enter into an agreement with the City to purchase a wastewater pump for West Bay Sanitary District</p>	<p>Concurrent with granting of land use entitlements</p> <p>Concurrent with granting of land use entitlements</p>	<p>Project Sponsor</p> <p>Project Sponsor</p>	<p>Public Works and West Bay Sanitary District</p> <p>Public Works and West Bay Sanitary District</p>

DRAFT**ORDINANCE NO.****ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK,
CALIFORNIA APPROVING THE DEVELOPMENT AGREEMENT WITH
FACEBOOK INC. AND WILSON MENLO PARK CAMPUS, LLC FOR
THE PROPERTY LOCATED AT 1601 WILLOW ROAD**

The City Council of the City Menlo Park does hereby ORDAIN as follows:

SECTION 1. On May 19, 1992, the City of Menlo Park (“City”) approved a Conditional Development Permit (“CDP”) for the property located at 1601 Willow Road in Menlo Park (“Property”). The CDP allowed a maximum 1,036,000 square foot development subject to certain conditions, including, but not limited to, a condition that set a maximum density of 3,600 employees on the Property and required a Transportation Demand Management program to reduce vehicle trips by 25 percent (collectively, “Density Condition”).

SECTION 2. The General Plan land use designation for the Property is Limited Industry and the Zoning for the Property is M-2-X (General Industrial - Conditional Development District).

SECTION 3. Facebook, Inc., a Delaware corporation (“Facebook”), and Wilson Menlo Park Campus, LLC, a Wisconsin limited liability company (“Owner”) (collectively, “Applicant”), applied to amend and restate the Conditional Development Permit and to enter into a Development Agreement to allow the Applicant to exceed the Density Condition through the imposition of a trip cap that sets a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips (“Trip Cap”).

SECTION 4. The City, as lead agency, prepared an Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act (“CEQA”). All required public notices and public hearings were duly given and held according the law. After notice having been lawfully given, a public hearing was held before the Planning Commission of the City of Menlo Park on May 7, 2012 whereat all persons interested therein might appear and be heard. After notice having been lawfully given, a public hearing was held before the City Council of the City of Menlo Park on May 29, 2012 whereat all persons interested therein might appear and be heard and the City Council certified the Final EIR.

SECTION 5. The City is authorized pursuant to Government Code Section 65864 *et seq.* and Resolution No. 4159 to enter into development agreements. Attached hereto as Exhibit A, and incorporated herein by this reference, is the development agreement between the City and the Applicant regarding the Project (“Development Agreement”).

SECTION 6. As required by Section 301 of Resolution No. 4159 and based on an analysis of the facts set forth above, the City Council hereby adopts the following as its findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended by the Project Approvals, as that term is defined in the Development Agreement.

2. The Development Agreement is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located, as amended by the Project Approvals.

3. The Development Agreement is in conformity with public convenience, general welfare and good land use practices.

4. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.

6. The Development Agreement will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

7. The Development Agreement will result in the provision of public benefits by the Applicant, including, but not limited to, financial commitments, development and seed funding for a community fund, volunteerism, an internship program for local youth, environmental improvements and outreach, and bicycle improvements.

SECTION 7. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 8. Within fifteen (15) days of its adoption this ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the twenty-ninth day of May, 2012.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kirsten Keith
Mayor, City of Menlo Park

ATTEST:

Margaret S. Roberts, MMC
City Clerk

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

1601 WILLOW ROAD
DEVELOPMENT AGREEMENT

SEPARATE PAGE, PURSUANT TO GOVT. CODE 27361.6

1601 WILLOW ROAD
DEVELOPMENT AGREEMENT

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1601 WILLOW ROAD
DEVELOPMENT AGREEMENT

THIS 1601 WILLOW ROAD DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this ___ day of _____, 2012, by and among the City of Menlo Park, a municipal corporation of the State of California ("City"), Facebook, Inc., a Delaware corporation ("Facebook"), and Wilson Menlo Park Campus, LLC, a Wisconsin limited liability company ("Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and City Resolution No. 4159.

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the City, Facebook and Owner:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), the City has adopted Resolution No. 4159 establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner owns those certain parcels of real property collectively and commonly known as 1601 Willow Road, in the City of Menlo Park, California ("Property") as shown on Exhibit A attached hereto and being more particularly described in Exhibit B attached hereto.

D. Facebook is currently the sole tenant of the Property pursuant to the Lease between Owner and Facebook dated as of February 7, 2011 ("Lease"). As the sole tenant of the Property, Facebook would have the right to occupy the Property in accordance with the Project Approvals and any other Approvals.

E. Facebook, with the acknowledgement and consent of Owner, proposes to amend and restate the Sun Conditional Development Permit (as defined in this Agreement) and secure the right to occupy the Property in accordance with the Project Approvals and any other Approvals (as such terms are defined in this Agreement).

F. The City examined the environmental effects of the Project (as defined in this Agreement) in an Environmental Impact Report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On May 29, 2012, the City Council of the City reviewed and certified the EIR.

G. The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for, and secure orderly development of, the Project and otherwise achieve the goals and purposes for which Resolution No. 4159 was enacted by City. The Project will generate the public benefits described in this Agreement, along with other fees for the City. Facebook and Owner will incur substantial costs in order to comply with the conditions of the Approvals and otherwise in connection with the development of the Project. In exchange for the public benefits and other benefits to the City and the public, Facebook and Owner desire to receive vested rights, including, without limitation, legal assurances that the City will grant permits and approvals required for the development, occupancy and use of the Project in accordance with the Existing City Laws (as defined in this Agreement), subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the City, Facebook and Owner desire to enter into this Agreement.

H. On May 7, 2012, after conducting a duly noticed public hearing pursuant to Resolution No. 4159, the Planning Commission of the City recommended that the City Council approve this Agreement, based on the following findings and determinations: that this Agreement (1) is consistent with the objectives, policies, general land uses and programs specified in the General Plan (as defined in this Agreement); (2) is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located; (3) conforms with public convenience, general welfare and good land use practices; (4) will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; (5) will not adversely affect the orderly development of property or the preservation of property values within the City; and (6) will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

I. Thereafter, on May 29, 2012, the City Council held a duly noticed public hearing on this Agreement pursuant to Resolution No. 4159. The City Council made the same findings and determinations as the Planning Commission. On that same date, the City Council made the decision to approve this Agreement by introducing Ordinance No. ____ ("Enacting Ordinance"). A second reading was conducted on the Enacting Ordinance on June 5, 2012, at which the City Council adopted the Enacting Ordinance, making the Enacting Ordinance effective on July 5, 2012.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Resolution No. 4159, and in consideration of the mutual covenants and promises of the City, Facebook and Owner herein contained, the City, Facebook and Owner agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1. Amended and Restated Conditional Development Permit. The Amended and Restated Conditional Development Permit that, subject to the terms and conditions of this Agreement, permits the Property to be occupied pursuant to the Density Condition or the Density Increase.

1.2. Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to authorize and entitle Facebook and/or Owner to develop and occupy the Property in accordance with the terms of the Project including, but not limited to, the Amended and Restated Conditional Development Permit and the heritage tree removal permits.

1.3. City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, and improvement applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, the City Laws shall include the General Plan and the City's Zoning Ordinance.

1.4. City Manager. The City Manager or his or her designee as designated in writing from time to time. Facebook and Owner may rely on the authority of the designee of the City Manager.

1.5. City Wide. Any City Law, Fee or other matter that is generally applicable to one or more kinds or types of development or use of property wherever located in the City. A City Law, Fee or other matter shall not be City Wide if, despite its stated scope, it applies only to the Property or to one or more parcels located within the Property, or if the relevant requirements are stated in such a way that they apply only to all or a portion of the Project.

1.6. Conditions. All Fees, conditions, dedications, reservation requirements, obligations for on- or off-site improvements, services, other monetary or non-monetary requirements and other conditions of approval imposed, charged by or called for by the City in connection with the development of or construction on real property under the Existing City Laws, whether such conditions constitute public improvements, mitigation measures in connection with environmental review of any project or impositions made under applicable City Laws.

1.7. Community Development Director. The City's Community Development Director or his or her designee.

1.8. Default. As to Facebook, the failure of Facebook to comply substantially and in good faith with any obligations of Facebook under this Agreement; as to Owner, the failure of Owner to comply substantially and in good faith with any obligations of Owner under this Agreement; and as to the City, the failure of the City to comply substantially and in good faith with any obligations of City under this Agreement; any such failure by Facebook, Owner or the City shall be subject to cure as provided in this Agreement.

1.9. Density Condition. Pursuant to the Sun Conditional Development Permit, the density limitation of 3,600 employees with a required 25 percent reduction in single vehicle occupancy trips through the implementation of a transportation demand management program.

1.10. Density Increase. The Project Approvals allowing increased employee density on the Property above the Density Condition, subject to the Trip Cap.

1.11. Effective Date. The effective date of the Enacting Ordinance pursuant to Government Code Section 65867.5, as specified in Recital I of this Agreement.

1.12. Existing City Laws. The City Laws in effect as of the Effective Date.

1.13. Fees. All exactions, costs, fees, in-lieu fees, payments, charges and other monetary amounts imposed or charged by the City in connection with the development of or construction on real property under Existing City Laws. Fees shall not include Processing Fees.

1.14. General Plan. Collectively, the General Plan for the City adopted by the City Council on November 30 and December 1, 1994, as previously amended and in effect as of the Effective Date.

1.15. Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any state or federal codes, statutes, executive mandates or court decisions thereunder. The term "Laws" shall exclude City Laws.

1.16. Mitigation Measures. The mitigation measures applicable to the Project, developed as part of the EIR process and required to be implemented through the MMRP and the Amended and Restated Conditional Development Permit.

1.17. MMRP. The Mitigation Monitoring and Reporting Plan adopted as part of the Project Approvals and applicable to the Project.

1.18. Mortgage. Any mortgage, deed of trust or similar security instrument encumbering the Property, any portion thereof or any interest therein.

1.19. Mortgagee. With respect to any Mortgage, any mortgagee or beneficiary thereunder.

1.20. Party. Each of the City, Facebook, and Owner and their respective successors, assigns and transferees (collectively, "Parties"). Facebook will cease being a Party on the earlier of its vacating of the Property or the expiration or earlier termination of the Lease unless Facebook is then the "Owner", in which case Facebook shall retain the rights and obligations of the "Owner" subject, however, to the terms of Section 34.3.

1.21. Processing Fee. A fee imposed by the City upon the submission of an application or request for a permit or Approval, which is intended to cover only the estimated cost to the City of processing such application or request and/or issuing such permit or Approval and which is applicable to similar projects on a City Wide basis, including but not limited to building permit plan check and inspection fees, public works, engineering and transportation plan check and inspection fees, subdivision map application, review and processing fees, fees related to the review, processing and enforcement of MMRP, and fees related to other staff time and attorney's time incurred to review and process applications, permits and/or Approvals; provided such fees are not duplicative of or assessed on the same basis as any Fees.

1.22. Project. The uses of the Property, the site plan for the Property and the Vested Elements, as authorized by or embodied within the Project Approvals and the actions that are required pursuant to the Project Approvals. Specifically, the Project includes the option to occupy the Property with the Density Increase subject to this Agreement and the making of certain improvements to the undercrossing.

1.23. Project Approvals. The following approvals for the Project granted, issued and/or enacted by the City as of the date of this Agreement, as amended, modified or updated from time to time: (a) this Agreement; (b) certification of the EIR and adoption of the MMRP and other actions in connection with environmental review of the Project; (c) the Amended and Restated Conditional Development Permit; and (d) the heritage tree removal permits.

1.24. Public Works Director. The City's Public Works Director or his or her designee.

1.25. Resolution No. 4159. City Resolution No. 4159 entitled "Resolution of the City Council of the City of Menlo Park Adopting Regulations Establishing Procedures and Requirements for Development Agreements" adopted by the City Council of the City of Menlo Park on January 9, 1990.

1.26. Sun Conditional Development Permit. The conditional development permit approved by the City on May 19, 1992 and issued to Sun Microsystems for the Property.

1.27. Trip Cap. The Trip Cap setting a maximum allowable number of vehicle trips associated with the Property on non-holiday weekdays, and which is as follows: 2,600 trips during the AM peak period from 7:00 a.m. to 9:00 a.m.; 2,600 trips during the PM peak period from 4:00 p.m. to 6:00 p.m.; and 15,000 total daily trips.

2. Effective Date; Term.

2.1. Effective Date. This Agreement shall be dated and the rights and obligations of the Parties hereunder shall be effective as of the Effective Date. Not later than 10 days after the Effective Date, the City, Facebook and Owner shall execute and acknowledge this Agreement, and the City shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California as provided for in Government Code Section 65868.5. However, the failure to record this Agreement within the time period provided for in Government Code Section 65868.5 shall not affect its validity or enforceability among the Parties.

2.2. Term.

2.2.1. This Agreement shall continue until the earlier of: (a) the termination of the Project Approvals or (b) the termination of this Agreement in accordance with its terms.

2.2.2. Notwithstanding Section 2.2.1 above, all commitments and obligations under the following sections of this Agreement shall terminate on the earliest of (a) Facebook vacating the Property, (b) the expiration or earlier termination of the Lease, or (c) February 6, 2026: Housing (Section 9), Local Community Fund (Section 10), Bay Trail Gap (Section 11), Utility Undergrounding (Section 12), Jobs (Section 13), City of East Palo Alto Benefits (Section 14), Environmental Education (Section 16), Local Purchasing (Section 17), Transportation Demand Management Information Sharing (Section 19) and Volunteerism (Section 20).

2.2.3. Unless otherwise expressly provided in this Agreement, all of Facebook's rights and obligations under this Agreement shall terminate on the earlier of the date Facebook vacates the Property or the expiration or earlier termination of the Lease unless Facebook is then the "Owner", in which case, Facebook shall retain the rights and obligations of the "Owner" subject, however, to the terms of Section 34.3.

2.2.4. The terms of this Agreement other than those specifically listed in Section 2.2.2 shall continue until this Agreement is terminated in accordance with its terms.

2.3. Expiration of Term. Except as otherwise provided in this Agreement or any of the Approvals, upon the expiration of the term of this Agreement, (a) this Agreement, and the rights and obligations of the Parties under this Agreement, shall terminate; (b) the Property shall remain subject to the Amended and Restated Conditional Development Permit; (c) the Property shall be subject to the Density Condition and the right to elect to have the Property subject to the Density Increase will terminate; and (d) Owner shall thereafter comply with the provisions of the City Laws then in effect or thereafter enacted and applicable to the Property and/or the Project, except that the expiration of the term of this Agreement shall not affect any rights of Owner that are or would be vested under City Laws in the absence of this Agreement and the Amended and Restated Conditional Development Permit.

3. General Development of the Project.

3.1. Project. Facebook and Owner shall have the vested right to develop and occupy the Property in accordance with the terms and conditions of this Agreement and the Project Approvals, and any additional Approvals for the Project and/or the Property obtained by Facebook and/or Owner, as the same may be amended from time to time upon application by Facebook and/or Owner; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement, so long as this Agreement remains effective, and the Approvals for the Project and/or the Property. Except as otherwise specified herein, until the expiration or earlier termination of this Agreement, this Agreement, the Approvals and the Existing City Laws shall control the overall development, use and occupancy of the Property, and all improvements and appurtenances in connection therewith, including, without limitation, the density and intensity of use ("Vested Elements"), and all Mitigation Measures and Conditions required or imposed in connection with the Project Approvals in order to minimize or eliminate environmental impacts of the Project.

3.2. Subsequent Projects. The City agrees that as long as Facebook and Owner develop and occupy the Project in accordance with the terms of this Agreement, Facebook's and Owner's right to develop and occupy the Property shall not be diminished despite the impact of future development in the City on public facilities, including, without limitation, City streets, water systems, sewer systems, utilities, traffic signals, sidewalks, curbs, gutters, parks and other City owned public facilities that may benefit the Property and other properties in the City.

3.3. Other Governmental Permits. Facebook, Owner or City (whichever is appropriate) shall apply for such other permits and approvals from governmental or quasi-governmental agencies other than the City having jurisdiction over the Project (e.g. the California Department of Transportation) as may be required for the development of or provision of services to the Project; provided, however, that City shall not apply for any such permits or approvals without Facebook's and/or Owner's prior written approval. The City shall promptly and diligently cooperate, at no cost to the City, with Facebook and/or Owner in its/their endeavors to obtain such permits and approvals and, from time to time at the request of Facebook and/or Owner, shall proceed with due diligence and in good faith to negotiate and/or enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. All such applications, approvals, agreements, and permits shall be obtained at Facebook's and/or Owner's cost and expense, including payment of City staff time in accordance with standard practices, and Facebook and/or Owner shall indemnify City for any liabilities imposed on City arising out of or resulting from such applications, permits, agreements and/or approvals. The indemnifications set forth in this Section 3.3 shall survive the termination or expiration of this Agreement. To the extent allowed by law, Facebook and/or Owner shall be a party or third party beneficiary to any such agreement between City and such agencies and shall be entitled to enforce the rights of Facebook and/or Owner or the City thereunder and/or the duties and obligations of the parties thereto.

3.4. Additional Fees. Except as set forth in this Agreement and the Project Approvals, the City shall not impose any further or additional fees (including, without limitation, any fees, taxes or assessments not in existence as of the Effective Date or not applicable to the Project in accordance with the Existing City Laws, the Project Approvals and this Agreement), whether through the exercise of the police power, the taxing power, or any other means, other than those set forth in the Project Approvals, the Existing City Laws and this Agreement. In addition, except as set forth in this Agreement, the base or methodology for calculating all such Fees applicable to the construction and development of the Project shall remain the same for such Fees as in effect as of the Effective Date. Notwithstanding the foregoing, the following provisions shall apply:

3.4.1. If the City forms an assessment district including the Property, and the assessment district is City Wide or applies to all M-2 Zoned properties and is not duplicative of or intended to fund any matter that is covered by any Fee payable by Facebook and/or Owner, the Property may be legally assessed through such assessment district based on the benefit to the Property (or the methodology applicable to similarly situated properties), which assessment shall be consistent with the assessments of other properties in the district similarly situated. In no event,

however, shall Facebook's and/or Owner's obligation to pay such assessment result in a cessation or postponement of development and occupancy of the Property or affect in any way Facebook's and/or Owner's development rights for the Project.

3.4.2. The City may charge Processing Fees to Facebook and/or Owner for land use approvals, building permits, encroachment permits, subdivision maps, and other similar permits and approvals which are in force and effect on a City Wide basis or applicable to all M-2 Zoned properties at the time Facebook and/or Owner submits an application for those permits.

3.4.3. If the City exercises its taxing power in a manner which will not change any of the Conditions applicable to the Project, and so long as any new taxes or increased taxes are uniformly applied on a City Wide basis or applied uniformly to M-2 Zoned properties, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City similarly situated.

3.4.4. If, as of the Effective Date, the Existing City Laws under which the Fees applicable to the Project have been imposed provide for automatic increases in Fees based upon the consumer price index or other method, then the Project shall be subject to any such increases in such Fees resulting solely from the application of any such index or method in effect on the Effective Date.

3.4.5. If state or federal laws are adopted which impose fees on new or existing projects, such fees shall be applicable to the Project.

3.5. Effect of Agreement. This Agreement, the Project Approvals and all plans and specifications upon which such Project Approvals are based, including but not limited to the Amended and Restated Conditional Development Permit, shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full.

3.6. Review and Processing of Approvals. The City shall accept, review and expeditiously process Facebook's and/or Owner's applications and requests for Approvals in connection with the Project in good faith and in a manner which complies with and is consistent with the Project Approvals and this Agreement. The City shall approve any application or request for an Approval which complies and is consistent with the Project Approvals and this Agreement. Facebook and/or Owner shall provide the City with the Processing Fees, applications, documents, plans, materials and other information necessary for the City to carry out its review and processing obligations. Facebook and/or Owner shall submit all applications and requests for Approvals in the manner required under applicable City Laws in effect as of the time of such submittal. The Parties shall cooperate with each other and shall use diligent, good faith efforts to cause the expeditious review, processing and issuance of the approvals and permits for

the development and occupation of the Project in accordance with the Project Approvals and this Agreement.

4. Specific Criteria Applicable to the Project.

4.1. Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise expressly provided in this Agreement, the laws and policies applicable to the Property are and shall be as set forth in Existing City Laws (regardless of future changes in Existing City Laws by the City), this Agreement and the Approvals. Facebook's and Owner's vested rights to develop and occupy or to cause the Property to be occupied in accordance with the Vested Elements, provided that City may apply and enforce the California Building Code as amended and adopted by the City (including the Mechanical Code, Electrical Code and Plumbing Code) and California Fire Code as amended and adopted by the City and/or the Menlo Park Fire Protection District, as such codes may be in effect at the time Facebook and/or Owner applies for building permits for any aspect of the Project. Without limiting the generality of the foregoing, except as otherwise expressly provided in this Agreement, during the term of this Agreement, the City shall not, without the prior written consent of Facebook and/or Owner: (a) apply to the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that is inconsistent with any Existing City Laws or Approvals and that would have the effect of delaying, preventing, adversely affecting or imposing any new or additional Condition with respect to the Project; or (b) apply to the Project or any portion thereof any new or amended ordinance, resolution, rule, regulation, requirement or official policy that requires additional discretionary review or approval for the proposed development, use and/or occupancy of the Project.

4.2. Application of New City Laws. Nothing herein shall prevent the City from applying to the Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not affect the Vested Elements, impose any further or additional fees or impose any other conditions on the Project, including, without limitation, those requiring additional traffic improvements/requirements or additional off-site improvements, that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

4.2.1. Limiting or reducing the density or intensity of use of the Property;

4.2.2. Limiting grading or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Approvals or this Agreement; or

4.2.3. Applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

4.3. Timing. Without limiting the foregoing, no moratorium or other limitation affecting the development and occupancy of the Project or the rate, timing or sequencing thereof shall apply to the Project.

4.4. Subsequent Environmental Review. The Parties acknowledge and agree that the EIR contains a thorough environmental analysis of the Project and the Project alternatives, and specifies the feasible Mitigation Measures available to eliminate or reduce to an acceptable level the environmental impacts of the Project. The Parties further acknowledge and agree that the EIR provides an adequate environmental analysis for the City's decisions to authorize Facebook and Owner to proceed with the Project as embodied in the Project Approvals and this Agreement and subsequent development of the Project during the term of this Agreement. The Mitigation Measures imposed are appropriate for the implementation of proper planning goals and objectives and the formulation of Project conditions of approval. In view of the foregoing, the City agrees that the City will not require another or additional environmental impact report or environmental review for any subsequent Approvals implementing the Project. Facebook and Owner shall defend, indemnify and hold the City harmless from any costs or liabilities incurred by the City in connection with any litigation seeking to compel the City to perform additional environmental review of any subsequent Approvals.

4.5. Easements; Improvements. The City shall cooperate with Facebook and Owner in connection with any arrangements for abandoning existing easements and facilities and the relocation thereof or creation of any new easements within the Property or the undercrossing necessary or appropriate in connection with the development of the Project. If any such easement is owned by the City or an agency of the City, the City or such agency shall, at the request of Facebook and/or Owner, take such action and execute such documents as may be reasonably necessary in order to abandon and relocate such easement(s) as necessary or appropriate in connection with the development of the Project in accordance with the Project Approvals. All on-site and off-site improvements required to be constructed by Facebook and/or Owner

pursuant to this Agreement, including those set forth in the Project Approvals, shall be constructed by Facebook and/or Owner (as applicable).

5. Trip Cap. If the Density Increase is elected and has not been suspended in accordance with the terms of Section 8.2, Facebook and/or Owner shall adhere to the Trip Cap, the details of which are included in the Project Approvals, and incorporated herein by this reference. To ensure compliance, the Trip Cap includes monitoring with periodic reporting and monetary penalties for violations of the Trip Cap that shall be paid by Facebook and/or Owner to the City. Facebook agrees that so long as it has not vacated the Property and the Lease is effective, it shall be solely responsible for complying with the Trip Cap and paying any monetary penalties payable thereunder.

6. Conditions Precedent. Facebook's obligations and Owner's obligations (if any) under Sections 7, 9-20 and 22 are expressly conditioned on the resolution of all legal challenges, if any, to the EIR, the Project Approvals and the Project. If no litigation or referendum is commenced challenging the EIR, the Project Approvals and/or the Project, Facebook's and Owner's obligations will vest 90 days after the Effective Date. If litigation or a referendum is commenced challenging the EIR, the Project Approvals and/or the Project, then Facebook's and Owner's obligations will vest on the date of final, non-appealable resolution of all litigation in a manner that is reasonably acceptable to Facebook and Owner or resolution of the referendum in a manner that is reasonably acceptable to Facebook and Owner. The conditions described in this Section 6 shall, collectively, be referred to as the "Conditions Precedent".

7. One Time Public Benefits; Conditions.

7.1. Capital Improvement. Within 45 days of the satisfaction of the Conditions Precedent, Facebook shall make a one-time payment of One Million One Hundred Thousand Dollars (\$1,100,000) to the City for the City's unrestricted use toward capital improvement projects.

7.2. Bicycle/Pedestrian. Within 240 days of the satisfaction of the Conditions Precedent, Facebook shall, subject to the approval of the applicable regulatory agencies, take the actions described in this Section 7.2.

7.2.1. Facebook shall perform one-time improvements to the undercrossing above and beyond those described in the Project. The specific improvements shall be designated by Facebook in its sole and absolute discretion, but shall be subject to review, approval and permitting by the City. Conceptually, these improvements include landscape embellishments and a self-service bicycle tool station. Also, as a key feature, Facebook proposes to improve the undercrossing by, to the extent appropriate, preserving existing art and/or providing wall surfaces for invited

artists to create mural art with the intent to create an "art gallery" experience for the pedestrians/bicyclists using the undercrossing.

7.2.2. Facebook shall perform restriping improvements for bicycle lanes to the following streets on a one-time basis:

- (a) Willow Road and Middlefield Road intersection;
- (b) Willow Road and U.S. 101 bridge;
- (c) Willow Road between Hamilton Avenue and Bayfront Expressway;
- (d) Willow Road between Newbridge Street and Ivy Drive; and
- (e) Willow Road between O'Keefe and U.S. 101 (shared lane marking).

7.2.3. Facebook shall have a one-time obligation to investigate the possibility of making crosswalk improvements, including, but not limited to the installation of in-pavement warning lights, to the pedestrian crossings at the U.S. 101 and Willow Road interchange, and, subject to the consent of the applicable regulatory agencies, shall make or pay for such improvements. Facebook shall not, however, be obligated to spend more than One Hundred Thousand Dollars (\$100,000) on these crosswalk improvements. If Facebook determines, as reasonably confirmed by the City's Public Works Director, that the cost of these crosswalk improvements will exceed One Hundred Thousand Dollars (\$100,000), the City may perform such improvements and Facebook shall reimburse the City for its reasonable costs to perform such improvements, but not to exceed One Hundred Thousand Dollars (\$100,000). If the City performs the crosswalk improvements, the City shall provide evidence of the cost to complete the crosswalk improvements to Facebook, which evidence shall be subject to Facebook's reasonable review and approval.

7.2.4. Facebook shall perform one-time improvements to publicly accessible walking paths, trails and levees in the immediate vicinity of the Property, subject to approval by the San Francisco Bay Conservation and Development Commission ("BCDC"). The intent of these improvements would be to make the area surrounding the Property more pedestrian friendly and enable the community, visitors and Facebook employees to learn about and enjoy the surrounding bay-lands in an ecologically sensitive manner. The specific improvements shall be determined by Facebook in its sole and absolute discretion, but may include planting bay friendly native shrubs and trees, providing additional destination viewing points and seating and creating a renovated, environmentally friendly walking path and shall include adding interpretive signage. In performing these improvements, Facebook shall work with an environmental consultant to ensure that human interactions with the ecosystem are appropriate.

7.3. Business District. Within three years of the satisfaction of the Conditions Precedent, Facebook will have a one-time obligation to investigate the possibility of creating a business improvement district in the Willow Road corridor between U.S. 101 and Bayfront Expressway that includes the Property. If the business improvement district is feasible and the adjacent property owners are likewise interested in creating the business improvement district, Facebook shall initiate the process for creating the business improvement district; provided, however, that Facebook shall not be obligated to spend more than Fifty Thousand Dollars (\$50,000) on this effort. The adequacy of Facebook's investigation and verification of the amount spent in diligently pursuing this condition is subject to the review and approval of the City's Community Development Director.

7.4. In-Lieu Mitigation Payment. Facebook agrees that if the City (a) secures grant funds to pay for mitigations that Facebook is obligated to perform pursuant to the MMRP, (b) notifies Facebook that it wishes to perform such mitigations in lieu of Facebook, and (c) completes those mitigations, then Facebook shall make an in lieu of payment to the City equal to the cost of the mitigations (which payment shall fully satisfy Facebook's obligation to perform such mitigations); provided, however, that (i) the City and Facebook shall agree on a not-to-exceed budget for the mitigations the City wishes to perform; and (ii) if the City notifies Facebook that it wishes to perform such mitigations in lieu of Facebook after Facebook has commenced planning for and/or performing such mitigations, then Facebook shall be entitled to a credit (to be offset against the in lieu of payment to the City) equal to Facebook's reasonable costs incurred in planning and/or performing such mitigations. The City shall provide evidence of the cost to complete the mitigations to Facebook, which evidence shall be subject to Facebook's reasonable review and approval. With respect to any particular mitigation, Facebook will not be obligated to pay the City any amounts incurred in excess of the not-to-exceed budget for that mitigation. If the City notifies Facebook that it wishes to perform a mitigation(s) in lieu of Facebook pursuant to this Section 7.4, then Facebook's only obligation with respect to such mitigation(s) will be to pay the City the applicable amounts described herein. In addition, Facebook also agrees that if the City secures grant funds to pay for mitigations that Facebook is obligated to perform pursuant to the MMRP and notifies Facebook that it wishes to use those funds to pay for mitigations that Facebook itself performs, then Facebook shall make an in lieu of payment to the City equal to the grant funds used by the City to pay for mitigations performed by Facebook.

8. On-Going Public Benefits, Conditions.

8.1. Annual Payment. During the term of this Agreement, Facebook and/or Owner shall make an annual payment ("Annual Payment") to the City in lieu of sales tax or other revenue that might otherwise accrue to the City if the Property was

occupied by a sales tax producer. The first payment of the Annual Payment will be for the City's July 1, 2012 to June 30, 2013 fiscal year, and will be due and payable in full to the City on January 1, 2013. Subsequent payments of the Annual Payment will be due and payable in full to the City on July 1 of each fiscal year for which the Annual Payment is payable (commencing July 1, 2013). The Annual Payment will be payable for the 10 year period commencing on July 1, 2012 and ending on June 30, 2022 ("Minimum Payment Period") with no proration, reduction or suspension (except as set forth in Sections 8.2.5 and 8.2.8). After the Minimum Payment Period has expired, however, the Annual Payment may be adjusted as set forth below in Section 8.2. If the City changes its fiscal year, then the date for payment of the Annual Payment shall, likewise, be changed.

8.1.1. In each of the first five years beginning with the first payment on January 1, 2013, the amount of the Annual Payment shall be Eight Hundred Thousand (\$800,000).

8.1.2. For each of the five years beginning with the payment on July 1, 2017, the Annual Payment shall be Nine Hundred Thousand (\$900,000).

8.1.3. For each of the five years beginning with the payment on July 1, 2022, the Annual Payment shall be One Million Dollars (\$1,000,000).

8.1.4. Beginning on July 1, 2027 and on each anniversary thereof (each an "Index Date"), the Annual Payment amount will be increased to the product of the Annual Payment amount in effect immediately prior to the applicable Index Date times a fraction, the numerator of which is the "Index" (defined below) for the third (3rd) month preceding the applicable Index Date, and the denominator of which is the Index for the third (3rd) month preceding the last Index Date or, in case of the first Index Date, the Index for April 1, 2026. "Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (all items for the SF-Oakland-San Jose Metropolitan Area on the basis of 1982-1984 = 100). If the format or components of the Index are materially changed after the execution of this Agreement, the City will reasonably select an index which is published by the Bureau of Labor Statistics or similar agency and which is a reasonable equivalent to the Index in effect on the Effective Date.

8.2. Adjustments.

8.2.1. Following expiration of the Minimum Payment Period on June 30, 2022 and on each five-year anniversary thereof (each an "Adjustment Date"), Facebook and/or Owner shall have the option to temporarily suspend or decrease the Density Increase or, if the Density Increase is then suspended or decreased, to unsuspend or increase the Density Increase ("Adjustment Option"). Notwithstanding the

foregoing, any increase shall not exceed the Density Increase permitted by the Project Approvals. Increases or decreases in the Density Increase shall be measured in terms of daily vehicle trips and Facebook and/or Owner may only elect to increase or decrease the Density Increase in increments of 1,000 daily vehicle trips. The Density Increase would decrease by reducing the maximum number of daily vehicle trips in the Trip Cap, for example from 15,000 to 14,000 total daily trips. There will be no corresponding reduction in the peak period trips unless the daily trips are reduced below 11,000 per day. For reductions in daily trips below 11,000 trips per day, there will be a corresponding reduction in the peak period trips at the ratio of 0.208 peak period trips per daily trip. To illustrate, if daily trips are reduced to 10,000 trips per day, then the peak period trips would each be reduced by 208 trips. For each 1,000 daily trips reduced, the Annual Payment would be reduced by an amount equal to 10 percent of the full amount of the Annual Payment and for each 1,000 daily trips increased the Annual Payment would increase by 10 percent of the full amount of the Annual Payment. If Facebook and/or Owner elects to suspend the Density Increase and provides timely notice of the same in accordance with Section 8.2.2, the obligation to make the Annual Payment will likewise be suspended (in its entirety).

8.2.2. Facebook and/or Owner may exercise its Adjustment Option by giving the City notice at least 180 days prior to an Adjustment Date. Such notice shall indicate whether Facebook and/or Owner is suspending, un-suspending, decreasing or increasing the Density Increase and, in the case of a decrease or increase, the amount (i.e. the decrease or increase to the maximum number of daily vehicle trips in the Trip Cap). On the first Adjustment Date, if Facebook and/or Owner does not exercise the Adjustment Option, the Annual Payment will be as described above in Section 8.1.3. Thereafter, if Facebook and/or Owner does not timely exercise its Adjustment Option, the Annual Payment (if any) for the succeeding five-year period will continue to remain as it was during the period preceding the Adjustment Date (subject to increases to account for changes in the Index as set forth in Section 8.1.4).

8.2.3. Following the expiration of the Minimum Payment Period, on the occurrence of a Triggering Event, as defined below, Facebook and/or Owner will have the option to suspend or decrease the Density Increase by giving the City notice of its exercise of its Adjustment Option, which notice must specify the Triggering Event. The suspension or decrease will become effective as of the commencement of the City's next fiscal year provided the City receives the notice at least 120 days prior to the commencement of such fiscal year. If the notice is given within 120 days of the City's next fiscal year, then the suspension or decrease will become effective as of the commencement of the City's succeeding fiscal year. The Triggering Event notice must indicate whether Facebook and/or Owner is suspending or decreasing the Density Increase and, in the case of a decrease to the Density Increase, the amount of such

decrease, in increments of 1,000 daily vehicle trips. If Facebook and/or Owner decreases the Density Increase pursuant to this Section 8.2.3, the Trip Cap shall be adjusted in the same manner as is set forth in Section 8.2.1. Following delivery of a Triggering Event notice, the Density Increase may be un-suspended and/or increased (as applicable) on the next Adjustment Date, in the manner set forth above.

8.2.4. A "Triggering Event" means either of the following: (a) vacation of four or more of Buildings 10, 12, 14, 15, 16, 17 and 18 as shown on the site plan attached hereto as Exhibit C and incorporated herein by this reference, or (b) the performance of building improvements that cause the average employee density of the Buildings 10, 12, 14, 15, 16, 17 and 18 to be less dense than the Density Condition, as determined in the reasonable discretion of the City's Community Development Director.

8.2.5. Upon the expiration of the Lease or Owner's termination of the Lease due to Facebook's default under the Lease, Owner shall have the one-time option to suspend the Density Increase by giving the City notice of its exercise of the Adjustment Option within 30 days of the expiration or termination of the Lease (as applicable). The suspension will become effective as of the commencement of the City's next fiscal year. If the Density Increase is suspended pursuant to this Section 8.2.5, the Density Increase may be un-suspended on the next Adjustment Date, in the manner set forth above. If Owner elects to suspend the Density Increase, the obligation to make the Annual Payment will likewise be suspended (in its entirety). Notwithstanding the foregoing, if Owner exercises the Adjustment Option pursuant to this Section 8.2.5 during the Minimum Payment Period, Facebook shall make a one-time payment to the City equal to the remaining unpaid Annual Payments due for the Minimum Payment Period discounted back to the present value. For purposes of the preceding, present value shall be computed by discounting at a rate equal to the "Prime Rate" as published in the Money Rates section of *The Wall Street Journal* on the date the Owner exercises the Adjustment Option. Facebook shall pay the City amounts due pursuant to this Section 8.2.5 within 60 days of the date the Owner delivers to the City notice of its exercise of the Adjustment Option provided for in this Section 8.2.5.

8.2.6. Facebook and/or Owner may elect to reduce the Density Increase by up to 8,000 daily trips or to suspend the Density Increase in its entirety. In no event, absent a suspension of the Density Increase, shall the Annual Payment due to the City fall below 20 percent of the Annual Payment. The Density Increase may be suspended for a maximum of ten consecutive years, after which time this Agreement may be terminated pursuant to Section 26.

8.2.7. Facebook and/or Owner will be entitled to a credit equal to all taxes paid to and received by the City and attributable to operations at the Property,

including, without limitation, sales taxes attributable to retail operations performed at the Property and any future taxes on any services provided from or attributable to the Property. That credit will be offset against the Annual Payment. Facebook and/or Owner will not be entitled to a credit for property taxes paid to the City.

8.2.8. Notwithstanding the above, if litigation or a referendum is commenced challenging the EIR, the Project Approvals and/or the Project and as a result of such litigation or referendum Facebook and/or Owner is prohibited from or elects not to occupy the Property in accordance with the Density Increase, the obligation to pay the Annual Payment will be stayed until the date of final, non-appealable resolution of all litigation in a manner that is reasonably acceptable to Facebook and/or Owner and final resolution of the referendum in a manner that is reasonably acceptable to Facebook and/or Owner.

8.2.9. Notwithstanding the above, so long as Facebook leases the Property pursuant to the Lease, (a) Facebook will be solely authorized to exercise Owner's rights under this Section 8 including, without limitation, the right to make an adjustment to the Density Increase on an Adjustment Date or following a Triggering Event and (b) Facebook and Owner shall be jointly and severally liable for any and all payment obligations related to the Annual Payment and penalties associated with violations of the Trip Cap, if any. Facebook's rights and obligations pursuant to this Section 8 shall terminate upon the expiration or earlier termination of the Lease (regardless of whether Facebook has vacated the Property) unless Facebook is then the "Owner", in which case, Facebook shall retain the rights and obligations of the "Owner" subject, however, to the terms of Section 34.3. This means, among other things, that unless Facebook is the "Owner", Facebook shall not be liable for any payment obligations related to the Annual Payment or penalties associated with violations of the Trip Cap following the expiration or earlier termination of the Lease, except as provided in Section 8.2.5.

9. Housing.

9.1. Facebook will explore opportunities to invest in low income tax credits for affordable housing projects in the City and the City of East Palo Alto, including partnering with a local non-profit housing developer(s) or contributing funds toward the creation of low, very-low or extremely-low income housing. Facebook shall report the results of its explorations to the City's Community Development Director upon the City's Community Development Director's written request. The decision of whether to make any investments will be in Facebook's sole and absolute discretion.

9.2. Facebook will contact a local real estate developer or local real estate developers interested in building housing projects in the City. Facebook in

concert with the real estate developer(s) will explore ways to support housing projects, including, but not limited to investing capital, committing to leasing units or offering marketing opportunities to Facebook employees. Facebook shall report the conclusions from this collaborative effort to the City's Community Development Director upon the City's Community Development Director's written request. The decision of whether to provide any support will be in Facebook's sole and absolute discretion.

10. Local Community Fund. Within one year of the satisfaction of the Conditions Precedent, Facebook shall create a Local Community Fund ("LCF") in partnership with a non-profit partner to manage and administer the LCF and Facebook shall contribute Five Hundred Thousand Dollars (\$500,000) to the LCF. The purpose of the LCF will be to provide support for local community needs. A five-member Board of Advisors will be created to advise about criteria for eligibility and distribution of funding. The Board of Advisors will endeavor to spread the LCF's benefits equally between the City and the City of East Palo Alto. The City Manager and East Palo Alto's City Manager each will name one Advisory Board member to serve a two-year term. Facebook will name two Advisory Board members to each serve a two-year term, and a Facebook representative appointed by Facebook will serve on a continuing basis. Advisory Board members may serve more than one term (if re-appointed by the City Manager, the City of East Palo Alto's City Manager or Facebook, as applicable). If after the LCF's funding has been exhausted Facebook determines that the LCF is a success, is operating smoothly and is making a positive impact on the community, Facebook will consider making an additional contribution to LCF (however, the decision of whether to make an additional contribution will be in Facebook's sole and absolute discretion).

11. Bay Trail Gap. Facebook will work with Bay Trail stakeholders, including, but not limited to Midpeninsula Regional Open Space District, Association of Bay Area Governments (ABAG), the City of East Palo Alto and the City and County of San Francisco and appropriate members of the business community to close the Bay Trail Gap, commonly known as Gap No. 2092, which terminates at the railroad right-of-way on University Avenue. Facebook will also evaluate making a future financial contribution to the effort to close the Bay Trail Gap. Facebook shall report the results of its explorations to the City upon the City's Community Development Director's written request. The decision of whether to make any investments will be in Facebook's sole and absolute discretion.

12. Utility Undergrounding. Facebook agrees to cooperate with the City in the City's efforts to underground existing electric transmission lines located in the vicinity of the Property, however, neither the City nor Facebook will be obligated to provide funding for utility undergrounding.

13. Jobs.

13.1. Internship Program. Facebook will create a summer intern program for students residing within the geographic boundaries of the Ravenswood Elementary School District. The summer intern program will commence with an initial, pilot program, and then later, if successful, may be expanded, in Facebook's sole and absolute discretion, to include more participants and/or subject areas. Students participating in the pilot program will work in the Facebook IT Department alongside technology professionals. The summer intern program will include weekly training sessions covering topics such as the college application process, professional skills and business and interpersonal skills. The department in which the summer interns are placed, and the scope of and agenda for the program may change over time. Facebook anticipates that the summer intern program will be launched in partnership with an academic non-profit organization and that the non-profit organization will be responsible for selecting the participating students, processing work permits and managing other related administrative matters. The program will include the following elements: (a) the program will be open to at least 10 students per session, (b) all students must be in or entering their Junior year in high school (unless otherwise determined by Facebook in its reasonable discretion), and (c) the program will run for at least four weeks. Facebook will endeavor to launch the pilot program in June 2012, and in no case will the pilot program launch later than summer 2013. Facebook may also elect (in its sole and absolute discretion) to expand the program to include an after-school session during the school year in addition to the annual summer program.

13.2. Encourage Local Jobs. Facebook will work with a local training program to expand training services for residents of the City and the City of East Palo Alto. Facebook will also create an ongoing quarterly series of career development workshops to commence within one year of the satisfaction of the Conditions Precedent. The workshops will focus on topics such as resume writing, interviewing skills and how to find a job via social media, including Facebook. These workshops will take place in local community centers and/or other neighborhood sites. In addition, within one year of the satisfaction of the Conditions Precedent, Facebook will host a session, promoted in the Belle Haven neighborhood and East Palo Alto, on how to become a Facebook employee, including how to apply through www.facebook.com/careers. Because people who work at Facebook are comprised of both employees and contractors, to encourage contractors to hire City residents and residents of the City of East Palo Alto, Facebook will require future vendors to use reasonable efforts to notify residents of the City and the City of East Palo Alto when they are hiring new people to work at the Property in the facilities, culinary and construction trades. Reasonable efforts shall include, but not be limited to, using the existing East Palo Alto first source hiring jobs hotline/posting capabilities and any

equivalent program later developed by the City. Vendors with existing contracts will be encouraged to use reasonable efforts to promote local hiring as openings become available. Facebook will also encourage campus vendors to host sessions on how to become an employee of their organization.

14. City of East Palo Alto Benefits. On _____, 2012, the City of East Palo Alto and Facebook entered into the Memorandum of Agreement by and between the City of East Palo Alto and Facebook, Inc. Regarding the Menlo Park Facebook Campus Project ("MOA"). A copy of the MOA, including its "Exhibit A, Terms and Implementation" is attached hereto as Exhibit D. The specific terms listed in "Exhibit A, Terms and Implementation" are incorporated herein, except for the following terms which are specifically not incorporated herein:

- (a) Paragraph 1.c) Traffic Improvements, the terms of which are included in Section 7.2.3 of this Agreement;
- (b) Paragraph 3.a) Jobs/Local Hire, the terms of which are included in Sections 13.1 and 13.2 of this Agreement;
- (c) Paragraph 3.b) Volunteerism, the terms of which are included in Section 20 of this Agreement;
- (d) Paragraph 3.c) Community Fund, the terms of which are included in Section 10 of this Agreement;
- (e) Paragraph 3.d) Housing, the terms of the second and third bullet points, which are included in Sections 9.1 and 9.2 of this Agreement; and
- (f) Paragraph 3.e), the terms of which are included in Section 11 of this Agreement.

15. Adopt-a-Highway. Within 180 days of the satisfaction of the Conditions Precedent, Facebook will adopt a roadway segment in the vicinity of the Property pursuant to Caltrans' Adopt-A-Highway Program. This commitment will be for a period of five years. If there are no segments available for adoption in the vicinity of the Property, Facebook's obligation shall be tolled until a segment becomes available.

16. Environmental Education.

16.1. When performing work that might impact the San Francisco Bay, Facebook will hire an environmental consultant knowledgeable about the San Francisco Bay and associated marsh habitats to ensure that endangered species, particularly the Salt Marsh Harvest Mouse and Clapper Rail, are not harmed.

16.2. Facebook will cooperate with the Don Edwards San Francisco Bay National Wildlife Refuge ("Refuge") team and related nonprofit groups on habitat protection and restoration adjacent to the Property. Facebook will establish an ongoing,

in-house point of contact for the Refuge, nonprofit groups and related agencies to ensure collaborative success.

16.3. Facebook will educate employees and visitors about the unique species next to the Property and their habitat requirements. Such education may be by way of installing appropriate interpretive signage and/or hosting educational programs.

16.4. Facebook will engage in "wildlife-friendly" behavior, such as (a) adopting policies requiring the trapping and removal of feral cats and the leashing of dogs when using trails located on the Property, (b) employing wildlife-safe rodent control measures, and (c) encouraging beneficial species (through, for example, the installation of bat houses).

17. On-Going Environmental Commitments.

17.1. When performing landscape improvements, Facebook and/or Owner will minimize (or require the minimization of) potential stormwater runoff through the use of appropriate techniques, such as grassy swales, rain gardens and other Low Impact Development (LID) measures.

17.2. If Facebook and/or Owner installs at the Property new windows or new window treatments on windows facing the parking lot or the San Francisco Bay, Facebook and/or Owner will select (or require the selection of) windows and window treatments that minimize impacts of light pollution and risk of collision to birds. If Facebook and/or Owner installs new lighting in the parking lot at the Property, Facebook and/or Owner will use (or require the use of) then available best practices to design and shield that new lighting so as to confine direct rays to the Property and not out into the adjacent areas of the San Francisco Bay. The obligations in this Section 17.2 will not apply to windows or treatments to windows that face the courtyard and lighting that is located within the courtyard, except that if Facebook and/or Owner replaces upper (3rd floor) windows or window treatments that face the courtyard, Facebook and/or Owner will select (or require the selection of) windows or treatments that minimize the risk of bird collision.

17.3. Except for the existing basketball court, Facebook and/or Owner will not create (or permit the creation of) any lighted playing field on the perimeter of the site that abuts the San Francisco Bay. Facebook and/or Owner will require the lights on the existing basketball court to be controlled so that the court is dark except when in use.

17.4. If Facebook and/or Owner installs new building roofs, window ledges, parking lot light poles or landscaping changes, Facebook and/or Owner will use (or require use of) then available best practices to ensure that the new building roofs,

window ledges, parking lot light poles or landscaping changes do not create sites for predatory bird species to roost or nest.

17.5. When performing landscape improvements to those portions of the Property that abut the San Francisco Bay, Facebook and/or the Owner will consult with (or require consultation with) a qualified environmental consultant familiar with California native plant communities and select (or require the selection of) suitable native plants for landscaping.

17.6. Facebook shall comply with the terms of this Section 17 while it occupies the Property pursuant to the Lease. Owner shall require any future Future Tenant (as defined below) to comply with the terms of this Section 17.

18. Local Purchasing.

18.1. Facebook shall adopt a program to incentivize Facebook employees to frequent local businesses and continue such program for three years from the Effective Date. Facebook's continuation of the "Facebucks" program will satisfy this obligation.

18.2. When purchasing goods that can be sourced locally, Facebook shall endeavor to purchase goods from vendors located in the City if the quality, price, terms and conditions are competitive.

18.3. When engaging vendors to provide on-site services to employees (e.g., chiropractic services), Facebook shall endeavor to engage vendors that are located in the City if their services satisfy Facebook's needs and the quality, price, terms and conditions are competitive.

18.4. If the Menlo Gateway project is developed, Facebook will consider adding the hotel built as part of that project to its list of preferred hotels for visitors.

19. Transportation Demand Management Information Sharing. To help mitigate regional traffic, Facebook agrees to share its Transportation Demand Management best practices with other interested Silicon Valley companies that request such information from Facebook.

20. Volunteerism. Facebook will actively promote local volunteer opportunities in the City and the City of East Palo Alto to all its employees. Such promotion shall include the creation of an internal Facebook page for the posting of volunteer opportunities. Facebook will host a "Local Community Organization Fair" on the Property. This fair will launch in Summer 2012 and take place annually.

21. Assignment and Assumption.

21.1. If the Lease terminates or Facebook vacates the Property prior to February 6, 2026, then the right to continue to occupy the Property with the Density Increase shall be conditioned on the Owner or a subsequent tenant of the Property (each a "Future Tenant") assuming all of Facebook's remaining obligations under Sections 7, 9-11, 13, 15, 16, 18-20 and 22 (collectively "Remaining Facebook Obligations"). Continuation of the right to occupy the Property with the Density Increase is also subject to Owner's and Future Tenant's (if any) compliance with Section 8, On-Going Public Benefits, Conditions. If Owner or Future Tenant wishes to preserve the Density Increase and assume the Remaining Facebook Obligations, then as a condition precedent to continued occupancy subject to the Density Increase, the Owner, Future Tenant (if applicable) and the City shall enter into an assignment and assumption of this Agreement which shall be recorded in the Official Records of the County of San Mateo, State of California. If Owner or Future Tenant does not wish to assume the Remaining Facebook Obligations, this Agreement and the Density Increase shall terminate. Notwithstanding the foregoing, the City (as approved by the City Council), Owner and Future Tenant (if applicable) may negotiate an amendment to this Agreement that continues the right to occupy the Property with the Density Increase and terminates the Remaining Facebook Obligations, but provides for alternative, appropriate public benefits. The option to assume the Remaining Facebook Obligations may be made at any time within five years of Facebook's vacating the Property or the termination of the Lease (as applicable). If the Remaining Facebook Obligations are not assumed and an assignment and assumption of this Agreement has not been recorded within that five year period, this Agreement and the option to elect to occupy the property with the Density Increase shall terminate.

21.2. If Facebook vacates the Property on or after February 6, 2026, then the right to occupy the Property with the Density Increase shall continue regardless of whether Owner or a Future Tenant has assumed the Remaining Facebook Obligations. Notwithstanding the foregoing, the continuation of the right to occupy the Property with the Density Increase is subject to compliance with Section 8, On-Going Public Benefits, Conditions.

22. Sanitary Sewer System Upgrades. West Bay Sanitary District ("WBSD") is the main permitting agency for the sanitary sewer system upgrades discussed in this Section 22. Facebook shall provide a specific contact to WBSD for matters related to the sanitary sewer system upgrades and shall provide another contact for all other matters, should it be different than the contact for the sanitary sewer system upgrades.

22.1. Facebook shall upsize 114 feet of the existing 12-inch diameter pipeline that runs north along Hamilton Avenue, beginning at the Hamilton/Willow Road intersection, to a 15-inch diameter pipe. Within 90 days of the Effective Date of this Agreement, Facebook shall apply for a Class 3 permit from WBSD. Facebook shall

cause a cost estimate to be prepared and shall provide the cost estimate to WBSD for its review and to the City. Within 30 days of receiving approval from WBSD, Facebook shall apply for an encroachment permit from the City and Caltrans. Within 180 days of receiving approval of the respective encroachment permits, Facebook shall construct the improvements. To ensure that this work is timely completed to the reasonable satisfaction of the City's Community Development Director, Facebook shall post a bond equal to 200 percent of the estimated cost of the work within 30 days of the satisfaction of the Conditions Precedent. The City shall release the bond upon completion of the work.

22.2. Facebook shall purchase a third wastewater pump to be placed into reserve in case of pump failure at the Hamilton Henderson Pump Station. Within 120 days of the Effective Date of this Agreement, Facebook shall purchase a Flygt NP 3202.090, 35 Horsepower, 460 Volt, 60 Hertz, 3 Phase pump with the following options: (a) 8-inch Discharge, (b) 642 Impeller, (c) minimum 50 feet of cable, (d) soft start motor starter, (e) FM explosion proof rating, and (f) Float Level Sensor or similar pump as approved by WBSD. Facebook shall cause a cost estimate to be prepared and shall provide the cost estimate to WBSD for its review and to the City. To ensure that the pump is purchased, to the reasonable satisfaction of the City's Community Development Director, Facebook shall post a bond equal to and 120 percent of the cost of the wastewater pump within 30 days of the satisfaction of the Conditions Precedent. The City shall release the bond upon WBSD's receipt of the pump.

23. Indemnity.

23.1. Owner shall indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, agents, contractors, and employees (collectively, "City Indemnified Parties") from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Owner or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, "Owner Claims"); provided, however, that Owner shall have no liability under this Section 23.1 for Owner Claims arising from the gross negligence or willful misconduct of any City Indemnified Party, or for Claims arising from, or are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by Facebook and/or Owner and accepted by the City.

23.2. Facebook shall indemnify, defend and hold harmless the City Indemnified Parties from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or

caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Facebook or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, "Facebook Claims"); provided, however, that Facebook shall have no liability under this Section 23.2 for Facebook Claims that (a) arise from the gross negligence or willful misconduct of any City Indemnified Party, or (b) arise from, or are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by Facebook and/or Owner and accepted by the City or (c) are attributable to events which occur after the earlier of Facebook's vacating the Property and the expiration or earlier termination of the Lease.

23.3. Facebook shall indemnify, defend and hold harmless Owner, and its officers, agents and employees (collectively, "Owner Indemnified Parties") from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with this Agreement and/or the Approvals and attributable to events occurring during the period of time commencing with the Effective Date and ending with the earlier of Facebook's vacating of the Property or the expiration or earlier termination of the Lease; provided, however, that Facebook shall have no liability under this Section 23.3 for claims arising from the gross negligence or willful misconduct of any Owner Indemnified Party.

24. Periodic Review for Compliance.

24.1. Annual Review. The City shall, at least every 12 months during the term of this Agreement, review the extent of Facebook's and Owner's good faith compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Notice of such annual review shall be provided by the City's Community Development Director to Facebook and Owner not less than 30 days prior to the date of the hearing by the Planning Commission on Facebook's and Owner's good faith compliance with this Agreement and shall to the extent required by law include the statement that any review may result in amendment or termination of this Agreement. A finding by the City of good faith compliance with the terms of this Agreement shall conclusively determine the issue up to and including the date of such review.

24.2. Non-Compliance. If the City Council makes a finding that Facebook and/or Owner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Facebook and/or Owner (as applicable) describing (a) such failure and that such failure constitutes a Default, (b) the actions, if any, required by Facebook and/or Owner to cure such Default, and (c) the time period within which such Default must be cured. If the Default can be cured,

Facebook and/or Owner (as applicable) shall have a minimum of 30 days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such 30 day period, if Facebook and/or Owner (as applicable) shall commence within such 30 day time period the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default, Facebook and/or Owner (as applicable) shall have such additional time period as may be required by Facebook and/or Owner (as applicable) within which to cure such Default.

24.3. Failure to Cure Default. If Facebook and/or Owner fails to cure a Default within the time periods set forth above, the City Council may amend or terminate this Agreement as provided below.

24.4. Proceeding Upon Amendment or Termination. If, upon a finding under Section 24.2 of this Agreement and the expiration of the cure period specified in such Section 24.2, the City determines to proceed with amendment or termination of this Agreement, the City shall give written notice to Facebook and/or Owner (as applicable) of its intention so to do. The notice shall be given at least 30 days before the scheduled hearing and shall contain:

24.4.1. The time and place of the hearing;

24.4.2. A statement that the City proposes to terminate or to amend this Agreement; and

24.4.3. Such other information as is reasonably necessary to inform Facebook and/or Owner (as applicable) of the nature of the proceeding.

24.5. Hearings on Amendment or Termination. At the time and place set for the hearing on amendment or termination, Facebook and/or Owner shall be given an opportunity to be heard, and Facebook and/or Owner (as applicable) shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Facebook and/or Owner (as applicable) has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement or, with Facebook's and/or Owner's agreement to amend rather than terminate, amend this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

24.6. Effect on Transferees. If Owner has transferred a partial interest in the Property to another party so that title to the Property is held by Owner and additional parties or different parties, the City shall conduct one annual review applicable to all

parties with a partial interest in the Property and the entirety of the Property. If the City Council terminates or amends this Agreement based upon any such annual review and the determination that any party with a partial interest in the Property has not complied in good faith with the terms and conditions of this Agreement, such action shall be taken as to all parties with a partial interest in the Property and the entirety of the Property.

24.7. Applicability to Facebook; Right to Cure. This Section 24 shall cease applying to Facebook upon Facebook's vacating of the Property, unless Facebook is then the "Owner" in which case Facebook shall retain the rights and obligations of the "Owner" subject, however, to the terms of Section 34.3. Until Facebook vacates the Property, it shall have the right, but not the obligation, to cure any default committed by Owner.

24.8. Cooperation. Owner acknowledges that Facebook is currently the sole occupant of the Property, and agrees on behalf of itself and future owners that so long as Facebook remains the sole tenant of the Property, Owner must reasonably cooperate with Facebook with respect to this Agreement and the Approvals and must take such actions under or with respect to this Agreement and/or the Approvals as Facebook reasonably requires.

25. Permitted Delays; Subsequent Laws.

25.1. Extension of Times of Performance. In addition to any specific provisions of this Agreement, performance by any Party of its obligations under this Agreement shall not be deemed to be in Default, and the time for performance of such obligation shall be extended, where delays or failures to perform are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasi-governmental entities other than the City, unusually severe weather, acts of another Party (except that acts or the failure to act of Facebook shall not excuse Owner's performance and that acts or the failure to act of Owner shall not excuse Facebook's performance), acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse the City's performance) or any other causes beyond the reasonable control, or without the fault, of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause of the delay. If a delay occurs, the Party asserting the delay shall use reasonable efforts to notify promptly the other Parties of the delay. If, however, notice by the Party claiming such extension is sent to the other Parties more than 30 days after the commencement of the cause of the delay, the period shall commence to run as of only 30 days prior to the giving of such notice. The time period for performance under this Agreement may

also be extended in writing by the joint agreement of the City, Facebook and Owner. Litigation attacking the validity of the EIR, the Project Approvals and/or the Project shall also be deemed to create an excusable delay under this Section 25.1, but only to the extent such litigation causes a delay and the Party asserting the delay complies with the notice and other provisions regarding delay set forth hereinabove. In no event shall the term of this Agreement be extended by any such delay without the mutual written agreement of the City, Facebook and Owner.

25.2. Superseded by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer reasonably and in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to the City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. Notwithstanding the preceding, so long as the Lease is effective, Owner shall not terminate this Agreement pursuant to this Section 25.2 without Facebook's prior written consent and Facebook shall likewise have the right to challenge the new Law preventing compliance with the terms of this Agreement.

26. Termination.

26.1. City's Right to Terminate. The City shall have the right to terminate this Agreement only under the following circumstances:

26.1.1. The City Council has determined that Facebook and/or Owner (as applicable) is not in good faith compliance with the terms of this Agreement, and this Default remains uncured, all as set forth in Section 24 of this Agreement.

26.1.2. The Lease is terminated or Facebook vacates the Property prior to February 6, 2026 and no assignment and assumption of this Agreement has been timely recorded in accordance with Section 21.

26.1.3. The Density Increase has been suspended for ten consecutive years.

26.2. Owner's Right to Terminate. Owner shall have the right to terminate this Agreement only under the following circumstances:

26.2.1. Owner has determined that the City is in Default, has given the City notice of such Default and the City has not cured such Default within 30 days following receipt of such notice, or if the Default cannot reasonably be cured within such 30 day period, the City has not commenced to cure such Default within 30 days following receipt of such notice and is not diligently proceeding to cure such Default.

26.2.2. Owner is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 25.2 and 31 of this Agreement.

26.2.3. Owner determines in the first five years after the Effective Date, in its business judgment, that it is not practical, reasonable or economically advantageous to pursue occupancy of the Property with the Density Increase.

26.2.4. The Density Increase has been suspended for ten consecutive years.

Notwithstanding the preceding, while Facebook occupies the Property, Owner shall not have the right to terminate this Agreement unless Facebook consents to such termination in its sole and absolute discretion.

26.3. Facebook's Right to Terminate. Facebook shall have the right to terminate this Agreement only under the following circumstances:

26.3.1. Facebook has determined that the City is in Default, has given the City notice of such Default and the City has not cured such Default within 30 days following receipt of such notice, or if the Default cannot reasonably be cured within such 30 day period, the City has not commenced to cure such Default within 30 days following receipt of such notice and is not diligently proceeding to cure such Default.

26.3.2. Facebook is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 25.2 and 31 of this Agreement.

26.3.3. Facebook determines in the first five years after the Effective Date, in its business judgment, that it is not practical, reasonable or economically advantageous to pursue occupancy of the Property with the Density Increase.

26.3.4. The Density Increase has been suspended for ten consecutive years.

26.4. Mutual Agreement. This Agreement may be terminated upon the mutual written agreement of the Parties.

26.5. Effect of Termination. If this Agreement is terminated pursuant to this Section 26, such termination shall not affect (a) any condition or obligation due to the City from Facebook and/or Owner and arising prior to the date of termination and/or (b) the Project Approvals, including, but not limited to, the Amended and Restated Conditional Development Permit, but Facebook and/or Owner's right to have the Property subject to the Density Increase will terminate.

26.6. Recordation of Termination. In the event of a termination, the City, Facebook and Owner agree to cooperate with each other in executing and acknowledging a Memorandum of Termination to record in the Official Records of San Mateo County within 30 days following the effective date of such termination.

27. Remedies. Any Party may, in addition to any other rights or remedies provided for in this Agreement or otherwise available at law or equity, institute a legal action to cure, correct or remedy any Default by the another Party; enforce any covenant or agreement of a Party under this Agreement; enjoin any threatened or attempted violation of this Agreement; or enforce by specific performance the obligations and rights of the Parties under this Agreement.

28. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such Default. No express written waiver of any Default shall affect any other Default, or cover any other period of time, other than any Default and/or period of time specified in such express waiver. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

29. Attorneys' Fees. If a Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a Default, or otherwise to enforce rights or obligations arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of such action or proceeding, including reasonable attorneys' fees and costs, and costs of such action or proceeding, which shall be payable whether such action or proceeding is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 29 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the

sums allegedly due, performance of the covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

30. Limitations on Actions. The City, Facebook and Owner hereby renounce the existence of any third party beneficiary of this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provisions of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

31. Effect of Court Action. If any court action or proceeding is brought by any third party to challenge the EIR, the Project Approvals and/or the Project, or any portion thereof, and without regard to whether Facebook and/or Owner is a party to or real party in interest in such action or proceeding, then (a) Facebook shall have the right to terminate this Agreement upon 30 days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within 90 days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a permitted delay under Section 25.1 of this Agreement. Facebook shall pay the City's cost and expense, including attorneys' fees and staff time incurred by the City in defending any such action or participating in the defense of such action and shall indemnify the City from any award of attorneys' fees awarded to the party challenging this Agreement, the Project Approvals or any other permit or Approval. The defense and indemnity provisions of this Section 31 shall survive Facebook's election to terminate this Agreement. Notwithstanding anything to the contrary herein, Facebook shall retain the right to terminate this Agreement pursuant to this Section 31 even after (a) it has vacated the Property and/or the Lease has expired or been terminated and (b) its other rights and obligations under this Agreement have terminated.

32. Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to the other Parties requesting such Parties certify in writing that, to the knowledge of the certifying Parties, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if the requesting Party is in Default, the nature and amount of any such Defaults, (d) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance, and (e) as to such other matters concerning this Agreement as the requesting Party shall reasonably request. A Party receiving a request hereunder shall execute and return such certificate within 30 days following the receipt thereof. The City Manager shall have the right to execute any certificate requested by Facebook or Owner hereunder. The City

acknowledges that a certificate may be relied upon by transferees and Mortgagees or Owner.

33. Mortgagee Protection; Certain Rights of Cure.

33.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recordation of this Agreement in the San Mateo County, California Official Records, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage, and subject to Section 33.2 of this Agreement, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, and the benefits hereof will inure to the benefit of such party.

33.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 33.1 above, no Mortgagee or other purchaser in foreclosure or grantee under a deed in lieu of foreclosure, and no transferee of such Mortgagee, purchaser or grantee shall (a) have any obligation or duty under this Agreement to construct, or to complete the construction of, improvements, to guarantee such construction or completion or to perform any other monetary or nonmonetary obligations of Owner under this Agreement, and (b) be liable for any Default of Owner under this Agreement; provided, however, that a Mortgagee or any such purchaser, grantee or transferee shall not be entitled to use the Property in the additional manner permitted by this Agreement and the Project Approvals (i.e. the Density Increase) unless it complies with the terms and provisions of this Agreement applicable to Owner.

33.3. Notice of Default to Mortgagee; Right to Mortgagee to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of Default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of a Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Default claimed or the areas of noncompliance set forth in the City's notice. If the Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, or any portion thereof, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver, by foreclosure or otherwise, and may thereafter remedy or cure the Default or noncompliance within 90 days after obtaining possession of the Property or such portion thereof. If any such Default or noncompliance cannot, with reasonable diligence, be remedied or cured within such 90

day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default or noncompliance if such Mortgagee commences a cure during such 90 day period, and thereafter diligently pursues such cure to completion.

34. Assignment, Transfer, Financing.

34.1. Owner's Right to Assign. Subject to the terms of this Agreement, Owner shall have the right to transfer, sell and/or assign Owner's rights and obligations under this Agreement in conjunction with the transfer, sale or assignment of all or any portion of the Property. If the transferred property consists of a less than the entire Property, or less than Owner's entire title to or interest in the Property, Owner shall have the right to transfer, sell and/or assign to the transferee only those of Owner's rights and obligations under this Agreement that are allocable or attributable to the transferred property. Any transferee shall assume in writing the obligations of Owner under this Agreement and the Project Approvals relating to the transferred property and arising or accruing from and after the effective date of such transfer, sale or assignment.

34.2. Financing. Notwithstanding Section 34.1 of this Agreement, Mortgages, sales and lease-backs and/or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the development of the Property are permitted without the need for the lender to assume in writing the obligations of Owner under this Agreement and the Project Approvals. Further, no foreclosure, conveyance in lieu of foreclosure or other conveyance or transfer in satisfaction of indebtedness made in connection with any such financing shall require any further consent of the City, regardless of when such conveyance is made, and no such transferee will be required to assume any obligations of Owner under this Agreement.

34.3. Release Upon Transfer of Property.

34.3.1. Except as otherwise provided in Section 34.3.2 below, upon Owner's sale, transfer and/or assignment of Owner's rights and obligations under this Agreement in accordance with this Section 34, Owner shall be released from Owner's obligations pursuant to this Agreement with respect to the transferred property which arise or accrue subsequent to the effective date of the transfer, sale and/or assignment. If a Default under this Agreement shall occur with respect to Owner, such Default shall not constitute a Default with respect to the owner of any transferred property, and shall not entitle the City to terminate or amend this Agreement as to the transferred property; and if a Default under this Agreement shall occur with respect to the owner of a transferred property, such Default shall not constitute a Default with respect to Owner or with respect to the portion of the Property owned by Owner, and

shall not entitle the City to terminate or amend this Agreement as to the portion of the Property owned by Owner.

34.3.2. Notwithstanding the provisions of Section 34.3.1 above, if a Transferred Property consists of less than the entire Property, or less than original Owner's entire title to or interest in the Property, and if the original Owner allocates a portion of its rights and obligations under this Agreement to the transferred property, the original Owner shall not be released from its obligations pursuant to this Agreement with respect to the transferred property which arise or accrue subsequent to the effective date of the transfer, sale and/or assignment unless the City agrees to such release.

34.3.3. Owner shall have the right to propose to the City alternative or substitute security for any of Owner's monetary obligations under this Agreement, including Owner's obligations to make the Annual Payment pursuant to Section 8 of this Agreement. Such alternative or substitute security may consist of, without limitation, a letter of credit, a cash deposit and/or real property or personal property collateral acceptable to City in its sole discretion. If the City accepts any such alternative or substitute security, the monetary obligations of Owner for which such alternative or substitute security shall have been provided shall no longer constitute a covenant running with the land or otherwise be binding upon any owner of any portion of the Property, and shall instead be the personal obligation of Owner but with the City's recourse with respect to such monetary obligation limited to the alternative or substitute security. Owner shall pay for all City costs of considering Owner's request for City's acceptance of such alternative or substitute security, including but not limited to cost of consultants retained to consider and advise the City Manager or City Council on such request.

35. Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Property, and the burdens and benefits of this Agreement shall be binding upon, and shall insure to the benefit of, each of the Parties and their respective heirs, successors, assignees, devisees, administrators, representatives and lessees, except as otherwise expressly provided in this Agreement.

36. Amendment.

36.1. Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be cancelled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868 and Article 7 of Resolution No. 4159. Any amendment to this Agreement which does not relate to the term of this Agreement, the

Vested Elements or the Conditions relating to the Project shall require the giving of notice pursuant to Government Code Section 65867, as specified by Section 65868 thereof, but shall not require a public hearing before the Parties may make such amendment.

36.2. Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than 10 days after the effective date thereof or of the action effecting such amendment, termination or cancellation; provided, however, a failure of the City Clerk to record such amendment, termination or cancellation shall not affect the validity of such matter.

37. Notices. Any notice shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, express mail, return receipt requested, with postage prepaid, or by overnight courier to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attention: City Manager

With a
copy to: City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025

Facebook: Facebook, Inc.
1601 Willow Road
Menlo Park, CA 94025
Attention: Director of Facilities

Owner: Wilson Menlo Park Campus, LLC
C/O RREEF
101 California St 26th Floor
San Francisco, CA 94111
Attention: Value Add and Development Group

A Party may change its mailing address at any time by giving to the other Parties 10 days' notice of such change in the manner provided for in this Section 37. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

38. Miscellaneous.

38.1. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the other in any respect hereunder and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Facebook and/or Owner, the affairs of the City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

38.2. Consents. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld or delayed. If a Party shall not approve, the reasons therefor shall be stated in reasonable detail in writing. The approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

38.3. Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals.

38.4. Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Property or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement, except as dedications may otherwise be specifically provided in the Project Approvals.

38.5. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the preceding, this Section 38.5 is subject to the terms of Section 25.2.

38.6. Exhibits. The Exhibits referred to herein are deemed incorporated into this Agreement in their entirety.

38.7. Entire Agreement. This written Agreement contains all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

38.8. Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships, limited liability company or other legal entities.

38.9. Further Assurances; Covenant to Sign Documents. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

38.10. Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California.

38.11. Construction. This Agreement has been reviewed and revised by legal counsel for Facebook, Owner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

38.12. Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring City's review or approval relating to the Project or Property.

39. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute but one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF MENLO PARK, a municipal corporation of the State of California

By: _____
Mayor

Attest:

City Clerk
corporation

"Facebook"

FACEBOOK, INC., a Delaware

By: _____
Name: _____
Title: _____

Approved as to Form:

By: _____
City Attorney

"Owner"

WILSON MENLO PARK CAMPUS, LLC, a Wisconsin limited liability company

By: _____
Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature
My Commission expires: _____

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature
My Commission expires: _____

EXHIBIT A
SITE PLAN OF PROPERTY

LANDS OF WILSON MENLO PARK CAMPUS, LLC
 DOCUMENT NO. 2011-015703

LOT 1
56.908 ACRES±

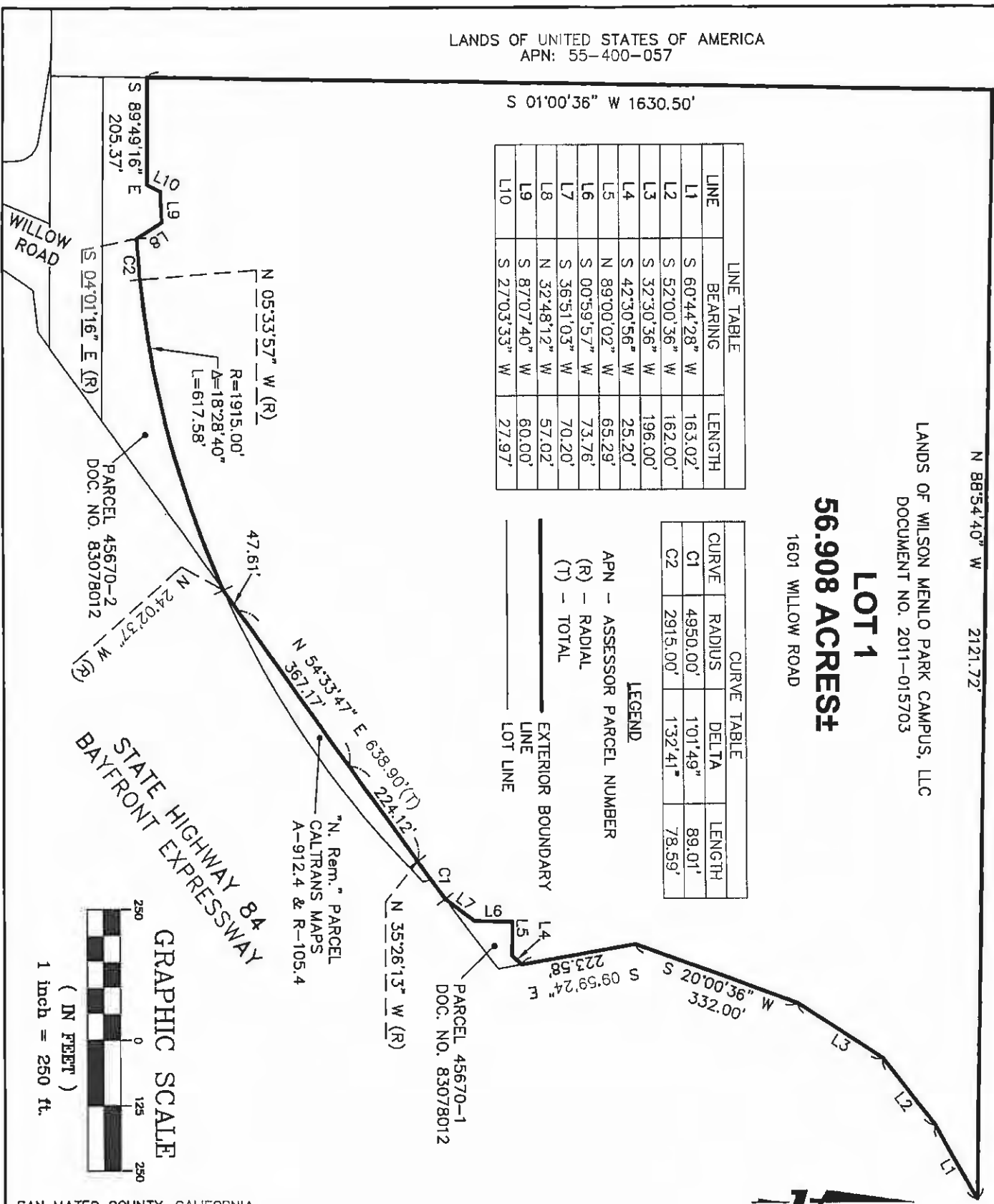
1601 WILLOW ROAD

LINE	BEARING	LENGTH
L1	S 60°44'28" W	163.02'
L2	S 52°00'36" W	162.00'
L3	S 32°30'36" W	196.00'
L4	S 42°30'56" W	25.20'
L5	N 89°00'02" W	65.29'
L6	S 00°59'57" W	73.76'
L7	S 36°51'03" W	70.20'
L8	N 32°48'12" W	57.02'
L9	S 87°07'40" W	60.00'
L10	S 27°03'33" W	27.97'

CURVE	RADIUS	DELTA	LENGTH
C1	4950.00'	1°01'49"	89.01'
C2	2915.00'	1°32'41"	78.59'

APN - ASSESSOR PARCEL NUMBER
 (R) - RADIAL
 (T) - TOTAL

EXTERIOR BOUNDARY
 LOT LINE

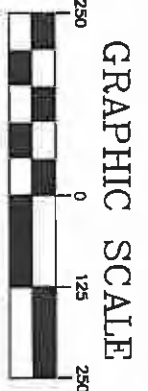


N 05°33'57" W (R)
 R=1915.00'
 Δ=18°28'40"
 L=617.58'

47.61'
 N 24°02'37" W (R)
 N 54°33'47" E 638.90'(T)
 367.17'
 224.12'
 "N. Rem." PARCEL
 CALTRANS MAPS
 A-912.4 & R-105.4
 N 35°26'13" W (R)
 9'
 L4
 L5
 223.58'
 S 09°59'24" W
 332.00'
 S 20°00'36" W
 9'

S 89°49'16" E
 205.37'
 L10
 L9
 L8
 C2
 S 04°01'16" E (R)

STATE HIGHWAY 84
 BAYFRONT EXPRESSWAY



SAN MATEO COUNTY, CALIFORNIA
 K:\SUR10\100166.10\DWG\LOT MERGER
 FACEBOOK EXHIBIT.DWG



4670 WILLOW RD
 SUITE 250
 PLEASANTON, CA 94588
 925-396-7700
 925-396-7799 (FAX)

Subject EXHIBIT
 WILSON MENLO PARK CAMPUS, LLC
 Job No. 20100166-11
 By RL Date 05/14/12 Chkd.WS
 SHEET 1 OF 1

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY



Legal Description

1601 Willow Road, Menlo Park, California 94025
Formerly known as 10, 15, 16 & 18 Network Circle, Menlo Park, California 94025

Real property situate in the City of Menlo Park, County of San Mateo, State of California, described as follows:

Lot 1 being all of Parcels 1, 2, 3 and 4 as shown on "PARCEL MAP – LANDS OF BNP LEASING CORPORATION", filed for record on February 16, 1994 in Book 67 of Parcel Maps at Page 36, San Mateo County Records and Corrected by that certain Certificate of Correction recorded on October 12, 1994, as Document No. 94-158967 Official Records San Mateo County, more particularly described as follows:

Beginning at the northwest corner of said Parcel 2;

Thence along the northerly line of said Parcel 2 and Parcel 4, South 88°54'40" East, 2121.72 feet to the southeasterly line of said Parcel 4;

Thence leaving said northerly line and along said southeasterly line of Parcel 4 and continuing along the southeasterly line of said Parcel 3 and the southwesterly and southerly line of said Parcel 1, the following seventeen (17) courses:

1. South 60°44'28" West, 163.02 feet;
2. South 52°00'36" West, 162.00 feet;
3. South 32°30'36" West, 196.00 feet;
4. South 20°00'36" West, 332.00 feet;
5. South 09°59'24" East, 223.58 feet;
6. South 42°30'56" West, 25.20 feet;
7. North 89°00'02" West, 65.29 feet;
8. South 00°59'57" West, 73.76 feet;
9. South 36°51'03" West, 70.20 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 4,950.00 feet from which a radial line bears North 36°28'02" West;
10. Along said curve, through a central angle of 01°01'49", for an arc length of 89.01 feet;
11. South 54°33'47" West, 638.90 feet to the beginning of a non tangent curve concave to the northwest, having a radius of 1,915.00 feet, from which a radial line bears North 24°02'37" West;
12. Along said curve, through a central angle of 18°28'40", for an arc length of 617.58 feet to the beginning of a compound curve having a radius of 2,915.00 feet;
13. Along said curve, through a central angle of 01°32'41", for an arc length of 78.59 feet;
14. North 32°48'12" West, 57.02 feet;

15. South $87^{\circ}07'40''$ West. 60.00 feet;
16. South $27^{\circ}03'33''$ West. 27.97 feet;
17. North $89^{\circ}49'16''$ West. 205.37 feet to the westerly line of said Parcel 1;

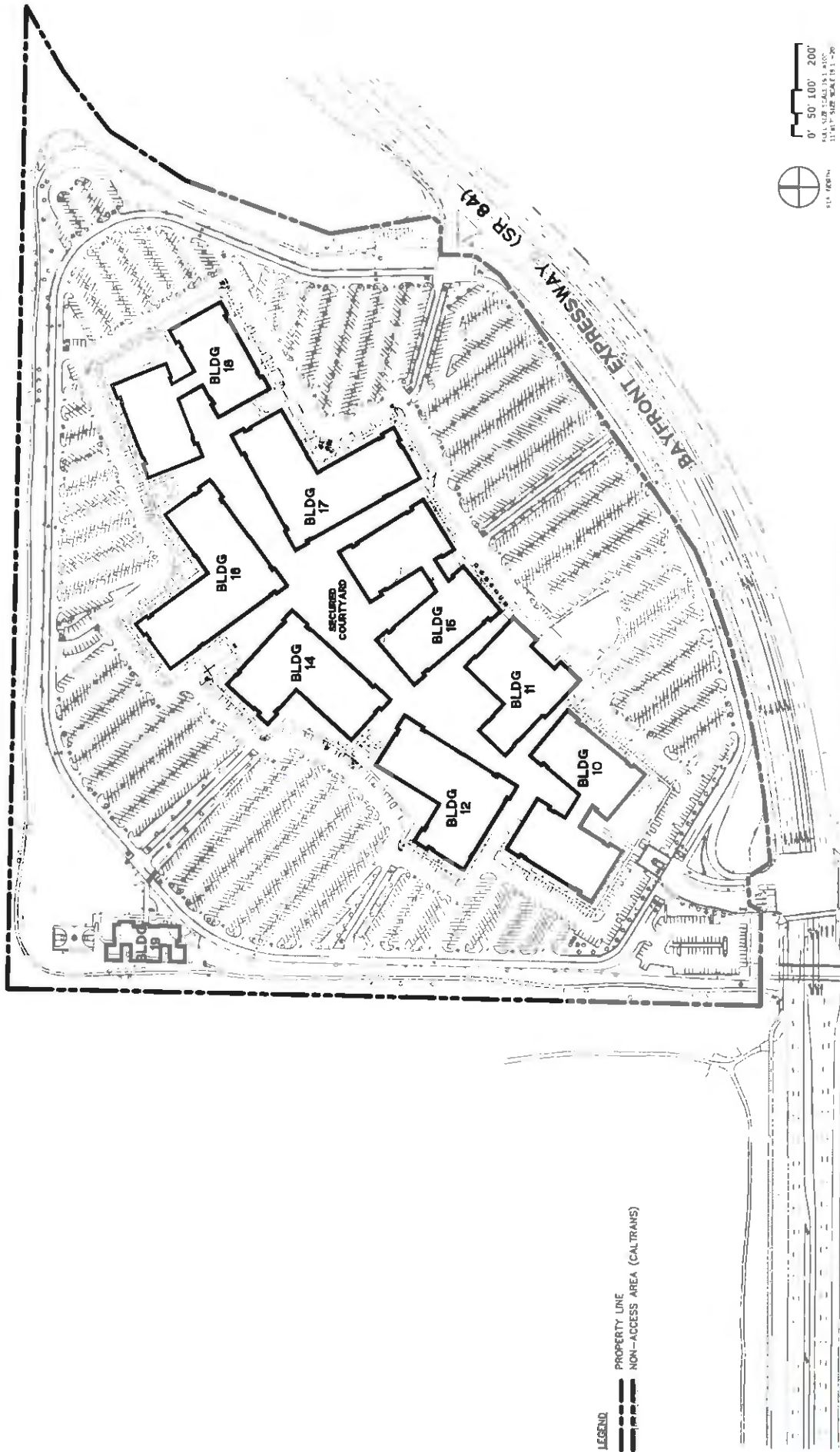
Thence leaving said southeasterly and southerly lines, along said westerly line of said Parcel 1 and continuing along the westerly line of said Parcel 2, North $01^{\circ}00'36''$ East, 1630.50 feet to the **Point of Beginning**.

Containing an area of 2,478,907 square feet, or 56.908 acres more or less.

Being all of Assessor's Parcel Number's 055-411-110, 055-411-120, 055-411-130 and 055-411-140.

EXHIBIT C

SITE PLAN



LEGEND
 ——— PROPERTY LINE
 - - - - - NON-ACCESS AREA (CALTRANS)



0' 50' 100' 200'
 1:100 SCALE (AS SHOWN)
 11" X 17" SHEET SCALE 1/4" = 1'-0"



**FACEBOOK @ MENLO PARK
 EAST CAMPUS**
 1601 WILLOW ROAD, MENLO PARK, CA

Genster
 McKenna Long
 & Aldridge
 FEHR & PEERS
 CONSULTANTS
 ARCHITECTS
 ENGINEERS
 PLANNERS
 LANDSCAPE ARCHITECTS

CMG
BKF
REMA

EA.1: EXISTING SITE PLAN
 May 16, 2012

EXHIBIT D

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT BY AND BETWEEN THE CITY OF EAST PALO AND FACEBOOK, INC. REGARDING THE MENLO PARK FACEBOOK CAMPUS PROJECT

THIS MEMORANDUM OF AGREEMENT (this "Agreement") is entered into as of this ^{24th} day of May, 2012 (the "Effective Date"), by and between the CITY OF EAST PALO ALTO, a general law city of the State of California ("EPA"), and FACEBOOK, INC., a Delaware corporation ("Facebook").

RECITALS

THIS AGREEMENT is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Facebook has proposed a two-phase project for the location of its corporate headquarters in Menlo Park (both phases, collectively, the "Project"). The first phase of the project relates to the approximately 56.9-acre parcel of real property commonly known as 1601 Willow Road, Menlo Park, California (the "East Campus"). The second phase relates to the re-development of the approximately 22-acre site located across Bayfront Expressway from the East Campus at 312 and 313 Constitution Drive, Menlo Park, California (the "West Campus").

B. For the East Campus, the Project includes (among other things) a modification of the existing conditional development permit that governs the East Campus so that the East Campus may be occupied in accordance with the existing 3,600 employee cap or a new vehicle trip cap that would include a maximum of 2,600 trips during the AM and PM peak periods and 15,000 trips on a daily basis. For the West Campus, the Project includes the demolition of the existing buildings located at the West Campus and development of 440,000 square feet of new office buildings and amenity structures.

C. To enable implementation of the Project, the City of Menlo Park ("MP") will consider various legislative and administrative actions, including, without limitation, enabling ordinances for development agreements, a resolution adopting an amended and restated conditional development permit, a resolution adopting a conditional development permit, a resolution certifying the Environmental Impact Report for the Project (the "Project EIR"), resolutions adopting heritage tree removal permits, resolutions adopting findings under the California Environmental Quality Act ("CEQA") and resolutions adopting statements of overriding considerations. The preceding legislative and administrative actions together with any other approvals and permits that are necessary or desirable to enable implementation of the Project are, collectively, referred to as the "Project Approvals".

D. EPA submitted a letter dated January 30, 2012, to MP commenting on the draft of the Project EIR and raising concerns and objections (the "EPA Comment Letter"). EPA and Facebook now desire to resolve EPA's concerns and objections regarding the Project including, without limitation, the Project EIR. To that end, Facebook has proposed payment to EPA of funds to be used for traffic improvements, bicycle and pedestrian improvements and air quality improvements and provision of the other public benefits described herein. In exchange, EPA has agreed to not file an action or proceeding challenging the Project or any of the Project Approvals as described herein.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Facebook will perform the terms set forth in Exhibit A (the "Terms and Implementation") and will request that the 1601 Willow Road Development Agreement with MP (the "DA") be drafted so that the Terms and Implementation and Facebook's obligation to perform the Terms and Implementation are incorporated into the DA. EPA agrees to accept the benefits provided by Facebook under the Terms and Implementation subject to the terms thereof.

2. Facebook will not be obligated to perform any of the Terms and Implementation until the Menlo Park City Council certifies and approves the Project Approvals attached to the City of Menlo Park Staff Report dated April 27, 2012 (or substantially similar Project Approvals acceptable to Facebook) (collectively, the "June Approvals"), the DA has been executed by all parties and all challenges to the June Approvals, the DA and the portions of the Project described in the June Approvals and/or the DA have been resolved. If no litigation or referendum is commenced challenging (a) the Menlo Park City Council's certification and/or approval of the June Approvals, (b) the DA, and/or (c) the portions of the Project described in the June Approvals and/or the DA, then Facebook's obligation will vest 90 days after the last of the June Approvals has been approved, notwithstanding any tolling agreement extending any statute of limitations, even if executed by Facebook. If litigation and/or a referendum is commenced within such 90-day period challenging (i) the Menlo Park City Council's certification and approval of the June Approvals, (ii) the DA, and/or (iii) the portions of the Project described in the June Approvals and/or the DA, then Facebook's obligation will vest on the date of final, non-appealable resolution of all litigation and resolution of the referendum in a manner that is reasonably acceptable to Facebook (as applicable). Any resolution of litigation or avoidance of a referendum involving an agreement executed by Facebook shall constitute final resolution in a manner reasonably acceptable to Facebook for purposes of this Section 2. The conditions described in this Section 2 shall, collectively, be referred to as the "Conditions Precedent". If Facebook withdraws the Project due to challenges to the June Approvals, the DA and/or the portions of the Project described in the June Approvals and/or the DA, then this Agreement will terminate and neither Party shall have any further obligations hereunder.

3. Unless this Agreement is terminated pursuant to Section 2, EPA shall refrain from filing any complaint, petition for writ of mandate or other judicial or administrative action or proceeding to object to or otherwise challenge the Project or the Project Approvals and will not join any other party's efforts which are intended to undermine or interfere with the Project's ability to proceed pursuant to the Project Approvals. Moreover, EPA will not join in or encourage such a challenge by any other agency, entity or individual.

4. Each of the parties to this Agreement may pursue any remedy at law or equity available for the breach of any provision of this Agreement, including, but not limited to, temporary or permanent injunctive relief or restraining orders.

5. This Agreement contains the entire understanding and agreement of the parties. There are no oral or written representations, understandings, undertakings or agreements that are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. No evidence of any such representations, understandings or agreements shall be admissible in any proceeding of any kind or nature relating to the terms or conditions of this Agreement or its interpretation or breach.

6. This Agreement is made and entered into for the sole protection and benefit of the signatory parties. No other persons shall have any right of action based upon any provision of this Agreement except for the parties' respective successors and assigns.

7. Each Party hereby represents and warrants to the other that the person executing this Agreement on its behalf has the authority to bind that party. For convenience, the parties may execute this Agreement on separate signature pages, which, when attached hereto, shall constitute one complete agreement.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and wholly to be performed within the State of

California, without giving effect to conflict of law or choice of law provisions under California law or any other jurisdiction.

9. The parties agree that this Agreement may not be varied in its terms by an oral agreement or representation or otherwise, and may only be amended or modified by an instrument in writing executed by all parties.

10. Each party agrees that it will bear its own costs and expenses (including attorneys' fees and costs) incurred in connection with this Agreement.

11. Any notice, demand, request or other communication required or permitted to be given under this Agreement, (a) shall be made in writing, (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed to a party as provided in this Section or such other address as such party may request by notice given in accordance with the terms of this Section.

Notice to EPA shall be provided as follows:

City of East Palo Alto
East Palo Alto City Hall
2nd Floor - 2415 University Ave
East Palo Alto, CA 94303
Attention: City Manager

Notice to Facebook shall be provided as follows:

Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
Attention: Director of Facilities


With a copy to:

Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
Attention: Real Estate Counsel

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

EPA:

CITY OF EAST PALO ALTO,
a general law city of the state of California

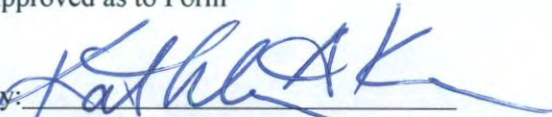
By: 
Name: Ronald L. Davis
Title: City Manager

FACEBOOK:

FACEBOOK, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Approved as to Form

By: 
Name: Kathleen Kane
Title: City Attorney

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

EPA:

CITY OF EAST PALO ALTO,
a general law city of the state of California

By: _____
Name: Ronald L. Davis
Title: Interim City Manager

Approved as to Form

By: _____
Name: Kathleen Kane
Title: City Attorney

FACEBOOK:

FACEBOOK, INC.,
a Delaware corporation

By: David Ebersman
Name: David Ebersman
Title: CFO



EXHIBIT A

THE TERMS AND IMPLEMENTATION

1. Traffic Improvements

- a) Within 45 days of the satisfaction of the Conditions Precedent, Facebook will make a one-time payment of \$500,000 to EPA to fund additional traffic improvements. The allocation of such funds and the specific traffic improvements funded shall be determined by the EPA City Council.
- b) Within 45 days of the satisfaction of the Conditions Precedent, Facebook will make a one-time payment of \$150,000 to EPA to be used by EPA to perform Bicycle/Pedestrian Improvements in EPA. Subject to the consent of the applicable regulatory agencies (e.g. Caltrans) and EPA's determination that the improvements will be beneficial to the community, these improvements may include restriping and/or crosswalk improvements to sections of the following streets: (i) Newbridge Street, (ii) University Avenue and Bay Road intersection, (iii) University Avenue and U.S. 101 bridge, (iv) Bay Road, (v) Pulgas Avenue, and (vi) Runnymede Street. If the improvements enumerated here do not require the full amount to implement or are not deemed feasible for permitting, engineering or safety reasons, EPA will undertake similar improvements for the benefit of bicycle and pedestrian safety within EPA. EPA may elect to reallocate up to \$50,000 of the \$150,000 payment to other traffic related improvements it deems appropriate.
- c) Facebook will investigate the possibility of making crosswalk improvements to the pedestrian crossings at the U.S. 101 and Willow Road interchange, and, subject to the consent of the applicable regulatory agencies (e.g. Caltrans), will make such improvements but not be obligated to spend more than \$100,000. The specific terms governing Facebook's obligation will be as set forth in the DA.

2. Air Quality Improvements

- a) EPA will designate a program designed to assist asthma patients residing within the geographic boundaries of the Ravenswood Elementary District. The intent of the program will be to provide small grants to those persons to allow them to improve the air quality of their home interiors. The recipient-program will be subject to Facebook's prior approval (not to be unreasonably withheld). Facebook will contribute \$75,000 to the recipient-program within 45 days of the later of (i) the satisfaction of the Conditions Precedent and (ii) Facebook's approval of the recipient-program designated by EPA.
- b) Facebook will work with an organization engaged in urban tree planting to provide for the planting of street trees in EPA. Facebook agrees to contribute at least \$25,000 to this effort within 5 years of the satisfaction of the Conditions Precedent.

3. Public Benefits

- a) Jobs / Local Hire
 - Facebook Summer Intern Program: Facebook will create a summer intern program for students residing within the geographic boundaries of the Ravenswood Elementary District. The summer intern program will commence with an initial, pilot program, and

then later, if successful, may be expanded, in Facebook's sole and absolute discretion, to include more participants and/or subject areas. Students participating in the pilot program will work in the Facebook IT Department alongside technology professionals. The summer intern program will include weekly training sessions covering topics such as the college application process, professional skills and business and interpersonal skills. The department in which the summer interns are placed, and the scope of and agenda for the program may change over time. Facebook anticipates that the summer intern program will be launched in partnership with an academic non-profit organization and that the non-profit organization will be responsible for selecting the participating students, processing work permits and managing other related administrative matters. The program will include the following elements: (a) the program will be open to at least 10 students per session, (b) all students must be in or entering their Junior year in high school (unless otherwise determined by Facebook in its reasonable discretion), and (c) the program will run for at least four weeks. Facebook will endeavor to launch the pilot program in June 2012, and in no case will the pilot program launch later than summer 2013. Facebook may also elect (in its sole and absolute discretion) to expand the program to include an after-school session during the school year in addition to the annual summer program.

- Facebook will work with a local training program to expand training services for residents of EPA and MP. Facebook will also create an ongoing quarterly series of career development workshops to commence within one year of the satisfaction of the Conditions Precedent. The workshops will focus on topics such as resume writing, interviewing skills and how to find a job via social media, including Facebook. These workshops will take place in local community centers and/or other neighborhood sites. In addition, within one year of the satisfaction of the Conditions Precedent, Facebook will host a session, promoted in EPA and the Belle Haven neighborhood, on how to become a Facebook employee, including how to apply through www.facebook.com/careers. Because people who work at Facebook are comprised of both employees and contractors, to encourage contractors to hire residents of EPA and residents of MP, Facebook will require future vendors to use reasonable efforts to notify residents of EPA and MP when they are hiring new people to work at the East Campus in the facilities, culinary and construction trades. Reasonable efforts shall include, but not be limited to, using the existing EPA first source hiring jobs hotline/posting capabilities and any equivalent program later developed by MP. Vendors with existing contracts will be encouraged to use reasonable efforts to promote local hiring as openings become available. Facebook will also encourage campus vendors to host sessions on how to become an employee of their organization.

b) Volunteerism

- Facebook will actively promote local volunteer opportunities in EPA and MP to all its employees. Such promotion shall include the creation of an internal Facebook page for the posting of volunteer opportunities and the sharing of relevant volunteer opportunities with applicable employee resource groups (e.g., black@fb, somos@fb, aapi@fb, gay@fb, etc.). Facebook will host a "Local Community Organization Fair" on the East Campus. This fair will launch in Summer 2012 and take place annually.

c) Community Fund

- Within one year of the satisfaction of the Conditions Precedent, Facebook shall create a Local Community Fund (“LCF”) in partnership with a non-profit partner to manage and administer the LCF and Facebook shall contribute \$500,000 to the LCF. The purpose of the LCF will be to provide support for local community needs. A five-member Board of Advisors will be created to advise about criteria for eligibility and distribution of funding. The Board of Advisors will endeavor to spread the LCF’s benefits equally between EPA and MP. EPA’s City Manager and MP’s City Manager each will name one Advisory Board member to serve a two-year term. Facebook will name two Advisory Board members to each serve a two-year term, and a Facebook representative appointed by Facebook will serve on a continuing basis. Advisory Board members may serve more than one term (if re-appointed by EPA’s City Manager, MP’s City Manager or Facebook, as applicable). If after the LCF’s funding has been exhausted Facebook determines that the LCF is a success, is operating smoothly and is making a positive impact on the community, Facebook will consider making an additional contribution to LCF (however, the decision of whether to make an additional contribution will be in Facebook’s sole and absolute discretion).

d) Housing

- Within 45 days of the satisfaction of the Conditions Precedent, Facebook will make a one-time payment of \$150,000 to EPA to be used by EPA to fund a land use planning process undertaken by EPA and intended to help preserve affordable housing in EPA.
- Facebook will explore opportunities to invest in low income tax credits for affordable housing projects in EPA and MP, including partnering with a local non-profit housing developer(s) or contributing funds toward the creation of low, very-low or extremely-low income housing. The decision of whether to make any investments will be in Facebook’s sole and absolute discretion.
- Facebook will contact a local real estate developer or local real estate developers interested in building housing projects in MP. Facebook in concert with the real estate developer(s) will explore ways to support housing projects, including, but not limited to investing capital, committing to leasing units or offering marketing opportunities to Facebook employees. The decision of whether to provide any support will be in Facebook’s sole and absolute discretion.

e) Bay Trail Gap

- Facebook will work with Bay Trail stakeholders, including, but not limited to, Midpeninsula Regional Open Space District, Association of Bay Area Governments (ABAG), EPA and the City and County of San Francisco and appropriate members of the business community to close the Bay Trail Gap, commonly known as Gap No. 2092, which terminates at the railroad right-of-way on University Avenue. Facebook will also evaluate making a future financial contribution to the effort to close the Bay Trail Gap. The decision of whether to make any investments will be in Facebook’s sole and absolute discretion.

4. Term: All commitments and obligations described in this Exhibit shall terminate on the earlier of Facebook vacating the East Campus and February 6, 2026.

329280.1

Exhibit A

DRAFT**RESOLUTION NO.****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, CALIFORNIA APPROVING AN AMENDED AND RESTATED CONDITIONAL DEVELOPMENT PERMIT FOR THE PROPERTY LOCATED AT 1601 WILLOW ROAD**

WHEREAS, on May 19, 1992, the City of Menlo Park ("City") approved a Conditional Development Permit ("CDP") for the property located at 1601 Willow Road in Menlo Park ("Property"); and

WHEREAS, the CDP allowed a maximum 1,036,000 square foot development subject to certain conditions, including, but not limited to, a condition that set a maximum density of 3,600 employees on the Property and required a Transportation Demand Management program to reduce vehicle trips by 25 percent (collectively, "Density Condition"); and

WHEREAS, the City received an application from Facebook, Inc., a Delaware corporation ("Facebook"), and Wilson Menlo Park Campus, LLC, a Wisconsin limited liability company ("Owner") (collectively, "Applicant"), to amend and restate the CDP and to enter into a Development Agreement to allow the Applicant to exceed the Density Condition through the imposition of a trip cap that sets a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips ("Trip Cap"); and

WHEREAS, in the Development Agreement, the Applicant has the opportunity to elect to terminate or suspend the Trip Cap; and

WHEREAS, the CDP runs with the land and the Property would continue to be subject to its limitations after this amendment and restatement such that if the Applicant elected to suspend or terminate the Trip Cap pursuant to the terms of the Development Agreement, the Density Condition would continue to apply to the Property; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park on May 7, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission of the City of Menlo Park having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter voted affirmatively to recommend to the City Council of the City of Menlo Park to approve an amended and restated CDP; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council of the City of Menlo Park on May 29, 2012 whereat all persons interested therein might appear and be heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park hereby approves the amended and restated Conditional Development Permit for the Property attached hereto as Exhibit A and incorporated herein by this reference.

I, Margaret S. Roberts, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ___ day of _____, 2012, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of _____, 2012.

Margaret S. Roberts, MMC
City Clerk

DRAFT**AMENDED AND RESTATED
CONDITIONAL DEVELOPMENT PERMIT****1601 Willow Road****1. GENERAL INFORMATION:**

- 1.1 Applicant: Facebook, Inc.
- 1.2 Property Owner: Wilson Menlo Park Campus, LLC (and its successors and assigns)
- 1.3 Nature of Project: Amended and Restated Conditional Development Permit, 1601 Willow Road Development Agreement, Heritage Tree Removal Permits and Environmental Impact Report (EIR) for the implementation of a vehicular trip cap to accommodate an increase in employees at the Project site beyond 3,600 employees (Project).
- 1.4 Property Location (Project site): 1601 Willow Road
- 1.5 Assessor's Parcel Numbers: The Property has been merged into one parcel; however, the County Assessor's Office has not yet assigned an Assessor's Parcel Number. Previous Assessor's Parcel Numbers associated with the Property include: 055-411-110, 055-411-120, 055-411-130 and 055-411-140.
- 1.6 Area of Property: 56.9 acres; pursuant to Section 8.9 of this Amended and Restated Conditional Development Permit, the Applicant shall diligently pursue incorporation of the Caltrans remainder parcel consisting of 0.45 acres as part of the Project site for a total of 57.35 acres.
- 1.7 Zoning: M-2-X (General Industrial, Conditional Development)
- 1.8 Previous Entitlements Superseded: The Amended and Restated Conditional Development Permit and the 1601 Willow Road Development Agreement supersede the Conditional Development Permit and associated Master Site Plan and Development Agreement for the Project site granted to Sun Microsystems in 1992.
- 1.9 Notwithstanding anything to the contrary herein, if the Project-specific conditions set forth in this Amended and Restated Conditional Development Permit are not satisfied by the Applicant and/or Property Owner (as applicable), the Amended and Restated Conditional Development Permit shall remain in full force and effect except that the right to exceed the Density Condition, as defined in Section 7.1.1, shall terminate.

- 1.10 The Applicant's and Property Owner's obligations as set forth herein are expressly conditioned on the resolution of all legal challenges, if any, to the EIR and/or the Project. If no litigation or referendum is commenced challenging the EIR and/or the Project, the Applicant's and Property Owner's obligations will vest on the passing of all applicable statutes of limitation.
- 1.11 Notwithstanding anything to the contrary herein, the Applicant's rights and obligations under this Amended and Restated Condition Development Permit shall terminate on the earlier of the Applicant vacating the Property or the expiration or earlier termination of the Lease between Wilson Menlo Park Campus, LLC and the Applicant dated as of February 7, 2011 (the earlier of such dates, the Applicant Termination Date) unless the Applicant is then the Property Owner, in which case, the Applicant shall retain the rights and obligations of the "Property Owner" so long as it remains the "Property Owner".

2. DEVELOPMENT STANDARDS:

- 2.1 Floor Area Ratio (FAR) shall not exceed **45 percent** of the Project site.
- 2.2 Building coverage shall not exceed **50 percent** of the Project site.
- 2.3 Building setbacks shall be in accordance with the approved plans. Development shall comply with a minimum **50 foot** front yard, **50 foot** side yard and **50 foot** rear yard setback.
- 2.4 Building height for buildings 10, 11, 12, 14, 15 and 18 shall not exceed **35 feet**, for buildings 16 and 17 building heights shall not exceed **48 feet**, and building height for building 19 shall not exceed **20 feet**. All heights shall be measured from the average level of the highest and lowest point of the finished grade of that portion of the lot covered by the structure (height excludes elevator equipment rooms, ventilating and air conditioning equipment).
- 2.5 The on-site circulation and parking spaces shall be maintained consistent with the approved plans inclusive of a minimum of **3,165** parking spaces and a maximum of **3,450** parking spaces installed according to the approved plans. The difference of **285** parking spaces shall be maintained in landscape or other reserve (shuttle stops and loading zones). Landscape and other reserve spaces may be converted after occupancy exceeds 3,600 employees, pursuant to condition of approval 8.10.
- 2.6 All rooftop equipment shall be fully screened and integrated into the design of the building. Roof-top equipment shall comply with noise requirements of the Municipal Code.

3. USES:

- 3.1 The campus development is comprised of nine one to three-story buildings consisting of office space and associated amenity buildings, totaling 1,036,000

square feet. Permitted uses in the office and associated amenity buildings shall include the following:

- 3.1.1 Administrative and professional offices, excluding medical/dental offices serving the general population;
 - 3.1.2 Medical and dental uses to serve on-site employees and contractors is permissible;
 - 3.1.3 General industrial uses including but not limited to warehousing, manufacturing, printing and assembling;
 - 3.1.4 Amenities and related uses intended to serve employees, contractors, and visitors, such as neighborhood-serving convenience retail, banks, community facility space, and restaurants, including those that serve alcoholic beverages;
 - 3.1.5 Outdoor seating, temporary structures, and events associated with those uses listed above, subject to approved building permits and Fire District permits, as applicable;
 - 3.1.6 Activities involving the use of hazardous materials, such as emergency power generators, incidental to those uses listed above and subject to an approved Hazardous Materials Business Plan, Building Permit, San Mateo County Health Permit, and Menlo Park Fire Protection District permit; and
 - 3.1.7 Cellular telecommunications facilities if fully screened or integrated into the design of the building.
- 3.2 Conditional uses listed in the M-2 zoning district may be conditionally permitted through a use permit process, unless otherwise allowed in Section 3.1.

4 SIGNS:

- 4.1 The maximum permissible sign area for the Project site is 200 square feet. Vehicular directional signage and signage not visible from the public right-of-way shall not count against the maximum sign areas. The square footage, location and materials for all signage shall be subject to review and approval by the Planning Division through the Sign Permit process, with an application and applicable filing fees.

5. RECORDATION:

- 5.1 Concurrently with the recordation of the 1601 Willow Road Development Agreement, the Applicant shall record the Amended and Restated Conditional Development Permit in the Official Records of the County of San Mateo, State of California.
- 5.2 The Amended and Restated Conditional Development Permit shall be in full force and effect on the effective date of the 1601 Willow Road Development Agreement.

6. MODIFICATIONS:

6.1 Modifications to the approved Project Plans may be considered according to the following:

6.1.1 Substantially Consistent Modifications, which include any changes to or modifications of any portion of the Project which Applicant and/or Property Owner make or propose to make to the Project, provided such changes or modifications are in substantial compliance with and/or substantially consistent with the approved plans and the Project approvals, as determined by the City Manager (in his/her reasonable discretion). Without limiting the foregoing, non-substantial modifications to the Project which do not affect permitted uses, density or intensity of use, restrictions and requirements relating to subsequent discretionary actions, monetary obligations or conditions or covenants limiting or restricting the use of the Property or constitute material changes shall be considered to be Substantially Consistent Modifications.

6.1.2 Minor Modifications, which do not affect permitted uses, density or intensity of use, restrictions and requirements relating to subsequent discretionary actions, monetary obligations, conditions or covenants limiting or restricting the use of the Property or similar material elements, based on the determination that the proposed modification(s) is consistent with other building and design elements of the approved Amended and Restated Conditional Development Permit, and will not have an adverse impact on the character and aesthetics of the Property. The Planning Commission shall be notified of approved Minor Modifications, and any member of the Commission may request within 14 days of receipt of the notice that the item(s) be reviewed by the Planning Commission.

6.1.3 Major Modifications (such as significant changes to the exterior appearance of the buildings or appearance of the Property) to the approved plans, as determined by the Community Development Director, may be allowed, subject to review and recommendation by the Planning Commission to the City Manager for final decision. The City Manager's determination shall be in accordance with the terms of the 1601 Willow Road Development Agreement and shall take into account the Planning Commission's recommendation. The Planning Commission's recommendation shall be based on the determination that the proposed modification is compatible with other building and design elements or onsite/offsite improvements of the Amended and Restated Conditional Development Permit and will not have an adverse impact on safety and/or the character and aesthetics of the site. Major Modifications that are not approved by the City Manager may be appealed to the Planning Commission for review and

recommendation to the City Council. City Council shall have final authority to approve Major Modifications.

6.2 Revisions to the Project which involve relaxation of the development standards identified in Section 2, material changes to the uses identified in Section 3, exceedance of the signage maximum square footages identified in Section 4, or modifications to the conditions of approval identified in Sections 8, 9 and 10 (other than changes deemed to be Substantially Consistent Modifications pursuant to Section 6.1.1 that can be authorized by the City Manager or Minor Modifications pursuant to Section 6.1.2) , constitute Conditional Development Permit amendments that require public hearings by the Planning Commission and City Council. Such revisions may also require modifications to the plans and/or 1601 Willow Road Development Agreement. Any application for amendment shall be made by the Property Owner and/or Applicant, in writing, to the Planning Commission. The Planning Commission shall then forward its recommendation to the City Council for revision(s) to the Amended and Restated Conditional Development Permit.

7. EMPLOYEE CAP/TRIP CAP:

7.1. To minimize environmental and community impacts resulting from utilization of the Project site, the Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall enforce either an employee cap or a trip cap.

7.1.1. The employee cap allows a maximum of 3,600 employees to occupy the Project site at any time subject to a Transportation Demand Management (TDM) program to reduce vehicle trips by 25 percent (collectively, Density Condition).

7.1.2. If the Applicant or the Property Owner elects to exceed the Density Condition, the Applicant and/or the Property Owner (as applicable) shall be subject to a trip cap that sets the maximum number of morning and evening peak period trips and daily trips (Trip Cap), and shall be subject to the terms of the 1601 Willow Road Development Agreement. If the 1601 Willow Road Development Agreement terminates, the right to the employee density increase terminates as well. The parameters and requirements of the Trip Cap are specified in the Trip Cap Monitoring and Enforcement Policy, which is included as Exhibit A and incorporated herein.

8. PROJECT SPECIFIC CONDITIONS - GENERAL:

8.1. Indemnity by Property Owner: Property Owner shall indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, agents, contractors, and employees (collectively, City Indemnified Parties) from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection

with, or caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Owner or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, Property Owner Claims); provided, however, that Owner shall have no liability under this Section for Property Owner Claims that (a) arise from the gross negligence or willful misconduct of any City Indemnified Party, or (b) arise from, or are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by the Applicant and/or Property Owner and accepted by the City.

- 8.2. Indemnity By Applicant: Applicant shall indemnify, defend and hold harmless the City Indemnified Parties from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Applicant or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, Applicant Claims); provided, however, that the Applicant shall have no liability under this Section for Applicant Claims that (a) arise from the gross negligence or willful misconduct of any City Indemnified Party, or (b) arise from, or are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by the Applicant and/or the Property Owner and accepted by the City or (c) are attributable to events which occur after the Applicant Termination Date.
- 8.3. Project Plans: Development of the Project shall be substantially in conformance with the following plans submitted by Gensler, BKF, CMG, KEMA and Fehr and Peers dated received by the Planning Division on April 20, 2012, consisting of 14 plan sheets, recommended for approval to the City Council by the Planning Commission on May 7, 2012, and approved by the City Council on May 29, 2012, except as modified by the conditions contained herein and in accordance with Section 6 (Modifications) of this document.
- 8.4. Generator Screening: Consistent with Project Plans, the Applicant shall screen the two existing generators that do not have screening prior to building permit final inspection for undercrossing improvements, to the satisfaction of the Community Development Director.
- 8.5. Emergency Vehicle Access Easement: The Applicant shall record an Emergency Vehicle Access Easement (EVAE) inclusive of the private ring road prior to building permit final inspection for the undercrossing improvements, to the satisfaction of the City Building Official.
- 8.6. Refuse and Recyclables: All garbage bins and carts shall be located within a trash enclosure that meets the requirements of the solid waste disposal provider (Recology), and City Public Works Department and Planning Division

- within 90 days of the effective date of the 1601 Willow Road Development Agreement, to the satisfaction of the Public Works Director. If additional trash enclosures are required to address the on-site trash bin and cart storage requirements of the Applicant, a complete building permit submittal shall be submitted inclusive of detailed plans, already approved by Recology, for review and approval of the Planning Division and the Public Works Department prior to each building permit issuance.
- 8.7. Leadership in Energy and Environmental Design: For any building improvements undertaken within five years of the effective date of the Amended and Restated Conditional Development Permit, the Applicant shall diligently pursue Leadership in Energy and Environmental Design (LEED) Gold for Commercial Interiors certification from the United States Green Building Council (USGBC), consistent with USGBC 2009 standards, to the satisfaction of the Community Development Director.
- 8.8. Alcohol and Beverage Control: The Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall ensure that all on-site suppliers of alcoholic beverages apply for and receive approval of the appropriate Alcohol and Beverage Control (ABC) license prior to any on-site alcohol sales and/or service, to the satisfaction of the Community Development Director.
- 8.9. Caltrans Remainder Parcel: The Applicant shall diligently pursue incorporation of the Caltrans remainder parcel (portion of APN: 055-411-090) as a part of the Project site. If incorporation of the remainder parcel with the Project site is not completed within three years of recordation of the 1601 Willow Road Development Agreement, the Applicant shall provide a letter from Caltrans indicating the proposed timing for incorporation of the remainder parcel into the Project site, or indicating why incorporation is not feasible, to the satisfaction of the Public Works Director.
- 8.10. Landscape Parking Reserve: If the Applicant and/or the Property Owner seeks to convert all or a portion of the identified landscape parking reserve to parking, a complete grading and drainage plan shall be submitted illustrating that there will be no net increase in impervious area and/or stormwater runoff on the Property, to the satisfaction of the Public Works Director. In addition, if lighting is proposed as part of the conversion of the landscape parking reserve, a complete lighting plan shall be submitted that illustrates no net increase in light spillover to adjacent natural areas, to the satisfaction of the Community Development Director.
- 8.11. Police Reimbursement for Protests and Dignitary Visits: Within three months of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall execute a cost recovery agreement with the City to the satisfaction of the City Attorney for all security costs related to protests and dignitary visits. Such a cost reimbursement agreement shall ensure that protest and dignitary-related activities would not result in a General Fund

expenditure increase for the City, to the satisfaction of the Finance Director and Police Chief.

- 8.12. Parking Intrusion: If the Applicant elects to exceed the Density Condition and be subject to the Trip Cap, the Applicant shall actively work to prevent the parking of employee and visitor vehicles (whose occupant(s)' final destination is the Project site) in adjacent neighborhoods, including, but not limited to, the Belle Haven neighborhood, on other public streets in the City, and on public streets in the City of East Palo Alto to the satisfaction of the Public Works Director. The City reserves the right to require monitoring of neighborhood parking intrusions consistent with the specifications of the Trip Cap Monitoring and Enforcement Policy, attached hereto as Exhibit A and incorporated herein.
- 8.13. Special Event Tents: The Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall obtain required building and Fire District permits for erection of special event tents requiring such permits, to the satisfaction of the Building Official.
- 8.14. Levee Maintenance: The Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall periodically maintain and improve the levees in order to ensure that the condition of the levees remains adequate, to the satisfaction of the Public Works Director. In addition, the Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall cooperate with Federal efforts to address repair and reconstruction of adjacent levees, to the satisfaction of the Public Works Director.
- 8.15. Bayside Landscaping: When performing landscape improvements to those portions of the Project site that abut the San Francisco Bay, the Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner shall minimize potential stormwater runoff through the use of appropriate techniques, such as grassy swales, rain gardens, and other Low Impact Development (LID) measures, and will consult with a qualified environmental consultant familiar with California native plant communities, select suitable natives for landscaping and ensure that plants and trees chosen are compatible with the adjoining wildlife habitats, to the satisfaction of the Public Works Director.

9. PROJECT SPECIFIC CONDITIONS – UNDERCROSSING IMPROVEMENTS

- 9.1 Sequencing Undercrossing Improvements: The following outlines the basic sequencing of required permits related to the required undercrossing improvements, as illustrated on plan sheet EL.2, Conceptual Undercrossing Plan.
 - a. City Approval: Apply for City approval of the undercrossing improvements (from the East Campus ring road all the way to the sidewalk in front of 1401 Willow Road)

- i. Submit complete set of undercrossing improvement plans to the City within 60 days of the effective date of the 1601 Willow Road Development Agreement.
 - b. Outside Agency Approval: Submit applications to outside agencies within 30 days of City approval of undercrossing improvement plans and diligently pursue approvals from those outside agencies. Applicable agencies with permitting authority for the undercrossing include:
 - i. Caltrans;
 - ii. Bay Commission Development Corporation (BCDC);
 - iii. SamTrans/Joint Powers Board (JPB); and
 - iv. Other Agencies with Jurisdiction
 - c. Construction: Construct the improvements within 180 days of the last approval by outside agencies with permitting authority, subject to acceptable delays, including, but not limited to, weather, the presence of nesting birds during nesting season, and the presence of burrowing owls, to the satisfaction of the Public Works Director.
- 9.2 Caltrans Approval: Prior to demolition, grading and drainage, or building permit issuance for the undercrossing improvements, the Applicant shall submit all necessary improvement plans and documents required by Caltrans for work associated with projects under Caltrans' jurisdiction, including, but not limited to, the undercrossing improvements, landscaping, and associated improvements. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. Upon Caltrans approval, the Applicant and/or Property Owner shall install the improvements and enter into a long-term maintenance agreement with the City for these improvements prior to building permit final inspection of the undercrossing improvements.
- 9.3 SamTrans/Joint Powers Board (JPB): Prior to demolition, grading and drainage, and building permit issuance for the undercrossing improvements, the Applicant shall submit necessary improvement plans to SamTrans/JPB for work associated with the project under their jurisdiction, including, but not limited to design and installation of a safe at-grade pedestrian crossing of the existing railroad. The plans shall be submitted to the Public Works Director for review and approval prior to submittal to SamTrans/JPB. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. Upon SamTrans/JPB approval, the Applicant shall install the improvements to the satisfaction of SamTrans/JPB.
- 9.4 Bay Conservation Development Commission: Prior to demolition, grading and drainage, and building permit issuance for the undercrossing improvements, the Applicant shall submit all necessary improvement plans and documents required by Bay Conservation and Development Commission (BCDC) for work associated with the Project under BCDCs' jurisdiction, including, but not limited to, the multi-use Shoreline Path adjustments and improvements, public amenity areas and associated landscaping. The plans shall be submitted to

- the Public Works Director for review and approval prior to submittal to BCDC. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. Upon BCDC approval, the Applicant shall install the improvements to the satisfaction of BCDC.
- 9.5 Bay Trail Project Coordination: The Applicant shall work cooperatively with the Bay Trail Project on the design of the proposed undercrossing improvements to ensure that the undercrossing is compliant with the Bay Trail requirements to the maximum extent practicable, to the satisfaction of the Public Works Director.
- 9.6 Public Access Easements: Concurrent with complete plan set submittal for construction of the undercrossing improvements, the Applicant shall submit a plat and legal description for public access easements for utilization of the undercrossing and public amenity areas (including, but not limited to view platforms, and seating areas) to the satisfaction of the Public Works Director. Prior to building permit final inspection for the undercrossing improvements, the Applicant shall record public access easements executed by the Property Owner for utilization of the undercrossing and public amenity areas, inclusive of access points on both side of the undercrossing, to the satisfaction of the Public Works Director.
- 9.7 Heritage Tree Removals: Prior to demolition, grading and drainage, and building permit issuance, the applicable heritage trees shall be removed, subject to the satisfaction of the Public Works Director. All heritage tree removals shall comply with condition of approval 10.6 relating to nesting bird protection, to the satisfaction of the Public Works Director.
- 9.8 Heritage Tree Protection: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures, as described in the arborist report. The project arborist shall submit a letter confirming adequate installation of the tree protection measures. The Applicant shall retain an arborist throughout the term of the project (demolition through approval of final building permit inspection for completion of the undercrossing improvements), and the project arborist shall submit periodic inspection reports to the Building Division. The heritage tree preservation plan shall be subject to review and approval by the Planning Division prior to demolition permit issuance.
- 9.9 Utility Installations: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Community Development Director and Public Works Director prior to each permit issuance. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground, subject to Menlo Fire, West Bay Sanitary District, Pacific Gas

and Electric and other agency requirements regarding utility clearances and screening. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. The screening shall be compatible and unobtrusive and subject to the review and approval of the Community Development Director prior to building permit issuance.

- 9.10 Grading and Drainage: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit a Grading and Drainage Plan, including an Erosion and Sedimentation Control Plan, for review and approval of the Public Works Director prior to building permit issuance. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist, the City approved Hydrology Report for the Project, and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements to the satisfaction of the Public Works Director.
- 9.11 Landscape Plan: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit a detailed on-site landscape plan, including the size, species, and location, and an irrigation plan for review and approval by the Community Development Director and Public Works Director, prior to building permit issuance. The landscape plan shall include all onsite landscaping, adequate sight distance visibility, screening for outside utilities with labels for the utility boxes sizes and heights, fencing inclusive of fence height and materials, and documentation confirming compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44), if applicable. The landscape plans shall illustrate the utilization of a plant palette consistent with the "Save the Bay" plant list. Furthermore, the landscape plan shall include an appropriate mix of native species to complement the nearby Don Edwards San Francisco Bay National Wildlife Refuge and shall be reviewed and approved by the Community Development Director and Public Works Director prior to building permit issuance.
- 9.12 Lighting: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit pedestrian scale lighting plans to ensure safe access and use of the undercrossing, to the satisfaction of the Community Development Director and Public Works Director.
- 9.13 Comply with Applicable Requirements: Prior to issuance of each demolition, grading and drainage, and building permit for the undercrossing improvements, the Applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project, to the satisfaction of the Community Development Director.

- 9.14 Building Construction Street Impact Fee: Prior to issuance of each demolition, grading and drainage, and building permit for undercrossing improvements, the Applicant shall pay the applicable Building Construction Street Impact Fee in effect at the time of payment to the satisfaction of the Public Works Director.
- 9.15 Utility and Communication Provider Requirements: Prior to issuance of each demolition, grading and drainage, and building permit for the undercrossing improvements, the Applicant shall comply with all regulations of Pacific Gas and Electric, West Bay Sanitary District, and communication providers (i.e., AT&T and Comcast) that are directly applicable to the project, to the satisfaction of the Community Development Director.
- 9.16 Stormwater Operations and Maintenance Agreement: Prior to issuance of each demolition, grading and drainage, and building permit, the Applicant and Property Owner shall enter into an Operations and Maintenance Agreement with the City or amend the existing Operations and Maintenance Agreement with the City. The Operations and Maintenance Agreement shall establish a self-perpetuating drainage system maintenance program (to be managed by the property owner or property manager) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other Best Management Practices (BMPs). Any accumulation of sediment or other debris shall be promptly removed. Funding for long-term maintenance of all BMPs must be specified in the Operations and Maintenance Agreement. The Operation and Maintenance Agreement shall be subject to review and approval of the City Attorney and the Public Works Director and shall be recorded prior to building permit final inspection. An annual report documenting the inspection and any remedial action conducted shall be submitted to the Public Works Director for review.
- 9.17 Construction and Demolition Debris: Prior to each demolition permit and/or building permit issuance, the Applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, subject to review and approval by the Building Official.
- 9.18 Erosion and Sedimentation Control: Concurrent with demolition, grading and drainage, and building permit submittal for the undercrossing improvements, the Applicant shall submit a plan for construction of safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the plan prior to commencing construction. The plans shall be reviewed and approved by the Building Official prior to issuance of a demolition permit.
- 9.19 Dust Control: Concurrent with each demolition, grading and drainage, and building permit submittal, the Applicant shall prepare a dust control plan. The

plan shall be reviewed and approved by the Building Official prior to demolition permit issuance. To reduce particulate matter emissions during project demolition, excavation and construction phases, the project contractor(s) shall comply with the dust control strategies developed by the Bay Area Air Quality Management District (BAAQMD). The Applicant shall include in all construction contracts the following requirements, or measures shown to be equally effective. These requirements shall be implemented during the demolition, grading, and construction phases to the satisfaction of the Building Official.

- All trucks hauling soil, sand, and other loose construction and demolition debris from the site shall be covered, or all such trucks shall maintain at least two feet of freeboard.
- All exposed or disturbed soil surfaces in active construction areas shall be watered at least twice daily.
- All unpaved parking areas and staging areas shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.
- All paved parking areas and staging areas shall be swept daily (with water sweepers).
- Mud and dirt carried onto paved streets from the construction areas shall be cleaned daily.
- Exposed stockpiles (i.e., dirt, sand, etc.) shall be enclosed, covered, watered twice daily or non-toxic soil binders applied.
- Traffic speeds shall be limited on unpaved roads to 15 mph.
- Sandbags or other erosion control measures shall be used to prevent silt runoff to public roadways.
- In graded areas in which construction activities will not occur for a period of more than 30 days, a temporary vegetative cover shall be planted within 5 days of completion of grading.
- Wheel washers shall be installed for all exiting trucks, or truck tires and tracks of all trucks and equipment leaving the site shall be washed.
- Wind breaks at the windward side(s) of construction areas shall be installed.
- Excavation and grading activity shall be suspended when winds (instantaneous gusts) exceed 25 miles per hour over a 30-minute period or more.
- To the extent possible, the area subject to excavation, grading, and other dust-generating construction activity shall be limited to only one activity.

9.20 Landscape Installation: Prior to building permit final inspection for the undercrossing improvements, landscape shall be installed on the applicable parcel/easement areas per the approved landscape plan, subject to review and approval by the Community Development Director and Public Works Director.

10. PROJECT SPECIFIC CONDITIONS – MITIGATION MEASURES:

- 10.1 Willow Road and Bayfront Expressway Improvement: The proposed partial mitigation measures for the intersection of Willow Road and Bayfront Expressway include an additional eastbound right turn lane with a right turn overlap phase from Willow Road to Bayfront Expressway, a new Class I bikeway between the railroad tracks and the existing Bay Trail, closing the outbound direction of the driveway at Building 10 to simplify maneuvering through the stop-controlled intersection (inbound access would still be provided), lengthening the existing right-turn pocket at the westbound approach to a full lane between Bayfront Expressway and the stop-controlled intersection, and ensuring the crosswalk at the stop-controlled intersection is accommodated safely.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Willow Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way and on the egress approach, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, signage and striping modifications further west on Willow Road, and the design of the eastbound direction Class I bikeway from the railroad tracks to the intersection of Willow Road and Bayfront Expressway. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the on-site improvements within 180 days of City approval of the plans. The Applicant shall construct the off-site improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City. Construction of this improvement by the Applicant shall count as a future credit toward payment of the Transportation Impact Fee (TIF) payable by the

Applicant pursuant to the TIF Ordinance. In the event any portion of the intersection improvements is eligible for funding in whole or in part by the City/County Association of Governments (C/CAG) such improvements may be deferred by the City in its sole discretion to pursue such funding and the Applicant may be relieved of its responsibility to construct such portion of the intersection improvements as may be funded by C/CAG, or such responsibility may be deferred until eligibility for funding is determined. (MM-TR-1.1.a)

- 10.2 Willow Road and Middlefield Road Improvement: The proposed mitigation measure for the intersection of Willow Road and Middlefield Road includes restriping an existing northbound through lane to a shared through and right-turn lane. Implementing this improvement would require traffic signal modifications, removal of the existing triangular median on the southeast corner of the intersection, along with realignment of the crosswalks on the south and east side of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Willow Road and Middlefield Road for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director. Upon obtaining approval from the City, the Applicant shall construct the improvements within 180 days of the encroachment permit approval date by the City. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.b)

- 10.3 University Avenue and Bayfront Expressway Improvement: The proposed mitigation measure for the intersection of University Avenue and Bayfront Expressway includes an additional southbound through lane and receiving lane. A revised signal timing plan would also be needed. The additional southbound through lane and southbound receiving lane are not feasible due to the right-of-way acquisition from multiple property owners, potential wetlands, relocation of the Bay Trail, and significant intersection modifications, which are under Caltrans jurisdiction. However, the installation of a Class I bikeway (portion of the Bay Trail from west of the railroad tracks

to the intersection of University Avenue and Bayfront Expressway) is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require paving, grading, drainage and signing and striping improvements.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed partial mitigation measure along University Avenue between Bayfront Expressway and the railroad tracks for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, and signage and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the proposed improvements within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements, and TDM programs throughout the City, with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.c)

- 10.4 Bayfront Expressway and Chrysler Drive Improvements: The proposed mitigation measures for the intersection of Bayfront Expressway and Chrysler Drive include restriping the existing eastbound right turn lane to a shared left-right-turn lane.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Bayfront Expressway and Chrysler

Drive for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements and TDM programs, throughout the City with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.d)

- 10.5 Marsh Road and Bayfront Expressway: The proposed mitigation measures for the intersection of Marsh Road and Bayfront Expressway include restriping the westbound approach from a shared left-through-right lane to a shared left-through lane and a shared through-right lane.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Marsh Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of

the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.a)

- 10.6 Marsh Road and US 101 NB Ramps: The proposed mitigation measures for the intersection of Marsh Road and US 101 Northbound off-ramp include widening the northbound off-ramp on the western side of the approach and adding an additional left-turn lane along with adding a second right-turn lane by restriping one of the existing left-turn lanes. This improvement will require relocation of existing traffic signal poles, utility relocation and reconstruction of the curb ramp on the southwest corner of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Marsh Road and US 101 Northbound off-ramp for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.b)

- 10.7 Willow Road and Newbridge Street: The potential mitigation measure for the intersection of Willow Road and Newbridge Street includes an additional eastbound left-turn lane, an additional northbound receiving lane for the eastbound left turning traffic, an additional westbound through/right-turn lane, and an additional receiving lane for the westbound through traffic. The additional eastbound left-turn lane and northbound receiving lane are not feasible due to the right-of-way acquisition and property impacts required along Newbridge Street and at the southwest quadrant of the intersection, which is in the City of East Palo Alto. However, the additional westbound through/right-turn lane and westbound receiving lane is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require traffic signal modifications, the removal of at least one heritage tree in front of 1157 Willow Road in order to accommodate the receiving lane, and the removal and relocation of a portion of the concrete masonry wall and landscaping near 1221 Willow Road.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the feasible mitigation measure at the intersection of Willow Road and Newbridge Street for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a performance bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the 1601 Willow Road Development Agreement effective date, the Applicant shall submit complete plans to construct a westbound through/right turn lane approximately 300 feet in length, and a westbound through receiving lane, from the Willow Road and Newbridge Street intersection to the beginning of the northbound US 101 on-ramp, based on impacts to the intersections of Willow Road and Newbridge Street.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and striping modifications. The plans shall be subject to review and approval by the City

and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. The partial mitigation improvements are not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.d)

- 10.8 Cogenra System: The Applicant shall install a Cogenra Combined Heat and Power system at the existing Building 11 at the Property. The scale of the system shall be designed such that Reactive Organic Gas (ROG), Nitrogen Oxide (NOX) and Particulate Matter (PM10) are reduced beyond the Operational Mass Emissions identified in the Draft EIR. (MM-AQ-2.1)
- 10.9 Nesting Bird Protection: The Applicant, until the Applicant Termination Date, and, thereafter, the Property Owner, shall implement the following measures to reduce impacts to nesting migratory birds:
 - 10.9.1 To facilitate compliance with State and federal law (Fish and Game Code and the Migratory Bird Treaty Act (MBTA)) and prevent impacts to nesting birds, the Applicant or the Property Owner (as applicable) shall avoid the removal of trees, shrubs, or weedy vegetation February 1 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity. (MM-BR-4.1.a)
 - 10.9.2 Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.

In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts. (MM-BR-4.1.b)

10.10 Sanitary Sewer System Improvements: The Applicant shall upsize 114 linear feet of the existing 12-inch diameter pipeline that runs north along Hamilton Avenue, beginning at the Hamilton Avenue/Willow Road intersection, to a 15-inch diameter pipe. To ensure that this work is completed, as part of the 1601 Willow Road Development Agreement, the Applicant is agreeing to conduct these improvements and post a bond equal to 200 percent of the estimated cost of the work. In addition, the Applicant shall purchase a third wastewater pump to be placed into reserve in case of pump failure at Hamilton Henderson Pump Station (HHPS). To ensure this work is completed, as part of the 1601 Willow Road Development Agreement, the Applicant is agreeing to purchase the pump and post a bond equal to 120 percent of the cost of the wastewater pump. (MM-UT-3.1)

11. GENERAL CONDITIONS

- 11.1 Covenants Run with the Land. All of the conditions contained in this Amended and Restated Conditional Development Permit shall run with the land comprising the Property and shall be binding upon, and shall inure to the benefit of the Property Owner and its heirs, successors, assigns, devisees, administrators, representatives and leasees, except as otherwise expressly provided in this Amended and Restated Conditional Development Permit.
- 11.2 Severability - If any condition of this Amended and Restated Conditional Development Permit, or any part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such condition, or part hereof, shall be deemed severable from the remaining conditions of this Amended and Restated Conditional Development Permit and shall in no way affect the validity of the remaining conditions hereof.
- 11.3 Exhibits – The exhibits referred to herein are deemed incorporated into this Amended and Restated Conditional Development Permit in their entirety.

Exhibit A: Trip Cap Monitoring and Enforcement Policy

TRIP CAP MONITORING AND ENFORCEMENT POLICY¹

The Facebook project includes both an East Campus and a West Campus. Entitlements are currently being sought only for the East Campus. Therefore, this Trip Cap Monitoring and Enforcement Policy is specific to the East Campus.²

DEFINITIONS

Trip – A single vehicle (car, truck, van, shuttle, etc.) arriving at a location in Menlo Park, whose occupant(s)' final destination is the East Campus, or a single vehicle departing from a location in Menlo Park, whose occupant(s)' origin is the East Campus. Therefore, for example, a roundtrip by a single vehicle arriving at a location in Menlo Park and departing from a location in Menlo Park whose occupant(s)' destination and origin is the East Campus equals two trips. Trips do not include bicycles or other self-powered modes of travel.

Peak Period – Roadway morning and evening commuter peak travel times:

- AM Peak Period - 7:00 AM to 9:00 AM
- PM Peak Period - 4:00 PM to 6:00 PM

Peak Period Trip Cap – The maximum number of trips in the AM Peak Period or the PM Peak Period.

Daily Trip Cap – The maximum number of trips per day.

Trip Cap – Generally refers to the AM Peak Period Trip Cap, the PM Peak Period Trip Cap and the Daily Trip Cap.

TRIP CAP

The Trip Cap is part of the Facebook project definition and is included in the Conditional Development Permit (CDP) for the project.³ Therefore, one way to think about the Trip Cap is in terms of building square footage. A CDP typically defines the maximum building square footage. Increases in building square footage that exceed the maximum permitted building square footage are not allowed without an

¹ This Trip Cap Monitoring and Enforcement Policy was prepared by the City of Menlo Park in consultation with Facebook.

² If and when Facebook seeks entitlements for the West Campus, a trip cap will be required per the mitigation measures contained within the Environmental Impact Report prepared for the Facebook project.

³ Although Facebook is the current applicant and the Trip Cap will apply to Facebook until Facebook vacates the East Campus, the Trip Cap is intended to apply to the East Campus, will apply to Owner and Owner's successor(s) and assign(s) through the Amended and Restated Conditional Development Permit that applies to the East Campus, and will cease applying to Facebook, directly, upon Facebook's vacating of the East Campus.

application for and approval of a change to the CDP. Any increase in building square footage without the appropriate approval violates the CDP. The same is true for the Trip Cap. Facebook must comply with the Trip Cap and may not exceed the Trip Cap without an application for and approval of a change to the CDP. If the Trip Cap is exceeded without the appropriate approval, Facebook is in violation of the CDP.

The Trip Cap proposed as part of Facebook's East Campus project definition is as follows:

- AM Peak Period Trip Cap: 2,600 trips
- PM Peak Period Trip Cap: 2,600 trips
- Daily Trip Cap: 15,000 trips

MONITORING

To monitor compliance with the Trip Cap, traffic counts shall be taken at the East Campus. The monitoring shall be done through automated means (e.g., imbedded loop detectors in the pavement in each travel lane or video detection) approved by the City.⁴ All vehicular entrances to the East Campus shall be included in the monitoring. Facebook shall be solely responsible for paying all costs related to monitoring, including, but not limited to, development, installation, maintenance and repair of all monitoring equipment.

In addition to monitoring the East Campus, the City reserves the option to require Facebook to monitor the West Campus prior to its occupancy if it is observed or suspected that vehicles whose occupant(s)' final destination is the East Campus are parking at the West Campus. The City also reserves the option to require Facebook to monitor neighborhood parking intrusion in the Belle Haven neighborhood, parking on other public streets in the City, or parking at any off-site parking lot(s) in Menlo Park if it is observed or suspected that vehicles whose occupant(s)' final destination is the East Campus are parking at any of these locations. If the City requires monitoring of these off-site locations and, after investigation, it is confirmed that vehicle occupant(s) are parking vehicles at these off-site locations to access the East Campus, the trips to these locations will be counted toward the Trip Cap.

Monitoring program details are as follows:

- **Monitoring Days/Times** – The AM Peak Period, the PM Peak Period and total daily trips will be monitored on all non-holiday weekdays. Holidays are those days identified as State holidays in California Government Code Section 6700. This is the condition evaluated in the Environmental Impact Report for the Facebook project.
- **Exclusions** – Two types of exclusions from the Trip Cap shall be permissible as discussed below:

⁴ City approvals related to monitoring equipment will be through the Director of Public Works or his/her designee.

- **Special Events:** To account for special events and their effect on trips, Facebook may have up to 12 special event exclusions per year or 12 days on which one or more of the AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap are exceeded, but are not considered violations of the Trip Cap. These special events do not represent typical operating conditions at the East Campus. A special event will be defined as an activity that is not typical of the normal operations of the East Campus and will likely involve more than East Campus employees. If the Trip Cap has been violated as a result of a special event, Facebook shall provide documentation to the City that a special event took place. Upon City review and approval, in the City's sole and reasonable discretion, an exclusion for a special event shall apply.
- **Non-event exclusions:** For non-special events, Facebook will be allowed three days on which one or more of the AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap are exceeded within a 180 day period without incurring penalties. These non-event exclusion days are intended to allow Facebook time to correct the Trip Cap violation. If Facebook exceeds the Trip Cap on more than three days within a 180 day period, then the non-event exclusion is eliminated and penalties are imposed for violations of the Trip Cap until compliance is reached for a consecutive 180 day period. Additional violations, if any, within the 180 day compliance period, will re-set the 180 day compliance period. If after a consecutive 180 day period, Facebook remains in full compliance with the Trip Cap, then the three day exclusion is available again.
- **Count Equipment** – Automated count equipment will be designed and constructed at Facebook's sole expense to collect data on the number of trips at the two East Campus driveways and send the data back to the City offices. The type of count equipment (initial and any future changes) shall be approved by the City, in consultation with Facebook and considering the latest technologies for detection, counting and reporting. The City shall not unreasonably withhold approval of initial count equipment or any future equipment which achieves the result envisioned in this document. The City shall also approve the count equipment that will be used to monitor off-site locations, if the City exercises the option to require such monitoring. The City shall not unreasonably withhold approval of such additional count equipment.
- **Initial Calibration Process** – Once the count equipment has been established, a calibration process will be undertaken to determine the reliability and accuracy of the count equipment. Depending on the type of equipment, the count accuracy can be affected by a number of environmental factors which will need to be confirmed. This calibration process would be conducted prior to the East Campus reaching full occupancy.
- **Determination of Reliability (Sensitivity) Factor** – Based on the calibration analysis, the City and Facebook will agree to a reliability factor for the count stations which will be used to evaluate the count results. The reliability factor would represent the margin of error inherent in the

vehicle counting equipment, and would address the exclusion of trips whose final destination is not the East Campus (i.e. wrong turns, uninvited guests, etc).

- **Periodic Count Equipment Testing/Recalibration** – The vehicle detection system will be periodically tested to ensure the accuracy of the monitoring counts. During the first two years of operation, testing will be conducted at six month intervals. If these tests show that the system is operating reliably, then testing can be reduced to once a year. If the equipment is thought to be out of calibration, Facebook will work with the City to test and calibrate the equipment if necessary. The City will have final approval, which approval shall be granted or withheld in a reasonable manner, on all testing and calibration.
- **Installation and Repairs** – The count equipment shall be installed and in good working order within 180 days of the effective date of the Conditional Development Permit. The City shall have final approval, which approval shall be granted or withheld in a reasonable manner, of the contractor completing the installation and the maintenance contractor completing any repairs. Non-emergency repairs and maintenance of the monitoring equipment shall occur only on evenings and weekends, unless otherwise approved by the City. The Transportation Division shall be notified at least 48 hours in advance of any non-emergency repairs or maintenance work. The City Transportation Division shall be notified within 24 hours of any emergency repairs. City inspection and approval of any repairs or maintenance is required. Failure to keep monitoring equipment operational in good working order will be considered a violation of the Trip Cap after two working days, unless the repairs/maintenance require additional time as approved by the City and Facebook is diligently pursuing such repairs/maintenance. The Trip Cap penalty will not be enforced during the repair/maintenance of the monitoring equipment. If the City, in its sole and reasonable discretion, determines that Facebook is not diligently pursuing the repairs/maintenance, the City may elect to perform the repairs/maintenance and charge the cost of the repair/maintenance, staff time, and 15 percent penalty fee to Facebook.
- **Access to Count Equipment/Reporting** – The City shall have the ability to access the count equipment at any time after reasonable prior notice to Facebook. Facebook will not have access to the count equipment, unless approved by the City or in case of the need for emergency repairs. The City shall not unreasonably withhold approval of access for repair/maintenance contractors. Facebook shall have “read-only” access to the reporting data, but shall have the ability to record such data and run history reports in order to track trends. Reporting data shall be provided to Facebook and the City in real time. Real time data will provide Facebook the opportunity to take immediate action, if necessary, to avoid violating the Trip Cap.

ENFORCEMENT

Facebook shall be responsible not only for monitoring, but also for achieving compliance with the Trip Cap, which includes, by definition, all three trip cap measurements on a daily basis (the AM Peak Period Trip Cap, the PM Peak Period Trip Cap and the Daily Trip Cap). The City shall enforce compliance with the Trip Cap.

If, on a given day, the results of the monitoring indicate that the number of trips is at or below the Trip Cap, considering the reliability factor, then Facebook is considered in compliance. If, however, the monitoring, considering the reliability factor, reveals that the AM Peak Period Trip Cap or the PM Peak Period Trip Cap or the Daily Trip Cap has been exceeded, Facebook is in violation of its CDP and the City may take steps to enforce the Trip Cap.

The specifics for enforcement are as follows:

- **Threshold** – If there are AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap violations that do not qualify for an exclusion as discussed above, then penalties will be imposed.
- **Penalties** – Monetary penalties will be imposed for violations of the Trip Cap in excess of the threshold. Penalties are calculated on a per trip basis and progressively increasing penalties will be imposed for subsequent violation(s) of the Trip Cap based on a tiered system described in the table below. Penalties will be applied for each violation including the AM Peak Period, PM Peak Period and the Daily Period. If the AM Peak Period Trip Cap, and/or PM Peak Period Trip Cap and Daily Trip Cap are exceeded on the same day, the penalty paid shall be the greater of the sum of the penalties for the AM Peak Period and PM Peak Period or the Daily penalty. The penalty payment schedule is shown in the table below:

Penalty Tier ₁	Applicability	Penalty Amount
Tier 1	Tier 1 is the default tier and applies for the month unless one of the other tiers is applicable.	\$50 per trip per day
Tier 2	Tier 2 applies for the month if either (a) penalties were imposed in both of the 2 months immediately preceding that month or (b) penalties were imposed in any 4 of the 6 months immediately preceding that month. Tier 2 will not apply if Tier 3 applies.	\$100 per trip per day
Tier 3	Tier 3 applies for the month if penalties were imposed in each of the 6 months immediately preceding that month.	\$200 per trip per day

¹ Only one tier is applicable for any given violation

An example table showing the penalty amounts:

Penalty Cost Per Day			
Vehicles over Trip cap	Tier 1	Tier 2	Tier 3
100	\$5,000	\$10,000	\$20,000
500	\$25,000	\$50,000	\$100,000
1000	\$50,000	\$100,000	\$200,000
2000	\$100,000	\$200,000	\$400,000

Example calculations

Daily penalty greater:

AM Peak Period exceeds the AM Peak Period Trip Cap by 100 trips
 PM Peak Period exceeds the PM Peak Period Trip Cap by 50 trips
 Daily trips exceed the Daily Trip Cap by 400 trips

The payment would be:

AM Peak Period penalty = 100 trips x \$50/trip = \$5,000
 PM Peak Period penalty = 50 trips x \$50/trip = \$2,500
 Total Peak Period penalty = \$7,500
 Daily penalty = 400 trips x \$50/trip = \$20,000
Penalty Paid = \$20,000

AM Peak Period and PM Peak Period penalty greater:

AM Peak Period exceeds the AM Peak Period Trip Cap by 100 trips
 PM Peak Period exceeds the PM Peak Period Trip Cap by 50 trips
 Daily trips exceed the Daily Trip Cap by 100 trips

The payment would be:

AM Peak Period penalty = 100 trips x \$50/trip = \$5,000
 PM Peak Period penalty = 50 trips x \$50/trip = \$2,500
 Total Peak Period penalty = \$7,500
 Daily penalty = 100 trips x \$50/trip = \$5,000
Penalty Paid = \$7,500

The base penalties shall be adjusted annually starting at base year 2012 per the Consumer Price Index for All Urban Consumers All Items in the San Francisco-Oakland-San Jose Metropolitan Area [1982-84=100]. Penalties are due and payable to the City within 30 days of the issuance of an invoice, which the City shall issue on a monthly basis. The City shall use the penalties collected for programs or projects designed to reduce trips or traffic congestion within Menlo Park and the City shall share 25 percent of the penalties collected with the City of East Palo Alto for use on transportation systems and solutions that help reduce traffic in the City of East Palo Alto around the East Campus. In addition to monetary penalties, failure to comply with the Trip Cap is considered a violation of the CDP and could result in revocation of the CDP.

- **Interim Measure** – If Facebook determines that it needs to secure parking in another location as an interim measure to maintain compliance with the Trip Cap, Facebook may, through the City’s entitlement process, obtain approval for the use of another private property in Menlo Park (not the East or West Campus) that includes both a building and associated parking. Trips to such an off-site location will not count toward the Trip Cap only if there will be no more trips to that off-site location than is allowed under the then current use of that property.
- **Compliance** – If after non-compliance, Facebook comes back into compliance with the Trip Cap and maintains compliance for 180 consecutive days, the scale of penalties will revert to the base level and the relevant threshold would once again apply before there is non-conformance and the onset of penalties.

DRAFT

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, CALIFORNIA APPROVING HERITAGE TREE REMOVAL PERMITS FOR THE PROPERTIES LOCATED AT 1601 WILLOW ROAD, AND 312 AND 313 CONSTITUTION DRIVE

WHEREAS, on April 9, 2012, the City of Menlo Park (“City”) received applications from Facebook, Inc., a Delaware corporation (“Project Sponsor”) for removal of one heritage tree at the property located at 1601 Willow Road in Menlo Park (“East Campus”) and seven trees at the property located at 312 and 313 Constitution Drive (“West Campus”); and

WHEREAS, the requested tree removals are necessary in order to construct access improvements to the existing undercrossing of Bayfront Expressway (State Route 84) to improve the connection between the East Campus and West Campus; and

WHEREAS, the removal of Heritage Trees within the City is subject to the requirements of Municipal Code Chapter 13.24, Heritage Trees; and

WHEREAS, the City Arborist reviewed the requested tree removals on April 17, 2012; and

WHEREAS, the City Arborist determined that the eight Heritage Trees were impeding the construction of the access improvements to the existing undercrossing of Bayfront Expressway (State Route 84); and

WHEREAS, the City Arborist determined that the eight Heritage Trees proposed for removal were of inferior species and in fair to good health; and

WHEREAS, the City Arborist determined that the proposed 28 replacement trees would be more compatible with the adjacent natural environment and consistent with species recommended on the Save the Bay Planting list; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park on May 7, 2012 whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission of the City of Menlo Park having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter voted

affirmatively to recommend to the City Council of the City of Menlo Park to approve the Heritage Tree Removal Permits; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council of the City of Menlo Park on May 29, 2012 whereat all persons interested therein might appear and be heard.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park hereby approves the Heritage Tree Removal Permits.

I, Margaret S. Roberts, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ___ day of _____, 2012, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of _____, 2012.

Margaret S. Roberts, MMC
City Clerk

Arborist Report

Prepared at the request of:

CMG LANDSCAPE ARCHITECTS

TREE SURVEY Facebook East Tunnel

DATE: 4-6-12

Prepared by:

SBCA TREE CONSULTING
Stephen Batchelder, Consulting Arborist

WC ISA Certified Arborist #228
CUFC Certified Urban Forester #134
Calif. Contractor Lic. (C-27) 533675

Molly Batchelder, Consulting Arborist

WC ISA Certified Arborist #9613A

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Assignment: SBCA Tree Consulting was asked to survey trees growing on the corner of the East Campus and which may be impacted by the improvements to the tunnel area. Information collected includes: species, diameter, height, spread, health, structural condition and pertinent comments where appropriate.

Introduction

The tree survey was conducted on April 5th. The tree survey entailed tagging and data collection. Heritage status trees were flagged with orange tape. This report provides data for 42 trees on the site. Dead trees and shrubs were not included in the survey. Also included in this report: Appendix 1-Survey Data and Appendix 2 –Tree Location Map.

City Requirements

The City of Menlo Park requires a permit to remove or heavily prune “Heritage Trees”. Heritage Tree designation includes the following:

1. Any tree having a trunk with a circumference of 47.1 inches (diameter of 15 inches) or more, measured at 54 inches above natural grade.
2. Any oak tree native to California, with a circumference of 31.5 inches (diameter of 10 inches)...
3. Any tree or group of trees specifically designated by the City Council...

Summary

The tree survey identified 42 trees. Three trees qualify as Heritage Trees under City of Menlo Park Ordinance. Total number of species surveyed was four. Most trees are in fair to good health and condition.

Species List

	Species	Amount	Heritage Trees
1	<i>Acacia melanoxylon</i>	12	2
2	<i>Aesculus californica</i>	7	0
3	<i>Carpinus betulus</i>	6	0
4	<i>Pinus eldarica</i>	16	1
5	<i>Rhamnus alaternus</i>	1	0

Survey Procedure

Both heritage and non-heritage trees were tagged with aluminum number tags. The corresponding numbers were noted on an overhead map of the site. Trees that qualified as “Heritage Trees” under City Ordinance Chapter 13.24, were identified with orange flagging tape attached to the number tag nail.



Data collected included: tree species, diameter (as per City guidelines), height, spread, health, structure and pertinent comments. Heritage qualifying trees are noted in bold in the survey data and in red on the tree location map.

The procedure for recording diameters of multi-stemmed trees emanating from ground level was to measure at ground level.

Site Conditions

Five trees are located in the parking lot area. The majority of the trees surveyed are located along a bay front pathway and waterway. Conditions are extremely windy.

Discussion of Tree Species and Preliminary Analysis of Data

Blackwood Acacia (*Acacia melanoxylon*) – 12 trees tagged

Two heritage trees were identified. Established trees located in the parking lot area were in fair to good health and structure. Most of the newly planted trees along the waterway are dead or dying. (Dead trees were not surveyed.) Nursery stakes were left in after planting, which causes trees to not develop the taper necessary to support themselves.

California Buckeye (*Aesculus californica*) –7 trees tagged

This California native species is doing well on site. All trees were multi stemmed.

Eldarica Pine (*Pinus eldarica*) – 16 trees tagged

One heritage tree was identified. These trees are doing well on site, displaying fair to good health and conditions. Poor clearance pruning was undertaken at one time, and more branches on trees were removed at one time than is recommended. Most of these trees have developed a lean due to windy conditions.

Eldarica Pines are very susceptible to sequoia pitch moth (*Synanthedon sequoia*) infestation. “Sequoia pitch moth is primarily an aesthetic pest. The main effect of larval feeding is to cause infested pines to produce copious amounts of unsightly resin. Sequoia pitch moth larvae cause very little injury to cambium and wood. This relatively minor damage does not usually cause girdling of the trunk and rarely kills trees. Larval feeding sometimes causes one or more limbs to die or become weak enough to break, especially if infested trees are young. Pines with pruning wounds or other injuries are more frequently attacked than uninjured pines” (<http://www.ipm.ucdavis.edu/PMG/PESTNOTES/pn7479.html>).

Hornbeam (*Carpinus betulus*) – 6 trees tagged

The trees are still small, and without a clear understanding of the soil conditions and soil volume available for root development, future prospects are indeterminate.



Italian Buckthorne (*Rhamnus alaternus*) – 1 trees tagged

Although this species is considered a shrub, it was included in the survey due to its “tree-like” form. The tree is not healthy, displaying leaf chlorosis, a condition where leaves produce insufficient chlorophyll. This is likely due to soil conditions (mineral or soil volume deficiencies).

End Report

Submitted By:



Molly Batchelder, Consulting Arborist
WC ISA Certified Arborist #9613A

Supplemental Material:

- Appendix 1- Tree Survey Data
- Appendix 2- Tree Location Map



Facebook East Tunnel Tree Survey

COLUMN HEADING DESCRIPTIONS

Tag# - Indicates the number tag attached to tree

DBH - Diameter measured in inches at 4.5 feet above soil grade unless otherwise indicated

Height - Estimated to the nearest 5 feet.

Spread - Estimated to the nearest 5 feet.

Health -Tree Health: G is Good, F is Fair, P is Poor, D is Dead

Structure- Tree Structural Safety: G is Good, F is Fair, P is Poor

ABBREVIATIONS AND DEFINITIONS

EB - Embedded bark; Included Bark	Included bark occurs when bark is included into the attachment between two stems, preventing the joining of wood tissue in the area between the stems. As stems having included bark increase in size, pressure is exerted from the stem expansion and a crack often develops in the crotch between the stems. Included bark attachments have a higher potential for failure in later years.
Codominant -	A situation where a tree has two or more stems which are of equal diameter and relative amounts of leaf area. Trees with codominant primary scaffolding stems are inherently weaker than stems, which are of unequal diameter and size.
Multi -	Multi Stemmed tree has two or more stems emminating from below 4.5 feet
Girdling root -	Roots that grow around the trunk in a circular manner, restricting other roots or trunk growth
Heritage Tree -	<ol style="list-style-type: none"> 1. Any tree having a trunk with a circumference of 47.1 inches (diameter of 15 inches) or more, measured at 54 inches above natural grade. 2. Any oak tree native to California, with a circumference of 31.5 inches (diameter of 10 inches)... 3. Any tree or group of trees specifically designated by the City Council...

Tag #	Species	Common Name	DBH	Height	Spread	Health	Structure	Notes
1	<i>Acacia melanoxyton</i>	Blackwood Acacia	12.5	40	20	G	F-G	Minor EB; Existing tree tag #585
2	<i>Acacia melanoxyton</i>	Blackwood Acacia	14	40	30	G	F	Surface rooting; Girdling root; Existing tag #684
3	<i>Acacia melanoxyton</i>	Blackwood Acacia	11.5	25	25	G	F	Surface rooting; Girdling root; Tree growing around irrigation hose; Existing tag #682

Tag #	Species	Common Name	DBH	Height	Spread	Health	Structure	Notes
4	<i>Acacia melanoxylon</i>	Blackwood Acacia	13.5	35	25	F	P	Surface rooting; Girdling roots; Foliage dieback; 2 EB; some basal damage; Existing tag #681
5	<i>Rhamnus alaternus</i>	Italian Buckthorne	5.5 @ 2'	15	15	F	F	Leaf chlorosis; Existing tag #683
6	<i>Pinus eldarica</i>	Eldarica Pine	2	10	5	F	F	
7	<i>Pinus eldarica</i>	Eldarica Pine	2	10	5	F	G	Off color foliage
8	<i>Pinus eldarica</i>	Eldarica Pine	2	10	5	F	G	Off color foliage
9	<i>Pinus eldarica</i>	Eldarica Pine	10	30	20	F-G	G	Sequoia pitch moth
10	<i>Pinus eldarica</i>	Eldarica Pine	16	35	25	F-G	G	Heritage tree; Sequoia pitch moth
11	<i>Pinus eldarica</i>	Eldarica Pine	12.5, 7	30	15	F-G	F-G	Codominant; Large pruning wounds; Sequoia pitch moth
12	<i>Acacia melanoxylon</i>	Blackwood Acacia	1	8	3	P	G	Nursery stake requires removal; Requires restaking for support
13	<i>Pinus eldarica</i>	Eldarica Pine	14	30	15	F-G	G	Lean; Sequoia pitch moth
14	<i>Pinus eldarica</i>	Eldarica Pine	5, 9	30	15	F-G	F	Codominant; Lean; Sequoia pitch moth
15	<i>Pinus eldarica</i>	Eldarica Pine	2.5	10	3	F	G	
16	<i>Acacia melanoxylon</i>	Blackwood Acacia	1	8	2	P	F	Nursery stake requires removal; Requires restaking for support
17	<i>Aesculus californica</i>	California Buckeye	7 @ base	10	15	G	F	Multi

Tag #	Species	Common Name	DBH	Height	Spread	Health	Structure	Notes
18	<i>Acacia melanoxylon</i>	Blackwood Acacia	1.5	10	2	F	F	Nursery stake requires removal; Requires structural pruning
19	<i>Aesculus californica</i>	California Buckeye	8 @ base	8	15	G	F	Multi
20	<i>Aesculus californica</i>	California Buckeye	9.5 @ base	8	15	G	F	Multi
21	<i>Pinus eldarica</i>	Eldarica Pine	9.5, 6	25	20	F-G	G	Pruning wounds; Lean; Sequoia pitch moth
22	<i>Acacia melanoxylon</i>	Blackwood Acacia	1	8	3	P-D	G	Nursery stake requires removal
23	<i>Pinus eldarica</i>	Eldarica Pine	8, 3.5	20	10	F-G	F	Pruning wounds; Sequoia pitch moth
24	<i>Pinus eldarica</i>	Eldarica Pine	8,9	20	15	F	F	Lean; Sequoia pitch moth
25	<i>Pinus eldarica</i>	Eldarica Pine	6.5, 6, 9.5, 2	25	15	F-G	F	Codominant; Pruning wounds; Sequoia pitch moth
26	<i>Pinus eldarica</i>	Eldarica Pine	6, 6, 4.5, 3.5, 8	15	25	F-G	F	Lean; Multi; Pruning wounds; Sequoia pitch moth
27	<i>Pinus eldarica</i>	Eldarica Pine	14, 11	25	20	F-G	F	Pruning wounds; Lean; Sequoia pitch moth
28	<i>Pinus eldarica</i>	Eldarica Pine	13.5	20	20	F-G	F	Lean; Sequoia pitch moth
29	<i>Acacia melanoxylon</i>	Blackwood Acacia	8.5	25	15	F-G	P	EB; Pruning wounds
30	<i>Aesculus californica</i>	California Buckeye	6 @ base	5	10	F	F	Damage to base; Multi
31	<i>Acacia melanoxylon</i>	Blackwood Acacia	8	20	15	F	F	Lean; Existing tag #686
32	<i>Aesculus californica</i>	California Buckeye	6 @ base	8	15	G	F	Multi

Tag #	Species	Common Name	DBH	Height	Spread	Health	Structure	Notes
33	<i>Aesculus californica</i>	California Buckeye	5.5 @ base	5	10	G	F	Multi
34	<i>Aesculus californica</i>	California Buckeye	11 @ base	10	15	G	F	EB at base; trunk damage
35	<i>Acacia melanoxylon</i>	Blackwood Acacia	16	40	25	G	F	Heritage Tree
36	<i>Acacia melanoxylon</i>	Blackwood Acacia	16	35	25	G	F	Heritage Tree
37	<i>Carpinus betulus</i>	Hornbeam	5	15	10	G	G	
38	<i>Carpinus betulus</i>	Hornbeam	4.5	15	5	G	G	
39	<i>Carpinus betulus</i>	Hornbeam	4	10	5	F-G	G	
40	<i>Carpinus betulus</i>	Hornbeam	4	10	5	F-G	G	
41	<i>Carpinus betulus</i>	Hornbeam	4	10	5	F-G	G	Windier conditions
42	<i>Carpinus betulus</i>	Hornbeam	3	10	5	F	G	Windier conditions

SBCA TREE CONSULTING

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E-mail: steve@sbcatree.com

Date: July 19, 2011

To: CMG Landscape Architecture
500 Third Street, Suite 215
San Francisco, CA 94107

Subject: Survey Addendum

Location: Facebook West

Assignment: SBCA Tree Consulting was asked to survey additional trees located on at the southwestern corner of the intersection of highways 84 and 114 and at the eastern perimeter of the proposed project site.

Introduction

This report serves as an addendum to an earlier tree survey for Facebook West, dated 5-18-11. The expanded survey identified trees located both inside and outside of the fenced at the east end of the parcel, near the corner of Highway 84 and Highway 114. Heritage trees were not flagged. Shrubs, small trees from root suckers and dead trees were not included in the survey.

Summary

Arborist tagged and surveyed 49 additional trees. The total number of trees surveyed for the Facebook West campus is now updated to 624. Two additional tree species were identified. The number of species surveyed is now 36. Survey identified 32 additional trees that qualify as Heritage Trees under City of Menlo Park Ordinance. Total of Heritage trees surveyed is now at 232.

Most of the Myoporum surveyed were heavily infested with Myoporum Thrips (*Klambothrips myopori*) and some specimens were close to dead. Because of their branching at soil grade, more of the Myoporum trees qualify as Heritage Trees than may be warranted.

The other three species surveyed included: Lombardy Poplars (*Populus nigra 'Italica'*), Fremont Cottonwood (*Populus fremontii*) and Deodar Cedar (*Cedrus deodara*). All specimens were in fair to good conditions.

Site Condition and Observations

The site is located at the eastern end of the campus and is separated from the rest of the campus by a chain link fence lined with Myoporum just inside (to the east of) the fence. The tunnel extending under Hwy 84 to the Facebook East campus is located at the north end of the area. Coyote Bush (*Bacchus pilularis*) has naturalized around the tunnel opening. An additional chain link fence separates the property with the road. On the west side of this south eastern perimeter fence there are Lombardy Poplar (*Populus nigra 'Italica'*), Fremont Cottonwood (*Populus fremontii*) and Deodar Cedar (*Cedrus deodara*). Additional understory plants observed include Cotoneaster, Euonymus, and Glossy Privet (*Ligustrum lucidum*). One seedling Coast Live Oak was growing under Lombardy Poplar Tree #605.

Discussion of Tree Species and Preliminary Analysis of Data

Deodar Cedar (*Cedrus deodara*) – 8 trees tagged

This species and eight specimens were added to the survey. All were in Fair to Good condition and fairly small. A few were dead.

Myoporum (*Myoporum laetum*) – 29 additional trees tagged

All 29 Myoporum, save for six growing in the middle of the row, were heavily infested with Myoporum Thrips. Twenty-seven specimens were marked as Heritage Trees. Almost all have poor structures and are multi-stemmed from the base. The diameters of the low branching trees were determined by measuring the diameter in two directions and averaging the diameters.

Freemont Poplar (*Populus fremontii*) – 2 trees tagged

The two Freemont Poplars were in excellent health. The smaller tree was co-dominant.

Lombardy Poplar (*Populus nigra 'Italica'*) – 10 additional trees tagged

The Lombardy Poplars seemed to be doing well in the location. A number of large suckers were observed, and some of the larger trees surveyed started from the root suckers of other trees. Six trees qualify as Heritage and were multi stemmed and measured from the base.



Species List

Provided below is an updated Species List. Items placed in **Bold** indicated where updates have occurred.

	Species	Amount	Heritage Trees	Dead or Poor to Dead
1	<i>Acacia sp.</i>	1		1
2	<i>Afrocarpus gracilior</i>	1		
3	<i>Alnus cordata</i>	17	2	
4	<i>Alnus rhombifolia</i>	3	3	1
5	<i>Betula jacquemontii</i>	4	4	4
6	<i>Betula pendula</i>	12		4
7	<i>Cedrus deodara</i>	8		
8	<i>Cinnamomum camphora</i>	1		
9	<i>Cupressus sempervirens</i>	5		
10	<i>Dodonaea viscosa 'Purpurea'</i>	3		
11	<i>Eucalyptus conferruminata</i>	1	1	
12	<i>Eucalyptus globulus</i>	3	3	
13	<i>Eucalyptus globulus 'Compacta'</i>	61	58	1
14	<i>Eucalyptus nicholii</i>	1	1	1
15	<i>Euonymus japonicus</i>	2		
16	<i>Ficus carica</i>	1		
17	<i>Ginkgo Biloba</i>	2		
18	<i>Gleditsia triacanthos</i>	13		
19	<i>Gleditsia triacanthos var. inermis 'Sunburst'</i>	28		1

	Species	Amount	Heritage Trees	Dead or Poor to Dead
20	<i>Ligustrum lucidum</i>	1		
21	<i>Liquidambar styraciflua</i>	10		
22	<i>Liriodendron tulipifera</i>	1		1
23	<i>Myoporum laetum</i>	64	57	4
24	<i>Olea europaea</i>	8	7	2
25	<i>Pinus eldarica</i>	10	4	
26	<i>Pinus halepensis</i>	84	60	
27	<i>Pittosporum undulatum</i>	1		
28	<i>Platanus x acerifolia</i>	160		15
29	<i>Platanus racemosa</i>	1		
30	<i>Populus fremontii</i>	2	1	
31	<i>Populus nigra 'Italica'</i>	29	11	17
32	<i>Prunus cerasifera 'Krauter Vesuvius'</i>	31		22
33	<i>Prunus serrulata sp.</i>	2		
34	<i>Pyrus calleryana 'Aristocrat'</i>	33		
35	<i>Schinus terebinthifolius</i>	19	19	
36	<i>Washingtonia robusta</i>	1	1	
Total	36 Species	624	232	74

End Report

Submitted By:

Steve Batchelder

Steve Batchelder, Consulting Arborist
 ISA Certified Arborist WE 228A
 CaUFC Certified Urban Forester #138
 Member ASCA
 Calif. Contractor Lic. (C-27) 533675

Appendix Information:

- 1- Expanded Tree Survey Data
- 2- Facebook West Map 3 (Revised)



Facebook West, Expanded Tree Survey, Menlo Park

Column Heading Descriptions

Tag# - Indicates the number tag attached to tree

Diameter - Measured in inches at 4.5 feet above soil grade unless otherwise indicated (GL= Ground Level)

Diameter @ GL - Diameter measured at Ground Level

Ht. - Height estimated to the nearest 5 feet.

Hlth. -Tree Health: G is Good, F is Fair, P is Poor, D is Dead

Str. - Tree Structural Safety: G is Good, F is Fair, P is Poor

Bold - Indicates Heritage Trees

Tag #	Species	DBH	Diameter @ GL	HT.	Hlth.	Str.	Notes
576	Myoprum laetum	5,6,6.5,7,4 4.5,6.5	30	25	P-D	F-P	Heritage tree, Euonomus understory, Thrips
577	Myoprum laetum	11,10,8,18 .5	36	20	P-D	F-P	Heritage tree, Euonomus understory
578	Myoprum laetum	3.5, 4, 4.5	12	15	P	F-P	Heritage tree, Thrips
579	Myoprum laetum	8, 9.5, 8.5	23	20	P-D	F-P	Heritage tree, Euonomus understory, Thrips
580	Myoprum laetum	3, 4, 6, 3.5, 4.5	24	20	P-D	F-P	Heritage tree, Euonomus understory
581	Myoprum laetum	4.5, 5.5, 5, 3, 7.5	19	20	P	F-P	Heritage tree, Thrips
582	Myoprum laetum	6.5, 5, 3, 5.5	16	20	P	F-P	Heritage tree, Thrips
583	Myoprum laetum	3.5, 4, 4	12	20	P	F-P	Thrips
584	Myoprum laetum	10.5, 4.5, 5, 6, 5	22	20	F-P	F-P	Heritage tree, Thrips
585	Myoprum laetum	3.5, 6, 5.5, 3, 4	16	20	F-P	F-P	Heritage tree, Thrips
586	Myoprum laetum	4.5, 7, 3, 4	24	20	F-P	F-P	Heritage tree, Thrips
587	Myoprum laetum	4.5, 4, 3.5, 4.5	16	20	F	F-P	Heritage tree
588	Myoprum laetum	5.5, 8, 6	22	20	F	F-P	Heritage tree
589	Myoprum laetum	4.5, 6, 5	18	20	F	F-P	Heritage tree
590	Myoprum laetum	5, 5, 5.5	19	20	F	F-P	Heritage tree
591	Myoprum laetum	6, 6	12	15	F	P	

592	Myoprum laetum	6, 5, 6	16	15	F	F-P	Heritage tree
593	Myoprum laetum	8.5, 2	12	15	F-P	F-P	Euonomus understory, Thrips
594	Myoprum laetum	8, 7.5	15	20	F-P	F-P	Heritage tree, Thrips
595	Myoprum laetum	6, 4, 5, 6	18	20	F-P	F-P	Heritage tree, Thrips
596	Myoprum laetum	5, 5.5, 7.5, 3	23	20	F-P	F-P	Heritage tree, Thrips
597	Myoprum laetum	4.5, 7, 4, 5, 4, 4	29	20	F-P	F-P	Heritage tree, Thrips
598	Myoprum laetum	3, 4, 5, 7	32	20	F-P	F-P	Heritage tree, Thrips
599	Myoprum laetum	4, 4.5, 5, 4.5, 2	24	20	P	F-P	Heritage tree, Thrips
600	Myoprum laetum	3, 2, 3, 2, 2	14	20	P	F-P	Thrips
601	Myoprum laetum	5.5, 5, 3.5, 3, 2	15	15	P	F-P	Heritage tree, Thrips
602	Myoprum laetum	2, 2, 2, 2, 2, 2, 2	18	15	P	P	Heritage tree, Thrips
603	Myoprum laetum	5, 3, 2.5, 2, 2, 2	27	10	P	F-P	Heritage tree, Thrips
604	Myoprum laetum	1, 2	16	8	P	P	Heritage tree, Thrips
605	Populus nigra 'Italica'	10, 10, 8, 4, 4	10	50	F	F	Heritage tree, Coast Live Oak, Privet understory
606	Populus nigra 'Italica'	4.5, 7, 4, 3	28	50	F	F	Heritage tree
607	Populus fremontii	18.5		60	F	G	Heritage tree
608	Populus fremontii	9		45	F	F	Co-dominant
609	Cedrus deodara	9.5		35	G	G	
610	Cedrus deodara	6		20	G	F	Topped (minor)
611	Cedrus deodara	3.5		15	G	F	Euonomus understory
612	Cedrus deodara	6, 2.5		30	F	F	
	Populus nigra 'Italica'						10 suckers
613	Populus nigra 'Italica'	7.5, 5.5, 5, 4, 4	23	50	G	F	Heritage tree, Cotoneaster, Euonymus understory
614	Populus nigra 'Italica'	3, 3, 2.5, 2	15	35	G	F	Heritage tree
615	Cedrus deodara	6.5		35	G	F	
616	Cedrus deodara	3.5, 4, 3, 3	11	15	G	F	

617	Populus nigra 'Italica'	12		15	G	P	Suckers, Multi
618	Cedrus deodara	7		35	G	F	Cotoneaster, poplar understory
619	Populus nigra 'Italica'	8, 7.5, 2.5, 2, 2.5, 3	30	50	G	F	Heritage tree
620	Populus nigra 'Italica'	6		45	G	F	
621	Cedrus deodara	3.5		15	G	F	
622	Populus nigra 'Italica'	5, 7	18	50	G	P	Heritage tree, Included bark, cotoneaster understory
623	Populus nigra 'Italica'	3.5, 2	18	20	F-P	F	Multi
624	Populus nigra 'Italica'		6	15	G	F	



TREE LEGEND

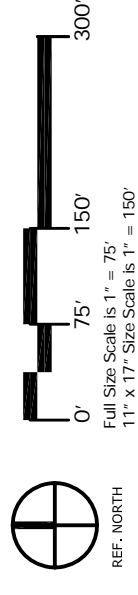
QTY.	SYM.	DESCRIPTION
20		HERITAGE TREE WITH GOOD STRUCTURE / HEALTH
69		HERITAGE IN WITH POOR STRUCTURE / HEALTH
286		NON - HERITAGE TREE
375		TOTAL TO BE REMOVED
51		HERITAGE TREE WITH GOOD STRUCTURE / HEALTH
93		HERITAGE IN WITH POOR STRUCTURE / HEALTH
105		NON - HERITAGE TREE
249		TOTAL TO BE PRESERVED

HERITAGE TREE REPLACEMENT

QTY REMOVED.	SYM.	REPLACEMENT TOTALS
20		40 (2 TO 1 REPLACEMENT VALUE)
69		103 (1.5 TO 1 REPLACEMENT VALUE)
89		143 TOTAL TO BE REPLACED

HERITAGE TREE REPLACEMENT LIST

BOTANICAL NAME	COMMON NAME
Acer pseudoplatanus	Sycamore Maple
Aesculus hippocastanum	European Horse Chestnut
Araucaria heterophylla	Norfolk Island Pine
Casuarina cunninghamiana	River She-Oak
Cedrus deodara	Deodar Cedar
Corymbia citrifodora	Lemon Scented Gum
Cupressus sempervirens	Italian Cypress
Cupressus macrocarpa	Monterey Cypress
Eucalyptus microtheca	Flooded Box
Eucalyptus robusta	Swamp Mahogany
Phoenix canariensis	Canary Island Palm
Pinus pinea Italian	Stone Pine
Pinus torreyana	Torrey Pine
Pittosporum spp.	Pittosporum Species
Quercus agrifolia	Coast Live Oak
Quercus shumardii	Shumard Oak
Quercus suber	Cork Oak



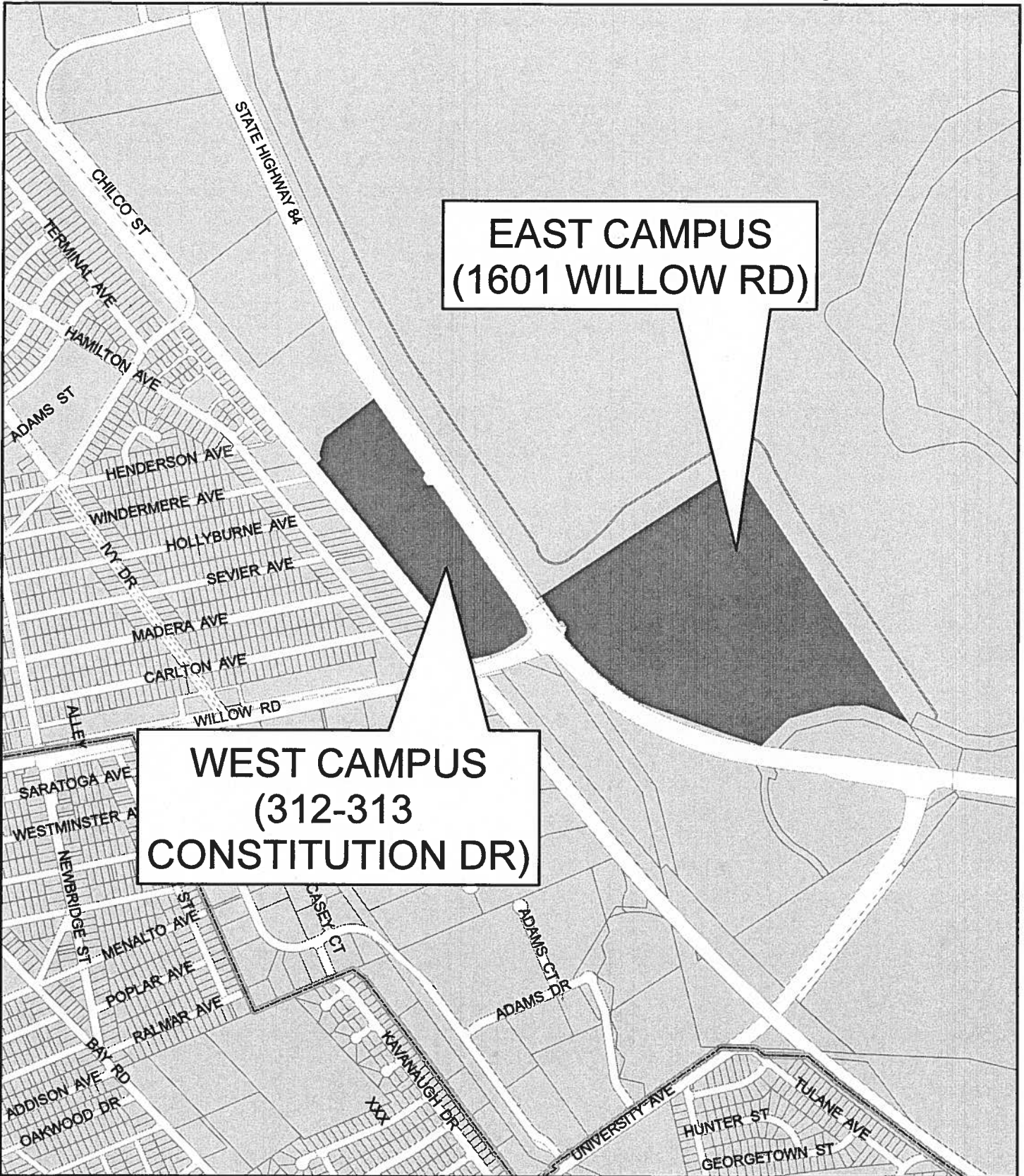
**FACEBOOK @ MENLO PARK
WEST CAMPUS**

312 & 313 CONSTITUTION DRIVE, MENLO PARK, CA



WL.1 TREE DISPOSITION PLAN

October 20, 2011



**EAST CAMPUS
(1601 WILLOW RD)**

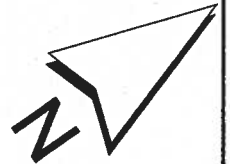
**WEST CAMPUS
(312-313
CONSTITUTION DR)**

CITY OF MENLO PARK

LOCATION MAP

1601 WILLOW RD & 312-313 CONSTITUTION DR

DRAWN: KTP CHECKED: KTP DATE: 5/29/12 SCALE: 1" = 900' SHEET: 1



**Meetings and Milestones
Facebook Campus Project
May 29, 2012**

Date	Body/Milestone	Description
4/15/11	City Council	Review of Environmental Impact Report (EIR) Notice of Preparation (NOP) schedule
4/21/11	Milestone	NOP released for public review
5/10/11	City Council	Authorization for City Manager to enter into consultant contract for transportation analysis
5/16/11	Planning Commission	EIR scoping session and study session
6/14/11	City Council	City Council authorization for City Manager to enter into consultant contracts for EIR and Fiscal Impact Analysis (FIA)
8/23/11	City Council	Review of public meeting process and tentative schedule
10/18/11	City Council	Appointment of Council Development Agreement (DA) subcommittee
11/15/11	City Council	Update on status of release of Draft EIR and Draft FIA
12/8/11	Milestone	Release of Draft EIR and Draft FIA
12/8/11	Public Outreach Meeting	Inform community about proposed project/documents available for review
12/12/11	Bicycle Commission	Inform community about proposed project/documents available for review
12/13/11	East Palo Alto City Council Study Session	Inform the Council and community about the proposed project and environmental impacts specific to the City of East Palo Alto (EPA)
12/14/11	Transportation Commission	Inform community about proposed project/documents available for review
12/15/11	Green Ribbon Citizen's Commission	Inform community about proposed project/documents available for review
12/21/11	Milestone	Release of EPA Housing Affordability Analysis
1/4/12	Housing Commission	Inform community about proposed project/documents available for review
1/4/12	Environmental Quality Commission	Inform community about proposed project/documents available for review
1/9/12	Planning Commission	Public hearing - review Draft EIR and Regular Business - review Draft FIA
1/10/12	City Council	Regular Business - review request to extend Draft EIR comment period
1/12/12	Planning Commission	Study Session - review Project proposal (continued from 1/9/12 Planning Commission Meeting)
1/30/12	Milestone	Close of Draft EIR Comment Period
1/31/12	City Council	Study Session - review Draft EIR, Draft FIA and Project Proposal
2/14/12	City Council	Regular Business - provide direction on DA negotiations
4/17/12	City Council	Regular Business - consider term sheet for the East Campus DA

4/23/12	Milestone	Release of Final EIR and Final FIA
5/7/12	Planning Commission	Public hearing for recommendation on Final EIR, East Campus Amended and Restated CDP, heritage tree removal permits and East Campus DA
5/29/12	City Council	Public hearing for certification of Final EIR, acceptance of Final FIA, East Campus Amended and Restated CDP, heritage tree removal permits and introduction of ordinance approving East Campus DA
6/5/12	City Council	Consent item for ordinance approving East Campus DA

CITY OF MENLO PARK
PLANNING COMMISSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, MAY 7, 2012
MENLO PARK CITY COUNCIL CHAMBERS

Reported by: MARK I. BRICKMAN, CSR RPR
License No. 5527

1 ATTENDEES
 2 THE PLANNING COMMISSION:
 3 Katie Ferrick - Chairperson
 4 John Kadwany - Vice Chairperson
 5 Vince Bressler
 6 Ben Eiref - Arrived 7:55 PM
 7 John O'Malley -
 8 Henry Riggs
 9 Peipei Yu - Not present
 10 THE CITY STAFF:
 11 Rachel Grossman - Associate Planner
 12 Justin Murphy - Development Services Manager
 13 Chip Taylor - Public Works Director
 14 Kyle Perata - Assistant Planner
 15 Leigh Prince - Deputy City Attorney
 16 ---o0o---
 17
 18 BE IT REMEMBERED that, pursuant to Notice
 19 of the Meeting, and on May 7, 2012, 7:03 PM at the Menlo
 20 Park City Council Chambers, 701 Laurel Street, Menlo
 21 Park, California, before me, MARK I. BRICKMAN, CSR No.
 22 5527, State of California, there commenced a Planning
 23 Commission meeting under the provisions of the City of
 24 Menlo Park.
 25 ---o0o---

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1 MEETING SUMMARY (re Facebook Discussion)
 2
 3 Staff Presentation by Ms. Grossman Page 13
 4 Commission Questions of Staff 30, 82
 5 Public Comments (See speakers below) 60
 6
 7 PUBLIC SPEAKERS
 8 Clem Molony 60
 9 Michael Kashiwagi 63
 10 William Webster 68
 11 William Nack 71
 12 Kate Comfort Harr 72
 13 Adina Levin 77
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 CHAIRPERSON FERRICK: Good evening.
 2 Welcome to the Planning Commission meeting of May 7th,
 3 2012. I'd like to call the meeting to order.
 4 First we'll do roll call. Commissioner
 5 Bressler, myself, Commissioner Kadwany, Commissioner
 6 O'Malley and Commissioner Riggs are all present, and at
 7 the moment, Commissioner Eiref is not present.
 8 We'll update the record once he hopefully
 9 arrives, and Commissioner Yu is not going to be able to
 10 join us this evening.
 11 Introduction of staff. We have Rachel
 12 Grossman, Associate Planner, Justin Murphy, Development
 13 Services Manager, Kyle Perata, Assistant Planner, Leigh
 14 Prince, City Attorney and you're Leigh, yeah?
 15 MS. PRINCE: Yes.
 16 CHAIRPERSON FERRICK: Okay, good. I just
 17 wanted to be sure I got everyone.
 18 Anybody else? Chip Taylor is here, and I
 19 think we'll introduce others as they may arrive.
 20 All right. So to start, under Reports and
 21 Announcements, staff and Commission members may
 22 communicate general information of interest regarding
 23 matters within the jurisdiction of the Commission. No
 24 Commission discussion or action can occur on any of the
 25 presented items.

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1 So over to on the update, Kyle or Justin.
 2 MR. MURPHY: Yes. We just have an update
 3 on two items. One is the El Camino Real Downtown
 4 Specific Plan.
 5 So that is scheduled to go in front of the
 6 City Council on June 5th, and we are at the process of
 7 preparing the minutes of the Planning Commission meeting
 8 last week, and so that's on track.
 9 And then the second item is a update on the
 10 Housing Element. There's going to be a City Council
 11 Study Session tomorrow night here in the Council
 12 Chambers -- I believe that starts at 5:30 -- where there
 13 will be a -- kind of a panel format with three people in
 14 attendance to provide updates from a kind of a state and
 15 regional perspective in terms of housing elements.
 16 So that's tomorrow evening starting at 5:30
 17 and we'll finish by 7:00.
 18 CHAIRPERSON FERRICK: Thank you, Justin.
 19 All right. Public comments. Under the
 20 first set of public comments, the public may address the
 21 Commission on any subject not listed on the agenda within
 22 the jurisdiction of the Commission.
 23 When you do so, please state your name and
 24 city or political jurisdiction in which you live for the
 25 record.

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1 The Commission cannot respond to any non-
 2 agendized items other than to receive testimony and/or
 3 provide general information.
 4 Is anyone here that would like to give
 5 public comment on a non-agendized item?
 6 Seeing none, moving right along. Consent
 7 calendar. Items on the consent calendar are routine in
 8 nature, and we just have one. We have the approval of
 9 minutes from April 2nd, 2012 Planning Commission meeting,
 10 and anybody want to -- yes.
 11 COMMISSIONER O'MALLEY: I have a couple of
 12 comments to make.
 13 CHAIRPERSON FERRICK: Commissioner
 14 O'Malley.
 15 COMMISSIONER O'MALLEY: On page 2, under
 16 action 2, top of the page, which reads: "Approval of
 17 minutes from the March 5th, 2012 Planning Commission
 18 meeting."
 19 Under the Commission Action, it has
 20 "unanimous consent to approve the following
 21 modifications" and the modifications are not there.
 22 CHAIRPERSON FERRICK: They're not listed
 23 in the minutes?
 24 COMMISSIONER O'MALLEY: They're not
 25 listed.

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1 Commissioner Riggs, O'Malley, Kadwany and Ferrick
 2 approve.
 3 All right. Moving right along, we'll go to
 4 our first -- oh, you know what? I did actually write a
 5 note to myself. I wanted to note that the minutes have
 6 been really, really good of late. I just -- overall,
 7 they've been fantastic in the last year or so.
 8 So thank you for whoever is diligently
 9 listening and doing these minutes.
 10 Public hearing. Item number 1, a Use
 11 Permit for 1155 Crane Street. This is a request for a
 12 use permit to locate a tutoring facility consisting of an
 13 individual and small group tutoring sessions within an
 14 existing single story building located within the C-3
 15 Central Commercial Zoning District.
 16 The property -- the proposed use to occupy
 17 two adjacent suites within the building, and Kyle, do you
 18 want to -- any additional information on that we should
 19 know about?
 20 MR. PERATA: Thank you. Staff has no
 21 additional comments at this time, but we'd be happy to
 22 answer any questions.
 23 CHAIRPERSON FERRICK: Any questions to
 24 staff? Commissioner O'Malley.
 25 COMMISSIONER O'MALLEY: Just one question.

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1 CHAIRPERSON FERRICK: Okay.
 2 MR. MURPHY: Do you recall that there were
 3 indeed modifications that evening or not sure? We can
 4 follow it up.
 5 COMMISSIONER O'MALLEY: I don't remember
 6 whether there were.
 7 MR. MURPHY: But we can reconcile it one
 8 way or the other.
 9 CHAIRPERSON FERRICK: Yeah. I see what
 10 you're talking about, Jack, and you're right. There's a
 11 colon and then no information.
 12 So yes, if you could just reconcile the
 13 minutes, that would be great.
 14 So could I have a motion to approve the
 15 April 2nd, 2012 Planning Commission minutes with the
 16 knowledge that that will be corrected, the reconciliation
 17 of the missing --
 18 COMMISSIONER O'MALLEY: So moved.
 19 CHAIRPERSON FERRICK: Thank you.
 20 COMMISSIONER RIGGS: And I'll second.
 21 CHAIRPERSON FERRICK: Thank you,
 22 Commissioner Riggs, second.
 23 And all those in favor, please raise your
 24 hand. That's -- and all those against. All those
 25 abstaining. All right. Commissioner Bressler abstains.

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1 CHAIRPERSON FERRICK: Oh, microphone.
 2 COMMISSIONER O'MALLEY: I turned it off.
 3 One question. On that street, are there
 4 any -- any units that have to pay in-lieu sales tax?
 5 MR. PERATA: Not to my knowledge. I don't
 6 believe there are any.
 7 COMMISSIONER O'MALLEY: Okay. Thank you.
 8 CHAIRPERSON FERRICK: All right. Thank
 9 you.
 10 Any other questions before we hear from the
 11 applicant?
 12 All right. Seeing none, if the applicant
 13 would like to come up and let us know about this, that
 14 would be great.
 15 MR. ANDRIKOPUOLOS: Hi. I'm Aaron
 16 Andrikopoulos. I'm one of the managing members of A.J.
 17 Tutoring and we currently operate offices in Palo Alto
 18 off of California Avenue with Saratoga right in the
 19 downtown area there and in San Jose.
 20 We do work with a lot of schools throughout
 21 the Peninsula. Probably worked with about 500 to 700
 22 families last year and a lot of students in the Menlo
 23 Park community, and we're really, you know, looking
 24 forward to the opportunity to possibly join your
 25 community and be a long time, you know, contributor to

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1 the City.
 2 And I'm happy to answer any questions or
 3 anything.
 4 CHAIRPERSON FERRICK: Okay. Thank you so
 5 much.
 6 Anybody have any questions for the
 7 applicant?
 8 All right. Seeing none, I just wanted to
 9 note that you have -- that you noted most of your
 10 students that come in for tutoring are either -- they all
 11 drive or bike or they get dropped off by their parents.
 12 That's -- and you're under -- your
 13 understanding that most of those people would be happy
 14 in -- if you were located in a downtown location?
 15 MR. ANDRIKOPOULOS: Yeah. Our other
 16 offices, two of them are in downtown locations, and
 17 parents find it really convenient.
 18 The lessons are an hour and a half. It's
 19 kind of an awkward time, you know, to drop off when
 20 they're coming right back. So they can stay and hang
 21 out.
 22 Also the location here, we've worked with a
 23 lot of students with Sacred Hart and Menlo Schools, which
 24 are, you know, two blocks away.
 25 So it's within walking distance, and we

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1 it would relate to and possibly reinforce retail.
 2 MR. PERATA: Correct.
 3 COMMISSIONER RIGGS: All right. Thank
 4 you.
 5 CHAIRPERSON FERRICK: All right. Anybody
 6 else? Jack.
 7 COMMISSIONER O'MALLEY: Would you like a
 8 motion?
 9 CHAIRPERSON FERRICK: I would.
 10 COMMISSIONER O'MALLEY: I make the motion
 11 that we approve the recommendations by staff in the staff
 12 report.
 13 CHAIRPERSON FERRICK: All right. So that
 14 would be to make the finding that this project is
 15 categorically exempt under class one of the current
 16 California CEQA guidelines, and that we'll make the
 17 findings that the zoning ordinance pertaining to granting
 18 of Use Permits is fine, and that we'll approve the Use
 19 Permit following -- subject to the following standard
 20 conditions, and there's four listed, A through D in the
 21 staff report page 3, and I'll second that.
 22 Vince.
 23 COMMISSIONER BRESSLER: I was just going
 24 to second it.
 25 CHAIRPERSON FERRICK: Okay, great. If

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1 have a similar situation in Palo Alto with Paly High
 2 School, and they will often walk over in those periods
 3 and do their tutoring during the school day, which is
 4 very convenient.
 5 CHAIRPERSON FERRICK: All right. Thank
 6 you.
 7 All right. Thank you. Just stay close by
 8 for potential further questions, but at this point, I'd
 9 like to take it out for public comment.
 10 If there's anyone here that wants to
 11 comment on this item.
 12 I am not seeing any, so I guess we'll just
 13 move along to the Commission for discussion.
 14 Anybody have any motions to make?
 15 Questions, comments.
 16 Commissioner Riggs.
 17 COMMISSIONER RIGGS: Thank you.
 18 Kyle, I just want to check that this
 19 application was considered in light of the adjacency to
 20 lot two, and therefore the presumed downtown activity
 21 in -- in relationship to retail.
 22 MR. PERATA: Can you -- I'm kind of lost
 23 on your question. Adjacency to lot two.
 24 COMMISSIONER RIGGS: Did -- staff took a
 25 particular look at this application and the way in which

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1 there's no further discussion, I'd be happy to take a
 2 vote.
 3 Jack, did you have something more you
 4 wanted to add?
 5 COMMISSIONER O'MALLEY: No. Great
 6 avocation.
 7 CHAIRPERSON FERRICK: All right. Great.
 8 Let's go ahead and vote. All that is in favor, please
 9 raise your right.
 10 That's five commissioners in favor.
 11 Commissioners Eiref and Yu are absent, and
 12 congratulation. Welcome to Menlo Park.
 13 All right. Moving along, Conditional --
 14 this one is what most of us, I believe, are -- are here
 15 for.
 16 Conditional Development Permit Amendment,
 17 Development Agreement for Facebook, Inc., 1601 Willow
 18 Road East Campus and Heritage Tree Removal Permit and
 19 Environmental Review of Facebook, Inc., East Campus and
 20 312 and 313 Constitution Drive, West Campus.
 21 Rachel.
 22 MS. GROSSMAN: Thank you. Good evening,
 23 Commission members and the public. It's good to be here
 24 this evening.
 25 Just to give an -- to assist with all

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1 questions, after my presentation and after the applicant
 2 and public speaks, on my left is our Development Services
 3 Manager, Justin Murphy. We also have our Assistant City
 4 Attorney, Leigh Prince here, our Public Works Director,
 5 Chip Taylor, and then from the environmental consultant,
 6 we have Erin Efner and Kirsten Chapman with Atkins and
 7 Paul Stanis with DKS, who are behind me at this moment if
 8 we have questions for them.
 9 Technology's working.
 10 So why are we here this evening? The
 11 purpose of this evening is to review and make
 12 recommendations to the City Council on a number of items
 13 for all details in attachment C of the staff report, and
 14 you'll notice as I go through this evening, I'm going to
 15 be making a lot of references to attachments and
 16 locations in the staff report just given the -- the large
 17 volume of paper that you all received this evening and to
 18 help the public actually walk through these, as well.
 19 So the first item you'll be taking actions
 20 on is specific to the East Campus and includes amended
 21 and restated Conditional Development Permit.
 22 The next is specific to the East Campus, as
 23 well, a Development -- a Development Agreement, and then
 24 specific to both the East and West Campuses is heritage
 25 tree removal associated with the undercrossing

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1 Impact Report and the Draft Environmental Impact Analysis
 2 and we answered any questions they had.
 3 And then on Valentine's Day, February 14th,
 4 the City Council provided the negotiating team on the
 5 parameters for the Development Agreement, and then over a
 6 course of approximately ten weeks, the City Negotiating
 7 Team had negotiating meetings with the applicant and came
 8 out with a term sheet which was endorsed by the City
 9 Council at a 5-0 vote at their meeting on April 17th.
 10 And I did share with the Commission this
 11 evening late that staff report as well as the
 12 presentation for that, and we have it here this evening
 13 if you have follow-up questions.
 14 And then finally as you may have seen in
 15 the media, the City of East Palo Alto also has an
 16 agreement with the applicant with Facebook, and that term
 17 sheet was approved by the East Palo Alto City Council
 18 last week on May 1st.
 19 And so for this evening, I'm going to just
 20 walk through the five items before you for recommendation
 21 this evening, the first of which is consideration of an
 22 amended and restating Conditional Development Permit.
 23 So first of all, the basis for where we're
 24 coming in is Sun Conditional Development Permit which was
 25 granted in 1992, and specific to that Conditional

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1 improvements, which I'll touch on further along.
 2 Also specific to both the East and West
 3 Campuses is certification of the Final Environmental
 4 Impact Report, and then finally moving back to an East
 5 Campus only item is the adoption of Statement of
 6 Overriding Considerations and the mitigation monitoring
 7 and reporting program, and again I'll detail attachment
 8 and I'll walk through some of these items.
 9 And before I do that, just to kind of
 10 remind us of where we come, we haven't been before the
 11 Planning Commission since January 9th of this year, and
 12 there's been quite a bit that's occurred since that time,
 13 and for a full list of the milestones that have occurred
 14 since April of last year, which will serve as with the
 15 release of the Notice of Preparation, you can refer to
 16 attachment C in your staff report.
 17 But since the meeting on the 9th of this
 18 year, the City Council as you know met on the 10th the
 19 following day to consider a request for extensions of the
 20 public comment period, which they did approve to January
 21 30th, and during that public comment period, we did
 22 receive fifty letters of comments on the Draft EIR which
 23 we're responded to in the Final EIR.
 24 The Council held a Study Session on January
 25 31st to discuss the project at the Draft Environmental

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1 Development, most germane to what we're talking about
 2 with the Restated Amended -- Amended Conditional
 3 Development Permit is the employee cap of 3,600 employees
 4 and the associated requirement for a 25 percent reduction
 5 in trips via Transportation Demand Management Program or
 6 TDM as you all have seen a lot of this evening.
 7 So what the amended and restated CDP
 8 would -- would include would be a vehicular trip cap to
 9 accommodate an increase of employees, and we've talked
 10 about this before, but just to remind the members of the
 11 Commission and the public, this vehicular trip cap
 12 includes an AM and PM peak period trip cap of 2,600
 13 trips, as well as a daily trip cap of 15,000 trips.
 14 And the -- the trip cap enforcement --
 15 monitoring enforcement policy is included as an
 16 attachment to your staff report, as well, which has been
 17 somewhat refined since our last meeting. Specifically
 18 the penalty information has been included to that for any
 19 violations of the trip cap.
 20 And in the CDP, if you've had the
 21 opportunity to look through it, just remember the public
 22 to have better understanding, this includes specific
 23 development standards, such a maximum height, floor areas
 24 ratios, lot coverage, and again most of the East Campus
 25 is -- is built out entirely, and the only construction

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1 that will be occurring as part of this project will be
 2 the undercrossing improvement, but those are included in
 3 the Conditional Development Permit, and as well as
 4 permitted uses and conditions of approval.
 5 And there's three types of conditional
 6 approval, those relative to the project that are very
 7 specific. Those are more related to the undercrossing
 8 improvements, although there will actually than be
 9 construction, and then finally, all of the mitigation
 10 measures are included in the Conditional Development
 11 Program.
 12 And this included in attachment F of the
 13 staff report for anybody that's following along here.
 14 And then moving on, one of the things I
 15 wanted to bring up this evening. We have spoken before
 16 about the undercrossing improvements, and for those who
 17 are not familiar with the undercrossing, that is the
 18 undercrossing of Bayfront Expressway or Highway 84.
 19 This was something that was evaluated and
 20 any potential impacts resulting in those construction
 21 were evaluated in the Environment Impact Report prepared
 22 for the project.
 23 But we did not yet have these conceptual
 24 plans. So these are included in attachment B to the
 25 staff report and I just kind of want to highlight some of

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1 towards the freeway.
 2 As part of these improvements, there would
 3 also be lighting improvements for pedestrian and cyclist
 4 safety as well as landscape enhancements that would be
 5 consistent with plan list provided to staff and the
 6 applicant from Save the Bay.
 7 And the Development Agreement, again we've
 8 talked about the purpose of the Development Agreement
 9 before, but it's a legally binding contract delineating
 10 the terms and conditions of a project.
 11 And the approved term sheet, which was
 12 approved by the Council again on April 17th, is the
 13 framework for the creation of the Development Agreement,
 14 which is a long forty plus page legal document that
 15 implements these terms of the term sheet, which is a
 16 eight-page document, which is a little bit easier to kind
 17 of wade through.
 18 The Draft Development Agreement is included
 19 as attachment I of the staff report, and the public
 20 benefits are summarized on page 7 of the staff report.
 21 A couple of the highlights based on
 22 Commissioner questions today. One of the requirements in
 23 the Development Agreement is for an in-lieu tax payment
 24 and it increases incrementally.
 25 So for years one through five, the cost

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1 the work that will be done.
 2 As discussed in the staff report, the
 3 undercrossing improvements have three phases. The first
 4 phase is with the development of the East Campus. The
 5 second phase would be during the construction of the West
 6 Campus and then the final phase would be for occupancy of
 7 the West Campus, and what we'll be focusing on tonight is
 8 the requirements for the East Campus that would come
 9 forward if the project is approved by the City Council.
 10 And so what we're seeing here is so the
 11 undercrossing is existing, and in the undercrossing, they
 12 would maintain the existing undercrossing and actually
 13 leave the red line spot as the location that would
 14 potentially in the future, if and when the West Campus
 15 development develops, that is where the people will be
 16 located.
 17 But for this first phase, it would just
 18 have improvement for the bike/pedestrian access and the
 19 undercrossing.
 20 And there would be associated improvements
 21 on the East Campus creating a linkage to the Bay Trail as
 22 well as an improved linkage to the East Campus.
 23 And then on the West Campus, there will be
 24 connectivity to Willow, Willow Road, both at the signalized
 25 intersection and out on to Willow Road heading back

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1 would be \$800,000 per year. Year six through ten, that
 2 escalates to nine hundred thousand. Years eleven through
 3 fifteen, that escalates to a million dollars, and after
 4 that, it esca -- it's adjusted annually above million
 5 dollars based upon changes in the Consumer Price index.
 6 And the important thing to note about that
 7 is the tax in-lieu payment is applicable when the occupy
 8 exceeding 3,600 employees.
 9 And then there's a companion to that that I
 10 referred to previously. The City of East Palo Alto did
 11 approve a term sheet with Facebook, and so this may
 12 result in some changes or incorporation into the City's
 13 Development Agreement.
 14 So they're still being addressed, so there
 15 might be some minor changes in the Development Agreement
 16 that is presented to the City Council as a result of
 17 that.
 18 And the next thing I'd like the touch on is
 19 the heritage tree removals that would be necessary in
 20 order to construct the undercrossing improvements, and
 21 there's a total of -- you will see -- it's hard to see on
 22 the screen. I'm going to try to highlight it.
 23 We have two heritage trees over here on the
 24 East Campus. Only one would be removed as part of the
 25 undercrossing improvements, and a total of seven heritage

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6 (Pages 18 to 21)

1 trees would be removed on the West Campus as part of
 2 those improvements.
 3 Our city arborist did visit the site and
 4 analyzed the trees and found that they were -- though
 5 they were in fair and good condition, they were of
 6 inferior species for this location and not been well
 7 maintained over time.
 8 If you've had the opportunity to go to the
 9 project site, you'll notice all the suckers coming out of
 10 the bottoms and they're just not in -- in good condition,
 11 and as such, it is recommended approval for these
 12 removals.
 13 Again, it's a total of eight trees on both
 14 the East and West Campus and 28 trees would be replaced
 15 as a requirement if these heritage tree removals are
 16 approved.
 17 And those trees again, as with previous
 18 landscape improvements, would be compliant with the Save
 19 the Bay planting recommendations.
 20 So the next phase of the project that
 21 you'll be looking at this evening is certification of the
 22 Final Environmental Impact Report for the Facebook campus
 23 project, and as I indicated previously, this
 24 certification applies to both phases of the project, both
 25 the East and West Campus, and is included in the

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1 mitigation measure has been added requiring surveys prior
 2 to any construction work on the West Campus.
 3 In regards to the transportation, we
 4 actually had a public let -- a public comment letter from
 5 the City of Palo Alto indicating that they felt perhaps
 6 that the impact at Middlefield and Lytton was not
 7 significant and unavoidable and that perhaps we made an
 8 error in our analysis.
 9 And when we did rerun those numbers, it was
 10 determined that there was not a significant impact at
 11 Middlefield and Lytton, so that's been removed as one of
 12 the significant impacts for intersections.
 13 In addition, there has been some minor
 14 changes to the mitigation measure at Middlefield and
 15 March -- Marsh based upon comments and discussions with
 16 the Town of Atherton.
 17 And then finally with regards to air
 18 quality, based upon some comments, we evaluated
 19 additional mitigation measures to try to reduce the
 20 reactive organic gases, nitrous oxide and particulate
 21 matter emissions, and we determined that one additional
 22 mitigation measure was feasible, which includes the
 23 installation of a cogenra combined heat and energy saving
 24 device on building 11 on the East Campus, and that is
 25 included in the mitigation measure, but does not mitigate

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1 resolutions included in attachment M to the staff report.
 2 What I'd like the touch on briefly at this
 3 point is the key differences -- this is also highlighted
 4 in the staff report -- between the Draft EIR and the
 5 Final EIR that was released on April 23rd.
 6 In the Final EIR, for anyone that's not
 7 familiar with it, includes responses to all of those
 8 public comments that were received on the document as
 9 well as any textual changes that were made to the Draft
 10 EIR, and those together are considered the Final EIR.
 11 The first item I'd like to touch on is
 12 changes to biological resources, and based upon public
 13 comments, there was further analysis conducted associated
 14 with tree removals on both East and West Campuses for the
 15 undercrossing improvements, and though there had
 16 previously been requirements for nesting bird surveys on
 17 the West Campus which were not included originally as a
 18 mitigation measure on the East Campus, so a new
 19 mitigation measure has been added requiring nesting bird
 20 surveys prior to any removal on the East Campus.
 21 And in addition, additional analysis was
 22 done to determine whether or not there was a potential
 23 for growing out on the West Campus project site.
 24 It was found that the occurrence would be
 25 highly unlikely, but in order to err on safety, a

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1 the impact to a less than significant impact, so it is
 2 still a significant and unavoidable impact.
 3 And finally, I just would like to conclude
 4 that when we went through this process, we determined
 5 that there was no significant new environmental impacts
 6 and there was no additional significant information and
 7 no substantial increase in the severity of the
 8 increased -- severity of any identified impacts
 9 previously, and so as such, there's no need to
 10 recirculate the document.
 11 Now, again, back to East Campus specific,
 12 we're looking at the adoption of a Statement of
 13 Overriding Considerations and Mitigation Monitoring
 14 Reporting Program, and the reason these are distinct from
 15 the certification of the Final EIR is the Statement of
 16 Overriding Considerations and the Mitigation Monitoring
 17 Reporting Program are associated with the granting of
 18 land use entitlement, so that's why we're looking
 19 specifically at the East Campus this evening, because
 20 that is the phase of the project that the applicant is
 21 seeking land use entitlements for.
 22 So specifically the Statement of Overriding
 23 Considerations is required to illustrate that the
 24 approval body has looked at the project and determined
 25 that the project can outweigh any substantial adverse

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7 (Pages 22 to 25)

1 environmental impacts, and then the purpose of the
 2 Mitigation Monitoring Reporting Program is to establish a
 3 responsibility and timing for all of those mitigation
 4 measures associated with impacts on the East Campus.
 5 And those two documents are included as
 6 attachment N, which is a resolution for adoption of the
 7 Statement of Overriding Considerations and Mitigation
 8 Monitoring and Reporting Program, and then attachment O,
 9 which is a Mitigation Monitoring Reporting Program.
 10 So with those summary of the five actions
 11 that the Commission is looking at this evening, I just
 12 wanted to highlight a couple of items that have changed
 13 since publication of the staff report last Monday.
 14 The first is an update to mitigation
 15 measures that will be included in the Statement of
 16 Overriding Considerations and the Mitigation Monitoring
 17 and Reporting Program, and this is not the result of the
 18 identification of any new impacts.
 19 This is strictly the result of an
 20 oversight. These were supposed to be included in the
 21 MMRP or the Mitigation Monitoring Reporting Program and
 22 the Statement of Overriding Considerations, and we made a
 23 mistake and they're not in there, because we had actually
 24 separated the mitigations from the East Campus and the
 25 West Campus.

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1 Atherton's comment letter. You all received the Town of
 2 Atherton's comment letter as an attachment to your staff
 3 report. That's attachment O -- excuse me. Attachment P,
 4 and we just were able to get our response out this
 5 evening.
 6 We had to work with our consultant team
 7 to -- in order to adequately address all of their
 8 concerns.
 9 So that response letter was sent to the
 10 Planning Commission and City Council this evening, and
 11 those are available on the back table for anyone who
 12 would like to review it.
 13 The things that I really want to highlight
 14 is that when we did the analysis under the California
 15 Environmental Quality Act, it was determined that the
 16 mitigation measure that the City chose working with the
 17 environmental consultant does fully mitigate the impact
 18 of the project at that intersection.
 19 The issues that Atherton are raising are
 20 related to existing deficiencies at the intersection that
 21 are not the result of the project, and as such, there is
 22 no nexus to require the project to make that -- that
 23 mitigation measure.
 24 So -- and there again, we have Chip Taylor
 25 and our traffic consultant Paul Stannis here to answer

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1 So as part of the revised Mitigation
 2 Monitoring Reporting Program, Statement of Overriding
 3 Considerations and the revisions will be similarly be
 4 made in the Conditional Development Permit.
 5 We will be adding the mitigation measures
 6 for these three intersections, which includes Marsh Road/
 7 Bayfront Expressway, Marsh Road and US 101 northbound
 8 ramped, and Willow Road and Newbridge Street into these
 9 documents.
 10 The next item I want to highlight, which was
 11 provided to the -- the Planning Commission late this
 12 evening on the dias -- I apologize for the late nature;
 13 we received this about 5:15 this evening -- was a comment
 14 letter from Caltrans on the Final EIR.
 15 Staff has not had the opportunity to review
 16 the letter in-depth. The applicant was provided with the
 17 letter this evening, but we will determine how to address
 18 that letter and work with Caltrans to address any of
 19 their concerns as we move forward.
 20 The next item is a piece of correspondence
 21 from Mr. William Webster that was sent to the East Palo
 22 Alto Council in regards to the term sheet negotiations
 23 and is included. Again, you all were copied and there's
 24 copies is back on the pile in the back of the room.
 25 And then the final response to the Town of

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1 any technical questions that you may have about that.
 2 So moving on to next steps this evening,
 3 we're looking for a recommendation from the Planning
 4 Commission to the City Council on the actions before you
 5 this evening, and then the City Council is scheduled to
 6 review these actions, as well, on May 29th at a special
 7 meeting.
 8 And then finally on the June 5th meeting,
 9 there will be a second reading of the Development
 10 Agreement ordinance.
 11 So with that, I'm just going to leave you
 12 with staff's recommendation, which is to -- that the
 13 Planning Commission recommend the City Council adopt a
 14 resolution approval the amended and restated Conditional
 15 Development Permit, introduce an ordinance approving the
 16 Development Agreement, adopt a resolution approving
 17 heritage tree removal and permits, adopt a resolution
 18 certifying the Final EIR and adopt a resolution adopting
 19 the Statement of Overriding Considerations and Mitigation
 20 Monitoring and Reporting Program.
 21 And with that, I'll close my presentation,
 22 and staff's available for any questions the Commission
 23 may have.
 24 CHAIRPERSON FERRICK: Thank you, Rachel.
 25 So questions for staff first, and then

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1 after that, I'd like to go to public comment and then
 2 we'll discuss further.
 3 Jack.
 4 COMMISSIONER O'MALLEY: I had some -- some
 5 comments and some questions, all of them involving the
 6 Development Agreement.
 7 In the Development Agreement, there seems
 8 to be lots of responsibility assigned to our Public Works
 9 Director, and I don't have any problem with that, but
 10 that's responsibility for the most part for -- for
 11 benefits public and ongoing at one time that are at the
 12 sole discretion -- discretion of Facebook, and he or she
 13 has the responsibility of ruling on -- on what's
 14 happening here in terms of Facebook meeting their
 15 responsibilities.
 16 But he also, I believe -- the way this
 17 reads, he can designate someone else, and I have a
 18 problem with designating someone else without knowing who
 19 has that responsibility to make that designation and at
 20 what level that person who's designated to do that is
 21 within our -- our management structure.
 22 MR. MURPHY: So we can address the
 23 question, but do you have a specific example that you
 24 could point to?
 25 COMMISSIONER O'MALLEY: There are several

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1 to be done. In most cases, it's pretty open in what it
 2 said there.
 3 So I -- I just want to have some assurance
 4 that whoever is selected has a designee, if it does
 5 happen, as someone who is quite familiar with the
 6 expectations of Council.
 7 MR. MURPHY: That's where I was just
 8 trying to align some of the specific examples elsewhere
 9 in the Development Agreement besides that definition,
 10 because there are aspects that are solely at Facebook's
 11 discretion where there's no -- no discretion at the staff
 12 level.
 13 So that's where I was trying to line up
 14 an -- an example elsewhere in the document.
 15 So there are instances that the decision is
 16 solely as Facebook's discretion and there's no discretion
 17 on the City's part, whether it's the Council, City
 18 Manager, a director or a designee.
 19 But there may be another example where
 20 there is indeed the discretion of a -- either the City
 21 Manager or the Director of Public Works or Community
 22 Development where it's either going to be the director
 23 his or herself or someone that they trust to act on their
 24 behalf.
 25 COMMISSIONER O'MALLEY: All right. I'm

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1 in there. I'll get to it. Okay.
 2 MR. MURPHY: Yeah.
 3 COMMISSIONER O'MALLEY: Okay.
 4 MR. MURPHY: We just want to make sure
 5 that we have the proper context, because it may vary
 6 slightly depending on which -- which one it is.
 7 COMMISSIONER O'MALLEY: Okay. Well, first
 8 of all, the declaration of Public Works Director is given
 9 on I-5 as the City's Public Works director or his or her
 10 designee.
 11 MS. PRINCE: So generally we allow in
 12 documents like this the opportunity for the Public Works
 13 Director to designate somebody or the Community
 14 Development Director to designate an individual to be
 15 responsible for this.
 16 My guess is that they're not going to
 17 designate it to someone who's incapable of making those
 18 decisions and determining whether this has been followed
 19 through with in accordance with the terms of the
 20 agreement.
 21 COMMISSIONER O'MALLEY: Well, the terms of
 22 the agreement basically in many cases gives sole
 23 discretion to Facebook, and there's seven or eight of the
 24 benefits listed to do that, and I -- I -- I personally
 25 feel that that's not spelled out exactly what's expected

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1 going through the document.
 2 MR. MURPHY: Okay. If you wanted to bring
 3 that up later this evening, we can look at those specific
 4 examples.
 5 COMMISSIONER O'MALLEY: All right. Let
 6 me -- let me move on and I will get back to that with
 7 some examples. Okay?
 8 CHAIRPERSON FERRICK: I'll get back to
 9 you, Jack, then.
 10 Do you want to go to Henry next and come
 11 back?
 12 COMMISSIONER O'MALLEY: Do you want to do
 13 one thing at a time?
 14 CHAIRPERSON FERRICK: Oh, did you have --
 15 no, go ahead if you have other questions.
 16 COMMISSIONER O'MALLEY: I have other
 17 questions, but let me just ask one right now.
 18 CHAIRPERSON FERRICK: Yeah. Go ahead.
 19 COMMISSIONER O'MALLEY: I thought -- I
 20 thought I heard Miss Prince make the statement that
 21 the -- that the annual payments will become the
 22 responsibility of Facebook when they elect to take the
 23 density increase. That is when they exceed 3,600
 24 employees.
 25 Is that what you stated earlier? Excuse

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1 me.
 2 MS. PRINCE: Yeah. That was Rachel.
 3 COMMISSIONER O'MALLEY: Excuse me. Rachel
 4 was, yes.
 5 MR. MURPHY: Yes. There's maybe just one
 6 slight clarification to that. It's tied to the
 7 entitlement or the right to have more than 3,600
 8 employees on the site, not necessarily that they've
 9 reached more than 3,600 employees. That's a slight
 10 clarification.
 11 So it's structured that it's tied to this
 12 land use entitlement that they're requesting going into
 13 effect, which includes clearing all hurdles related to
 14 any possible litigation.
 15 COMMISSIONER O'MALLEY: Does that not
 16 happen the moment is agreement is signed?
 17 MR. MURPHY: No. There's a -- there's
 18 a -- there's a -- there's the need to -- Council needs to
 19 act. It's a two-step process with an ordinance, and then
 20 the ordinance would typically go into effect in thirty
 21 days.
 22 During that thirty-day window, there's a
 23 possibilities of a referendum and there's also
 24 possibilities of a CEQA challenge.
 25 COMMISSIONER O'MALLEY: Yes, but after

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1 So it's in effect, but it may be stayed for
 2 a period of time.
 3 COMMISSIONER O'MALLEY: I would understand
 4 that. I was -- my -- I guess my question is: If all
 5 those legal obstacles are -- are satisfied, at that
 6 point, then the agreement becomes into effect and at that
 7 point they are -- they are obligated to make the annual
 8 payments.
 9 That's what I'm trying to find out, and I
 10 think the answer is yes. I see you nodding. Okay, fine.
 11 Okay.
 12 So right now the -- the annual payment's
 13 supposed to start the first -- January 1st, 2013. Okay.
 14 I'll stop now and give somebody else a
 15 chance to ask questions.
 16 CHAIRPERSON FERRICK: Thank you, Jack.
 17 Henry.
 18 COMMISSIONER RIGGS: Thank you.
 19 So just a couple of questions to confirm
 20 what we heard earlier. In your update, Rachel, at the
 21 top of the list were three intersections. I believe
 22 those intersections were in -- were covered and were part
 23 of the comparison between the Final EIR and the Draft
 24 EIR.
 25 So they are already in the documents we

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1 that's all done and -- and all satisfied, then the --
 2 then the Development Agreement would go into effect.
 3 MR. MURPHY: It gets executed and then
 4 recorded.
 5 COMMISSIONER O'MALLEY: Yes, and when that
 6 happens, would that -- would they not be obligated to --,
 7 to make the annual payments until they exceed 3,600
 8 employees?
 9 MR. MURPHY: No. They'd be obligated to
 10 make the payments if that land use entitlement is in
 11 effect.
 12 COMMISSIONER O'MALLEY: If it's in effect?
 13 MR. MURPHY: Yeah, effect. It is
 14 according --
 15 COMMISSIONER O'MALLEY: Would it not be in
 16 effect when they sign the agreement is what I'm trying to
 17 find out. Am I confused about something here?
 18 MS. PRINCE: The entitlement goes into
 19 effect when the agreement is executed and recorded. The
 20 distinction that we're trying to clarify is that until
 21 they elect to exceed the 3,600 cap, they don't have to
 22 begin payments.
 23 They may elect not to do that if there's a
 24 legal challenge to the Development Agreement, the project
 25 or the Environmental Impact Report.

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1 have reviewed. Is that correct?
 2 MS. GROSSMAN: Correct. The only
 3 clarification is that we made a mistake and realized --
 4 they trigger with the West Campus and East Campus
 5 coming -- both coming online based when the West Campus
 6 coming online in 2018.
 7 However, in the event that the West Campus
 8 development were in never occur, they're also triggered
 9 in the cumulative East Campus 2025.
 10 COMMISSIONER RIGGS: Huh.
 11 MS. GROSSMAN: So we already evaluated and
 12 they're already included in mitigations measures.
 13 Basically what this is doing is requiring the applicant
 14 to do those improvements sooner rather than later,
 15 meaning they're tied to the East Campus entitlement.
 16 COMMISSIONER RIGGS: All the better.
 17 Thank you.
 18 MS. GROSSMAN: You're welcome.
 19 COMMISSIONER RIGGS: And then regarding
 20 the Atherton letter, it looked to me that on page 5-28 of
 21 the Final EIR, this addresses the predominance of their
 22 issues, in particular the Marsh and Middlefield
 23 intersections.
 24 I bring this up because it -- it might
 25 appear to some that we just got a letter tonight from

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10 (Pages 34 to 37)

1 Atherton, whereas this has actually been an ongoing
 2 conversation.
 3 MS. PRINCE: That's correct. In their
 4 additional comment letter that was submitted on January
 5 19th, 2012 is also responded on page 4-220 and 4-221.
 6 COMMISSIONER RIGGS: And when I use the
 7 word "respond," I meant not just in terms of
 8 documentation, but in terms of the fact that we have
 9 included the description of a mitigation that is the
 10 revision of -- of the Marsh and Middlefield intersection
 11 that describes how to do it as well as the conditions of
 12 the applicant posting percentage payment for that
 13 project.
 14 MS. PRINCE: Correct.
 15 COMMISSIONER RIGGS: Thank you.
 16 CHAIRPERSON FERRICK: Thank you, Henry.
 17 John.
 18 COMMISSIONER KADVANY: Thank you. I just
 19 have a few -- few questions. I wanted to confirm my
 20 understanding -- I talked to staff about this earlier
 21 this afternoon. It's a complicated question involving
 22 how mitigations get executed through the -- through CEQA
 23 and the -- the EIR. We've had a lot of discussion about
 24 the value of -- of putting in new lanes -- new lanes in
 25 intersections, and there are several involving that.

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1 they are fully mitigated.
 2 COMMISSIONER KADVANY: Okay. The City of
 3 Menlo Park is really -- they have no choice, and if
 4 their -- if their people have concerns about a Caltrans
 5 mitigation, they can go to Caltrans and tell them if they
 6 like it or they don't like it.
 7 MR. TAYLOR: Yeah. Yeah.
 8 COMMISSIONER KADVANY: And potentially
 9 it's Caltrans' decision.
 10 MR. TAYLOR: Correct.
 11 COMMISSIONER KADVANY: Okay. Thanks. I
 12 wanted to clarify that.
 13 I also wanted to clarify something in
 14 public benefit so that the public, the amount -- I don't
 15 know what we're call -- it's not in-lieu fee, whatever.
 16 It's called the 800, 900,000, one million dollar
 17 payments, those apply only to the East Campus and they
 18 have absolutely no implications for any similar payments
 19 for the West Campus.
 20 Is that still left open for future
 21 negotiations assuming that West Campus proceeds?
 22 MR. TAYLOR: That's correct. The -- this
 23 particular Development Agreement is only for the East
 24 Campus.
 25 COMMISSIONER KADVANY: Good. Okay. And I

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1 So my understanding is that if we have --
 2 if we have a mitigation in which there's other -- another
 3 agency is re -- is required -- is basically in control of
 4 that intersection, then we have to turn -- we basically
 5 turn over the decision-making authority for that
 6 intersection, new lane or restriping to -- to them.
 7 It's basically out of the City of Menlo
 8 Park's hands, and -- or -- and indeed if it is in our
 9 hands, then we're also obligated to carry out -- carry
 10 out the mitigation as described.
 11 MR. TAYLOR: Yeah. I mean, ultimately
 12 yes. For the intersections that are within Caltrans,
 13 let's say, they have full control over that intersection.
 14 So the mitigation measures would have to go
 15 through Caltrans to get approved. So they have the
 16 decision-making authority on that.
 17 Now, in this case, Facebook still has to
 18 work through diligently trying to pursue getting the
 19 mitigation measure in place, and in the past, we've had
 20 conversations with Caltrans that these types of
 21 mitigation measures aren't likely to get approved by
 22 Caltrans, but ultimately they do have that decision.
 23 As far as the City of Menlo Park,
 24 mitigation measures, then, the ones included in the
 25 document, we do need to implement in order to say that

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1 also -- also wanted to clarify the -- there is a --
 2 there's a trip cap now for the West Campus as a
 3 mitigation measure. That's has it's -- that its status.
 4 MR. TAYLOR: That's correct.
 5 COMMISSIONER KADVANY: Okay. And that --
 6 are the parameters of that also similarly flexible at the
 7 time of proceeding with West Campus development?
 8 So, you know, peak -- peak measures,
 9 whether we have an all day measure, what those measures
 10 are and so -- so forth.
 11 MR. TAYLOR: They're -- they're included
 12 in the document. They parallel what you see for the East
 13 Campus.
 14 So if it is a mitigation measure, it would
 15 need to be accomplished as part of the West Campus, and
 16 it does have a peak measure for AM and PM and then a
 17 daily trip cap, as well. Oh, that's right. There is not
 18 a daily on the -- on the West Campus.
 19 COMMISSIONER KADVANY: Okay.
 20 MR. TAYLOR: Yeah, there's not.
 21 COMMISSIONER KADVANY: Could -- could --
 22 could the form and content of that be discussed when the
 23 West Campus comes up or is it pretty much fixed now?
 24 MR. TAYLOR: I mean, the intent is that it
 25 would be fixed now, so if -- it is identified as a

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1 mitigation measure.
 2 COMMISSIONER KADVANY: Okay. Oh, I see.
 3 As opposed to being -- having some other status like the
 4 public benefit.
 5 So it pretty is -- pretty much is fixed
 6 now?
 7 MR. MURPHY: Well, there's a few different
 8 levels to this. In terms of the peak period, there's a
 9 mitigation measure that would estab -- establish a cap,
 10 so in no case could it go higher than that under this
 11 existing EIR that would be certified.
 12 Through some sort of agreement, it could be
 13 potentially lowered, but that would be -- not --
 14 potentially then not feasible for the project.
 15 The daily trip cap is something that's not
 16 currently in mitigation. It could be a mitigation, the
 17 number of trips that were studied in the Draft EIR.
 18 It couldn't go higher than that. It could
 19 potentially go lower, but we'd want to kind of look
 20 pretty seriously about that because that gets to the
 21 feasibility issue.
 22 One thing that we would want to maintain to
 23 be the same in terms of the form and structure between
 24 the East Campus and West Campus is how trips are
 25 measured.

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1 COMMISSIONER KADVANY: Okay, great. Thank
 2 you.
 3 And then one -- last question. Is there a
 4 time frame for the under -- the -- the first phase of the
 5 undercrossing improvements to where it's basically
 6 functional?
 7 Has that been -- anybody laid that out? Is
 8 it kind of as soon as possible, kind of In-process? I'm
 9 just wondering.
 10 MR. MURPHY: So that -- part of that has
 11 to do with the number of jurisdictions that are
 12 associated with it. Ms. Grossman's getting to those
 13 specific condition that she can point you to, but there's
 14 a -- a need to submit plans to the City and they need to
 15 go out and get permits from Caltrans, review by BCDC, Bay
 16 Conservation Development Commission, samTrans Joint
 17 Powers Board for the railroad crossing.
 18 There's a number of things, and triggers
 19 and milestones for making sure the applicant is pursuing
 20 diligent efforts to improve those.
 21 And we may be able to -- she's showing me
 22 now. It's page circle F-8, page 8 of attachment F of the
 23 Conditional Development Permit, item 9.
 24 Item 9 outlines -- 9.1, the sequencing.
 25 Facebook has a -- their own kind of

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1 The policy that's in -- included in the
 2 staff -- in the Draft EIR has been updated and is
 3 attached to your staff report. We would want that to be
 4 the same.
 5 We would also want to make sure that we're
 6 understanding that as we've been looking at the
 7 implications of having a trip cap on the two parcels and
 8 how -- how those need to go hand in hand.
 9 In terms of the exact -- the exact amount
 10 of the limitation of trips, that is something that could
 11 be discussed, but only in the downward direction, but
 12 the -- question the feasibility.
 13 COMMISSIONER KADVANY: Okay. If -- if the
 14 West Campus project was built out to a significantly
 15 smaller scale, like two buildings -- two buildings, say,
 16 with a full trip cap scale down in that case so that you
 17 don't have this kind of oversized cap relative to the --
 18 the project.
 19 MR. MURPHY: Right. I believe that the --
 20 a lot of the numbers that were looked out for the West
 21 Campus were in relative proportion to the size of the
 22 East Campus.
 23 And so yes, if there was -- the scale of
 24 the development of the West Campus was smaller, then
 25 those numbers would scale down.

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1 incentive to want to try to get it open as quickly as
 2 possible, so I'm not sure that we've -- what the best
 3 case scenario would be.
 4 It's probably close to 240 to 2 -- 270
 5 days, maybe.
 6 COMMISSIONER KADVANY: Okay. So it may be
 7 a year.
 8 MR. MURPHY: We hope that would be open
 9 for a year by now.
 10 COMMISSIONER KADVANY: Got it. Thanks
 11 very much.
 12 CHAIRPERSON FERRICK: Thanks, John.
 13 Vince, go ahead.
 14 COMMISSIONER BRESSLER: As I recall from
 15 our previous meeting, the Development Agreement for the
 16 East Campus only exist because there was a previous trip
 17 cap based on the Development Agreement, and therefore we
 18 don't expect that there will be a Development Agreement
 19 for the West Campus.
 20 Is that an accurate statement?
 21 MR. MURPHY: Let's see. So the -- there's
 22 a previous Development Agreement for the Sun campus and
 23 East Campus, but there's -- separate from that, there's
 24 an existing Conditional Development Permit that limits
 25 the number of employees on the East Campus to 3,600.

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12 (Pages 42 to 45)

1 COMMISSIONER BRESSLER: Right.
 2 MR. MURPHY: So that's -- that's what is
 3 kind of -- the trigger for the City having more
 4 discretion as to what can go on on the East Campus.
 5 The applicant has expressed an interest, as
 6 is outlined in the Draft EIR, for the West Campus that
 7 there would be -- they would request a Development
 8 Agreement for the West Campus.
 9 COMMISSIONER BRESSLER: Okay.
 10 MR. MURPHY: With that, the City does have
 11 the ability to negotiate mutually beneficial --
 12 COMMISSIONER BRESSLER: What - what would
 13 be the basis for them needing a Development Agreement?
 14 MR. MURPHY: They don't necessarily so
 15 much need one, but that may be the best framework for
 16 dealing with some of the significant unavoidable impacts
 17 as outlined in the Draft EIR.
 18 COMMISSIONER BRESSLER: We have a formal
 19 process to -- to sort this out.
 20 MR. MURPHY: Yes.
 21 COMMISSIONER BRESSLER: Okay.
 22 MR. MURPHY: And then that gives them
 23 long-term approvals to build out the West Campus. So
 24 that's -- That's clearly the benefit they would get.
 25 COMMISSIONER BRESSLER: I noticed a few

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1 that there was anything other than those two connection
 2 pieces for the class one facility.
 3 COMMISSIONER BRESSLER: Okay. Well, I'm
 4 glad we clarified that.
 5 The 800,000 a year in-lieu sales tax, how
 6 was that computed? What was the basis for coming up with
 7 that number?
 8 MR. MURPHY: Yeah. That -- that was a --
 9 it was a negotiated number, so I'm not sure that anybody
 10 could point to a -- a specific formula for arriving at
 11 that.
 12 The -- there was some reflection upon some
 13 of the sales tax generated from the site previously, but
 14 some of those numbers are -- sales tax is confidential,
 15 so that's kind of difficult to point to specifically, but
 16 in general terms, it seemed like it was in the ballpark.
 17 But there's no specific formula for the
 18 arrival of those --
 19 COMMISSIONER BRESSLER: Let me just follow
 20 up with that.
 21 When Sun was there and was generating
 22 actual sales tax, the numbers that I've heard were over a
 23 million dollars a year.
 24 Was that not the case? I know they moved
 25 their -- their headquarters somewhere else.

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1 things in the Development Agreement that we had spoken
 2 about here before, so it was nice to see. One was a bike
 3 path that goes all the way to the railroad station, and I
 4 think there was a number associated with that. It was
 5 maybe with -- a million dollars or something like that,
 6 I'm recalling.
 7 MR. MURPHY: What was that?
 8 COMMISSIONER BRESSLER: A bike trail.
 9 MR. MURPHY: There's some bike trail from
 10 like University -- from Bayfront Expressway to the
 11 railroad tracks?
 12 COMMISSIONER BRESSLER: My impression was
 13 that that went to Caltrain station.
 14 Is that not the case?
 15 MR. TAYLOR: Um. I mean, the -- there's a
 16 mitigation measure -- partial mitigation measure that's
 17 included that takes the Bay Trail from University and
 18 Bayfront Expressway to the railroad tracks, the Dumbarton
 19 railroad tracks, and then there was some discussion by
 20 some members of the public about the Bay Trail gap from
 21 University --
 22 COMMISSIONER BRESSLER: Right.
 23 MR. TAYLOR: -- to there.
 24 That's included in here as far as them
 25 working with other entities on that, but I don't think

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1 MR. MURPHY: Yeah. I can't point to
 2 specific numbers, but you need to be careful of any
 3 numbers that you may have heard in terms, you know, any
 4 one year, there could be high numbers, low numbers.
 5 So it's a matter of looking at a longer
 6 term perspective than any -- any one year.
 7 COMMISSIONER BRESSLER: I guess I'd feel
 8 more comfortable recommending this number if I knew what
 9 it was based on other than well, that was a negotiated
 10 position.
 11 MR. MURPHY: Yeah. Unfortunately, we
 12 can't provide a specific formula for you.
 13 COMMISSIONER BRESSLER:
 14 CHAIRPERSON FERRICK: And I just wanted to
 15 note for the record that Commissioner Eiref is now
 16 present.
 17 Jack, did you want to ask some questions?
 18 COMMISSIONER O'MALLEY: I -- yes. When I
 19 talked about the Development Director before I should
 20 have said the Community Development Director, okay, and
 21 that's -- that's the confusion.
 22 In 9.1, 9.2 on 11, Facebook is going to
 23 explore various things relative to housing and to the Bay
 24 Trail gap, and then they are to write a report to the
 25 Community Development Director or his des -- his or her

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1 designee, and that's what I was referring to.
 2 And It seems to me if you're going to write
 3 a report, it goes to the highest level person within
 4 government that you have to review it, and that's where I
 5 thought it should stay. Unless Council has -- has the
 6 responsibility to designate another person.
 7 That was just a comment I'm making, okay.
 8 MR. MURPHY: I could -- on each of those,
 9 I believe, those are instances where the decision is
 10 fully Facebook's sole discretion.
 11 COMMISSIONER O'MALLEY: Yes.
 12 MR. MURPHY: So one reason to identify the
 13 Community Development Director is the Community
 14 Development Department would be the entity that would be
 15 leading the annual reviews that need to be conducted for
 16 the Development Agreements, and then with those annual
 17 reviews, those are -- those come to the Planning
 18 Commission, and they have the potential to go up to the
 19 City Council.
 20 So I think that was probably the intent for
 21 having it be the Community Development Director.
 22 But the reports could go to someone else,
 23 but the -- probably the best forum in the context for it
 24 would be the annual reviews conducted by the Planning
 25 Commission.

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1 know, something in those arenas.
 2 If they've done nothing in their arenas,
 3 the way it reads, it's their sole discretion, and then it
 4 doesn't matter.
 5 So they don't have to do anything, and yet
 6 the -- the reason it's in there is that their expectation
 7 for them to do something, and someone has to review that
 8 at a high level.
 9 MR. MURPHY: Right, yes. So just --
 10 Facebook is obligated to explore these things. So that's
 11 where we're measuring whether they've made the good faith
 12 effort to do explore the actual decision to do them at
 13 their decision. It's kind of a two-step process, and
 14 that's what the City would be reviewing.
 15 COMMISSIONER O'MALLEY: I understand that,
 16 but it's listed as benefits. It's not a benefit unless
 17 they decide to go forward on something, in my judgment
 18 anyway, and there are a number of points that -- that are
 19 in their sole discretion.
 20 You know, that's surprising on its own, but
 21 that was just a comment that I made, and then you
 22 answered one of the other questions that I had, because
 23 Vince asked it.
 24 And I have one other question, as well.
 25 There are triggering events. Once they -- the agreement

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1 COMMISSIONER O'MALLEY: It will come to
 2 the Planning Commission, then, those -- those reports
 3 that are issued?
 4 MR. MURPHY: Yeah. In whatever years
 5 those would come, those would be items that would be --
 6 that would warrant reporting out to the Planning
 7 Commission --
 8 COMMISSIONER O'MALLEY: That's good news.
 9 MR. MURPHY: -- for the annual review.
 10 So it just depends on when those reports
 11 come in and the timing of the annual review.
 12 COMMISSIONER O'MALLEY: Yeah. Okay.
 13 Well, you know, the concern I had was that -- we expect
 14 Facebook -- and I'm sure they will do this. Positive
 15 they will do this. As a matter of fact, use their best
 16 efforts in doing a lot of these things that they have
 17 their sole discretion to do.
 18 And we expect them to do something, all
 19 right, or it wouldn't be in this -- this Development
 20 Agreement.
 21 And -- and if they don't do something that
 22 which we expect even though it's in their sole
 23 discretion, there is that -- there's some analysis that
 24 takes place that goes to Council and the Council
 25 eventually has to decide whether or not they do, you

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1 is signed after all the litigation, if there is any, is
 2 satisfied, then it isn't until my understanding the --
 3 the 30th of June in 2022 where they do have the option
 4 of -- of then saying they don't want to keep continue
 5 with that special density increase, and there's a
 6 triggering event that allows them to do that, as well.
 7 And then two conditions in the triggering
 8 event. One was the vacation of four more buildings out
 9 of a listing of seven, and the other one was for less
 10 dense employ -- employee density of the above buildings,
 11 and I didn't know what that meant.
 12 Is it one person less than what they
 13 expected? There are no numbers there. That's 8.2.3.
 14 I -- I just wanted to have some
 15 understanding of really what that -- those aspects of the
 16 triggering event meant.
 17 MR. MURPHY: Yeah. So as it relates to
 18 the changes to those buildings, those buildings are the
 19 office buildings. There's two other buildings on the
 20 campus.
 21 Building 11, which is -- mainly a
 22 cafeteria, an auditorium and then building 19, which is
 23 the recreation facility.
 24 So the -- the office buildings, if you look
 25 at the -- what this effectively means is looking at the

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1 core plans that Sun Microsystems had with hard walled
 2 offices and cubicles versus the -- and the number of --
 3 not from a Building Code perspective, but from a
 4 usability perspective the number of seats in there
 5 compared to the number of seats that Facebook has with
 6 its open floor plan with the tables.
 7 And so that's -- that's what is intended
 8 there is that the -- there be a -- a real physical change
 9 to the layouts of the buildings away from the way
 10 Facebook has them laid out to something that was more
 11 comparable to what Sun Microsystems had.
 12 COMMISSIONER O'MALLEY: The way I
 13 interpret it was -- was that basically where those
 14 buildings are vacated and employee density in the above
 15 all seven buildings became less than a certain number,
 16 whatever that number was, but it all related to getting
 17 back -- getting back to a need of not having -- not
 18 needing the extra density and they would be right back to
 19 3,600 employees or less at that stage, and I -- I thought
 20 that would be how that was -- how those buildings were
 21 identified.
 22 So someone knows how many people are going
 23 to be in each of those buildings, I would presume is what
 24 you're saying.
 25 MR. MURPHY: Correct, and it would be

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1 spend on the average over a year's period and then how
 2 much sales tax would come from it and what percentage of
 3 the sales tax come to Menlo Park, and it didn't seem to
 4 be a very big, big number.
 5 I was just wondering why this was put in there,
 6 unless Facebook has products to sell which I'm unaware
 7 of, and perhaps you could give me some information.
 8 MR. MURPHY: To my knowledge, they do not,
 9 but it's -- this is a long-term document. They -- they
 10 may acquire a company or -- or things may change.
 11 One thing that could change is state law in
 12 terms of how sales and use tax is calculated.
 13 So as of right now, there's -- that would
 14 not be a large source of revenue to kind of offset what
 15 their obligations are, but that was something that they
 16 did request as part of this overall deal to have that
 17 flexibility down the road, that if things did change,
 18 that that would be counted against their annual payment
 19 by the credit towards their annual payment obligation.
 20 COMMISSIONER O'MALLEY: Well, okay. I
 21 understand that, but I -- I thought that we were -- these
 22 public benefits were coming to us solely because we're --
 23 we're giving them the less density alternative to use,
 24 and somehow that's the case, but then we're subtracting
 25 from those benefits that are coming to us based on any

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1 comparable to what those 3,600 employee cap.
 2 COMMISSIONER O'MALLEY: Okay. Can I ask
 3 one last question? And then I --
 4 CHAIRPERSON FERRICK: Of course.
 5 COMMISSIONER O'MALLEY: By the way, if I
 6 sound that I'm not interested in Facebook, I can tell you
 7 that I'm one hundred percent interested in Facebook,
 8 okay, but I just want to understand certain things.
 9 The -- the annual payments that take place
 10 are reduced by amount of sales tax that comes to the
 11 City.
 12 Am I correct? Does that start on day one?
 13 MR. MURPHY: Yes.
 14 COMMISSIONER O'MALLEY: Okay. And I was
 15 curious, you know. When I asked Facebook this question
 16 when they were in front of us, I -- I wanted to know what
 17 they sold, all right, that would provide sales tax, and I
 18 don't -- I didn't get an answer, and so I just assumed --
 19 I know what assume means, but I just assumed that what
 20 they sell in terms of food and T-shirts and souvenirs and
 21 what have you would be those things that would contribute
 22 to sales tax.
 23 And then I started to do some calculations
 24 I based on having 6,000 employees over there or so and
 25 trying to figure out just how many dollars they would

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1 sales tax that we may receive from them, and I -- to me,
 2 I just felt that that was strange.
 3 You know, I -- it protects Facebook, but
 4 it -- it diminishes the public benefit to the City, as
 5 far as I'm concerned. That's a comment that I wanted to
 6 make.
 7 And that's all I had to say.
 8 CHAIRPERSON FERRICK: Okay, thanks, and
 9 Commissioner Eiref has some questions, and I want to get
 10 to the public comments right after that.
 11 COMMISSIONER EIREF: Two quick questions.
 12 For the trip cap -- who -- the trip cap is
 13 being counted throughout the day, but there are specific
 14 intervals there between 7:00 and 9:00 AM and 4:00 and
 15 6:00 PM, right?
 16 Who chose the 4:00 to 6:00? I'm just
 17 curious.
 18 MR. TAYLOR: We -- that was chosen with
 19 staff discussion with the consultant as well as Facebook
 20 to talk about -- the real intent is when in roadway
 21 adjacent to this facility have the peak times for that
 22 roadway that's adjacent.
 23 And so in the cases of Bayfront Expressway
 24 and the roadways in this area, that's 7:00 to 9:00 time
 25 frame and that 4:00 to 6:00 time frame is really when

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1 those roadways are closer to capacity.
 2 And so ultimately those -- that's why those
 3 time frames were chosen, and that's really what it comes
 4 down to.
 5 COMMISSIONER EIREF: The reason I ask that
 6 is in the Bay Area in general, like -- the rideshare
 7 lanes for 101, 7:00 PM is normally the cutoff time.
 8 Just based on personal experience -- I'm
 9 guessing you would probably agree with this -- there's a
 10 ton of traffic around here all the way up to seven
 11 o'clock, so I'm just curious.
 12 Would there be a flexibility in bumping
 13 that up to 7:00 PM?
 14 MR. TAYLOR: Going 5:00 to 7:00 rather
 15 than --
 16 COMMISSIONER EIREF: Yeah.
 17 MR. TAYLOR: -- of 4:00 to 6:00?
 18 I think it -- I think it would be
 19 challenging to do, but ultimately, I mean, that's what --
 20 we looked at the peak time frame, and really that's where
 21 you see that peak.
 22 There might be still an intended peak where
 23 you still see some amount of peak after six o'clock at
 24 night, but it's not as high as you would see during that
 25 4:00 to 6:00 time frame ultimately.

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1 comment, and then we'll still have more chances up here
 2 to ask additional questions or -- or comments.
 3 So first we have Clem Molony followed by
 4 Michael Kashiwagi. My apologies for any mis-
 5 pronunciation.
 6 Can I just take the cards directly on -- of
 7 do you guys need to see them first?
 8 MR. MURPHY: You can take them first.
 9 CHAIRPERSON FERRICK: Oh, thank you. As
 10 you come up, I should have announced that -- one moment,
 11 Clem.
 12 If anyone else has cards that they want to
 13 submit to speak, please bring 'em on up through here and
 14 I'll collect them in the order in which I got 'em in.
 15 Thank you.
 16 Go ahead, Mr. Molony. Thank you.
 17 MR. MOLONY: Good evening, Commissioners.
 18 Clem Molony, forty-year Willows homeowner -- homeowner,
 19 and I live about five blocks from the Facebook campus.
 20 Just a couple of comments on the exact
 21 steps in the process of evaluating land use, the
 22 permitting, the Development Agreement.
 23 The east side, I was surprised the vehicle
 24 trip cap and the permit agreement amendment is pretty
 25 aggressive. Potential penalties look pretty challenging.

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1 COMMISSIONER EIREF: Okay. And then
 2 the -- I think there were some questions in some of the
 3 letters and things.
 4 Will we -- will we make the trip counts
 5 public?
 6 MR. TAYLOR: I mean, we don't necessarily
 7 have the intent of publishing them on a regular basis,
 8 but ultimately they would be available for anybody who
 9 wanted to see them.
 10 I don't think they would be restricted in
 11 any way, so I think they would be completely available if
 12 somebody did want to see them, but we didn't have the
 13 intent of publishing on some regular basis out to the web
 14 or something to that effect.
 15 COMMISSIONER EIREF: So if a neighboring
 16 community or somebody wanted to see them, there would be
 17 no reason why they couldn't?
 18 MR. TAYLOR: Oh, Absolutely, and I think
 19 that there's also -- there might be as part of the annual
 20 monitoring, there might be some additional data -- as
 21 part of the Mitigation Monitoring Report, there would be
 22 some information in there during that time, as well.
 23 COMMISSIONER EIREF: Okay. Thanks.
 24 CHAIRPERSON FERRICK: Thank you, Ben.
 25 All right. Let's go right to public

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1 and that's good, because this isn't -- this is a contract
 2 that you're working on. So it needs to be firm.
 3 The EIR mitigations appear appropriate. I
 4 didn't see any surprises there. I spoke to the EIR back
 5 in January, and I'm comfortable.
 6 On the Menlo Park letter, which I scanned
 7 tonight for the first time real quickly, I read it. Just
 8 a thought that even though there is no nexus legally,
 9 and the attorney has pointed that out, it reminds me
 10 somewhat of the bridge over San Francisquito Creek up by
 11 the golfcourse at Stanford.
 12 Until we got to -- years to get everybody
 13 to see that that was a part of the city that needed to be
 14 improved, a part of the mid-Peninsula and to be done
 15 right, and I hope that some good relationships between
 16 our two cities can build towards a good solution as fast
 17 as can be in that funny little intersection, because it's
 18 a mess.
 19 I go through there all the time. I work in
 20 Redwood City and I come home that way to avoid the
 21 freeway.
 22 So just -- just a hope that, you know, even
 23 the Facebook project occupants are going to benefit by
 24 fixing that one.
 25 Whatever we can do as a city to cooperate

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16 (Pages 58 to 61)

1 with Atherton, I don't like to see lawyer letters so --
 2 so much.
 3 On the west side, the 75 foot height, I
 4 think it should be acceptable if it's designed well,
 5 which I believe we can expect from the Facebook
 6 Facilities Group.
 7 I was pleased to see a -- a below market
 8 rate housing agreement in there, and I recommend that
 9 this needs to be an aggressive goal.
 10 Below market rate housing is very
 11 important, very important for our Peninsula, for our blue
 12 collar workers, nurses, all of the -- the workers who are
 13 my peers.
 14 The -- the eventual agreement language
 15 needs to have teeth and specificity.
 16 In conclusion, I've watched this public
 17 process so far very thoroughly. I'm impressed by the
 18 methodical analysis in the reports so far.
 19 Both staff and the -- excellent questions
 20 tonight, substantial public benefits and the Development
 21 Agreement. Let's nail those down as much as possible.
 22 It's good that we're having fiscal analysis.
 23 So bottom line, I encourage that the City
 24 Staff and this Commission continue your thorough work.
 25 You're writing a long-term contract. It needs to be

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1 identified issues with regards to the adequacy of the
 2 environmental document, and a lot of the meetings and our
 3 comments were summarized in a letter dated April 26th
 4 from our City Manager to your Mayor and City Manager,
 5 which I believe is attachment P of your staff report this
 6 evening.
 7 I'm here tonight because the Town wishes to
 8 have a portion of the letter read into the record, so
 9 that's what I'll be doing.
 10 So "in summary, the Town of Atherton
 11 believes the Draft EIR did not adequately address traffic
 12 impacts at the Marsh/Middlefield intersection due to
 13 assumptions and methodologies that understated traffic
 14 volumes generated by the Facebook project in mitigations
 15 that don't fit on the existing site or don't truly result
 16 in successful mitigation of probability impacts from the
 17 increased traffic generated from this project.
 18 "This resulted in understated impacts which
 19 resulted in inadequate mitigation measures recommended at
 20 this intersection in the Town of Atherton.
 21 "More specifically, the traffic impact
 22 analysis was inadequate for the following reasons: The
 23 analysis was based upon an artificial trip count provided
 24 by Facebook which resulted in a project trip generation
 25 rate less than -- rate of 25 percent less than the

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1 right.
 2 Thanks.
 3 CHAIRPERSON FERRICK: Thank you, Mr.
 4 Molony. Next up we have Michael Kashiwagi.
 5 MR. MURPHY: Chair Ferrick --
 6 CHAIRPERSON FERRICK: Yes.
 7 MR. MURPHY: -- we may want to start --
 8 make sure to see if the applicant would like to say
 9 anything. We don't really start comment until the
 10 applicant --
 11 CHAIRPERSON FERRICK: Sorry about that.
 12 Would the applicant like to make any
 13 comments before we proceed with further public comment?
 14 You're not required to if you --
 15 MR. TENANAS: I can go at the end.
 16 CHAIRPERSON FERRICK: Okay. Sorry about
 17 that. Come on up, and I very much apologize if I'm
 18 mispronouncing your name.
 19 MR. KASHIWAGI: That's fine. I often
 20 mispronounce it myself.
 21 But Commissioner Ferrick, members of the
 22 Planning Commission, my name is Mike Kashiwagi and I'm
 23 with the Town of Atherton.
 24 As you know, throughout the comment period
 25 of the EIR, the Town has expressed concerns and

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1 Institute of Transportation Engineers trip generation
 2 rates which are widely used as the industry standard.
 3 "This resulted in understating traffic
 4 impacts resulting in inadequate mitigation measures.
 5 "Traffic generated by the Facebook project
 6 was assigned to the road network by hand rather than
 7 utilizing the City and County Associate of Governments or
 8 other appropriate traffic demand forecasting models.
 9 "This methodology does not accurately
 10 quantify the displacement of traffic from major
 11 transportation facilities such as US 101 caused by
 12 Facebook project.
 13 "By not utilizing appropriate travel demand
 14 forecasting models, the Facebook traffic impact analysis
 15 did not accurately identify and quantify increased
 16 traffic demand on affected routes such as Middlefield and
 17 marsh Roads.
 18 "This faulty analysis resulted in
 19 understated traffic impacts and inadequate mitigation
 20 measures.
 21 "For the cumulative traffic scenario, the
 22 Facebook traffic EIR did not include significant future
 23 projects, such as the North Air Oaks Community Plan
 24 update.
 25 "The Town of Atherton believes that the

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17 (Pages 62 to 65)

1 cumulative analysis would show in increased degradation
 2 of traffic conditions at the Marsh/Middlefield
 3 intersection if the North Air Oaks Project was properly
 4 included in the Facebook Draft EIR.
 5 "This omission represents another flaw
 6 which results in understated traffic impacts and
 7 inadequate mitigation measures.
 8 "The Facebook EIR failed to analyze
 9 additional potentially significant traffic impacts within
 10 the Town of Atherton since the analysis did not extend
 11 beyond the Marsh/Middlefield intersection.
 12 "For instance, even by using artificially
 13 low generation rates and not including significant future
 14 development in cumulative scenarios, the EIR identifies
 15 an additional 200 peak hour trips converging at the
 16 Marsh/Middlefield intersection.
 17 "All these additional trips are traveling
 18 on Atherton streets beyond Marsh/Middlefield
 19 intersection. Accordingly, the Town of Atherton believes
 20 the traffic impact analysis must be expanded to properly
 21 analyze potentially significant impacts to streets such
 22 as Fair Oaks Lane, Watkins, Atherton Avenue, Stockbridge,
 23 Encinal, Glenwood and other residential streets used to
 24 bypass impacted intersections.
 25 "And finally, the Facebook project is shown

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1 It is important to note that Atherton staff
 2 has indicated that mitigation measures at this
 3 intersection could be funded by the applicant and
 4 contractually obligated for implementation by the town
 5 with rebate to Facebook over time as other -- others are
 6 required to contribute their fair share to this
 7 litigation.
 8 Either situation would render the
 9 mitigation totally feasible at this present time.
 10 Thank you.
 11 CHAIRPERSON FERRICK: Thank you, and next
 12 up, we have William Webster followed by William Nack.
 13 MR. WEBSTER: Chairman Ferrick, members of
 14 the Menlo Park Planning Commission, my name is William
 15 Webster. I reside at 480 East O'Keefe in the City of
 16 East Palo Alto.
 17 I'm now in my 20th year as the senior
 18 member of the East Palo Alto Rent Stabilization Board and
 19 I serve on several other boards and committees in the
 20 City of East Palo Alto.
 21 I forwarded to your attention my letter of
 22 commendation to the East Palo Alto negotiating team or
 23 rather to the East Palo Alto City Council expressing
 24 my -- my modified congratulations or approval of the
 25 terms and conditions agreed to between East Palo Alto and

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1 to have a significant impact at the Marsh/Middlefield
 2 intersection in the cumulative scenario.
 3 "However, the EIR failed to describe the
 4 heavy demand for westbound to northbound right turns from
 5 Marsh Road to Middlefield Road. The existing
 6 intersection design results in vehicle queues which
 7 extend easterly along Marsh Road beyond Fair Oaks Avenue.
 8 "This results in traffic using residential
 9 streets in Atherton such as Fair Oaks, Holbrook Lane,
 10 Palmer Lane and San Benito Avenue to bypass Marsh Road,
 11 which creates neighborhood traffic and safety impacts.
 12 "This represents another problem with
 13 Facebook traffic analysis."
 14 And then in addition to the information
 15 that was provided in the letter, it was also noted that
 16 the Final EIR mitigation measure for improving Marsh/
 17 Middlefield and identifies it as being unavoidable
 18 because it is located outside your jurisdiction and would
 19 depend on an outside agency for implementation.
 20 This is not a correct statement under CEQA,
 21 and the recent case of City of San Diego versus Board of
 22 Trustees held correctly that where a mitigation depends
 23 on an outside agency for implementation, the adopting
 24 agency is required to assess the feasibility of paying
 25 the outside agency to implement the mitigation measure.

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1 Facebook.
 2 It represented a radical improvement over
 3 the situation that obtained in December when there was
 4 that total denial as articulated in the Keyser Marston
 5 Associates report of December 21st of any significant
 6 negative impacts upon the City of East Palo Alto for the
 7 Facebook campus expansion.
 8 The resulting agreement is a de facto
 9 acknowledgement that these negative impacts definitely
 10 exist potentially or in fact.
 11 I want to thank very much Facebook for --
 12 for its willingness to take steps to be a good corporate
 13 neighbor; not only to the City of Menlo Park, but also to
 14 the City of East Palo Alto.
 15 I do have one remaining caveat with -- with
 16 regard to the Final EIR. In response to my comments
 17 letter, and I believe also to the East Palo Alto comments
 18 letter, there's a statement -- reiterating statement that
 19 the impacts upon housing and the threat of displacement
 20 of citizens is mitigated by 843 house -- housing units
 21 that would be built in East Palo Alto.
 22 It's clear even from the Kayser Marston
 23 Associates report of December 31st, that it was unlikely
 24 that these 843 units would be built because of the fact
 25 that they're part of a redevelopment project area.

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18 (Pages 66 to 69)

1 Eight days later, the California State
 2 Supreme Court confirmed that it was very unlikely that
 3 these 843 units would be built.
 4 Yet in the final report, despite the fact
 5 that the -- the actuality or the potential for the
 6 construction of any number these 843 units to be built,
 7 there continues to be affirmed as a grounds for denial of
 8 a negative impact.
 9 I want to make it clear it's unlikely that
 10 those units will be built and consequently a significant
 11 movement of Facebook employees will necessarily have a
 12 measurable impact upon the residents of East Palo Alto
 13 and their ability to continue in the community.
 14 I thank -- I thank Facebook for its
 15 willingness to at least let us have a place at the table.
 16 In all of my statements before you, the City Council and
 17 in my comments letter, all I was really trying to get was
 18 authorization for a place at the table through the
 19 constitution of the Board of Advisors for the local
 20 community fund.
 21 At least we are getting that, and I thank
 22 everybody who was involved in making that happen.
 23 Thank you.
 24 CHAIRPERSON FERRICK: Thank you, Mr.
 25 Webster.

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1 We agree with staff's recommendation that
 2 Facebook's project include substantial benefits and
 3 respectfully request that the Planning Commission
 4 recommend that the City Council adopt a resolution
 5 approving the requested amended and restated Conditional
 6 Development Agreement, approve an ordinance for the
 7 Development Agreement, adopt a resolution approving the
 8 heritage tree removal permits, adopt a resolution
 9 certifying the Environmental Impact Report and adopt a
 10 resolution adopting the Statement of Overriding
 11 Considerations and Mitigation Monitoring Reporting
 12 Program.
 13 You now have the opportunity to make Menlo
 14 Park home to one of the world's most popular, intriguing
 15 and successful companies.
 16 Thank you.
 17 CHAIRPERSON FERRICK: Thank you, Mr. Nack.
 18 Up next, we have Kate Comfort Harr and then
 19 followed by Ray Mueller.
 20 MS. HARR: Hello and thank you for the
 21 opportunity to speak tonight. I am Kate Comfort Harr. I
 22 am Executive Director of HIP Housing.
 23 We are a non-profit organization that
 24 provides creative affordable housing solutions throughout
 25 San Mateo County, and I believe here tonight to talk on

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1 Mr. Nack, welcome.
 2 MR. NACK: Thank you.
 3 Good evening, Chair Ferrick and other
 4 honorable members of the Planning Commission. My name is
 5 William Nack. I'm a resident of Menlo Park. I am also
 6 speaking on behalf of the San Mateo County Building
 7 Trades Council.
 8 In 2010, Facebook, the world's largest
 9 social network and one of Silicon Valley's fastest
 10 growing companies, approached Menlo Park about making
 11 this community as their home.
 12 Facebook's move to Menlo Park would
 13 renovate an under-utilized corporate campus for its new
 14 global headquarters.
 15 Putting an existing unproductive property
 16 back to work with such a flagship company provides Menlo
 17 Park with an enormous public benefit.
 18 Facebook's move from Palo Alto to Menlo
 19 Park provides construction jobs and massive economic
 20 opportunity at a time when the city and the county is
 21 facing tough academic challenges.
 22 Facebook has already established itself as
 23 a good neighbor to the surrounding community by funding
 24 charities, working in local schools, sponsoring community
 25 events and supporting their new neighbors in Belle Haven.

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1 behalf of Facebook and some of the outreach they've done
 2 for the non-profit sector.
 3 I feel that as a community, we're really at
 4 our best when the public, the private and the non-profit
 5 come together to work well, and the magic is in the
 6 middle, and I feel that Facebook has done a very
 7 conscientious effort to reach out to the non-profit
 8 sector.
 9 As Mr. Nack had commented, you know,
 10 reaching out to school districts, to local affordable
 11 housing agencies, including my own, and also sponsoring
 12 major events like the progress seminar and today's
 13 luncheon with Harr, which is all about affordable
 14 housing.
 15 So as we go forward, I would hope that --
 16 that as decisions are being made, that it would be kept
 17 in mind that we do have a great community partner that's
 18 made a very conscientious effort to -- to reach out to
 19 the community and that would be taken into light as you
 20 go forward making your decision.
 21 Thank you.
 22 CHAIRPERSON FERRICK: Thank you. Thanks
 23 for being here.
 24 And Ray, followed by Adina Levin.
 25 MR. MUELLER: Good evening. Some I'm

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1 speaking to you tonight as a resident, although I am a
 2 member of the Menlo Park Transportation Commission.
 3 I thought I was going to come here tonight
 4 and it was going to be a relatively simple night, and
 5 then I found this letter from Caltrans, and what I wanted
 6 to do real quick is go over it with you because I've had
 7 the chance to go through it real quickly.
 8 And so for your edification, if you look at
 9 the majority of this letter, it deals with the 25 percent
 10 trip reduction figure. That's paragraphs 4, 5 and 6.
 11 The problem with that is that Caltrans had
 12 that figure prior, and in their prior response to the
 13 City, it just simply asked for more information.
 14 A good portion of this letter focuses on
 15 the fact that 25 percent number doesn't comport with
 16 realistic expectations.
 17 They could have raised that issue earlier
 18 in their first letter to the City. They did not.
 19 Now, why that's important is they base --
 20 base it on their 2004 -- 2004 engineering handbook, but
 21 things have changed since 2004, and when you go and you
 22 look at their last paragraph, they ask for an example.
 23 A great example of a 25 percent --
 24 actually, a greater than 25 percent trip reduction is
 25 Stanford.

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1 initially, and then they sort of get to it in one
 2 sentence. Are we going to benefit from this financially?
 3 So as you go through this, I really think a
 4 great portion of this can be discounted because it was
 5 wasn't raised earlier.
 6 Paragraph 3, if you look at it, we have --
 7 completely within our right as -- as proposed in our
 8 master response to set the limitation at fifteen years as
 9 to what they're saying we should have.
 10 So I wanted to bring that to your
 11 attention, because when I first saw this letter, it
 12 really did give me pause, but I -- I think that this is
 13 something that honestly can be worked out between the
 14 City and Caltrans.
 15 I think the letter's frankly a little
 16 inflammatory. I think it's meant to be that way from a
 17 negotiating standpoint.
 18 Having said all of that, I really encourage
 19 you tonight to move this plan forward and to certify it
 20 and to -- to recommend to Council that they go ahead and
 21 go forward with all of the -- the appropriate ordinances.
 22 This campus means so much; not only to
 23 Menlo Park, but frankly to the valley, and we're at a
 24 very critical time right now in the valley to get this
 25 project moving.

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1 Stanford at ten percent go past twenty
 2 percent and the twenty percent alternative transportation
 3 TDM.
 4 Why is this going to work? Well, it works
 5 because of -- and it really gets to the crux of this
 6 letter, I believe.
 7 It works because of the TDM penalties that
 8 you see in the Development Agreement which are
 9 significant, which it can be up as -- I think the example
 10 goes up to \$400,000 per day.
 11 And when you look at that figure and you
 12 start to think about that money, then you have to go back
 13 and think why did Caltrans send this letter, and I
 14 believe the reason why Caltrans sent this letter is
 15 reflected in paragraph 4, sub F.
 16 If you look at paragraph 4, sub F, it ends
 17 with "who will benefit from the financial penalties
 18 received?"
 19 And when I saw that, I reflected for a
 20 moment, because I thought it was odd that Caltrans at the
 21 last moment sent this letter to us on this project
 22 because transportation demand measures really affect two
 23 things, quality of life and who's going to pay for it.
 24 And there's a lot in here about -- that
 25 sort of beats around the bush, that they didn't raise

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1 Thank you.
 2 CHAIRPERSON FERRICK: Thank you, Ray. And
 3 Adina.
 4 That's the last card I have. If anyone
 5 else is interested in commenting on this item, please
 6 fill out a speaker card and bring it up to the staff
 7 table.
 8 Thanks. Adina.
 9 MS. LEVIN: Good evening, Chair and
 10 Commissioners. Adina Levin, resident of Menlo Park, and
 11 I have a couple of questions relating to some of the late
 12 breaking changes that the Chair and Commission may find
 13 relevant to be answered by staff, and if so, here's the
 14 questions.
 15 First of all, in the staff report, there
 16 was a mention of some changes in how the trip cap works,
 17 and I was wondering what those were.
 18 The second is a clarification of when does
 19 the reporting start. Is that date triggered by the same
 20 thing that some of the other changes were triggered?
 21 Which is thirty days after the Development Agreement is
 22 signed, which is the CEQA statute of limitations, or is
 23 that correct for when the reporting kicks in? Does that
 24 make sense?
 25 When does the reporting start? Is it

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20 (Pages 74 to 77)

1 thirty days after the Development Agreement is signed?
 2 Third question has to do with the
 3 pedestrian undercrossing, and another detail -- one of
 4 the mitigation measures, which is as I understand it
 5 correctly closing off the pedestrian exit from the
 6 Facebook campus crossing the street going over --
 7 crossing Bayfront Expressway.
 8 And if I understand that right, is that
 9 actually correlated with the existence of the
 10 undercrossing so that once there's an undercrossing,
 11 people will be expected to do that and not cross on the
 12 street?
 13 Or might that happen prior, which would
 14 obviously hamper people crossing the street without a
 15 compensation -- you know, without the ability to use the
 16 undercrossing.
 17 Last question has to do with something that
 18 I observed in the agreement with East Palo Alto, which
 19 was received by East Palo Alto a week ago.
 20 There was a clause in there that said if
 21 there's any litigation on the matter, that the
 22 agreement -- with East Palo Alto, which includes
 23 significant improvements to the bicycle and pedestrian
 24 facilities which help Facebook commuters and -- as well
 25 as it being a community benefit, those would be obviated

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1 by thanking you and also a big thanks to the staff.
 2 You've done an amazing job. Thanks so much.
 3 You've been a powerful and valuable voice
 4 during our move here to -- Facebook's move to Menlo Park.
 5 You've been -- you've been in contact or we've been in
 6 contact directly.
 7 In fact, I've made formal presentations to
 8 you about our plans and public.
 9 I believe we enjoy a positive collaborative
 10 process. Because we've listened, we've taken your
 11 feedback, we stretched to meet your concerns that you've
 12 raised in our last few meetings.
 13 As a result, the agreement that you -- that
 14 we're considering represents a concrete commitment to
 15 Menlo Park and our neighboring communities.
 16 You deserve a great deal of credit for your
 17 contributions to you -- what has been done. It's been a
 18 very positive experience for us.
 19 During the process of our move, we've grown
 20 from a company looking for more efficient workspace into
 21 a good neighbor looking out for our local community, and
 22 along the way, we've built strong friendships and new
 23 partnerships focused on a better Menlo Park and the
 24 neighboring communities.
 25 Thank you again for your help. I'd like to

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1 if there's any kind of litigation.
 2 And my concern there is if there are others
 3 unrelated to East Palo Alto -- for example, if Atherton
 4 would choose to sue, would that obviate all the other
 5 community benefits with East Palo Alto? Or, you know,
 6 is -- is it only an East Palo Alto related term?
 7 So those are the questions that came to
 8 mind with the late -- late breaking changes.
 9 And in summary, I would continue to express
 10 happiness that Facebook is in town. It's a tremendous
 11 asset to the community. Really happy to see the
 12 improvements to bike and pedestrian access which will
 13 help Facebook achieve its trip cap and help residents of
 14 the area getting around without needing to drive quite so
 15 much and add traffic to the roads, and I hope that this
 16 Commission and that the City Council move this to a
 17 conclusion so that Facebook can settle in and grow.
 18 Thank you.
 19 CHAIRPERSON FERRICK: Thank you, Adina.
 20 All right. That's the last card. Any
 21 other cards anywhere? No? All right. Great.
 22 That concludes public comments, and before
 23 we go to questions, I wanted to ask the applicant if he
 24 would like to say anything. John Tenanas.
 25 MR. TENANAS: Good evening. Let me begin

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1 invite your questions and welcome any constructive
 2 conversations about how we can cement Facebook's future
 3 in this community.
 4 Thanks so much.
 5 CHAIRPERSON FERRICK: Thank you very much.
 6 All right, and with that, did you have
 7 anything to add before we bring it back up here for
 8 questions and comments?
 9 MR. MURPHY: No, but at -- at some point,
 10 you will want to officially close the public hearing with
 11 a motion and second. You can do that now and ask
 12 questions or you could hold it open for a little bit, but
 13 we want to make sure we do close the public hearing.
 14 CHAIRPERSON FERRICK: All right. I've
 15 given everybody plenty of notice to get their comments
 16 cards in.
 17 So I just assume make the motion to close
 18 the public hearing. If there's a second out there.
 19 COMMISSIONER O'MALLEY: Second.
 20 CHAIRPERSON FERRICK: Jack O'Malley
 21 seconds that.
 22 And all those in favor? All those -- oh,
 23 that was unanimous. Six to zero with Commissioner Yu
 24 absent.
 25 And all right. So bringing it back up here

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1 for discussion, I wanted to actually start, if that's all
 2 right with you all, myself with just asking some of the
 3 questions that one of the public comment speakers, Adina
 4 Levin raised just to get some clarification from probably
 5 Justin or Rachel on a little bit more explanation of the
 6 changes and how the trip cap works.
 7 Chip Taylor.
 8 MR. TAYLOR: Yeah. I'll answer that one,
 9 because I think some of the others, I'll probably wind up
 10 answering.
 11 But ultimately the trip cap, the only thing
 12 that changed was that the penalty was actually put
 13 forward.
 14 So that was just not identified early. So
 15 now the penalty is identified. That's the only change to
 16 it.
 17 CHAIRPERSON FERRICK: Great. Thank you.
 18 Maybe it's Rachel or maybe it's Chip. I don't know.
 19 When does the reporting start for the --
 20 after signing?
 21 MR. TAYLOR: For the trip cap or -- or
 22 just reporting in general?
 23 CHAIRPERSON FERRICK: It sounds like it
 24 had more to do with all the requirements rather than just
 25 the trip cap.

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1 remain open.
 2 CHAIRPERSON FERRICK: All right. Any
 3 other discussion points up here? Oh, and just for a
 4 process, too, we have the option -- I checked this out
 5 earlier -- of making the recommendation in one big
 6 motion.
 7 We could break out the Environmental Impact
 8 Report or we could take each of those five items one at a
 9 time to make the recommendations or change the
 10 recommendations or what have you.
 11 So just so you know, we have some options
 12 and flexibility there, and I'll start with Commissioner
 13 Bressler.
 14 COMMISSIONER BRESSLER: Okay. There's a
 15 list on the EIR document, page 4-163, and this -- the far
 16 right column on this page, this is about intersections
 17 and whether the mitigation measures have really mitigated
 18 the problem.
 19 And my question is: The gentleman from
 20 Atherton in particular got me thinking about this. He's
 21 saying that he thought it was feasible to fully mitigate
 22 the problems at Marsh and some other problems throughout
 23 Atherton.
 24 And it just seems like we've got a company
 25 here with -- if these really are associated with this

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1 MR. MURPHY: For all the requirements,
 2 okay. So in terms of the annual reporting, that would be
 3 one year after the effective date of the agreement.
 4 So if it's effective in July, then every
 5 July, we would do the annual reporting.
 6 If it is specific to the annual -- in terms
 7 of monitoring the -- the trips, then that's within the
 8 180 days of the effective date, the equipment needs to be
 9 installed, and that's in the trip cap policy on page 4 of
 10 that attachment G.
 11 CHAIRPERSON FERRICK: Okay. And for those
 12 who don't know the equipment actually is the automatic
 13 counting of cars equipment.
 14 All right. Thank you.
 15 And then the pedestrian under --
 16 undercrossing. Is the closure of the at grade pedestrian
 17 crossing correlated with the opening of the under-
 18 crossing?
 19 MR. TAYLOR: There was a time when we were
 20 looking to potentially close the above grade or at grade
 21 crossing as the undercrossing was developed, but we've
 22 decided to leave both of those open for the time being.
 23 At some point in the future, we may discuss
 24 that further and decide maybe it's appropriate to close
 25 the at grade closing, but for right now, both would

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1 project, why do we have partial mitigations? Why can't
 2 we mitigate everything here? Is it just not possible?
 3 How are these decisions made?
 4 MS. GROSSMAN: I'm going to start and then
 5 I can turn it over to Mr. Taylor for further insert.
 6 Just to clarify what you were pointing to
 7 is my staff report. There was an attachment to the East
 8 Palo Alto letter, and so actually this table's been
 9 updated and it's included in the Final EIR on page 5-15.
 10 COMMISSIONER BRESSLER: Yes.
 11 MS. GROSSMAN: So includes some additional
 12 information. It's a little bit different format. It was
 13 structured differently to fit better into the staff
 14 report.
 15 In regards to Atherton, I apologize if I
 16 was not clear, but the mit -- the mitigation measure
 17 included in the EIR and is required as part of the --
 18 will be required when the West Campus comes forward,
 19 because it's triggered with the East Campus and West
 20 Campus cumulative, would mitigate the impacts.
 21 However, since it is in a jurisdiction
 22 other than the City of Menlo Park, we still identified
 23 those as a significant and unavoidable.
 24 It's thought that perhaps Atherton and
 25 Caltrans may not approve of the mitigation measures. I

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22 (Pages 82 to 85)

1 can let Chip speak.
 2 And he was just highlighting the fact that
 3 that particular mitigation is a fair share contribution.
 4 So it doesn't fully mitigate that -- that intersection
 5 impact unless other projects are to contribute to the
 6 construction.
 7 COMMISSIONER BRESSLER: All right. So I
 8 just want to be really clear. You said a few things
 9 there.
 10 If everybody goes along with the program,
 11 will these impacts be mitigated according to the EIR?
 12 MR. TAYLOR: In the case of Marsh and
 13 Middlefield, it's -- in that particular case, there is a
 14 mitigation measure that's in the document. The one
 15 that's in the document is the feasible mitigation
 16 measure.
 17 And so similar to other projects that have
 18 been done for this particular intersection, the project
 19 is going to pay a fair share contribution toward that
 20 improvement, and they're actually paying a fair share of
 21 the new traffic that's being added to the intersection.
 22 So even though they currently add about
 23 eight percent in the long range time frame, their
 24 actually -- their fair share contribution is going to be
 25 about thirty percent of the total cost of that

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1 bike trails as described.
 2 Thank you.
 3 CHAIRPERSON FERRICK: All right.
 4 Commissioner Riggs.
 5 COMMISSIONER RIGGS: Thank you.
 6 Just because I have it written down here, I
 7 want to observe that the trip monitoring is -- by the
 8 Development Agreement determined by the City and paid for
 9 by Facebook, and it of course is reported to the City,
 10 and I think has someone else says -- a public speaker has
 11 noted, the penalties for failing to keep within the trip
 12 count are quite significant.
 13 I -- as a Planning Commissioner, I find
 14 this quite important because a lot of -- well, a
 15 significant part of our approval of the increased density
 16 is based on the faith that the traffic will indeed be
 17 held in check.
 18 My question regarding traffic has to do
 19 with the peak hour, which is something that Ben also
 20 touched on, and I think a lot of us have observed that
 21 there are a lot of professionals in the South Bay who
 22 operate at a somewhat shifted time zone and that the
 23 likely traffic peak for Facebook might be one to two
 24 hours later than what was chosen for traffic impact.
 25 I have two questions. First just

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1 improvement.
 2 And so that was calculated to pay for their
 3 portion of the impact at the intersection.
 4 COMMISSIONER BRESSLER: Since we're on
 5 this topic, I want to follow up on something a little
 6 different.
 7 I'm not aware of it if it's in here, but is
 8 there any analysis that looks at whether improving bike
 9 trails east-west across the City would have any
 10 beneficial effect?
 11 MR. TAYLOR: There's not that analysis.
 12 Right now, there's not a lot of good models that actually
 13 will allow that analysis to take place and really be more
 14 legally defensible.
 15 And so as -- over time, I think that that's
 16 going to be more of an emphasis and there's going to be
 17 more tools available to do those sorts of analyses, but
 18 right now, there really isn't that sort of analysis to do
 19 anything to analyze what kind of reduction you might see
 20 in traffic for building a bike trail.
 21 COMMISSIONER BRESSLER: Okay. So that --
 22 that was my impression, the fact that we didn't have the
 23 analysis, we couldn't support the mitigation measures is
 24 really the explanation why there may not be any
 25 mitigation for anything like that or improvements in the

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1 confirming that the traffic impact is based on a
 2 different work type, this being the M-2 zone, but also
 3 being a traffic corridor from the East Bay into the
 4 Peninsula.
 5 Is -- is that perhaps why the traffic
 6 appears to peak at the hours that are suggested, the 7:00
 7 to 9: 00 and the 4:00 to 6:00? This would be for Chip.
 8 MR. TAYLOR: I mean, the analysis is based
 9 on the traffic counts in the area, and we've looked at
 10 historical count, and typically historically, the peak
 11 hour in this particular area is anywhere from 7:15 to
 12 8:15, 7:30 to 8:30, 7:45 to 8:45.
 13 It kind of varies depending on the year,
 14 but it's clearly in that 7:00 to 9:00 time frame is when
 15 the roadway peaks.
 16 COMMISSIONER RIGGS: All right. Well, you
 17 can't argue with observation.
 18 And then can you give us just an idea of
 19 the traffic flow during those hours? I mean, we're
 20 looking at a potential campus at full buildout of over
 21 9,000.
 22 The traffic on -- say through the
 23 intersection of the expressway and Willow Road during the
 24 peak hour. Just a rough order of magnitude?
 25 MR. TAYLOR: Well, I mean, there's --

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1 there's several points of entrance and exit for the site,
 2 but ultimately the trip cap is built on 2,600 cars or
 3 trips -- not cars, trips during the peak period, in the
 4 7:00 to 9:00 peak period and the 4:00 to 6:00 peak
 5 period.
 6 That's for the East Campus, and the West
 7 Campus, I believe, the 1,100. I'd have to look at the
 8 exact number, but it's a -- a lower number because
 9 there's a lower amount of square footage there as part of
 10 its trip cap.
 11 So that gives you some idea of the number
 12 of vehicles that would be coming to the site.
 13 COMMISSIONER RIGGS: All right. And just
 14 to put that in perspective with what is currently there
 15 now, I see on page 5-65, Willow Road daily traffic is in
 16 the 45,000 range.
 17 Do you have roughly what -- what northbound
 18 Willow is, for example, during the peak hour?
 19 MR. TAYLOR: I -- I could try to look in
 20 the document and find that information. It might be in
 21 there, but I don't have that number right off the top of
 22 my head.
 23 I think the numberS that you quoted, 45,000
 24 shows some of the daily traffic that you see on Willow in
 25 the more cumulative time frame.

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1 had a chance to digest yet, but just in general how would
 2 you approach working with a -- an entity such as Caltrans
 3 after receiving such a letter?
 4 MR. TAYLOR: Well, I mean, from -- from
 5 the standpoint of obviously there's the legal issues that
 6 we have to con -- deal with this, but as far as --
 7 ultimately, we have to deal with them through the process
 8 of the mitigation measures and -- and putting mitigation
 9 measures in.
 10 So we'll us just have to work with them,
 11 and if there's some slightly different numbers that they
 12 want to see as we're doing the encroachment permit, we'll
 13 just have to work with them and address those as we go.
 14 I don't have a good answer without looking through the
 15 letter.
 16 CHAIRPERSON FERRICK: But it wouldn't
 17 change a Development Agreement if it's been signed and
 18 put into effect?
 19 MR. TAYLOR: I -- I wouldn't anticipate,
 20 no. I don't think it could.
 21 CHAIRPERSON FERRICK: All right. Thank
 22 you.
 23 Commissioner Kadvany.
 24 COMMISSIONER KADVANY: I'll hold off on
 25 comments, but I do want to complete the thought on Mr.

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1 COMMISSIONER RIGGS: All right. Is it
 2 fair to say that if the current peak hour traffic is
 3 between 7:00 and 9:00 and people coming to Facebook at
 4 ten o'clock are probably not going to exceed that current
 5 level of -- of traffic?
 6 MR. TAYLOR: I mean, as -- as you get past
 7 nine o'clock, the traffic volumes start to taper pretty
 8 significantly.
 9 So the background traffic or the existing
 10 traffic on the roadways tapers, which frees up a lot of
 11 capacity on those roadways.
 12 And so by ten o'clock, you've got a lot of
 13 additional capacity on the roadway where your signals are
 14 operating at a much better level of service at that
 15 point.
 16 COMMISSIONER RIGGS: Okay. Thank you.
 17 I think that's it for questions. I'll have
 18 a couple of comments later.
 19 CHAIRPERSON FERRICK: All right. Thanks.
 20 And before I move on to Commissioners
 21 Kadvany and Eiref, I wanted to ask just a little bit
 22 related to what you were just talking about. Actually, I
 23 wanted to touch on what Transportationer --
 24 Transportation Commissioner Mueller commented on, that
 25 Caltrain -- the Caltrans letter that I know you haven't

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1 Kashiwagi's --
 2 CHAIRPERSON FERRICK: Uh-huh.
 3 COMMISSIONER KADVANY: -- comments from
 4 Atherton.
 5 What I understood him to say in addition to
 6 the comments from staff was that the trip -- the trip --
 7 trip cap is nominal or artificial in some way, there --
 8 therefore modifying the traffic models so that they'll
 9 obey this trip cap is misrepresenting the actual traffic
 10 volume.
 11 The models should have not had such a cap
 12 or the cap should have been much higher, and if you have
 13 a higher -- you know, that var -- what that variable
 14 would have been of the amount of traffic coming into
 15 Facebook would be higher, and that would lead to further
 16 impacts in Atherton. So that's what I think I understood
 17 him to be saying.
 18 My own -- this is a question for the EIR
 19 lawyers and so on, but those we -- we do have these
 20 stringent penalties and when do have a fixed parking lot
 21 at Facebook, which would seem to make the trip cap more
 22 than nominal or whatever -- artificial is the word he
 23 used, but that's what -- that's what I heard in -- in
 24 addition to the -- to what was brought out by staff.
 25 So is that consistent with what you -- you

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1 all heard down there when he was -- he did -- that was
 2 one of his major points of what he was reading.
 3 MR. TAYLOR: Yeah. I believe -- that is
 4 one of the points that was in the letter, and we have
 5 addressed that, and the key is that it's tied to the
 6 Conditional Development Permit, so it's tied to that.
 7 There's a legal remedy, and then ultimately
 8 you have a \$50 per trip penalty, which is very stiff and
 9 starts to increase very significantly each day that they
 10 go over that penalty. So they have a -- a large
 11 incentive to stay under it.
 12 COMMISSIONER KADVANY: I understand. What
 13 he in effect was saying that there -- we should have
 14 modeled this differently and there were -- we should have
 15 looked at -- and consequently other streets in Atherton,
 16 et cetera.
 17 So that's a follow up on Vince's question
 18 about what were they tracking in the EIR. Well, he's
 19 contesting the whole assumption of -- of the trip cap.
 20 But it is. If we didn't have the -- didn't
 21 have the penalties, didn't have a parking lot, it would
 22 be much harder to justify, but again it's a question for
 23 the lawyers to pursue.
 24 CHAIRPERSON FERRICK: Well, just a
 25 clarification question on that, though. Isn't the EIR

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1 that -- it's that 6:00 to 7:00 period where you could
 2 potentially be dumping thousands of people out on to the
 3 roadways.
 4 Now perhaps it's not going to affect Willow
 5 so much out near the campus because it sounds like the --
 6 that the -- the flow there is not so high, but if you're
 7 dumping them on to 101 or Willow closer to Menlo Park or
 8 Marsh or any of these other roads, in my observation it
 9 would be that those roads are extremely busy. In fact,
 10 sometimes they're packed between 6:00 and seven o'clock
 11 in the evening.
 12 So I'll let -- see if this resonates with
 13 any of the other commissioners, but that's kind of
 14 opening a big -- a big hole in the structure of the
 15 framework here to not be kind of covering that 6:00 to
 16 7:00 time zone.
 17 CHAIRPERSON FERRICK: Well, my comment
 18 back to that is that it's a data driven time frame, that
 19 that's what studies have shown is, in fact, the peak
 20 traffic period.
 21 So even though we can estimate people will
 22 be working long hours, we don't have any -- I mean, data
 23 shows that the 4:00 to 6:00 period is the heavier volume.
 24 So that's -- so I'm comfortable with it
 25 being 4:00 to 6:00 in the EIR and as the trip cap peak

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1 itself the process and what -- what is looked at
 2 certified by a state agency to say that it's an
 3 adequate -- you know, like you're looking at the right
 4 thing?
 5 MS. GROSSMAN: The document would actually
 6 be certified by our City Council.
 7 CHAIRPERSON FERRICK: Okay.
 8 Commissioner Eiref.
 9 COMMISSIONER EIREF: I just wanted to
 10 continue to explore the trip cap time limit just a little
 11 bit more, because the big number, the 15,000 to me is not
 12 much of a real challenge. I'm guessing.
 13 You have -- if you have 6,600 employees on
 14 here, every one of them could drive their own car and
 15 still fit within 15,000 trips per day.
 16 The real ones that matter are the 7:00 to
 17 9:00 and the 5:00 -- 4:00 to 6:00, and I'm guessing that
 18 the 4:00 to 6:00 one is going to be the most operative
 19 one, because, you know, a lot of software developers,
 20 people I'm guessing -- just making guesses here -- that
 21 will be at Facebook are probably going to be staying a
 22 bit later and probably not heading home at four o'clock
 23 in the afternoon. Just -- just a guess.
 24 So I feel personally just based on having
 25 been around for ten or fifteen years in the community

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1 period.
 2 COMMISSIONER BRESSLER: I'm looking at the
 3 table of 5-15 again, and item number 8, 12 and 18
 4 according to this table are not fully mitigated.
 5 I'm reading that correctly; am I not?
 6 MR. TAYLOR: That's correct. So 8 is
 7 Willow and Bayfront Expressway, which is correct. It's
 8 not being fully mitigated.
 9 Willow and Newbridge is 12, which is not
 10 fully mitigated, and the other one?
 11 COMMISSIONER BRESSLER: University Avenue
 12 and Bayfront Expressway.
 13 MR. TAYLOR: University Avenue and
 14 Bayfront Expressway.
 15 COMMISSIONER BRESSLER: These are all out
 16 there. These intersections are -- I mean, it's not just
 17 the a Menlo Park issue. There seems to be some kind of
 18 flaw in this process where Menlo Park gets to decide the
 19 EIR and yet this is more of a regional issue, and now we
 20 get this letter from -- from Caltrain saying is there --
 21 does the larger community have any redress other than
 22 suing? Is that what they can do?
 23 MR. TAYLOR: I won't get into the legal
 24 pieces, but as far as -- there's -- there's reasons why
 25 these particular intersections don't -- are not fully

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1 mitigated.
 2 In the case of Willow and Newbridge, let's
 3 say, there's a need for an additional turn lane from
 4 Willow on to Newbridge, and there -- it's very difficult
 5 to get that additional turn lane on Willow as well as any
 6 need the receiving lane on Newbridge and there's
 7 buildings on the other side.
 8 COMMISSIONER BRESSLER: Yeah. I
 9 understand it's difficult and it's expensive, and then
 10 the City of Menlo Park comes along and says, "Well,
 11 that's okay because we want Facebook," but that may not
 12 be okay to somebody else.
 13 And, I mean, I guess that's just the nature
 14 of this process.
 15 I mean, am I missing something here? We
 16 do -- we do -- I guess what I'm looking for is a couple
 17 of things.
 18 One is who decides that it's worth saying,
 19 "Okay. That's fine." How is that decision made?
 20 MR. MURPHY: At -- at the end of the day,
 21 it's the City Council certifying the EIR. It's a pretty
 22 extensive process in terms of Notice of Preparation, the
 23 preparation of the Draft EIR, consultation with various
 24 agencies, response to comments -- comments, response to
 25 comments, Final EIR and ultimately certification by the
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1 Draft EIR. Once we get through the certification
 2 process, assuming we have an EIR to certify, we'll be
 3 notifying them at the conclusion of that.
 4 There are posting requirements, both at the
 5 state level and at the county level. So we do go through
 6 all those, those required steps, and as Mr. Murphy
 7 alluded to, there's been extensive outreach process,
 8 including many meetings with Atherton, many calls and
 9 discussions with Caltrans.
 10 We've done our best to reach out early and
 11 often to engage these participants and address all these
 12 concerns.
 13 COMMISSIONER BRESSLER: Just a thought.
 14 This is not meant as a criticism of staff or the City of
 15 men member. It's just that we have this huge document,
 16 and I mean, I'd like to cut through everything and just
 17 point out what's not mitigatable and who makes the
 18 decision.
 19 I think it's important for people to
 20 understand that.
 21 Okay. Thanks.
 22 CHAIRPERSON FERRICK: In case -- just for
 23 clarification perhaps on that, there's a really helpful
 24 table towards the back of that -- of that book 5-15.
 25 It has the intersections that are -- you
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1 City Council. So it's been a year plus long process.
 2 COMMISSIONER BRESSLER: I understand.
 3 MR. MURPHY: By it's the decision of the
 4 City Council.
 5 COMMISSIONER BRESSLER: Bottom line, it's
 6 the City of Menlo Park, period.
 7 CHAIRPERSON FERRICK: Well, can I
 8 interrupt? I'm sorry.
 9 What I have been trying to get from you,
 10 Rachel, but I did locate it in here. Page 4.2 of the
 11 Final EIR responses is a letter from the State of
 12 California Governor's Office of Planning and Research
 13 paragraph at the end says: "This letter acknowledges
 14 that you complied with the State Clearing House Review
 15 requirements for Draft Environmental documents pursuant
 16 to CEQA. Please contact" blah-blah-blah-blah.
 17 So when I was reading that, I thought, oh,
 18 it's sort of been codified as far as like being a process
 19 or a -- you kind of checked all the boxes that you needed
 20 to check in order to have a valid EIR?
 21 MS. GROSSMAN: We've complied with the
 22 requirements of the State Clearing House which is
 23 operates and mandates the requirements for environmental
 24 review.
 25 So as part of that, we notified them of the
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1 know, that are in that status that are difficult to
 2 mitigate for whatever reason. That's a good summary of
 3 the -- you know, cutting through the mass volume of pages
 4 to really what is -- what are the tougher intersections,
 5 and it sounds like seven -- could you explain what you
 6 told me earlier seven triggered?
 7 MS. GROSSMAN: So when I first presented
 8 this to you all back in January, we had -- with Mr.
 9 Taylor, there was that graphic that you had up, which is
 10 fantastic, indicates the ten different intersections, and
 11 only -- now to the point we update that table is that
 12 we've now removed Middlefield and Lytton based upon the
 13 re-analysis. So we're at nine intersections.
 14 And then the one intersection that is
 15 within our jurisdiction, which is Middlefield and Willow,
 16 can be fully mitigated, and that's indicated on this
 17 table.
 18 So we're down to looking at eight
 19 intersections, and of those eight intersections,
 20 including Marsh and Middlefield, which Mr. Taylor
 21 corrected. I was not quite clear on this. That is a
 22 partial mitigation.
 23 We have four that are partially mitigated,
 24 and they're infeasible to fully mitigate due to
 25 challenges related to right-of-way acquisition and other
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26 (Pages 98 to 101)

1 constraints as Mr. Taylor alluded to.
 2 The other four have mitigation measures
 3 that are feasible with Caltrans' approval, but we still
 4 consider that significant and unavoidable since we are
 5 unsure if Caltrans will approve those mitigation
 6 measures.
 7 CHAIRPERSON FERRICK: Thanks a lot.
 8 MS. GROSSMAN: Thank you.
 9 Commissioner Kadvany.
 10 COMMISSIONER KADVANY: Thank you. I guess
 11 we're still kind of in question -- kind of a question
 12 morphing to discussion, but I want to follow up on
 13 Commissioner Eiref's point.
 14 I thought about this 4:00 to 6:00 PM or
 15 5:00 to 6:00 PM peak for the afternoon. I thought I
 16 understood when Commissioner Riggs was talking about the
 17 same issue, he was talking about the morning peak.
 18 And so Mr. Taylor's discussion of when the
 19 peak hours for the morning, but we get the peak for the
 20 afternoon, also there, the data peak?
 21 MR. TAYLOR: I don't -- I don't have it
 22 off the top of my head, but I mean, typically in these
 23 cases, it's about -- 4:30 to 5:30 tends to be the peak
 24 hour, but I don't have the data in front of me right now
 25 for this particular case.

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1 COMMISSIONER KADVANY: Workforce
 2 management. I'm sorry.
 3 MS. GROSSMAN: That was not something that
 4 was analyzed in the Environmental Impact Report. So
 5 additional analysis would be required, which would push
 6 the project back.
 7 I'm not sure what would result out of that
 8 processes, but we would need to further analyze that if
 9 the analysis were to be changed as a result of the change
 10 to the peak period.
 11 MR. TAYLOR: I mean, the other case, too,
 12 is, you know, depending on where you put it, if you put
 13 it 4:00 to 6:00 or you put it 5:00 to 7:00, they could
 14 potentially shift one way or the other. They could shift
 15 earlier and try to leave earlier. They can shift later
 16 and try to go after the peak period at that time.
 17 So either way you do it, I think you always
 18 have that risk that there could be something at another
 19 hour of the day.
 20 COMMISSIONER KADVANY: Well, I -- I mean,
 21 I think what we're trying to do is incentivize exactly
 22 that behavior so that we direct the behavior in that
 23 direction.
 24 So we want to basically optimize our, you
 25 know, placement of -- of the peak, unless indeed Facebook

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1 But I know we did look at that when we were
 2 putting these documents together to determine what would
 3 be the appropriate peak period, and the peak period is
 4 really the -- the peak of those adjacent roadways.
 5 It's not to say that there's some -- some
 6 level of traffic in either side of that, but that is the
 7 peak time frame.
 8 COMMISSIONER KADVANY: Right. We're
 9 talking about that location and not on 101, which may hit
 10 its peak somewhat later because it's drawing traffic
 11 from -- that would be good if we -- if we do that.
 12 I have some sympathy with what Commissioner
 13 Eiref is pointing out, because it is intuitive, it's not
 14 database. Database.
 15 Is -- I mean, is there a question about
 16 feasibility if the -- if the peak is moved later from
 17 Facebook's perspective from your discussions with them?
 18 Are you -- are they running -- are they
 19 concerned that too many people will be then leaving in
 20 the 6:00 to seven o'clock range to make that, you know,
 21 feas -- if that provided a greater advantage to the City
 22 from the perspective of traffic density, volume
 23 mitigation, does it nonetheless provide issues for, you
 24 know, crowd management at Facebook?
 25 MS. GROSSMAN: Well --

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1 has -- you know, they're basically concerns basically
 2 with what they expect to see from, you know, their own --
 3 their own workforce.
 4 My question -- I mean, my earlier question
 5 was not about the EIR. I know this -- I know there was
 6 not -- the EIR did not say Facebook said, "No, I don't
 7 think we could handle that."
 8 I was asking sort of in terms of the
 9 informal discussions about when that was -- was set.
 10 But I'll leave it at that. Maybe
 11 Commissioner Eiref has some new ideas on the topic.
 12 CHAIRPERSON FERRICK: Well, there's --
 13 Commissioner Riggs is next because his light's on.
 14 COMMISSIONER RIGGS: Thank you, Madam
 15 Chair.
 16 By the way, I should -- if you want to
 17 refer to the peak numbers following page 5-50 in the
 18 Final EIR, two pages following is the existing peak hour
 19 volumes chart from Atkins.
 20 So I did want to just confirm something a
 21 bit following up Commissioner Bressler's question,
 22 because inevitably when we see an EIR, we start to think
 23 of it as a prescription for the applicant and the City,
 24 whereas -- correct me if I'm wrong, but an EIR is a
 25 reporting -- is a report that is required by the City in

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1 order to prove that we have evaluated all -- al of the
 2 environmental aspects of a project.
 3 MS. GROSSMAN: I'll start and if Leigh
 4 wants to chime in with anything else.
 5 So the California Environmental Quality Act
 6 identifies preparation of an environmental document as a
 7 public disclosure document so that the approving body can
 8 be informed as well as the public can be informed of any
 9 potentially significant environmental impacts resulting
 10 from the project.
 11 So the tools have been informed that the
 12 decision-makers and the public and to make a
 13 determination such as in this case, if the public
 14 benefits and the benefits of the project outweigh those
 15 significant environmental impacts.
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1 funded by the bond and is required in that mitigation
 2 measure.
 3 COMMISSIONER RIGGS: You foresaw my second
 4 question. So I wanted to offer -- offer that to Chair
 5 Bressler that I -- I mean, to Commissioner Bressler that
 6 even though the EIR indicates that it's not feasible,
 7 because we cannot assume or direct it as the City of
 8 Menlo Park, nonetheless, these are -- there is an effort
 9 if we don't call it mitigation which could be pursued.
 10 So how do we know as representatives of
 11 Menlo Park that this is something that will be pursued by
 12 the applicant?
 13 For example, the left turn on to Newbridge.
 14 MR. MURPHY: So there's a -- a slightly --
 15 slight differences between feasibility and then something
 16 that's considered significant and unavoidable.
 17 In terms of the left turn from Willow on to
 18 Newbridge, that was deemed infeasible. That's not part
 19 of the mitigation measure. That's not part of the thing
 20 that Facebook and the applicant needs to make a good
 21 faith effort to pursue.
 22 What they do need to pursue is the other
 23 aspects of that mitigation measure, which I believe
 24 included an additional third right through lane westbound
 25 towards the on-ramp to 101.

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1 So in that case, in the disclosure
 2 document. However, there are also teeth within that
 3 disclosure document called the mitigation measures which
 4 the applicant is required to implement in order to
 5 mitigate impacts of the project, and those are contained
 6 again within the Mitigation Monitoring Reporting Program.
 7 COMMISSIONER RIGGS: Right, and that's
 8 under a given set of rules. For example, the assumption
 9 that falls within the jurisdiction
 10 MS. GROSSMAN: Just to clarify, those
 11 mitigation measures will be required to be pursued.
 12 Like, for example, with Caltrans, the applicant
 13 diligently pursue those upgrades for a period of -- of
 14 five years.
 15 If they're unable to construct those
 16 upgrades, if they cannot achieve approval from Caltrans,
 17 then they are -- the bonds they are required to deposit
 18 would be utilized for transportation improvement within
 19 the City with an emphasis given so they're east of 101.
 20 Even though they're not in our
 21 jurisdiction, the mitigation would move forward in that
 22 way.
 23 COMMISSIONER RIGGS: As an encumbrance on
 24 the applicant.
 25 MS. GROSSMAN: Correct. That would be

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1 That's the part that is the -- because that
 2 requires Caltrans' approval, and I think even maybe --
 3 that requires Caltrans' approval. That is the part that
 4 they need to pursue diligently for five years.
 5 That's separate from the left turn portion
 6 of the mitigation -- of the potential improvement that
 7 would have fully mitigated the impact.
 8 COMMISSIONER RIGGS: All right. Thank
 9 you. I picked a poor example, but I think that is
 10 reassuring.
 11 And following up on a question posed by
 12 speaker Adina Levin, and this would be for Leigh.
 13 If there is a CEQA based suit, does this in
 14 any way affect the Development Agreement?
 15 MS. PRINCE: So in the Development
 16 Agreement, there is a section entitled: "Conditions
 17 Precedent," and it lists that the obligations that are in
 18 there, the onetime manifest in Section 7 and then 9
 19 through 19, those go on hold until all the legal
 20 challenges are resolved.
 21 So I think Adina's question was what does
 22 that do to those DA issues that are related to East Palo
 23 Alto.
 24 There are some in here that relate to East
 25 Palo Alto. For example, 7.2.2 identifies a payment

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1 related to some restriping improvements. That is in
 2 paragraph 7. So that would go on hold were there to be a
 3 litigation that comes forward.
 4 But when that's resolved to the
 5 satisfaction of Facebook and the owner, then that comes
 6 back into play. So it would disappear.
 7 COMMISSIONER RIGGS: All right. In
 8 effect, if you don't get to build anything, you don't
 9 have to pay the payments for building something.
 10 MS. PRINCE: Right.
 11 COMMISSIONER RIGGS: Okay. Thank you.
 12 I wanted to just make the note that I
 13 support the list of public benefits and the efforts that
 14 the City Council subcommittee and the -- and the
 15 negotiating team have come up with, and personally I
 16 think that Menlo Park did a very good job with
 17 negotiating.
 18 So my comment here is not with the result,
 19 but with definitions.
 20 I would just like to say that in the
 21 future, we should use the term "public benefit" in a
 22 somewhat more restrictive way, and I just wanted to
 23 separate my approval tonight -- potential approval
 24 tonight from support of the way in which that was
 25 written.

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1 and indeed there are peak hour volumes there, but peak
 2 hour is defined as 4:00 to 6:00 PM.
 3 We don't have different histograms,
 4 distributions from 4:30 to 6:30, from 5:00 to 7:00, from
 5 5:30 to 7:30 and so on, which would be the kind of
 6 evidence we need to see when the true peak exists.
 7 So this is -- the peak as defined as 4:00
 8 to 6:00. Whether it's the truth, you know, a real peak
 9 or whether it differs and so on, that data is not here.
 10 So I just wanted to make that clear for the
 11 record.
 12 CHAIRPERSON FERRICK: Thank you, and
 13 Commissioner Bressler.
 14 COMMISSIONER BRESSLER: I don't think I
 15 would have any recommendations based on things about the
 16 mitigated intersections, but just a follow with what John
 17 is saying.
 18 There's a difference between when peak
 19 traffic is and the time at which you could actually
 20 assign this window, which would have the most beneficial
 21 effect.
 22 Those are different things, and we don't
 23 have the analysis for that.
 24 In other words, it may not be the case that
 25 the peak traffic is at 6:30, but that doesn't mean that

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1 I think we will be developing a better way.
 2 Thank you.
 3 CHAIRPERSON FERRICK: And I'll go to you
 4 next, but I wanted to in the meantime suggest that it
 5 sounds like there's a couple things that there --
 6 especially Chair -- Commissioner Bressler and Kadwany --
 7 Kadwany were concerned about.
 8 We do have the ability to make
 9 recommendations along with whatever of these
 10 recommendations we choose to make to the City Council.
 11 So, for example, if you thought it was
 12 important to emphasize to work productively to resolve
 13 Caltrans' questions of feasibility on traffic impacts at
 14 the intersections they named in their letter, whatever,
 15 have you, we can do that.
 16 It's just that -- you know, they're
 17 recommendations. So that's all we are doing, anyway. So
 18 I just wanted to make that as a potential way to move
 19 forward, particularly with -- with what you were
 20 concerned about.
 21 But before you jump in, I wanted to offer
 22 John the floor.
 23 COMMISSIONER KADVANY: Okay. Just the
 24 last footnote to this afternoon peak hour discussion.
 25 Commissioner Riggs had identified graphics on page 5-50,

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1 if they have an incredible number of cars from Facebook
 2 go out at 6:30 because it's past their -- their time, it
 3 doesn't cause a huge problem. Okay.
 4 So based on what I know here, we don't --
 5 we don't know the answer to that question, but we have to
 6 decide whether we want to pursue that or not.
 7 CHAIRPERSON FERRICK: Do you have any
 8 suggestions on how -- do you want to pursue that or --
 9 COMMISSIONER BRESSLER: You know, I -- it
 10 was something I brought up. I just wanted to clarify it
 11 a little bit, and I'm going to let the people that
 12 brought it up say something if they want to about that.
 13 CHAIRPERSON FERRICK: Ben.
 14 COMMISSIONER EIREF: I'm still -- I'm
 15 still kind of ruminating on this one. I think there's
 16 different things you can optimize for. I mean, one of
 17 them would be -- so I guess the spirit of this cap
 18 concept, at least when I was originally thinking about it
 19 was you're trying to -- we're effectively doubling the
 20 number of employees on this campus and we're doing it
 21 with the notion that Facebook has a phenomenal track
 22 record of employees who rideshare together, take the bus,
 23 that kind of stuff, and effectively the number of
 24 vehicles that would be going in and out during that total
 25 course of the day would be perhaps not even a whole lot

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1 than it used to be in the past.
 2 But the way that -- so -- so one potential
 3 way of interpreting this is that you're trying to
 4 encourage ridesharing, bus sharing, all that kind of
 5 stuff.
 6 And therefore if you don't make the cap
 7 period, the real tight period, if you don't use that to
 8 encapsulate the most popular travel times, then you've
 9 kind of missed the boat.
 10 Because, you know -- let's pretend that a
 11 lot of employees will behave like software developers and
 12 they'll arrive late and leave late.
 13 So there's nothing in this -- you know, if
 14 we don't interpret it that way, then we're not effect --
 15 effectively getting to where we're trying to get to.
 16 If we're really trying to optimize around,
 17 you know, minimizing the impacts specifically the
 18 intersection around the front entrance of that campus,
 19 then that's a totally different thing to optimize for.
 20 Because it may be true that the peak time
 21 is 4:30 in the afternoon, and therefore we've kind of hit
 22 that, but it's a different thing to optimize for.
 23 I personally philosophically was trying to
 24 shoot for more driving towards fewer total number of
 25 trips, and the 15,000 number doesn't do that, because you

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1 traffic peaks at specifically the entrance to that com --
 2 complex around 4:00 to 6:00, but if you look around town,
 3 if you look along Willow closer to downtown, look on
 4 Marsh, look on 101, it's incredibly busy all the way
 5 through seven o'clock, and it does move around quite a
 6 bit depending on the day.
 7 But to me, there's very broad shoulders
 8 kind of thing. It's not like it peaks out at 5:30 and
 9 all of a sudden it just tails off.
 10 CHAIRPERSON FERRICK: Well then maybe the
 11 question is how come there's a two-hour peak period or
 12 how was that arrived at.
 13 COMMISSIONER EIREF: You can be in
 14 complete dead standstill on 101 at 6:30 in the evening.
 15 MS. GROSSMAN: I want to speak to a couple
 16 points. I'll turn it over to Mr. Taylor to speak about
 17 why a two-hour period was chosen.
 18 First, I just want to clarify for the
 19 15,000 daily trips, that's not just the -- the single
 20 occupancy vehicle trips coming in. That's all their
 21 deliveries, that's their shuttle trips. It's all their
 22 contractors coming in.
 23
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1 can have -- again, you can have 7,000 employees all drive
 2 their own car and you can still do it in 7-15,000. So
 3 it's really that question that I'm personally wrestling
 4 with, and I don't know what the right answer at this
 5 point, but --
 6 CHAIRPERSON FERRICK: I wanted to add on
 7 to that the -- because that's one thing that it -- it
 8 does -- this trip -- peak time trip cap to me, it
 9 wouldn't -- so we know that in general, traffic is
 10 heavier from 4:00 to 6:00 PM according to the data.
 11 So even if they do have different hours
 12 that they keep, that's okay as long as it's not impacting
 13 the traffic surrounding the area, the impacted
 14 intersections and the freeway on-ramps.
 15 That's what we're worried about. It's not
 16 that we need to stick it to the -- you know, the -- you
 17 know, if they're willing to work from noon to 9:00 PM and
 18 it doesn't affect our traffic and doesn't cause an impact
 19 to the community, then that's a good thing, I think.
 20 COMMISSIONER EIREF: Well, just -- I'm
 21 sorry. One quick addendum, which is that -- and there
 22 are -- there's an incredible amount of data in here, so
 23 it actually hard to get to the nub of exactly where to
 24 look.
 25 But I think if you ignore and perhaps the

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1 That is every single in and out to that
 2 campus. So any time a vehicle comes and leaves, that's
 3 two trips. It doesn't matter what kind of vehicle it is.
 4 And then as far as the period that we've
 5 chosen, we identified those times, because that's when
 6 traffic is the worst, and we're trying to optimize
 7 benefit for the entire community.
 8 That's why those times were chose chosen,
 9 because we found, for example, in the morning, after --
 10 it was after eight o'clock when trips are really rapidly
 11 falling off.
 12 So if we were to shift the peak period up
 13 to 8:00 to 10:00, we would actually be lessening
 14 improvements for those intersections for all the
 15 community who's utilizing them.
 16 MR. TAYLOR: I mean, ultimately, as far as
 17 the document analyzes a peak hour, so that's what the
 18 document actually analyzed. That's what we do in the
 19 CEQA documents and the EIR is to analyze the peak hour.
 20 So initially the discussion was well, how
 21 can we limit that peak hour? Because it's going to be an
 22 impact and then it can be a mitigation, and we started
 23 thinking well, one hour. We know you can just shift over
 24 here or shift over there.
 25 So we said let's encompass a two-hour

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30 (Pages 114 to 117)

1 period and make it a peak period. So then we're
 2 encompassing a larger amount of time so that they can't
 3 just shift one or the other this way or that way, and
 4 that's where the peak period concept came in.
 5 And so then we looked at the data and
 6 looked at the time frames to figure out what is the best
 7 time frame to get that two-hour period in, and that's
 8 where the 7:00 to 9:00 time frame came in and the 4:00 to
 9 6:00 time frame.
 10 It -- it could have been three hours, it
 11 could have been four hours, because there are times when
 12 there's a flatter peak in some cases and certain roadways
 13 where you do get that elongated time frame of some peak.
 14 But it is lower at -- on the fringes of
 15 that and higher in the middle, and so we were trying to
 16 encompass that with the peak period and then how to
 17 essentially limit any impacts from the project.
 18 So that's where the - the two-hour window
 19 came in.
 20 CHAIRPERSON FERRICK: Thanks, Chip.
 21 John, you had had your light on. Go ahead.
 22 COMMISSIONER KADVANY: Yeah. Just a quick
 23 comment. Again, I think it's mainly the afternoon, not
 24 the -- the mornings that we're focusing on.
 25 And also, you know, the other variable here

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1 misunderstood it, but I thought Chip said that the peak
 2 hour is 4:30 to 5:30 and they tagged on an extra half an
 3 hour to make it span two hours.
 4 And you know the 4:30 to 5:30 because of
 5 how?
 6 MR. TAYLOR: I mean, I -- that number, I
 7 don't have it in my head whether it was 4:15 to 5:15,
 8 4:30 to 5:30, but I know when we looked at the date
 9 initially, we had some data for the roadway segments out
 10 there to determine what is the peak period time, what is
 11 the appropriate time by putting on some additional time
 12 on either side of that.
 13 So that's how we determined both 7:00 to
 14 9:00 and the 4:00 to 6:00 is by using that data.
 15 CHAIRPERSON FERRICK: Thanks.
 16 Vince.
 17 COMMISSIONER BRESSLER: I'm just going to
 18 be quick. I got -- we could go on a long time on this
 19 issue, but the bottom line is are we willing to create a
 20 problem with this?
 21 To me, I'm not, because it's not well-
 22 defined enough. I don't agree that it's sticking it to
 23 them. I really think this is trying to optimize that.
 24 But you have to also realize that
 25 there's -- there's the self-correcting mechanism here

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1 is the Development Agreement parameter for penalties.
 2 I mean, we've got too -- you know, we've
 3 got too many variables or constants going on here.
 4 I think our main concern really is keeping
 5 the traffic down, and if we had to adjust the penalty to
 6 have a softer penalty structure to accommodate a
 7 different time window, I'd certainly be interested in
 8 that.
 9 I -- you know, it's -- you know, the -- the
 10 outcome is much more important than the particular form
 11 we've chosen here.
 12 So -- and again, Commissioner Ferrick is --
 13 has maybe said once or twice about what the data show,
 14 but I don't think we have the data that shows the
 15 selection -- you know, that justifies the selection of
 16 this -- you know, of this peak or the selection of other
 17 peaks. You know, it doesn't give you significant
 18 benefit.
 19 So it is, you know -- it is -- it's not
 20 clear that it's part of the EIR because it's more -- you
 21 know, it's part of our agreement of how we want this
 22 project defined.
 23 The EIR is fine. It's a question of what
 24 the project is and just we know about it.
 25 CHAIRPERSON FERRICK: Well, I may have

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1 that people don't want to drive into the teeth of really
 2 horrible traffic, as well.
 3 So I don't really want to mess with it. I
 4 just -- this is just pointing out problems with the whole
 5 process, and it really bothers me when we say things are
 6 unmitigatable, but that's okay, too.
 7 But I just -- I think that's where we're
 8 at.
 9 CHAIRPERSON FERRICK: Just to clarify,
 10 we're not saying that's okay, per se. We're saying that
 11 the benefits outweigh the -- and I don't mean the
 12 Development Agreement benefits --
 13 COMMISSIONER BRESSLER: Yeah.
 14 CHAIRPERSON FERRICK: -- but the project
 15 benefits outweigh --
 16 COMMISSIONER BRESSLER: There's no formal
 17 process to make that determination, so --
 18 CHAIRPERSON FERRICK: And -- and even
 19 though we may make that determination, the -- it doesn't
 20 alleviate the responsibility on the applicant to -- to
 21 try to correct and mitigate the intersections in
 22 particular.
 23 Was there -- Henry, go ahead.
 24 COMMISSIONER RIGGS: Oh. I just turned my
 25 light on, so Ben may have had a comment.

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1 CHAIRPERSON FERRICK: I didn't even see
 2 your light, Ben. Go ahead.
 3 COMMISSIONER EIREF: Yeah. I was just
 4 going to say actually now that I've heard the
 5 explanation, I think I kind of get the concept of how you
 6 came up with it, so I'm a little more comfortable with
 7 it.
 8 I do think, though, for the record that
 9 incentive to -- come six o'clock, the incentive is going
 10 to drop pretty close to zero, because I think the
 11 15,000's not going to be a problem.
 12 If there's ever going to be a problem in
 13 the next ten, fifteen years, it's going to be in those
 14 zones that we've picked, and that incentive's going to
 15 drop off dramatically when you get to six o'clock.
 16 So depending on what happens, we don't
 17 know, but at least I understand kind of the concept,
 18 which helps a lot.
 19 Thanks.
 20 CHAIRPERSON FERRICK: And -- and just to
 21 add to that, if -- if it's the case that the traffic
 22 outside in the greater area is dropping off at 6:00, then
 23 that is okay, if they pile out at 6:01.
 24 COMMISSIONER EIREF: Comes 6:30.
 25 CHAIRPERSON FERRICK: All right. Go

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1 ahead, John.
 2 COMMISSIONER KADVANY: I guess this is
 3 kind of a question for staff. I -- I understand the
 4 issue about keeping the 4:00 to 6:00 time frame, because
 5 that's what's been analyzed in the EIR and so on, but
 6 if -- if that was something that was subject to review
 7 based on data, is that something that can be considered
 8 in the -- you know, every year or every two years or
 9 something like that, we look -- you know, we look at that
 10 one?
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1 We don't know what's going to happen to
 2 traffic. Traffic patterns could change. For example,
 3 we're locking this in now.
 4 And so another alternative is just we look
 5 at those parameters as variable instead of fixed and
 6 they're subject to review.
 7 I mean, we're -- we're trying to make this
 8 thing work. We -- we're not trying to run Facebook into
 9 the penalty box. Far from it.
 10 We are just trying to -- we're trying to
 11 keep the traffic down. That's all -- that's really all
 12 we care about.
 13 I'd much rather have a traffic design that
 14 worked great and we had no penalties. You know, carrot
 15 rather than the stick and pack rather than nut stick.
 16 So -- I don't know if that's any -- is that
 17 all within the realm of possibility to thread the needle
 18 here?
 19 In other words, we -- in other words, we
 20 kick the can -- we don't ignore the problem, but we do
 21 kind of allow it to be raised in the -- in the future.
 22 CHAIRPERSON FERRICK: So could it be a
 23 recommendation to have flexibility in analyzing peak
 24 hours at a future date?
 25 COMMISSIONER KADVANY: Something along

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1 those lines. That's an open-ended question for staff.
 2 MR. MURPHY: Yeah. I mean, we're just
 3 coordinating here. We all believe it would be pretty
 4 challenging. That's something that you'd probably want
 5 to ask explicitly of the applicant, as well.
 6 There's been a ton of time and effort and
 7 if this was, you know, brought up a number of months ago,
 8 we could have examined this, but this is -- at this point
 9 in time, I would be concerned to want to bring up
 10 anything like that.
 11 So if you wanted to pose that to the
 12 applicant, but there's so many layers to this, that that
 13 causes some concern.
 14 If there was something that was done that
 15 was mutually beneficial for everybody and would fit
 16 within the parameters -- I mean, we're open to new ideas.
 17 It's just a matter of where this is coming in at this
 18 point in time.
 19 CHAIRPERSON FERRICK: Commissioner Riggs,
 20 sorry about that.
 21 COMMISSIONER RIGGS: Thank you. Quite all
 22 right.
 23 Just because I -- we've discussed it, I
 24 can't resist throwing in two cents.
 25 One is that if I thought I actually could

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1 predict what the driving habits were of employees that
 2 have not even been hired yet and that the likelihood is
 3 that they would work till 7:00 PM and that unfortunately
 4 they all might decide to out for beer at that time twice
 5 a week, certainly not every night, that that impact could
 6 be really significant.
 7 But I think trying to read that crystal
 8 ball is really fruitless, plus I think they might get
 9 sick for going out for beer and discovering their own
 10 traffic jams.
 11 So I'm willing to just let this go.
 12 I also would like to note that not
 13 withstanding the peak hour trip cap and the daily cap,
 14 there still is a limited amount of parking within one
 15 mile of the campus, and probably a whole -- a very
 16 significant reduction in productivity if you walk that
 17 mile.
 18 So I'm just -- I'm willing to go with this,
 19 not knowing any better. In fact, to the point where I
 20 would like to make a motion.
 21 Perhaps someone would like to separate the
 22 five items, but I don't have any issues with any of the
 23 items after a fair amount of reading.
 24 So I would like to move that we recommend
 25 to Council all five points.

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1 required effort into the Development Agreement terms,
 2 even the ones that they have to self-monitor, and then
 3 those that have outside monitoring such as these trip
 4 caps, I know that they've make every effort.
 5 I really think that the culture there is
 6 one that they do want to reduce their trips; not because
 7 of a potential fine, but because they want to lessen the
 8 impacts of greenhouse emissions on the earth.
 9 With that, I'm happy to have been the
 10 seconder of the motion, and we can further discuss.
 11 Go ahead, Vince.
 12 COMMISSIONER BRESSLER: Well, I have a
 13 totally unrelated plan. I didn't know we were going to
 14 get to this so quickly.
 15 But if you look at the 800,000, that's
 16 about eighty cents a square foot, and typically, I mean,
 17 some travel agent moves in downtown and we're charging
 18 them \$2.00 a square foot. I've never seen eighty cents.
 19 So that's why I asked hey, how was -- how
 20 did you come up with this number? Well, it was a
 21 negotiated position. Well, how is it fair that we charge
 22 \$2.00 a square foot for some little mom and pop shop
 23 downtown and then these guys get eighty cents? That's --
 24 and we're saying they did a great job negotiating. Well,
 25 explain to me how they did.

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1 CHAIRPERSON FERRICK: And I'll second
 2 that.
 3 Thank you, Henry, and with that, I wanted
 4 to -- I'll get to you in just a second, Vince.
 5 I wanted to just add that all the questions
 6 I had that were answered, and as I had earlier stated at
 7 our January hearing, that the EIR in general on balance
 8 was -- was pretty reasonable and not alarming in nature
 9 and that it's been good to note that there hasn't been
 10 any new significant and unavoidable impacts since then
 11 based on the comments.
 12 And that I was also kind of doing a little
 13 tally of the benefit to the City that's not only
 14 monetarily that I noted, too, but the amount of jobs that
 15 are going to be brought to the City is really tremendous,
 16 and of all different types, which I think is fantastic.
 17 And then the partnerships that we've seen
 18 over the last eighteen months in the community are
 19 unprecedented and just a -- really a model for any future
 20 companies that come in. I only hope they can be half as
 21 good.
 22 And so, you know, there was that and then
 23 the -- the ongoing -- you know, every way they've
 24 demonstrated, I have all the confidence that they're
 25 going to continue to -- to put forth more than just the

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1 CHAIRPERSON FERRICK: I don't want to try
 2 to, you know, get into a debate, but my calculations were
 3 a little different.
 4 One is that they're not in a retail area,
 5 like that's not -- you know, that's not a place where
 6 people would shop.
 7 So you know how we have a lower in-lieu fee
 8 for those that are off Santa Cruz Ave? These guys are
 9 way off Santa Cruz Ave.
 10 And then the other part is that -- to note
 11 that the net financial gain to the City goes beyond that
 12 800,000 if you look at all the sales tax revenue,
 13 property tax revenue, TOT, UUT annually reoccurring not
 14 including sales tax, and then subtract out all our annual
 15 expenditures, which is really labor costs for the City,
 16 so those are jobs, too.
 17 We still net almost 168,000, between 75 and
 18 168,000 up and above the 800.
 19 And so to me, that's really approaching a
 20 million, and so you could say it's a dollar a square
 21 foot.
 22 COMMISSIONER BRESSLER: It's still a low
 23 number. I mean -- in my opinion. Why? Because we have
 24 numbers for a retail district and we know that the M-2
 25 produces a lot more retail revenue than the downtown, but

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1 then when you ask the question, I get an answer like,
 2 well, that's -- we can't tell you. It's kind of closely
 3 held information. Can't tell you what -- what Sun did.
 4 Come on. And yet we're supposed to approve
 5 this.
 6 The one solid data point that I have says
 7 this is a low number.
 8 COMMISSIONER RIGGS: Sun didn't pay any
 9 sales tax that I know of after they moved their
 10 headquarters.
 11 COMMISSIONER BRESSLER: Well, this is
 12 true. This is true. I mean, it's not -- it's not as
 13 simple as I'm making it sound, but based on what I can
 14 compare it to, that's my reaction.
 15 CHAIRPERSON FERRICK: Thanks, Vince.
 16 John?
 17 COMMISSIONER KADVANY: Just -- I didn't
 18 intend to comment on that, but just some data points.
 19 This -- the negotiated agreement has to be
 20 agreed to by the applicant. So that's -- you know,
 21 basically we can't demand anything. We have to -- so we
 22 have to end up with some settlement point and something
 23 is always better than something less -- something less.
 24 Second, the West Campus is still yet to
 25 get -- yet to appear, and that part of it's still -- is

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1 so it's -- it isn't entirely appropriate to demand
 2 something.
 3 What that number is, I don't know. So I
 4 have some other -- I don't know if you want to continue
 5 this.
 6 COMMISSIONER BRESSLER: I just want to
 7 react to that.
 8 COMMISSIONER KADVANY: That's kind of
 9 everything I've thought about on this topic, and I'm --
 10 I'm kind -- I'm okay with the one million dollar number.
 11 The fact that it's happening sooner rather
 12 than later is time valued money, too, rather than drawing
 13 things out, so --
 14 COMMISSIONER BRESSLER: My reaction is --
 15 is partly to me thinking that the number might be low,
 16 but it's mostly to the fact that we have people here who
 17 negotiated this agreement and now we're drawing out up
 18 here the arguments in favor of that number, not -- that's
 19 just wrong. I'm sorry.
 20 If you're negotiating -- if I was there
 21 negotiating that agreement, I'd be prepared to say why
 22 that number makes sense.
 23 Because if you're not -- if you can't do
 24 that here, then what were you doing in the negotiation?
 25 I'm sorry if it makes people uncomfortable

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1 still open.
 2 And there are other comparative numbers out
 3 there. I mean, it -- but it, you know, depends what you
 4 want to -- my understanding is the City of Palo Alto gets
 5 something like almost five million dollars a year in tax
 6 revenue or mixed revenues from the Stanford Shopping
 7 Center, which is probably one of the most profitable
 8 shopping centers around.
 9 The city is twice as -- maybe almost twice
 10 as big as Menlo Park, and so, you know, there are a bunch
 11 of numbers out there.
 12 You know, the two numbers I do -- I
 13 think -- I don't know quite how to use them are -- I
 14 don't know. In 2003 or whatever it was we passed as a
 15 City the Parks and Recreation bond measure that was about
 16 thirty million dollars, maybe it was 31 million dollars,
 17 and then several years later, we passed a schools bond,
 18 which is ninety million dollars, I think.
 19 So the City, we as residents are ready to
 20 pony up to make our City what we want it to be, and my
 21 feeling, whatever the -- I feel it's totally appropriate
 22 to see -- you know, see the significant businesses in our
 23 community as doing the same.
 24 There's no other way for the City -- City
 25 to have the quality that it can have and should have, and

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1 to hear this, but -- I mean, this is the frustration that
 2 I have with the way these kinds of things are negotiated.
 3 I don't have any evidence that -- that any
 4 real thought went into that, and I -- that's just a
 5 problem I have with the whole process.
 6 CHAIRPERSON FERRICK: All right. Jack,
 7 did you want to say something?
 8 COMMISSIONER O'MALLEY: Yeah. I think
 9 we've moved far enough. I'd move for a vote.
 10 CHAIRPERSON FERRICK: All right. So
 11 Jack's calling for the vote.
 12 John, before we do that --
 13 COMMISSIONER KADVANY: I -- I have some
 14 comments. They're not divisive issues by any means. So
 15 before we vote, I'd like to make --
 16 CHAIRPERSON FERRICK: Go ahead.
 17 COMMISSIONER KADVANY: A couple of these
 18 are kind of quasi-actionable, but, you know, they're sort
 19 of voluntary in some way.
 20 Something I have a concern about is
 21 potential bike safety on the overpasses when -- with the
 22 restriping that's going to go through.
 23 I'm sure the plans for how -- this will be
 24 on Willow and University on 101. I'm sure the way that
 25 that's going to be done is absolutely the best possible.

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1 Nonetheless, I mean, I don't like riding
2 in those -- you know, cutting action cross an on-ramp and
3 then going up on to a bridge with pretty heavy traffic.
4 So whatever this -- for the City, perhaps,
5 whatever we can do to make that safe, that's not the kind
6 of thing, you know, that -- I don't think that is covered
7 in our EIR that we actually may be creating some kind of
8 risk that didn't exist there before.
9 So this is not a Facebook thing. It's
10 like -- it's basically how we're going ahead with that,
11 and if there's more that we can do to make it safe.
12 There was a comment -- there was a comment
13 about greenhouse gases in the FEI -- in the Final EIR,
14 and it was comparing Menlo Gateway project to Facebook
15 and how -- you know, what a better Transportation Demand
16 Management program Facebook had compared to what we saw
17 in Menlo Gateway and, you know, can we learn anything
18 from that?
19 And my reflection on that is the fact
20 the -- there's a big difference there, which in this
21 case, we have Facebook, a single business that can make
22 certain it's hiring the people and can make certain
23 demand of its workforce that in the case a developer
24 couldn't happen.
25 So it's kind of -- this is kind of for the

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1 actionable maybe by Facebook, maybe by other people.
2 When I -- I was really surprised when I
3 read in the final document about the final gap in the --
4 in the Bay Trail that apparently because the numerous
5 jurisdictions which converge on this nearly one mile
6 segment, you could -- the estimated time to actually
7 complete this -- this segment could be like something
8 like -- I think it is it said eleven to fifteen years.
9 Let's call it ten years. That's incredible.
10 So any -- if Facebook has any great ideas
11 about how to improve the urban planning and tran -- you
12 know, transportation planning process using social
13 networking or other processes to reduce that ten years to
14 a few -- fewer years, I think that would be fabulous.
15 And that's, you know, my comments, at which
16 point I'm also happy to entertain --
17 CHAIRPERSON FERRICK: Actually --
18 COMMISSIONER KADVANY: Maybe we have some
19 further comments.
20 CHAIRPERSON FERRICK: Well, I do. When
21 you were -- I just did some calculations -- some people
22 call it cowboy math, but I'm hoping to let Vince know so
23 you feel a little better about the -- I actually added up
24 on the term sheet -- not even everything, just the things
25 that are calling out an actual dollar figure, and beyond

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1 City and for people who live in Menlo Park, if we want to
2 try to get more benefit in terms of controlling
3 greenhouse gases at this developmental level, that may
4 be -- that may be what we have to look at and something
5 the way -- something about the way the development
6 proceeds, where we bring people in to fill -- fill these
7 buildings once they're built.
8 There are incredible complaints in the
9 FEIR about -- so these are comments on the Draft EIR
10 about housing in Menlo Park and how we're -- you know,
11 we're not doing anything. We're bringing in all these
12 employees, we're not doing anything.
13 And it's true. Our Housing Element is out
14 of -- is out of date, but that's on tap to be reviewed.
15 But at the same time, we do have this
16 Specific Plan, and this is more -- another reason, the
17 importance of the Specific Plan that while it's not a
18 Housing Element, it does not address all housing needs by
19 a long shot, it is addressing the substance of those
20 complaints that Menlo Park is doing something about
21 housing through that instrument.
22 So, you know, people are serious about
23 that. That's a reason to pay attention to the Specific
24 Plan.
25 The last thing is -- this is kind of semi-

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1 a -- the \$800,000 payment, and not even including the
2 other incremental benefit in fees and taxes and what not,
3 Facebook will make a one-time payment to the City, the
4 1.1 million for capital improvements.
5 Facebook will create a community fund with
6 an initial \$500,000 contribution. There's the Willow
7 Road Business Improvement District, \$50,000 in feed
8 funding. There's the one million for pedestrian crossing
9 improvements at Willow Road and 101.
10 Those are only the ones with figures
11 listed, and that comes to 2.65 million, which would get
12 you closer to that --
13 COMMISSIONER BRESSLER: Well --
14 CHAIRPERSON FERRICK: -- equivalent to
15 Santa Cruz Ave for square foot figure.
16 COMMISSIONER BRESSLER: Those are one
17 time.
18 CHAIRPERSON FERRICK: True, but there's
19 also some other major capital improvement projects that
20 don't have a dollar figure on here, but that undoubtedly
21 will be future major expenses, including that Facebook
22 will pay for bicycle and pedestrian improvements in Menlo
23 Park and East Palo Alto, and then they also have public
24 benefits -- that's not the right word, but some
25 agreements made with East Palo Alto as well as with the

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1 Fire Protection District.
 2 So there's a much greater -- I mean, I
 3 think they actually are going to be paying more than what
 4 an -- an equivalent Santa Cruz Avenue shop would be in
 5 total. It's not just in an un -- unrestricted funds.
 6 COMMISSIONER BRESSLER: I wouldn't
 7 necessarily disagree with you, and there are some things
 8 than that, even, and I'm actually thrilled that we got
 9 the in-lieu because we didn't get it on Gateway.
 10 And so I think we're kind of moving in the
 11 right direction.
 12 I'm just trying to help the process along a
 13 little bit here, because I think that when you negotiate
 14 something like this, you should be thinking it through
 15 and be able to express why you came up with that number.
 16 I don't like being put in a position where
 17 I get that kind of answer that -- when I ask that
 18 question.
 19 CHAIRPERSON FERRICK: All right. Thanks.
 20 All right. Has everybody said what they
 21 need to say and we can go ahead and take the vote on --
 22 we're going to vote -- so the motion was to -- the
 23 Planning Commission recommends to the City Council and
 24 then all five of those items that are listed on the
 25 slide.

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1 accepted.
 2 CHAIRPERSON FERRICK: Wonderful. Same.
 3 And the three mitigation measures that he spoke of are
 4 listed on the slide Marsh Road and Bayfront Expressway,
 5 Marsh Road and US 101, northbound ramps at Willow Road
 6 and Newbridge Street.
 7 That was for Mark's benefit.
 8 All right. Are we ready to take a vote on
 9 the motion? All those in favor, please raise your hand.
 10 That's six votes. Six affirmative, and Peipei is not
 11 available tonight.
 12 Thank you.
 13 All right. So those recommendations will
 14 proceed to Council. Thank you all for your work on that
 15 and thank you all, members of the public for weighing in.
 16 I anticipate if you still would like to
 17 comment further, I believe that there's a meeting in City
 18 Council June 5th.
 19 Is that correct, Rachel? Isn't it June 5th
 20 is the next, or is it the end of May?
 21 MS. GROSSMAN: May 29th will be the City
 22 Council's formal review of the project that you reviewed
 23 tonight, and June 5th is the second reading of the
 24 Development Agreement on this.
 25 CHAIRPERSON FERRICK: Thank you. May 29th

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1 So adopt a resolution approving the amended
 2 and restated CDP, introduce on ordinance approving the
 3 Development Agreement, adopt a resolution approving
 4 heritage tree removal and permits, adopt a resolution
 5 certifying the Final EIR and adopt a resolution adopting
 6 the Statement of Overriding Conditions and MMRP.
 7 So is everyone clear on what the motion is?
 8 Did you need to say something, Justin?
 9 MR. MURPHY: Just a thought that that
 10 incorporates the additional three mitigations into the
 11 MMRP that was identified this evening.
 12 CHAIRPERSON FERRICK: All right. Did you
 13 want to --
 14 MR. MURPHY: And the recognition that
 15 there will be changes to the Development Agreement and
 16 potentially Conditional Development Permit as it relates
 17 to any updates to incorporate items from the East Palo
 18 Alto term sheet.
 19 CHAIRPERSON FERRICK: All right.
 20 MR. MURPHY: And the mitigation measures,
 21 those three intersections are in the MMRP and the
 22 mitigation measures of the Conditional Development
 23 Permit.
 24 CHAIRPERSON FERRICK: Okay. Great.
 25 COMMISSIONER RIGGS: Yeah. Understood and

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1 if you still need to comment more, and I imagine if
 2 you're interested in the Caltrans letter developments,
 3 that will happen then.
 4 So beyond this, we have Commission
 5 business, none, and I wanted to just note that the future
 6 Planning Commission schedule.
 7 The next time we'll be meeting is May 21st,
 8 2012, and I will make the motion to adjourn.
 9 Anybody want to give me a second on that?
 10 COMMISSIONER RIGGS: I'll second.
 11 CHAIRPERSON FERRICK: All right.
 12 Meeting's adjourned.
 13 Thank you.
 14 (The meeting concluded at 9:46 PM).
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<p>1 STATE OF CALIFORNIA) 2 COUNTY OF SAN FRANCISCO) 3 4 I, the undersigned, hereby certify that the 5 discussion in the foregoing meeting was taken at the 6 time and place therein stated; that the foregoing is a 7 full, true and complete record of said matter. 8 I further certify that I am not of counsel or 9 attorney for either or any of the parties in the 10 foregoing meeting and caption named, or in any way 11 interested in the outcome of the cause named in said 12 action. 13 14 IN WITNESS WHEREOF, I have 15 hereunto set my hand this 16 _____ day of _____, 17 2012. 18 19 <u>MARK I. BRICKMAN CSR 5527</u> 20 21 22 23 24 25</p> <p style="text-align: right;">Page 142</p>	

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FACEBOOK @ MENLO PARK

APRIL 20, 2012



RECEIVED
APR 20 2012
By PLANNING

FACEBOOK CAMPUS

1601 Willow Road | MENLO PARK, CALIFORNIA

A.0 Area Plan

EA. ARCHITECTURE

- EA.1 Existing Site Plan
- EA.2 Parking Plan
- EA.3 Trash & Recycling Collection Plan
- EA.4 Generator Location Plan

EL. LANDSCAPE

- EL.1 Pedestrian & Bicycle Connectivity
- EL.2 Conceptual Undercrossing Plan
- EL.3 Conceptual Undercrossing Plan--East Campus
- EL.4 Conceptual Undercrossing Plan--West Campus
- EL.5 Tree Disposition Plan
- EL.5a Tree Disposition Schedule--East Campus
- EL.5b Tree Disposition Schedule--West Campus



FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA

Gensler

McKenna Long
& Aldridge

FEHR + PEERS



BRUNNEN
KUMMER
RUTENFRANZ

CMG

CHARTERED MEMBER OF THE
AMERICAN SOCIETY OF
LANDSCAPE ARCHITECTS

KEMA

DRAWINGS INDEX

APRIL 20, 2012



FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA

Gensler
 McKenna Long & Aldridge
 FEHR + PEERS

BRT
 CMG
 KEMA

A.0 AREA PLAN

APRIL 20, 2012

AREA
56.9 ACRES

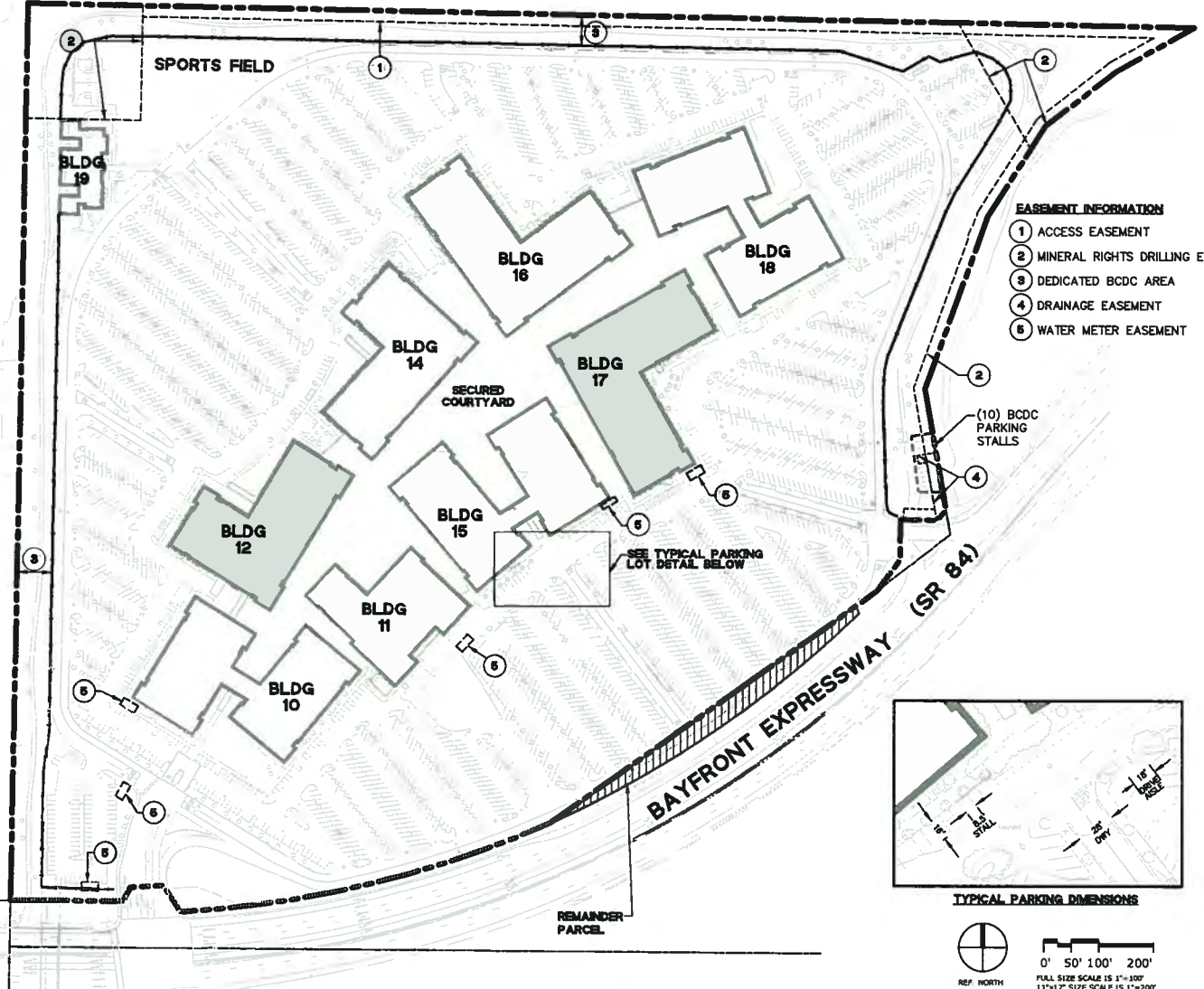
FLOOD_ZONE
FEMA_ZONE: AE7 (PER FLOOD INSURANCE RATE MAP DATED 4/21/99,
COMMUNITY PANEL NUMBER 060321 0005 D)
BASE FLOOD ELEVATION IS 7.5 FEET*
*PER FLOOD INSURANCE STUDY BY FEMA, APRIL 21, 1999 (NOVD29)

EXISTING BUILDING INFORMATION
EAST CAMPUS 1601 WILLOW ROAD

BUILDING #	SQUARE FOOTAGE	# OF FLOORS
BUILDING 10	114,145 SF	2
BUILDING 11	46,911 SF	2
BUILDING 12	139,149 SF	3
BUILDING 14	139,149 SF	3
BUILDING 15	122,204 SF	2
BUILDING 16	174,128 SF	3
BUILDING 17	174,128 SF	3
BUILDING 18	114,227 SF	2
BUILDING 19	11,799 SF	1
TOTAL GSF	1,035,840 SF	

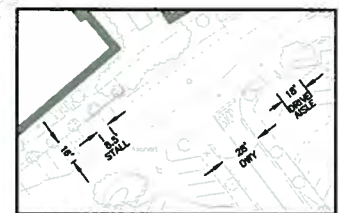
LEGEND

- PROPERTY LINE
- - - EASEMENT
- BAYFRONT EXPRESSWAY (SR 84) RIGHT-OF-WAY
- ▨ NON-ACCESS AREA (CALTRANS)



EASEMENT INFORMATION

- ① ACCESS EASEMENT
- ② MINERAL RIGHTS DRILLING EASEMENT
- ③ DEDICATED BCDC AREA
- ④ DRAINAGE EASEMENT
- ⑤ WATER METER EASEMENT



TYPICAL PARKING DIMENSIONS

0' 50' 100' 200'

FULL SIZE SCALE IS 1"=100'
11"x17" SIZE SCALE IS 1"=200'

REF. NORTH

FACEBOOK @ MENLO PARK EAST CAMPUS
1601 WILLOW ROAD, MENLO PARK, CA

Genster
McKenna Long & Aldridge
FEHR PEERS

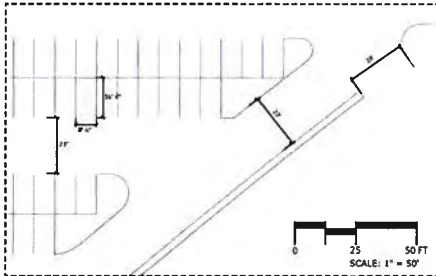
CMG
BKF
ENGINEERS SURVEYORS PLANNERS
KEMA

EA.1: EXISTING SITE PLAN
April 20, 2012

	# OF STALLS
EXISTING PARKING STALLS *	3,185
EXISTING LANDSCAPE RESERVE	181
OTHER RESERVE **	45
OTHER PROPOSED	59
TOTAL	3,450

- * "EXISTING PARKING" includes 36 motorcycle stalls (18 standard stalls).
- ** "EXISTING PARKING" excludes 10 BCDC parking spaces.
- 7 spaces are deducted for the recently constructed trash enclosure to the north of BLDG 18.
- 23 spaces are deducted for the improvements to the undercrossing connection to the West Campus.

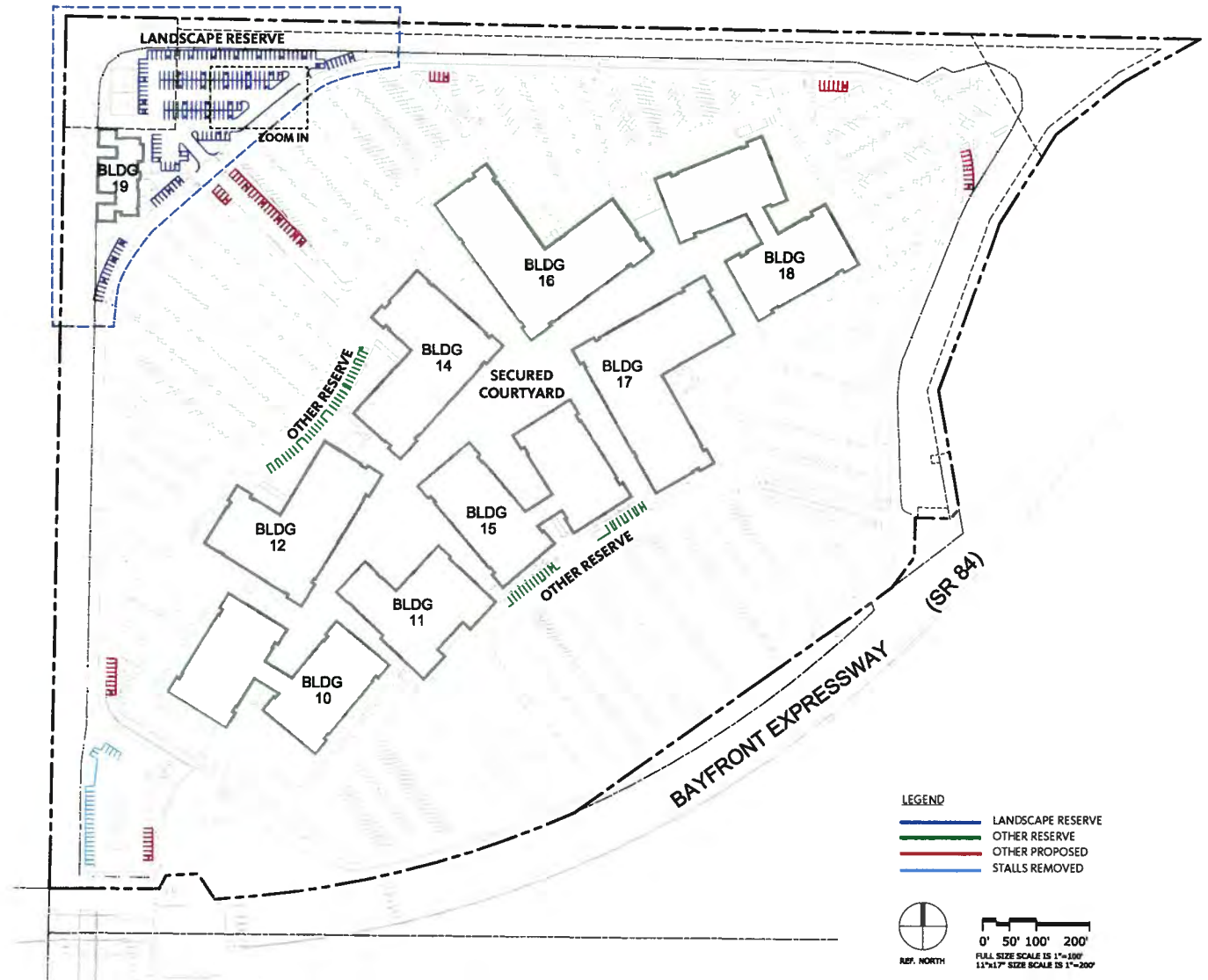
ZOOM IN (Typical Dimensions)



Note:

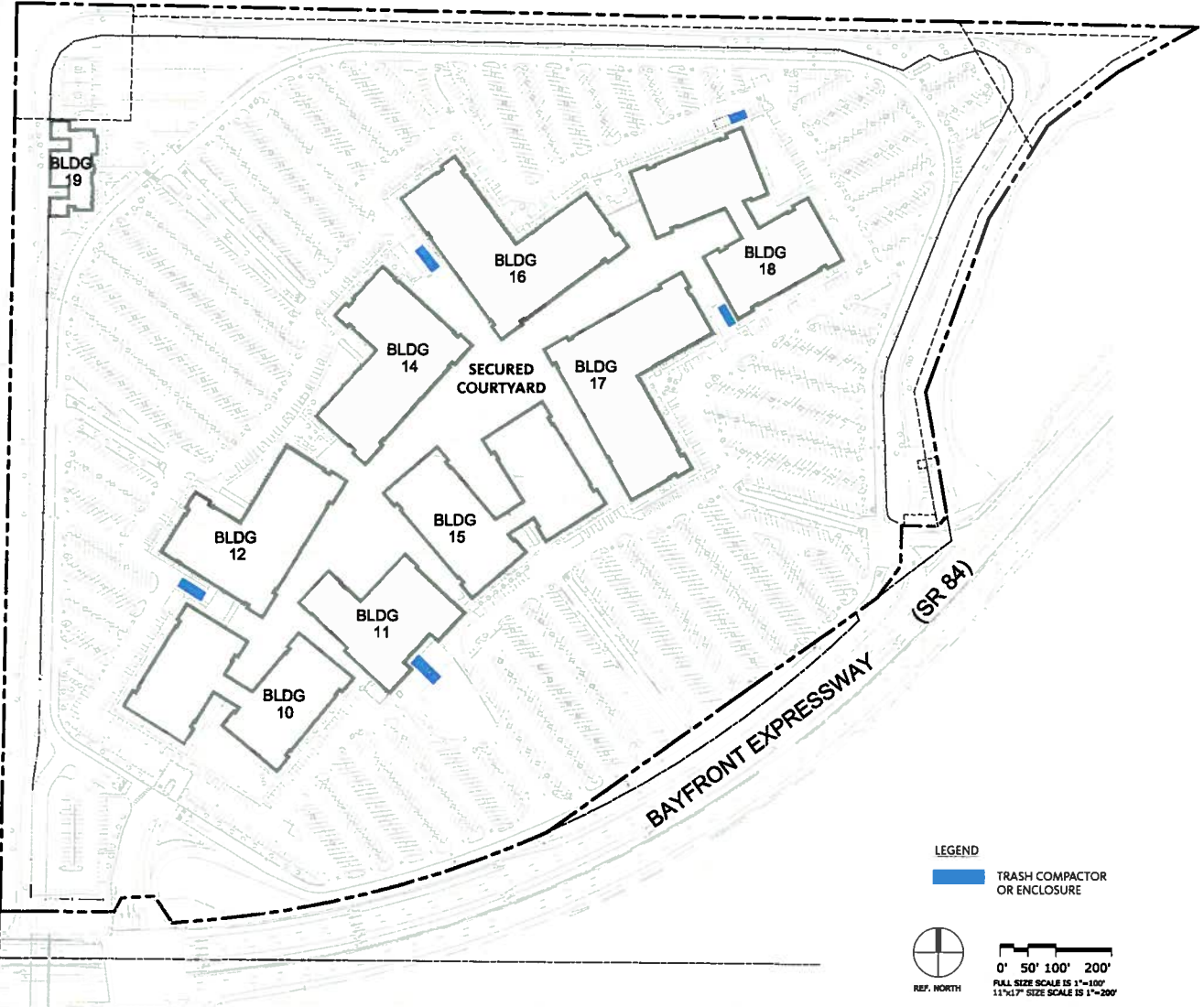
Bike parking

- Facebook anticipates providing the East Campus with bicycle parking for a minimum of 5% of total motorized vehicle parking capacity.
- Preferred bike parking will be located in or near each building, wherever possible.
- Short term bike racks shall be located within 200' of each building entrance to facilitate on campus bikeshare.
- Secure commuter bicycle storage will make use of the existing bike storage facility.
- Facebook reserves the right to increase the number of bike parking spaces in parity with the performance of the TDM program and on-campus demand.



Note:

- Existing trash compactors adjacent to Buildings 12, 11, 16, and 18 shall be roofed if the existing equipment is removed or replaced.



BAYFRONT EXPRESSWAY (SR 84)



FACEBOOK @ MENLO PARK
EAST CAMPUS

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA

Gensler

McKenna Long
& Aldridge

FEHR + PEERS



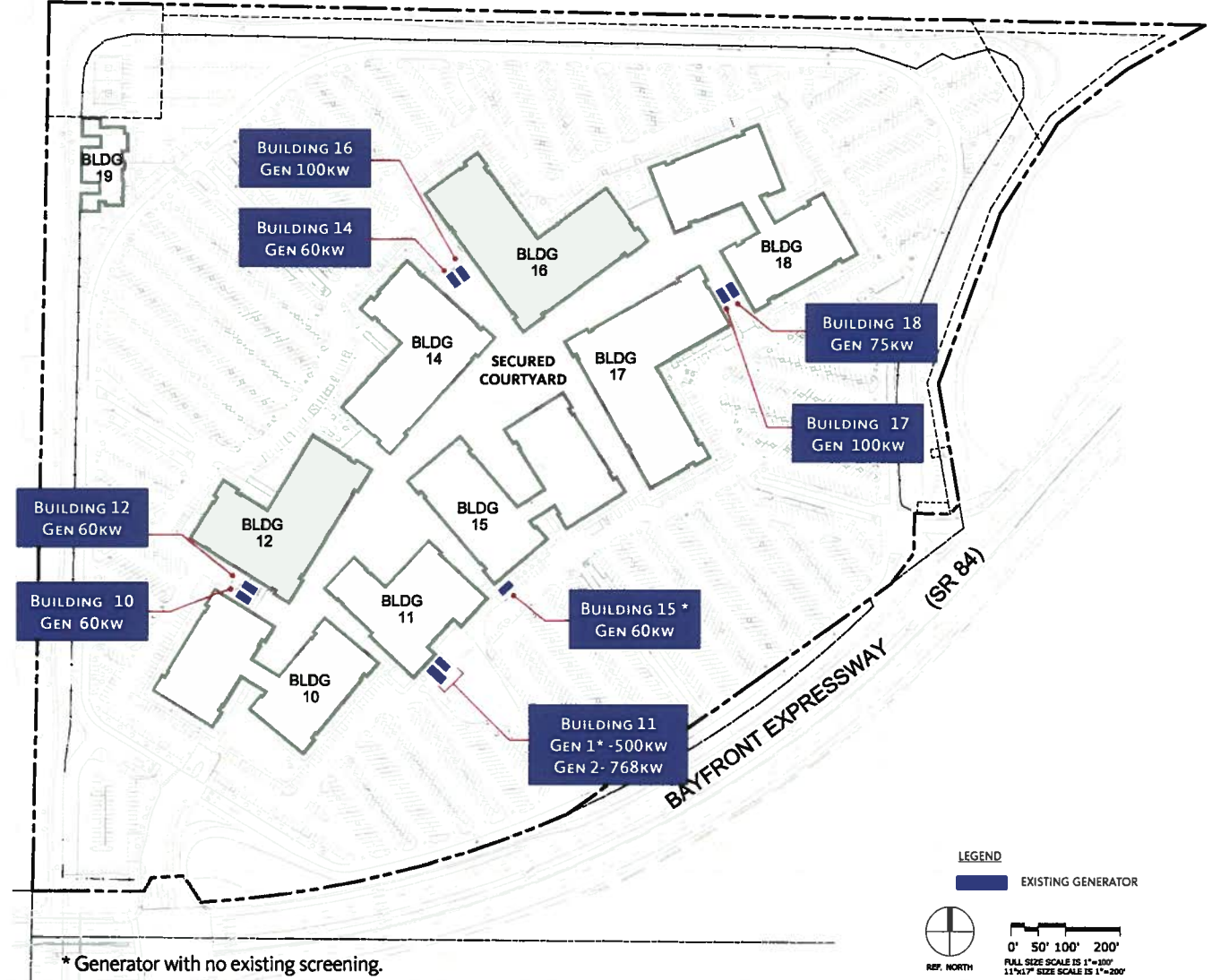
CMG

Engineers
Surveyors
Planners
KEMA

EA.3 TRASH & RECYCLING COLLECTION PLAN

APRIL 20, 2012

GENERATORS	BLDG 10 60 KW	BLDG 12 60 KW	BLDG 14 60 KW	BLDG 16 100KW	BLDG 17 100KW	BLDG 18 75 KW	BLDG 15 75 KW	BLDG 11-1 500 KW	BLDG 11-2 768 KW
Stack Height	3"	3"	3"	n/a no stack	n/a	n/a	n/a	4"	33"
Fuel Capacity	50 Gal	50 Gal	50 Gal	100 Gal	100 Gal	100Gal	100 Gal	600 Gal	719 Gal
Stack Diameter	4"	4"	4"	3"	3"	3"	3"	6 1/2"	8"
Exit Gas volumetric	1046cfm	1046cfm	1046cfm	663cfm	663cfm	522cfm	522cfm	4305cfm	8405cfm
Exit Gas Temp	926 DEG F	926 DEG F	926 DEG F	975 DEG F	975 DEG F	972 DEG F	972 DEG F	1050 DEG F	975 DEG F
Horse power	102hp	102hp	102hp	120hp	120hp	120hp	120hp	750hp	1135hp
Engine Make model	Cummins 48T3.9-G2	Cummins 48T3.9-G2	Cummins 48T3.9-G2	CAT 95A033 63-S	CAT 95A033 63-S	CAT 95A033 63-S	CAT 95A033 63-S	Cummins KTTA19-G2	Cummins 750 DFHA
HOURS OF OPERATION	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR	20 HOURS PER YEAR
Emission Test (Grams per HP-Hour)	PM. N/A ORG. N/A NOX. 6.99 SO2. 62 CO. 1.26	PM. N/A ORG. N/A NOX. 6.99 SO2. 62 CO. 1.26	PM. N/A ORG. N/A NOX. 6.99 SO2. 62 CO. 1.26	PM.02 ORG.02 NOX.35 SO2.NA CO.08	PM.02 ORG.02 NOX.35 SO2.NA CO.08	PM.02 ORG.02 NOX.35 SO2.NA CO.06	PM.02 ORG.02 NOX.03 SO2.NA CO.06	PM0.15 ORG. NA NOX10.20 SO2 0.58 CO 1.30	PM0.09 ORG NA NOX8.23 SO2 0.58 CO 0.12
Any exhaust modifications	NO	NO	NO	NO	NO	NO	NO	NO	NO



- NOTE:
- With exception to the Genset at Building 15 and Gen 1 at Building 11, existing generators are screened with CMU walls or chain link fences.
 - The Genset at Building 15 and Gen 1 at Building 11 will be screened consistent with the other Gensets and/or overall aesthetics of the campus.

FACEBOOK @ MENLO PARK EAST CAMPUS
 1601 WILLOW ROAD, MENLO PARK, CALIFORNIA

Gensler
 McKenna Long & Aldridge
 FEHR + PEERS

BRF
 ENGINEERS ARCHITECTS

CMG
 CONSULTING GROUP

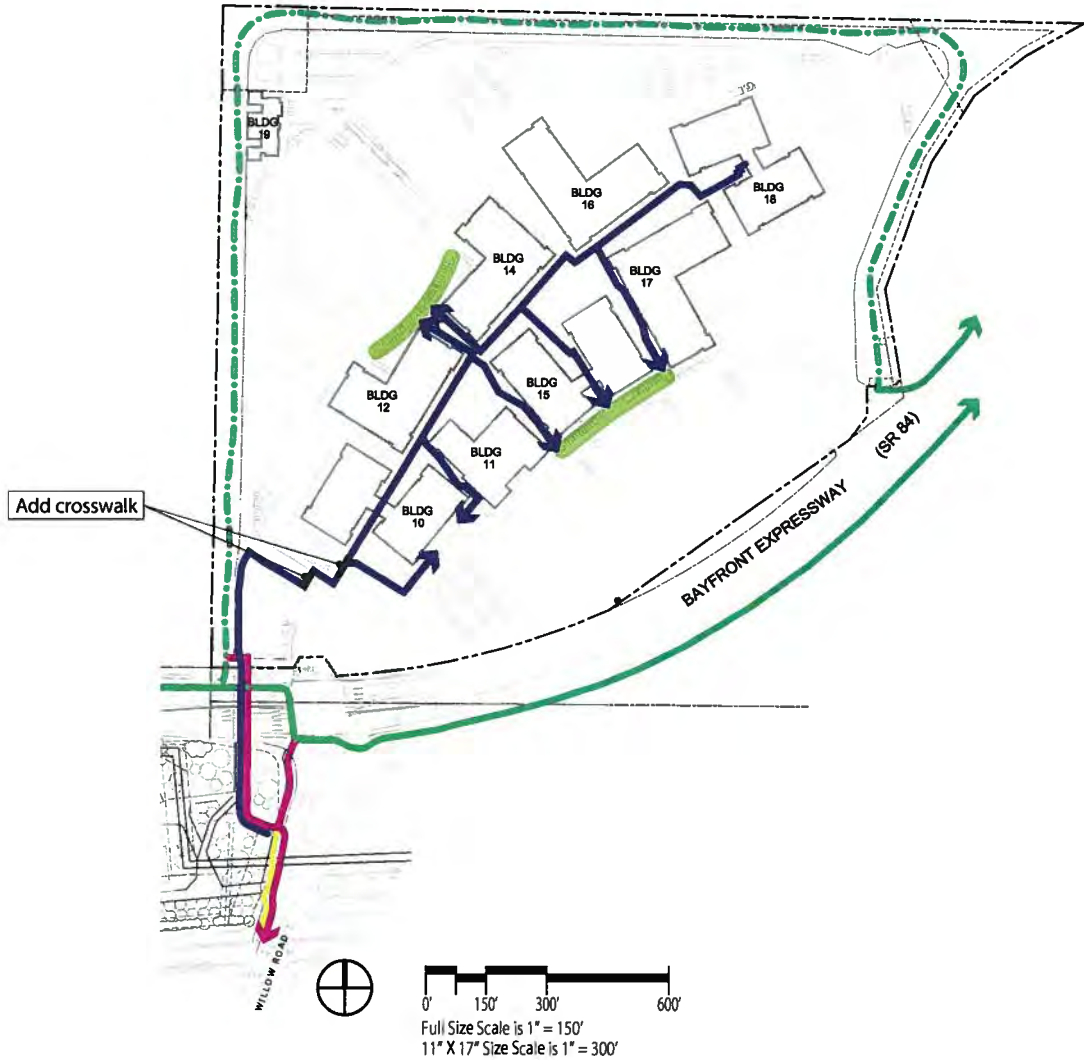
KEMA

EA.4 GENERATOR LOCATION PLAN

APRIL 20, 2012

LEGEND

-  PROPOSED MULTI-USE PATH
-  EXISTING BAY TRAIL
-  EXISTING BCDC SHORELINE TRAIL
-  FACEBOOK BIKE/PEDESTRIAN ROUTE
-  PROPOSED SIDEWALK CONNECTION
-  TRANSIT LOADING/UNLOADING
-  PROPOSED CROSSWALK LOCATION



**FACEBOOK @ MENLO PARK
EAST CAMPUS**

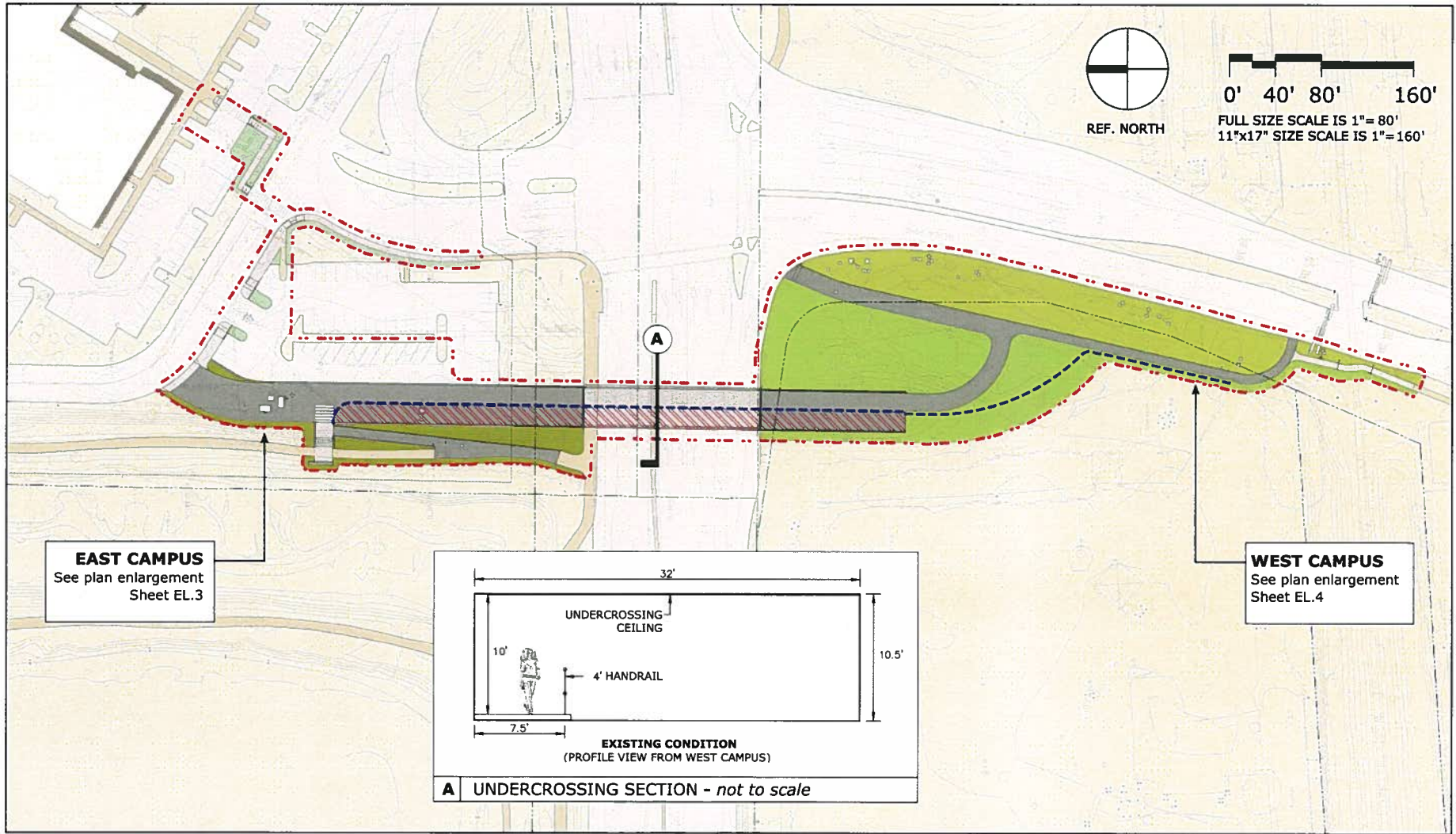
1601 WILLOW ROAD, MENLO PARK, CALIFORNIA

Gensler
McKenna Long
& Aldridge
FEHR + PEERS



EL.1 PEDESTRIAN & BICYCLE CONNECTIVITY

APRIL 20, 2012



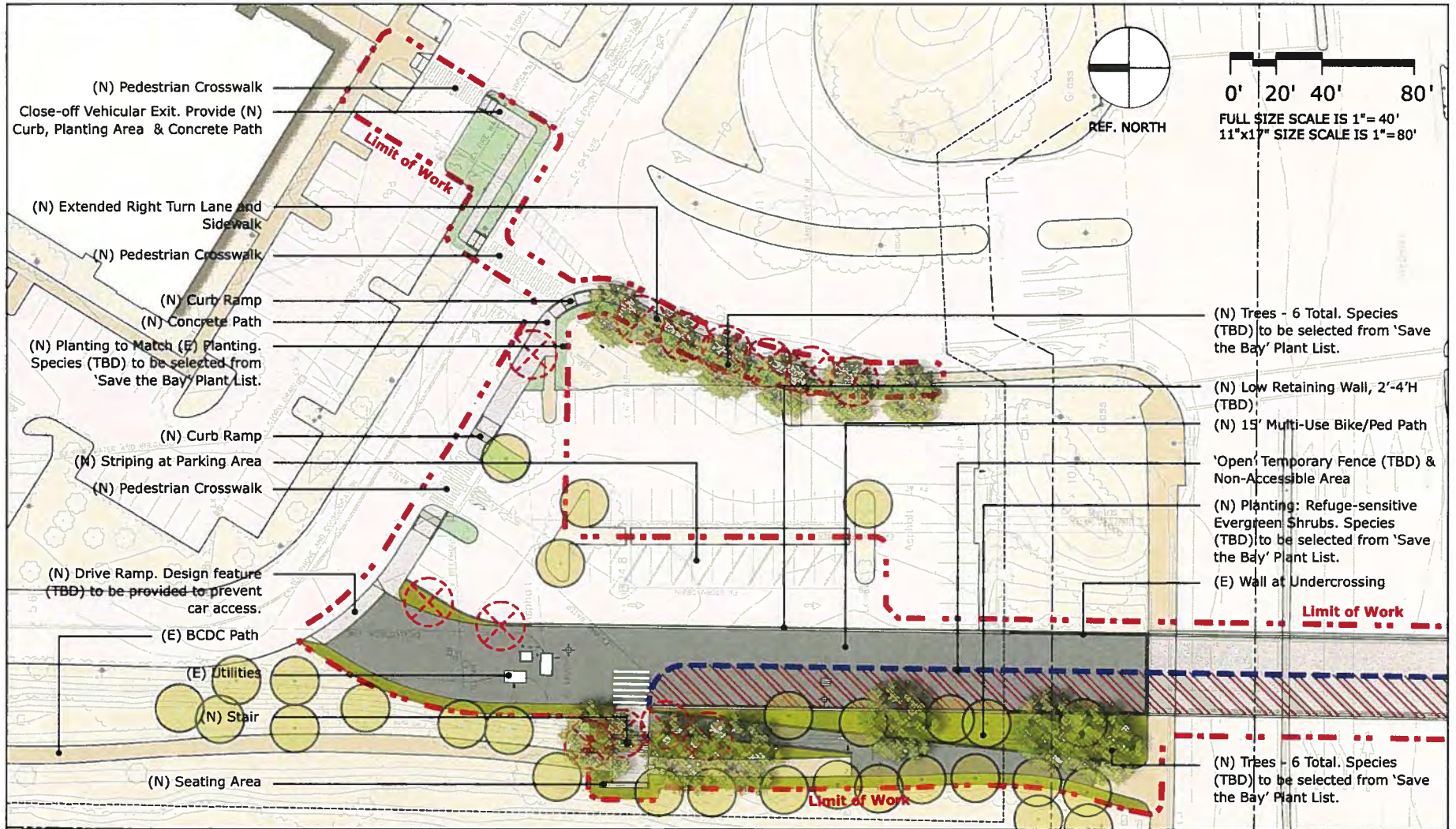
FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.2 CONCEPTUAL UNDERCROSSING PLAN

APRIL 20, 2012



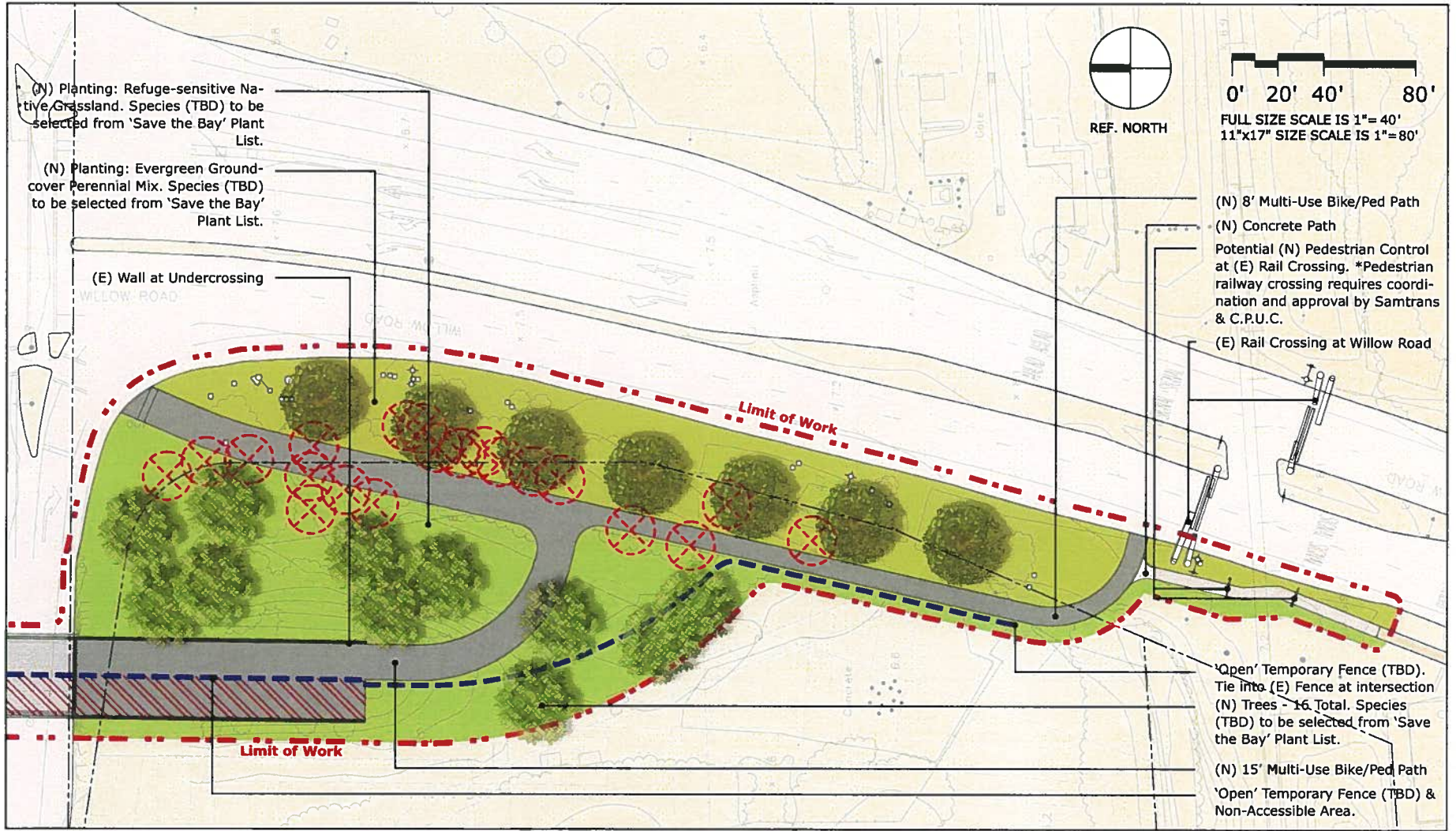
FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.3 CONCEPTUAL UNDERCROSSING PLAN East Campus

APRIL 20, 2012



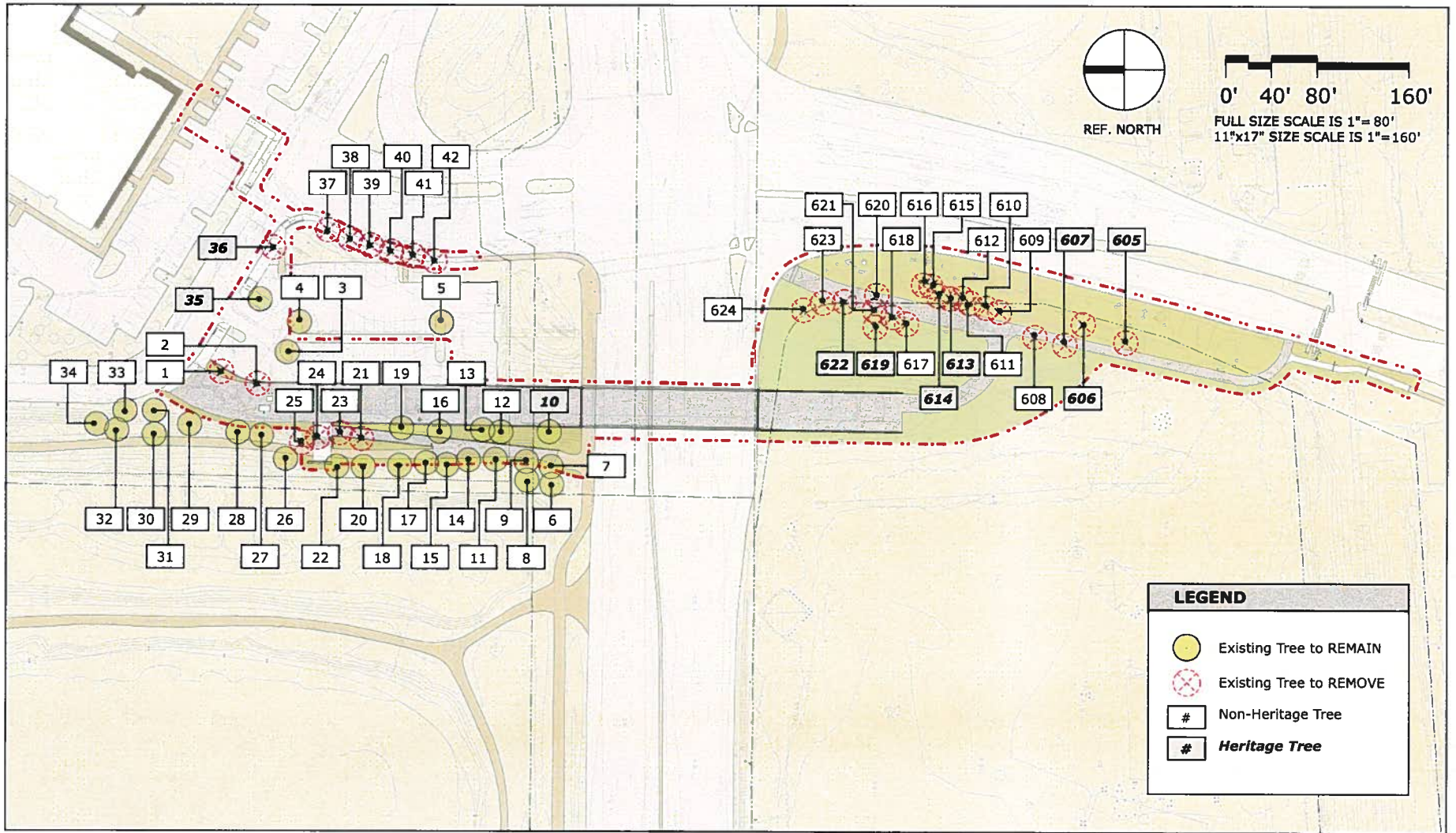
FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.4 CONCEPTUAL UNDERCROSSING PLAN West Campus

APRIL 20, 2012



FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.5 TREE DISPOSITION PLAN

APRIL 20, 2012

TREES - EAST CAMPUS					
Total HERITAGE Trees: 3					
Total HERITAGE Trees to Remove: 1					
Total NON-HERITAGE Trees to Remove: 12					
Total Replacement Trees: 12					
#	SPECIES	DBH (in)	HT (ft)	HERITAGE?	REMOVE?
1	Acacia melanoxylon	12.5	40	No	YES
2	Acacia melanoxylon	14.6	40	No	YES
3	Acacia melanoxylon	11.5	25	No	No
4	Acacia melanoxylon	13.5	35	No	No
5	Rhamnus alaternus	5.5 @ 2'	15	No	No
6	Pinus eldarica	2	10	No	No
7	Pinus eldarica	2	10	No	No
8	Pinus eldarica	2	10	No	No
9	Pinus eldarica	10	30	No	No
10	Pinus eldarica	16	35	YES	No
11	Pinus eldarica	12.5,7	30	No	No
12	Acacia melanoxylon	1	8	No	No
13	Pinus eldarica	14	30	No	No
14	Pinus eldarica	5,9	30	No	No
15	Pinus eldarica	2.5	10	No	No
16	Acacia melanoxylon	1	8	No	No
17	Aesculus californica	7 @ base	10	No	No
18	Acacia melanoxylon	1.5	10	No	No
19	Aesculus californica	8 @ base	8	No	No
20	Aesculus californica	9.5 @ base	8	No	No
21	Pinus eldarica	9.5,6	25	No	YES
22	Acacia melanoxylon	1	8	No	No
23	Pinus eldarica	8,3.5	20	No	YES
24	Pinus eldarica	8,9	20	No	YES
25	Pinus eldarica	6.5, 6, 9.5, 2	25	No	YES
26	Pinus eldarica	6,6,4.5,3.5,8	15	No	No
27	Pinus eldarica	14,11	25	No	No
28	Pinus eldarica	13.5	20	No	No

#	SPECIES	DBH (in)	HT (ft)	HERITAGE?	REMOVE?
29	Acacia melanoxylon	8.5	25	No	No
30	Aesculus californica	6 @ base	5	No	No
31	Acacia melanoxylon	8	20	No	No
32	Aesculus californica	6 @ base	8	No	No
33	Aesculus californica	5.5 @ base	5	No	No
34	Aesculus californica	11 @ base	10	No	No
35	Acacia melanoxylon	16	40	YES	No
36	Acacia melanoxylon	16	35	YES	YES
37	Carpinus betulus	5	15	No	YES
38	Carpinus betulus	4.5	15	No	YES
39	Carpinus betulus	4	10	No	YES
40	Carpinus betulus	4	10	No	YES
41	Carpinus betulus	4	10	No	YES
42	Carpinus betulus	3	10	No	YES



FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.5a TREE DISPOSITION SCHEDULE East Campus

APRIL 20, 2012

TREES - WEST CAMPUS					
Total HERITAGE Trees: 7					
Total HERITAGE Trees to Remove: 7					
Total NON-HERITAGE Trees to Remove: 13					
Total Replacement Trees: 16					
#	SPECIES	DBH (in)	HT (ft)	HERITAGE?	REMOVE?
605	Populus nigra 'Italica'	10,10,8,4,4	50	YES	YES
606	Populus nigra 'Italica'	4.5,7,4,3	50	YES	YES
607	Populus fremontii	18.5	60	YES	YES
608	Populus fremontii	9	45	No	YES
609	Cedrus deodora	9.5	35	No	YES
610	Cedrus deodora	6	20	No	YES
611	Cedrus deodora	3.5	15	No	YES
612	Cedrus deodora	6,2.5	30	No	YES
613	Populus nigra 'Italica'	7.5,5.5,5,4,4	50	YES	YES
615	Populus nigra 'Italica'	3,3,2.5,2	35	YES	YES
615	Cedrus deodora	6.5	35	No	YES
616	Cedrus deodora	3.5,4,3,3	15	No	YES
617	Populus nigra 'Italica'	12	15	No	YES
618	Cedrus deodora	7	35	No	YES
619	Populus nigra 'Italica'	8,7.5,2.5, 2,2.5,3	50	YES	YES
620	Populus nigra 'Italica'	6	45	No	YES
621	Cedrus deodora	3.5	15	No	YES
622	Populus nigra 'Italica'	5,7	50	YES	YES
623	Populus nigra 'Italica'	3.5,2	20	No	YES
624	Populus nigra 'Italica'		15	No	YES



FACEBOOK @ MENLO PARK

1601 WILLOW ROAD, MENLO PARK, CALIFORNIA



EL.5b TREE DISPOSITION SCHEDULE
West Campus

APRIL 20, 2012

Grossman, Rachel M

From: William Byron Webster <wbw@stanford.edu>
Sent: Tuesday, May 01, 2012 12:31 AM
To: _Planning Commission
Cc: Grossman, Rachel M; Murphy, Justin I C
Subject: Fwd: Resolution of Menlo Park Facebook Campus Expansion Project impacts on the City of East Palo Alto

FYI

Begin forwarded message:

From: William Byron Webster <wbw@stanford.edu>
Date: April 30, 2012 6:16:48 AM PDT
To: Ruben Abrica <rubenxl@aol.com>, Ruben Abrica <rubenabrica@gmail.com>, Carlos Romero <cromero_ezln@yahoo.com>, Laura Martinez <LauraMartinezForEPA@gmail.com>, David Woods <davidwoods01@yahoo.com>, "A. Peter Evans" <Ujimaepa@aol.com>
Cc: Ronald Davis <rdavis@cityofepa.org>, Kathleen Kane <kkane@cityofepa.org>, John Doughty <jdoughty@cityofepa.org>, Linda Johnson <lindamj@stanford.edu>
Subject: Resolution of Menlo Park Facebook Campus Expansion Project impacts on the City of East Palo Alto

Dear Mayor Martinez and Honorable Members of the East Palo Alto City Council:

When at some day in some distant future century the final epitaph is written on the history of our great American Republic, one possibility may well be the words from the film regarding the Watergate scandal that buried the Nixon administration in ignominy: "Follow the money."

As I follow the money in the staff report on Item No. 23 of the East Palo Alto Regular Meeting agenda for Tuesday, 1 May 2012, entitled "Recommended Terms and Conditions for Agreement with Facebook and the City of Menlo Park" I find myself and all other critics of the Keyser Marston Associates report of 21 December 2011 denying significant impacts on the housing, circulation, and air quality of East Palo Alto alleged in the 26 May 2011 letter from Planning Department Director Brent Butler addressed to the City of Menlo Park alleging significant negative impacts to the City of East Palo Alto in these areas to be totally vindicated.

The repudiation of the Keyser Marston Associates contention of no significant impacts reflected in the letters of comments from the City of East Palo Alto, including the Shute, Mihaly and Weinberger LLP report incorporated in the City of East Palo Alto letter, the letter from Public Advocates signed by Richard Marcantonio, the YUCA letter, as well as my own letter of comments on the Menlo Park Facebook Campus Project Draft EIR is de facto acknowledged by the terms and conditions for agreement with Facebook and the City of Menlo Park despite the responses in the Final EIR rejecting our assertions of significant negative impacts on housing, circulation, and air quality by virtue of the terms of agreement.

I cite the agreement of Facebook as detailed on page 3 of the staff report dated 1 May 2012 from the Facebook Negotiation Team consisting of Council Members Carlos Romero and David E. Woods, Community Development Director John Doughty, and City Attorney Kathleen Kane on the subject "Recommended Terms and Conditions for Agreement with Facebook and the City of Menlo Park."

Among the several agreements on the topic of "Traffic/Transportation" "Facebook agrees to provide \$650,000 to the City for traffic mitigation and safety improvements," \$150,000 of that amount going to pedestrian and bicycle improvements and the remainder of the funds to be allocated to the City's Capital Improvement Program for Citywide traffic improvements. In the category of air quality, "Facebook agrees to provide a total of

\$100,000 to address unmitigated air quality impacts arising from increased traffic to and from the Facebook Campus; \$75,000 to fund a pilot micro-grant program to improve air quality in impacted residences with asthma sufferers within the City and Belle Haven neighborhood and \$25,000 to fund street tree plantings in the City."

In the area of housing, "in recognition of East Palo Alto's expressed concerns regarding potential pressures on regional housing, Facebook will contribute \$150,000 toward a land use planning process in East Palo Alto to address preservation of affordable housing within the City."

On page 3 of the staff report under the heading "Analysis" further concessions are made to the City of East Palo Alto.

What is most important, however, is not to fail to see the forest for the trees. The overall import of the terms to which Facebook has agreed with the certain concurrence of Menlo Park is the de facto acknowledgement that what was alleged in the 26 May 2011 letter from the East Palo Alto Planning Department of significant negative impacts in the areas of housing, circulation, and air quality is true. Were these allegations without merit, Facebook would not be giving a "direct payment of one time funds in the amount of \$800,000 while community benefits will equal approximately \$1,150,000 over the term of the agreement."

The rejoinder from the Menlo Park Planning Division which in the Final EIR repudiates our contentions of significant negative impacts in these areas is obfuscating rhetoric that is negated by the reality that we highlighted in our objections to the Keyser Marston Associates 21 December 2011 denial of significant impacts. Someone must have thought our objections had some validity to be willing to dispense a significant amount of money once the City of East Palo Alto agreed to the terms.

If the allegations were without merit, \$800,000 in direct payments would not be made. In addition, to sweeten the deal, Facebook is willing to fund "a community fund, with an initial contribution of \$500,000 to benefit East Palo Alto and Menlo Park nonprofits" with the possibility of future contributions once the initial \$500,000 is gone. Under the category of "Jobs" "Facebook has agreed to institute an internship program for local high school students in order to provide technical training, mentorship, and future career opportunities to those students." This will involve over time an additional outlay of funds.

I had requested in my 30 January 2012 DEIR comments letter that a committee be established on an ongoing basis consisting of representatives from Facebook, Menlo Park, and East Palo Alto to monitor possible displacement of East Palo Alto residents so that actions could be taken to mitigate such displacement. I have reiterated that request in every communication and at every meeting of the Menlo Park Planning Commission and City Council I have attended. That specific request was not agreed to, but my basic objective that there be some kind of official institutional representation of East Palo Alto with Facebook and Menlo Park on an ongoing basis is being realized through the formation of an ongoing committee to monitor the Local Community Fund comprising representatives from East Palo Alto, Menlo Park, and Facebook. Back in December 2011 what we were faced with was a situation that denied East Palo Alto any recognition whatsoever, any place at the table. The permanent representation of East Palo Alto at the table with regard to allocations of the Facebook contributions to the Local Community Fund establishes a permanent institutional relationship that can serve as a precedent for an official institutional representation or even an ad hoc representation in other areas or on other issues. For me the point was that East Palo Alto's existence as a participant if not a full partner be officially and permanently acknowledged. When the Menlo Park City Council on Tuesday, 17 April 2012, voted to approve the Facebook terms for incorporation in the development agreement, I stated my satisfaction with the outcome for that very reason that rather than be ignored as though East Palo Alto were in a nonparallel universe rather than an integral part of the equation, we would be represented at the table on an ongoing basis.

What counts is not what people say, it is what they do. Actions, especially actions with monetary implications,

speaking louder than words.

I commend the Negotiation Team for its relative effectiveness in representing the critics of the Keyser Marston Associates report that embodied the attempt of the Menlo Park Planning Division to deny that East Palo Alto would not be significantly impacted by the Facebook campus expansion.

Their contention sought to ignore the reality that the fate, the fortunes, and the infrastructures of the Cities of Menlo Park, Palo Alto, and East Palo Alto are inextricably interwoven. The collective critiques of the Draft EIR and the Keyser Marston Associates report of 21 December 2011 have been vindicated by the terms of the agreement.

The other issue, however, is are the terms of agreement enough. Possibly in the area of traffic mitigations they may be sufficient. I doubt they are sufficient in the area of air quality. There is at least a de facto concession that the concerns reflected in the 26 May 2011 letter from the Planning Department regarding negative impacts on housing upon which I focused in my 30 January 2012 DEIR comments letter, also reflected in the Public Advocates comments letter and the Shute, Mihaly and Weinberger comments incorporated in the City of East Palo Alto letter, deserve attention via the \$150,000 Facebook is offering to support "the land use planning process in East Palo Alto to address preservation of affordable housing within the City."

My 30 January 2012 DEIR comments letter raises issues regarding the issue of displacement of East Palo Alto residents as a consequence of the tripling of the Facebook staff and the campus expansion. My concerns are shared in the Shute, Mihaly and Weinberger DEIR comments. Our comments discern a connection between the acquisition of the former Page Mill Properties portfolio of 1812 housing units on the West Side of East Palo Alto through a sale by Wells Fargo commenced in August 2011 and completed in December 2011 to Equity Residential for what is believed to be a significant overpayment beyond the revenue-producing value of this portfolio on the one hand and the Facebook campus expansion on the other.

I interpret the \$150,000 payment by Facebook to support a process to preserve affordable housing in East Palo Alto as a de facto acknowledgement that such a connection exists.

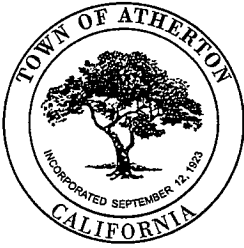
Despite all the rhetoric invoked by the Menlo Park Planning Division staff contesting the comments in my DEIR comments letter of 30 January 2012, the Procrustean provisions in the development agreement between Menlo Park and Facebook that severely restricts the number of daily vehicle trips into and out of the Facebook East Campus, the former Sun Microsystems campus, resulting in the necessity for possibly half of the provisionally maximum 9400 anticipated Facebook employees to cycle, walk, vanpool, or take a shuttle to work, will over time dispose a significant number of Facebook employees to seriously consider living in East Palo Alto contrary to all the contentions in the Keyser Marston Associates report of 21 December 2011 to the contrary, resulting in their contention that over a 6-year period of time one could expect a maximum increase of 160 new Facebook employees choosing to reside in East Palo Alto.

I by the way welcome Facebook employees in East Palo Alto and hope that some of those who choose to reside in East Palo Alto will contribute their brilliance in service to the community by serving on such bodies as the Planning Commission and the Rent Stabilization Board. But everything in moderation so as to avoid the massive disruptions in the lives of thousands as were experienced during the period of Page Mill Properties dominance of West Side housing and the involuntary displacement of at least 1500 residents through what the City of East Palo Alto contended were massive illegal evictions.

At the end of the day while we may be three different political entities with very different populations economically and demographically, our fortunes and fates are inextricably intertwined. What affects one community will affect the others for good or ill. It all depends on how conscientious we are in looking out not only for ourselves, but for each other as neighboring communities. Fences do not always make good neighbors.

Best wishes,

William Byron Webster
President and Board Chair
East Palo Alto Council of Tenants (EPACT)
Education Fund



Town of Atherton

91 Ashfield Road • Atherton, California 94027
 (650) 752-0500 • Fax (650) 688-6528
www.ci.atherton.ca.us

April 26, 2012

Ms. Kirsten Keith, Mayor
 Mr. Alex McIntyre, City Manager
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025

Re: Facebook Project EIR

Dear Ms. Keith and Mr. McIntyre:

Regretfully, the Town of Atherton finds itself in the difficult position of finding that serious flaws and deficiencies exist in the proposed Facebook Project Final EIR. The Town of Atherton staff has met with Menlo Park staff and they have not been able to resolve our issues and concerns regarding transportation improvements necessary to properly mitigate potentially significant environmental impacts resulting from additional project traffic at the Marsh/Middlefield intersection. Accordingly, we are providing this letter to insure you are fully aware of our issues.

On January 19, 2012, the Town of Atherton submitted our comments regarding the Facebook Draft EIR (DEIR). Our review focused on the traffic impacts of the project at the noted intersection, and a copy of our letter is included (Attachment 1) for information. In summary, we believe the DEIR did not adequately address traffic impacts at this location due to assumptions and methodologies that understated traffic volumes generated by the Facebook Project, and mitigations that don't fit on the existing site or don't truly result in successful mitigation of probable impacts from the increased traffic generated by this project. This resulted in understated impacts, which resulted in inadequate mitigation measures recommended at this intersection in the Town of Atherton. More specifically, the traffic impact analysis was flawed and inadequate for the following reasons:

- The analysis was based upon an artificial Trip Cap provided by Facebook which resulted in a project trip generation rate 25% less than the Institute of Transportation Engineers trip generation rates which are widely used as the industry standard. This resulted in understated traffic impacts resulting in inadequate mitigation measures.
- Traffic generated by the Facebook Project was assigned to the road network by hand rather than utilizing the City/County Association of Government (C/CAG) or other appropriate travel demand forecasting models. This methodology does not accurately quantify the displacement of traffic from major transportation facilities such as US 101 caused by the Facebook Project. By not utilizing appropriate travel demand forecasting

models, the Facebook traffic impact analysis did not accurately identify and quantify increased travel demand on affected routes such as Middlefield and Marsh Roads. This faulty analysis resulted in understated traffic impacts and inadequate mitigation measures.

- For the cumulative traffic scenario, the Facebook DEIR did not include significant future projects such as the North Fair Oaks Community Plan Update. The Town of Atherton believes that the cumulative analysis would show an increased degradation of traffic conditions at the Marsh/Middlefield intersection if the North Fair Oaks project was properly included in the Facebook DEIR. This omission represents another flaw which results in understated traffic impacts and inadequate mitigation measures.
- The Facebook DEIR failed to analyze additional potentially significant traffic impacts within the Town of Atherton since the analysis did not extend beyond the Marsh/Middlefield intersection. For instance, even by using artificially low traffic generation rates and not including significant future development in the cumulative scenarios, the DEIR identifies an additional 200 peak hour trips converging at the Marsh/Middlefield intersection. All these additional trips are travelling on Atherton streets beyond the Marsh/Middlefield intersection. Accordingly, the Town of Atherton believes the traffic impact analysis must be expanded to properly analyze potentially significant impacts to streets such as Fair Oaks Lane, Watkins, Atherton Avenue, Stockbridge, Encinal, Glenwood, and other residential streets used to bypass impacted intersections.
- The Facebook project is shown to have a significant impact at the Marsh/Middlefield intersection in the cumulative scenario. However, the DEIR failed to describe the heavy demand for westbound to northbound right turns from Marsh Road to Middlefield Road. The existing intersection design results in vehicle queues which extend easterly along Marsh Road beyond Fair Oaks Avenue. This results in traffic using residential streets in Atherton such as Fair Oaks, Holbrook Lane, Palmer Lane, and San Benito to bypass Marsh Road which creates neighborhood traffic and safety impacts. This represents another flaw with the Facebook traffic impact analysis. This impact needs to be studied and analyzed and an appropriate mitigation measure identified.

As a result of the deficiencies noted above, the Town of Atherton prepared schematic designs of transportation improvements we believe necessary to properly mitigate traffic impacts from Facebook and other significant development. Identified improvements not only improve capacity at the Marsh/Middlefield intersection, but also address the inadequate right turn capacity on westbound Marsh.

Identified improvements include the construction of an additional traffic lane approximately 600 feet in length on Marsh Road beginning at the intersection with Middlefield. Marsh Road will be widened to the south which will require the covering of the Atherton Channel. Construction of this additional lane provides necessary width to accommodate the additional left turn movements from southbound Middlefield to eastbound Marsh as well as lengthening the existing westbound right turn lane on Marsh approximately 350 feet. Other required improvements include relocating utility poles along Marsh, new roadway signing and striping, and modifying the existing traffic signal. There will be potentially significant tree removal associated with any of

the potential traffic mitigations that should be reviewed in conjunction with appropriate traffic mitigation as well.

On March 27, 2012, the Town of Atherton provided mitigation language to the City of Menlo Park for inclusion in the Facebook Final EIR. The mitigation language described the improvements identified above, as well as a requirement for Facebook to fund the private development portion of improvements with a reimbursement provision for future development to share in the improvement costs. The Town of Atherton will also provide a portion of funding. A copy of the mitigation language provided to Menlo Park staff is also included (Attachment 2) for review.

Town of Atherton Planning and Public Works staff met with City of Menlo Park staff on April 9th to review and discuss our position regarding Facebook mitigation obligations. At this meeting and through subsequent telephone calls, Menlo Park staff have taken the position that Facebook is only responsible for mitigating traffic impacts at the Marsh/Middlefield intersection as identified in the DEIR. The staffs met again in the field on April 25, 2012, where it was pointed out that the suggested mitigations at the Middlefield/Marsh Road intersection proposed by Menlo Park staff don't fit within existing rights-of-way on both streets and as such are not satisfactory mitigations at all. Additionally one of the mitigations includes a turn lane on this busy road with a 10 foot width and eliminates a safety separation of three feet with a double yellow line that is unacceptable and unsafe.

The Town of Atherton strongly disagrees with this position and must explore all options including legal challenges to the mitigation measures to effect a more reasonable and responsible position by Facebook and the City of Menlo Park. Regretfully the Town of Atherton cannot accept the identified mitigation measure at the Marsh/Middlefield intersection since, as outlined in our January 19th letter and further summarized above, the traffic analysis performed for the Facebook EIR is flawed and inadequate.

The Town of Atherton is interested in resolving this issue with Menlo Park in hopes of reaching agreement regarding implementation of truly appropriate mitigation measures. Our goal is to eliminate potential cumulative impacts resulting from this project that will impact our residents, and to avoid unnecessary litigation and to join in the celebration of this significant project for the City of Menlo Park.

Sincerely,



Theresa DellaSanta
Interim City Manager

Cc: Atherton City Council



Town of Atherton Public Works Department

91 Ashfield Road
Atherton, California 94027
650-752-0560
Fax 650-688-6539

January 19, 2012

Ms. Rachel Grossman
Community Development Department
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Comments on Facebook Campus Project DEIR

Dear Ms. Grossman:

The Town of Atherton has reviewed the Facebook DEIR completed by Atkins and dated December 2011. Our review focused on the traffic impact of the project, and in particular the impact the project would have on Town of Atherton transportation facilities. Our review identified the following issues that are relevant to the Town of Atherton:

- Trip cap
- Traffic assignment
- Background development assumptions
- Middlefield & Marsh intersection

The following paragraphs describe these issues of concern.

Trip Cap. The DEIR states that the Facebook east site has a trip cap of 2,600 vehicles during the morning and evening 2-hour commute periods. The DEIR also recommends that the west site be subject to a similar trip cap. According to our calculations, the trip cap represents about a 25% reduction in the number of trips that would “normally” be generated based on Institute of Transportation Engineers trip generation rates for the Corporate Headquarters Office land use category (Land Use Code 714). The DEIR uses the trip cap as a background assumption for the east site. Therefore, there is no analysis of traffic conditions without the trip cap being met. Atherton believes the DEIR should

include a description of how the trip cap would be met. The description should include programs that Facebook would implement, measures that Menlo Park would implement to monitor and enforce the cap, and a description of what happens if monitoring shows the cap is being exceeded.

Traffic Assignment. The Facebook traffic has been assigned to the road network by hand based on the Menlo Park CSA document. This methodology does not account for the traffic displacement that would occur when such a large number of additional trips are added onto the road network. For example, the project is shown to add 283 trips to US101 to/from the north and 699 trips to/from the south during the AM and PM peak hours. US101 does not have any capacity for new trips. Therefore, these new trips would displace existing trips off US101 to other routes. Affected routes could include Middlefield Road, El Camino Real, and Alameda de las Pulgas, all of which are in Atherton. There also could be increased travel demand on the streets connecting to the US101 parallel routes, such as Valparaiso Avenue and Glenwood Avenue in Atherton. The only way to effectively account for trip displacement is to analyze the project impact with a travel demand forecasting model, and not by hand. Atherton requests that the traffic analysis be redone using the City/County Association of Governments (C/CAG) or other appropriate travel demand forecasting model.

Also, the trip assignment only goes as far into Atherton as the intersection of Middlefield Road and Marsh Road. At that point according to the trip assignment figures (Figure 3.5-20a for example) there are over 200 trips in the peak direction coming from or going toward Atherton. Atherton would like to know what might happen to these trips once they get past the intersection. Are they going toward El Camino Real? Are they going toward I-280? In either case they could create an impact to other Atherton streets, such as Fair Oaks Lane, Atherton Avenue, or Stockbridge Avenue.

Background Development. The DEIR does not account for the potential development in the North Fair Oaks neighborhood in San Mateo County. The County completed a DEIR for potential development in the North Fair Oaks neighborhood (*North Fair Oaks Community Plan Update*) in August 2011. Potential new development in the neighborhood was shown to generate about 2,000 AM peak hour trips and 2,800 PM peak hour trips. Many of these trips were shown to use Marsh Road and Middlefield Road. Atherton believes that the cumulative analysis may show worse conditions on Marsh Road and Middlefield Road with the addition of both the Facebook and the North Fair Oaks Plan traffic.

Middlefield & Marsh Intersection. The Facebook project is shown to have a significant impact at the intersection of Middlefield Road and Marsh Road in the cumulative scenario. The Gateway project in Menlo Park and the North Fair Oaks plan also were shown to have a significant impact at that intersection. All of the EIRs show the need for additional capacity for the southbound to eastbound left turn from Middlefield Road to Marsh Road.

As mitigation for the impact, the Facebook DEIR identifies the need for a second southbound to eastbound left turn lane from Middlefield Road to Marsh Road. As acknowledged in the DEIR, this improvement would require widening Marsh Road eastbound from one lane to two lanes to receive the two turn lanes. (Note that the mitigation measure listed on page 3.5-113 for Middlefield/Marsh is incorrect. The correct mitigation is shown in Table 3.5-31.)

None of the EIRs, including Facebook, describe the existing problem that occurs in the opposite direction. There is a heavy demand for westbound to northbound right turns from Marsh Road to Middlefield Road. The left turn queue at the signal blocks the right turn lane, so vehicles have been observed cutting through the adjacent residential neighborhood on Fair Oaks Avenue, Holbrook Lane, and Palmer Lane. The mitigation for impacts to Middlefield/Marsh should include lengthening the left turn pocket so that the right turns do not get blocked.

Atherton has taken a close look at potential improvements to the Marsh Road and Middlefield Road intersection. Marsh Road can be widened to four lanes within the right-of-way. However, widening to four lanes for the entire length would involve the loss of several trees. The Town wishes to see widening only near the Marsh/Middlefield intersection to reduce the tree loss. Widening of Marsh Road also needs to accommodate pedestrians and bicycles within the cross section.

There is not sufficient room to widen Middlefield Road without acquiring right-of-way or making the lanes and shoulders too narrow for bicycles and pedestrians. Therefore, a second left turn lane cannot be added. To increase the left turn capacity, the southbound through lane could be converted to a left/through lane. This would require split-phase signal operation on Middlefield Road. Atherton has determined that the shared lane with split-phase operation would be enough to mitigate the Facebook impact, although the operation would not be as good as with two separate left turn lanes.

Sincerely,

Michael Kashiwagi, Director of Public Works

Neal Martin, City Planner

c. Marsh & Middlefield

The proposed mitigation measures for the intersection of Marsh Road and Middlefield Road includes restriping an additional southbound left turn/thru lane on Middlefield and modifying the existing traffic signal to accommodate a split phase operation of the intersection. On westbound Marsh Road the existing right turn lane shall be extended easterly approximately 350 feet by restriping the existing pavement. On eastbound Marsh, an additional lane approximately 600 feet in length shall be added to accommodate the eastbound receiving lane and provide the additional road width to accommodate the additional westbound right turn lane.

The improvements would require construction of a new travel lane on eastbound Marsh, signing and striping improvements, relocation of utility poles along Marsh and modifications to the existing traffic signal at the Marsh/Middlefield Road intersection.

Prior to the Development Agreement approval, the Project Sponsor shall prepare an updated construction cost estimate for the proposed mitigation measures at the intersection of Marsh Road and Middlefield Road for review and approval of the Public Works Director and the Town of Atherton. Within 90 days of the effective date of the Development Agreement of the East Campus, the Project Sponsor shall provide a bond for the improvements in the amount equal to the Project's fair share contribution of the estimated construction cost for the intersection improvements plus a 30 percent contingency. The Project's fair share contribution is estimated to be 30.4%.

Upon request by the Town of Atherton, the Project Sponsor shall deposit 100 percent of the construction cost estimate with the Town of Atherton. The Town of Atherton shall cause the improvements to be constructed and shall reimburse the Project Sponsor 69.6 percent of the construction cost estimate in the future as other area developments that impact this intersection are approved and they are required to pay exactions to fund their share of the construction of intersection improvements at that time. Construction of these improvements are not eligible for a Transportation Impact Fee (TIF) credit. Although the proposed mitigation would fully mitigate the impact, it remains **significant and unavoidable** because the intersection is under the jurisdiction of the Town of Atherton and the City cannot guarantee the mitigation measure would be implemented. (MM-TR6.2)



OFFICE OF THE CITY ATTORNEY

1100 ALMA STREET / MENLO PARK, CA 94025 / 650.324.9300 / FAX 650.324.0227

May 7, 2012

VIA US MAIL AND EMAIL

Ms. Theresa DellaSanta
 Interim City Manager
 Town of Atherton
 91 Ashfield Road
 Atherton, California 94027

Re: Facebook Campus Project Environmental Impact Report

Dear Ms. DellaSanta:

The City of Menlo Park ("City") is in receipt of your letter on behalf of the Town of Atherton ("Atherton") dated April 26, 2012. The City, as lead agency, takes seriously any claim regarding the sufficiency of its Environmental Impact Report ("EIR") analyzing the potential environmental impacts of the Facebook Campus Project and this letter is intended to respond to Atherton's comments.

As you know, the Facebook Campus Project consists of two phases: the first phase is the occupancy of 1601 Willow Road ("East Campus") with a vehicle trip cap and the second phase is the development of 312 and 313 Constitution Drive ("West Campus"). The Notice of Preparation ("NOP") was released for the Facebook Campus Project on April 21, 2011 for a 36-day public review period. A public scoping meeting was held on May 16, 2011 before the City's Planning Commission. Comments received by the City on the NOP and at the public scoping meeting were taken into account during preparation of the Draft EIR.

The Draft EIR was released on December 8, 2011 for a 54-day extended review period that ended on January 30, 2012. The public review period included one City Planning Commission hearing on January 9, 2012, which was open to the public. Comment letters on the Draft EIR were received from 11 public agencies (including Atherton), 14 organizations, and 25 individuals.

Atherton's comment letter dated January 19, 2012 ("Comment Letter"), acknowledged that the Facebook Campus Project would impact the intersection of Marsh Road and Middlefield Road in the cumulative scenario. In fact, the Draft EIR identified an impact only for the Cumulative 2025 East Campus and West Campus condition in the

evening peak hour. Atherton's Comment Letter further acknowledged that the mitigation proposed in the Draft EIR included additional capacity for the southbound to eastbound left-turn from Middlefield Road to Marsh Road. The Comment Letter went on to discuss the existing problem that occurs in the opposite direction and how the queue in the left-turn lane blocks the right-turn lane. The Comment Letter indicated that to address this *existing* problem, the road would need to be widened, but that widening Marsh Road would involve the loss of several trees and, therefore could not be done as Atherton wished to avoid tree loss.¹ The Comment Letter, then, turned back to the impact of the Facebook Campus Project and concluded that Atherton had determined that the conversion of the southbound through lane to a shared left and through lane with split-phase operation "would be enough to mitigate the Facebook impact". The City, therefore, understood that Atherton preferred this less intrusive mitigation to the widening of Middlefield Road, and was otherwise generally satisfied with the Draft EIR.

In response to Atherton's Comment Letter, City staff approached Atherton staff to discuss the wording of the mitigation measure for the intersection of Marsh Road and Middlefield Road. On February 1, 2012, City staff and Atherton staff discussed adding flexibility in regard to the specific improvement, similar to the language used for the Menlo Gateway Project. The City proposed language would allow Atherton the option to mitigate as proposed in the Draft EIR, which as shown in Exhibit A is feasible without the loss of trees, but which may require some right-of-way acquisition. The City proposed language would also allow Atherton to choose a similar traffic mitigation that would reduce delay to less than significant levels, including the conversion of the southbound through lane to a shared left and through lane with split-phase operation which Atherton indicated "would be enough to mitigate the Facebook impact" and, which as shown in Exhibit B is feasible and would also not result in the loss of any trees.

Then, for the first time on March 26, 2012, Atherton staff indicated that not only did Atherton want split phase operation, but it also wanted to cover the Atherton Channel, extend the westbound turn lane by 350 feet and add a 600 foot eastbound receiving lane, with the Facebook Campus Project paying 100 percent of the cost and receiving reimbursements as other projects were required to pay a fair share of the cost of intersection improvements (hereinafter referred to as the "Late Changed Mitigation Measure"). City staff and Atherton staff met on April 9 and April 25, 2012 to discuss the proposed Late Changed Mitigation Measure.

City staff reviewed the plan for the Late Changed Mitigation Measure, as shown on Exhibit C and determined that it would impact a number of trees, a result that Atherton's

¹ Atherton's stated desire to avoid tree loss makes sense in light of the explicit statement in Atherton's Municipal Code that preservation of these trees is essential to the health, welfare and quality of life of the citizens of Atherton. Atherton Municipal Code Section 8.10.010(B).

Comment Letter indicated was not acceptable to Atherton. In fact, based on a preliminary analysis by the City, Atherton's Late Changed Mitigation Measure would impact at least four heritage trees (as defined by Atherton Municipal Code Section 8.10.020(A)). This Late Changed Mitigation Measure would not only impact heritage trees on the north side of Marsh Road, it would also cover the Atherton Channel, impacting not only this environmentally sensitive waterway, but also necessitating the removal of a number of additional trees (some of which may be heritage trees). Despite meeting with Atherton staff on April 9 and April 25, 2012, Atherton has not provided any evidence or documentation to prove that the Late Changed Mitigation Measure is necessary to mitigate the Facebook Campus Project's Cumulative 2025 East Campus and West Campus condition impact in the evening peak hour.

On April 23, 2012, the City published a Response to Comments Document that included the flexible mitigation measure language that addressed Atherton's Comment Letter. See Final EIR, pgs. 4-220 and 4-221. The City's Planning Commission will hold a public hearing on the adequacy of the Final EIR on May 7, 2012.

Atherton's Comments and Requested Changes are Late

The California Environmental Quality Act ("CEQA") provides that the lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. 14 Cal. Code Regs. Section 15088(a). Use of the word shall indicates that responding to comments received prior to the close of the comment period on a draft EIR is mandatory. The comment period for the Facebook Campus Project Draft EIR closed on January 30, 2012. None of the discussions between Atherton and the City regarding Atherton's Late Changed Mitigation Measure or Atherton's April 26, 2012 letter were submitted prior to the deadline for comments. Therefore, all of Atherton's comments with the exception of the Comment Letter are late.

CEQA addresses how late comments are to be handled: The lead agency...*may* respond to late comments. 14 Cal. Code Regs. Section 15088(a) (emphasis added); see also Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 567: "There is no requirement that a lead agency respond in writing to comments submitted after expiration of the comment period." Therefore, it is as a courtesy to Atherton, not because of any legal requirement, that the City has considered these late comments.

Additionally, with respect to timing, it is of concern to the City that the letter dated April 26, 2012, was sent to the City just five business days (taking into account days that City offices are closed) prior to the Planning Commission hearing on the Final EIR, despite Atherton having had plenty of time to comment on the Draft EIR and the proposed

mitigation before the close of the comment period.² Courts have stated, "We cannot, of course, overemphasize our disapproval of the tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 568. The City sincerely hopes that Atherton does not have such motives behind this late letter. Nevertheless, because the City appreciates its amicable working relationship with Atherton and desires to be a good neighbor, the City has taken the time to send this late comment letter to its expert transportation consultant, DKS Associates, for analysis, consideration and response. The specific detailed response from DKS Associates is attached hereto as Exhibit D. To summarize, DKS Associates concludes that the comments provided by Atherton in the April 26, 2012 letter do not invalidate the analysis in the Final EIR and no change to the mitigation measure is warranted. Therefore, the City has no obligation to impose Atherton's proposed Late Changed Mitigation Measure on the Facebook Campus Project.

No Legal Basis For Proposed Late Changed Mitigation Measure

There is not only no factual basis on which to change the mitigation measure at the intersection of Marsh Road and Middlefield Road, there is also no legal basis. CEQA requires an EIR to discuss mitigation measures that can minimize the significant environmental effects of a project. Public Resources Code Section 21002.1(a); 14 Cal. Code Regs. Section 15126.4. The mitigation measure identified in the Draft EIR was designed to minimize the Cumulative 2025 East Campus and West Campus condition evening peak hour impact. The only basis on which it was concluded that this impact was significant and unavoidable is that the mitigation lies within the jurisdiction of Atherton. 14 Cal. Code Regs. 15091(a)(2). Were the intersection in the City's jurisdiction, the impact would not be significant and unavoidable, and could be mitigated. The revision reflected in the Final EIR provides Atherton the flexibility to implement the mitigation measure in the Draft EIR or a similar traffic mitigation to reduce delay to a less-than-significant level. As shown on Exhibit B, the mitigation measure which Atherton indicated in its Comment Letter "would be enough to mitigate the Facebook impact" is feasible and also would not result in the loss of any trees.

The Late Changed Mitigation Measure that Atherton now proposes is designed to address the existing problem that occurs in the opposite direction at a different time of day, the morning peak period, not any impact created by the Facebook Campus Project. In fact, in a recent staff report for the Atherton Council meeting on April 18, 2012, Atherton staff acknowledged that the Late Changed Mitigation Measure sought not only to mitigate

²It is also of concern to the City that at the meeting between City staff and Atherton staff on April 25, 2012, which was intended to be a collaborative effort to reach agreement regarding the mitigation measure, Atherton's representatives did nothing more than engage in legal posturing and made no room for productive discussion.

the perceived Facebook Campus Project's impact, but also the existing conditions at the intersection of Marsh Road and Middlefield Road: "Staff has requested the City of Menlo Park include the attached language as a mitigation measure in the Final Facebook EIR to properly address impacts to the Marsh/Middlefield intersection as well as the queuing of traffic on westbound Marsh Road." Atherton's own report evidences its desire to have the Facebook Campus Project mitigate an existing traffic condition to which the Facebook Campus Project itself does not contribute. CEQA requires only that a project mitigate its own impacts, not existing conditions and, therefore the proposed Late Changed Mitigation Measure far exceeds the legal bounds of CEQA and the purpose of mitigation.

Furthermore, despite the acknowledgment by Atherton staff in its April 18, 2012 staff report that "we cannot require new development to fix existing deficiencies", Atherton continues to request that the Facebook Campus Project fund 100 percent of the cost. As a general rule, an agency may assess a project its fair share of mitigation costs, based on the amount the project contributes to a cumulative environmental problem. The mitigation required of a project must be roughly proportional to its impacts, so a lead agency may not insist that the developers of a single project shoulder the bulk of the expense for mitigating a significant cumulative impact. Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 364; 14 Cal. Code Regs. Section 15126.4(a)(4)(B). Accordingly, it is not legally appropriate for the mitigation measure to include the requirement that the Facebook Campus Project deposit 100 percent of the cost of Atherton's desired intersection improvements. Furthermore, in the Cumulative 2025 East Campus and West Campus condition, the Facebook Campus Project will be responsible for only *eight* percent of the traffic at the intersection of Marsh Road and Middlefield Road. In light of the fact that 92 percent of the traffic is from other sources, Atherton's demand that the Facebook Campus Project front 100 percent of the cost is far from roughly proportional as required by CEQA.

The City appreciates Atherton's interest in the Facebook Campus Project, but continues to respectfully disagree that any change to the mitigation measure as presented in the Final EIR is factually or legally necessary. The City is willing, however, to pursue the design features in Exhibit B which Atherton has indicated "would be enough to mitigate the Facebook impact" without intruding into any right-of-way or requiring removal of trees. The City looks forward to a continued good relationship with Atherton as projects come forward, which impact both communities.

Sincerely,


William L. McClure
City Attorney

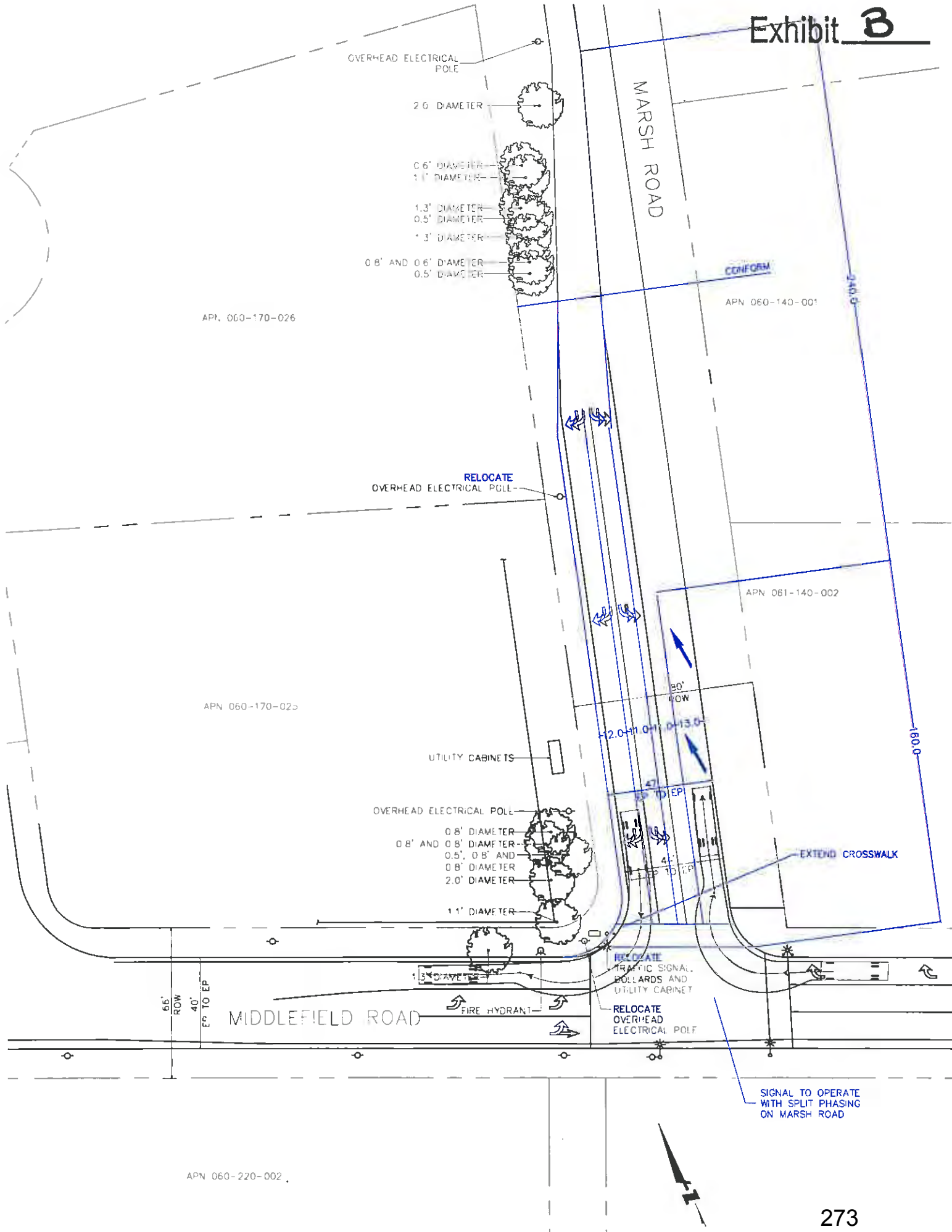
Ms. Theresa DellaSanta
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cc: Alex D. McIntyre
Justin Murphy
Charles Taylor
Planning Commission
City Council
Applicant
Atherton Town Attorney

Exhibits:

- A – Diagram: Draft EIR Mitigation Measure
- B – Diagram: Atherton's January 19, 2012 Mitigation Measure
- C – Diagram: Late Changed Mitigation Measure
- D – DKS Associates Memorandum

Exhibit B



APN 060-170-026

APN 060-170-025

CONFORM
APN 060-140-001

APN 061-140-002

APN 060-220-002



MEMORANDUM

TO: Rachel Grossman, Atul Patel, Justin Murphy, Chip Taylor,
City of Menlo Park

FROM: Paul Stanis
DKS Associates

DATE: May 4, 2012

SUBJECT: Additional Facebook EIR Response to Comment from the Town of Atherton's April 26, 2012, Letter. P 11014-000

This memo provides a Response to Comments for the additional comment letter that was submitted by the Town of Atherton to the City of Menlo Park pertaining to the Facebook EIR on April 26, 2012. DKS has reviewed the comments and provided responses to each of the concerns raised by the Town of Atherton. The potentially significant impact associated with the intersection of Marsh Road and Middlefield Road would occur for the Cumulative 2025 East Campus and West Campus Condition PM peak hour. The Facebook Campus Project's contribution to traffic at this intersection would only be eight percent of the traffic, with 92 percent of the traffic attributable to other sources. The mitigation measure suggested to reduce the impact at this location to a less than significant level has been described in the EIR. This measure would include adding a second left-turn lane to the southbound approach and widening the paving. Additionally, Marsh Road would be restriped to accommodate an eastbound receiving lane.

1 *The commentor states that the trip generation associated with the Project has been incorrectly calculated and is 25 percent less than the rates described in the Institute of Transportation Engineers Trip Generation 8th Edition.*

The trip generation for the Project was calculated for the East and West Campuses and tailored for the specific uses at each campus. The trip generation was calculated using the fitted curve equation for land use 714 in the Institute of Transportation Engineers (ITE) Trip Generation 8th Edition, which is the industry standard for trip generation calculations. The use of the fitted curve equation considers the size of the proposed development as it relates to the sample size and sample characteristics surveyed to develop the trip generation assumption. The fitted curve equation provides a customized trip generation number based on the size of a proposed project rather than a one-rate-fits-all approach provided by an average rate per employees. The trip generation calculations include all vehicles visiting the Project site, including, but not limited to, personal, shuttle, and vanpool vehicular trips. Additionally, the daily vehicle trip analysis included in the Draft EIR represents a higher vehicle trip total when compared to the ITE trip generation rates. The trip generation methodology is detailed in the Draft EIR on pages 3.5-30 through 3.5-31, 3.5-43 through 3.5-44, and 3.5-72 through 3.5-73.

For the East Campus, a 25 percent trip reduction factor arises from the Sun Conditional Development Permit and Development Agreement which has governed the East Campus

since 1992. This trip reduction is not considered a credit for trip generation but rather is a trip reduction requirement. Consequently, any occupancy of the East Campus under the existing permit, including occupancy by Facebook up to 3,600 employees, would be required to adhere to this 25 percent trip reduction. Nevertheless, the Project Sponsor is incorporating additional Transportation Demand Management (TDM) measures and a trip cap, as described on pages 2-8 through 2-9 of the Draft EIR, to further reduce vehicle trips generated by the Project. The Trip Cap Monitoring and Enforcement Policy is included in Appendix 3.5 of the Draft EIR. Please refer to Master Response 3 in the Final EIR for further information regarding the TDM program and Master Response 4 in the Final EIR for further information regarding the trip cap.

The West Campus trip generation estimates presented on page 3.5-72 of the Draft EIR use the best-fit equation methods from the Institute of Transportation Engineers (ITE), Trip Generation Manual (8th Edition, 2008) for Corporate Headquarters (Land Use Code 714) for the Peak Hour trip generation, as well as information provided by the Project Sponsor for daily trip generation. The daily trip generation for the West Campus was prepared using data provided by the Project Sponsor and utilized the same methods as the East Campus trip generation. For more details regarding the trip generation calculations, please see the discussion on page 3.5-72 of the Draft EIR.

Accordingly, the Project trip generation for the East and West Campuses is correct as reported in the Draft EIR.

- 2 *The commentor states that the trips generated by the Project have been distributed by hand rather than utilizing the City/County Association of Governments (C/CAG) or other appropriate travel demand forecasting models. As a result, the commentor states that the methodology used in the Draft EIR analysis does not quantify the appropriate displacement of traffic from major transportation facilities due to the Project.*

While C/CAG and other travel demand forecasting models are available as the commentor notes, the City of Menlo Park has collected and regularly uses information about trip distribution patterns for employees who are employed *within the City*. The employee residential trip distribution applied in the Draft EIR is based on the City of Menlo Park Circulation System Assessment (CSA), which details Menlo Park employee residences by geographical region and details the accepted trip distribution patterns for transportation analysis within the City. These CSA guidelines have been used for this analysis, as well as for other EIRs in Menlo Park, and are appropriate because they utilize employee characteristics unique to Menlo Park. While the CSA trip distribution served as the foundation for the trip distribution and trip assignment in the Draft EIR, it was refined with existing Facebook employee zip code and Census information. The use of a manual assignment methodology reflects the future demand on a given intersection and does not assume changes the future travel characteristics of the existing, background, or project trips, such as time of travel or mode choice. Therefore, the manual assignment represents a

conservative approach to estimating the demand and, ultimately, the analysis of future traffic conditions.

As described on page 3.5-44 of the Draft EIR, the trip distribution pattern reflects a more traditional employee distribution pattern within the City of Menlo Park. Consequently, the trip distribution developed and relied upon in the Draft EIR is correct. The background growth rate used for the Draft EIR is also addressed in Response 9b.23 of the Final EIR.

- 3 *The commentor states that the Draft EIR should include significant future projects, including the North Fair Oaks Community Plan Update in the analysis.*

The North Fair Oaks Community Plan details a set of policies, strategies, guiding principles, and land use changes for that community. The North Fair Oaks Community Plan is included in the Tier 2 analysis in the Cumulative Conditions with Potential Cumulative Projects on page 3.5-126 of the Draft EIR.

- 4 *The commentor states that the Draft EIR has not analyzed additional potentially significant traffic impacts within the Town of Atherton beyond the intersection of Marsh and Middlefield Roads. The commentor requests that streets such as Fair Oaks Lane, Watkins Avenue, Atherton Avenue, Stockbridge Avenue, Encinal Avenue, Glenwood Avenue, and other residential streets used to bypass impacted intersections be analyzed.*

The roadway facilities selected for analysis include the most likely intersections and roadways to be traveled by Project-generated vehicles. Consideration has been given to roadway facility proximity to the Project site, existing traffic patterns, distances to freeway ramps, travel time to the Project site, and projected travel patterns to/from the Project site to origins/destinations regardless of jurisdiction. Based on these considerations, the Draft EIR concluded that vehicle traffic will disperse through the roadway network and is not expected to affect any of the specific roadway segments in the Town of Atherton noted by the commentor. Therefore, the list of intersections selected for analysis in the Draft EIR is appropriate and correct.

- 5 *The commentor states that the Draft EIR did not describe the heavy demand for westbound to northbound right turns from Marsh Road to Middlefield Road. The heavy demand may result in cut-through traffic utilizing neighborhood streets in Atherton such as Fair Oaks Lane, Holbrook Lane, Palmer Lane, and San Benito Avenue to bypass Marsh Road.*

The demand for westbound right turns from Marsh Road to northbound Middlefield Road is considered in the intersection analysis for this location. Queuing analysis is generally not required by CEQA and is not analyzed as part of the Draft EIR. However, information regarding the average queue length for the westbound approach can be found in Appendix 3.5.

Bi-directional 24-hour roadway counts along Holbrook Lane suggest that cut-through traffic occurs during the AM peak period in the westbound direction, counter to the AM peak hour

vehicle flow generated by Facebook trips heading in the eastbound direction on Marsh. Additionally, cut-through traffic in the PM peak period, when the only Project-related impacts at Marsh Road and Middlefield Road would occur, is minimal. As such, the Project does not contribute “heavy demand” during the AM peak period when the majority of existing cut-through traffic occurs, and nor would Project-related vehicle trips find it necessary to use the North Fair Oaks neighborhood for cut-through traffic in the PM peak period.

This memo aims to respond to the comments contained in the Town of Atherton’s April 26, 2012 letter to the City of Menlo Park relating to the Facebook EIR. If you should have any questions or additional comments about the memo, please feel free to contact me at 510-267-6645.

Sincerely,

Paul Stanis

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

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*Flex your power!
 Be energy efficient!*

May 7, 2012

SMVAR003
 SCH#2011042073

Ms. Rachel Grossman
 Planning Division
 Community Development Department
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025

RECEIVED
 MAY 07 2012
 BY PLANNING

Dear Ms. Grossman:

Menlo Park Facebook Campus Project – Final Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the Menlo Park Facebook Campus project. The following comments are based on the Final Environmental Impact Report (FEIR).

West Campus Site Access

As we stated in our January 30, 2012 comment letter on the Draft Environmental Impact Report (DEIR), Caltrans maintains access control along State Route 84 where the project is located. New and/or relocated access points are not normally permitted along access controlled routes. Therefore, the plans for the relocated and secondary driveway should not be assumed as part of this project. We recommend that you meet with us as soon as possible to verify what options are available for access to the site.

Trip Generation and Traffic Estimates

1. Response #3.6, DEIR, Table 3.5-11, Near Term 2015 East Campus Only Condition Trip Generation, page 3.5-44: shows an under-estimated AM Peak trip generation of 1,820 vehicles per hour (VPH) adopting the fitting curve $LNN(T) = 0.89 LN(X) - 0.02$ for 6,600 employees the Institute of Transportation Engineers (ITE) land use code 714. Please revise the generated trips on Tables 3.5-11, 3.5-24 and associated analysis accordingly.
2. Response #3.6 and Master Response #1 Baseline: The average occupancy of the East Campus over a 10-year horizon from 2002 - 2011 was 2,854 employees. We understand an employee cap of 3,600 employees is allowed under the existing permit for the East Campus. However, the 3,600 was used as the existing/baseline where the actual baseline is 2,854, an over-estimation by 746. The report implies that the existing condition is the same as the baseline

"Caltrans improves mobility across California"

Ms. Rachel Grossman/City of Menlo Park
May 7, 2012
Page 2

condition.

Table 3.5-24, East Campus and West Campus Trip Generation, East Campus Office Increment, page 3.5-104: Please revise all of the associated trip generation tables and traffic impact analysis to reflect the correct existing number of 2,854.

3. Response #3.8, Cumulative 2025 Conditions, Page 3.5-94: A 20-year time horizon is the norm for analyzing long-term traffic impacts. The study uses year 2025 for Cumulative Conditions which is only a 13-year horizon. A 13-year horizon is considered an intermediate impact. We understand the City of Menlo Park (City) accepted the year 2025 as the cumulative horizon. Considering the General Plan Build-out should be updated to between 2030 and 2035, the study should be revised to reflect 2030 or 2035 for the Cumulative Only Conditions, West Campus plus East Campus Only Conditions, and West Campus plus East Campus plus 2030 or 2035 Cumulative Conditions.
4. Response #3.7 and Master Response #4: We believe that both the 25% trip reduction and the 40% non-drive alone figures are over-estimated and are unattainable targets for the following reasons:
 - a. The Facebook Campuses are farther from the urban core, have limited transit services, and lack adequate proximity to public transportation infrastructure (such as being within walking distance to BART or a light rail station).
 - b. Resident employees may drive alone for an easy and convenient commute.
 - c. High car ownership and flexible working hours do not guarantee the success of a Transportation Demand Management (TDM) program in either the short or long-term, while economic incentives are likely to be less sensitive to the high-income commuter.
 - d. The TDM program with transit service may have a limited 2% to 2.5% vehicle trip reduction without transit service (applied to the existing conditions, Figure 3.5-2) and a 2.5% to 5% vehicle trip reduction with transit corridor according to the June 2004 Institute of Transportation Engineers (ITE) Trip Generation Handbook. Thus, 25% vehicle trip reduction is too aggressive.
 - e. If possible, please provide documentation that shows modal share of the current 3,600 employees at the East Campus that successfully fulfills the 40% non-drive alone share over the last two years. If this cannot be shown at this time, motivating the future 6,600 employees to give up driving alone would be likely impossible.
 - f. Please provide more details on the Trip Cap program enforcement and penalty methodology. Who will benefit from the financial penalties received? What action would be taken if the Trip Cap program is not successful?
5. Response #3.7 Additional Information and Master Response #4 Trip Cap:
In order to demonstrate that the underlying assumptions and implementation of the Trip Cap are within reasonable and tolerable levels, please provide additional information and analysis as identified below:
 - a. Number of non-resident employees who live outside the City versus resident employees of all campuses, including the breakdown of the 9,400 employees between the East Campus and the West campus

Ms. Rachel Grossman/City of Menlo Park
May 7, 2012
Page 3

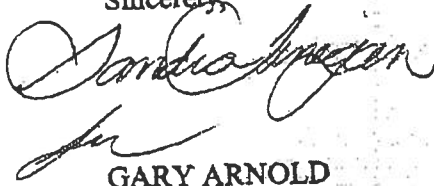
- b. Trip length of all employees, particularly the breakdown of East Campus and West Campus in the form of distribution of trip length (y-value) versus employee (x-value)
 - c. Travel time of all employees, particularly the breakdown of the East Campus and the West Campus in the form of distribution of travel time (y) versus employee (x)
 - d. Analysis of future modal split of all employees, incorporating reasonable travel time and costs for high income and high time value of employees
 - e. Please provide any comparable cases in the nine Bay Area counties that have shown a sustainable 25% vehicle trip reduction with measures of trip cap and TDM.
6. The 25 % trip reduction and Trip Cap should be considered an experimental pilot test. These assumptions should not be factored into trip generation tables before the 25% trip reduction and Trip Cap can be proven successful over a substantial period of time. We recommend the study apply reasonable TDM reductions until the proposed trip cap and TDM program are found to be successful and rates sustainable over time.

Encroachment Permit

Work that encroaches onto the state right of way (ROW) requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating the state ROW must be submitted to the following address: Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. See the website link below for more information. <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Please feel free to call or email Sandra Finegan at (510) 622-1644 or sandra_finegan@dot.ca.gov with any questions regarding this letter.

Sincerely,



GARY ARNOLD
District Branch Chief
Local Development – Intergovernmental Review

c: State Clearinghouse

KIRSTEN KEITH
MAYOR

PETER OHTAKI
MAYOR PRO TEM

ANDREW COHEN
COUNCIL MEMBER

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COUNCIL MEMEBR

KELLY FERGUSSON
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Building

TEL 650.330.6704
FAX 650.327.5403

City Clerk

TEL 650.330.6620
FAX 650.328.7935

City Council

TEL 650.330.6630
FAX 650.328.7935

City Manager's Office

TEL 650.330.6610
FAX 650.328.7935

Community Services

TEL 650.330.2200
FAX 650.324.1721

Engineering

TEL 650.330.6740
FAX 650.327.5497

Environmental

TEL 650.330.6763
FAX 650.327.5497

Finance

TEL 650.330.6640
FAX 650.327.5391

**Housing &
Redevelopment**

TEL 650.330.6706
FAX 650.327.1759

Library

TEL 650.330.2500
FAX 650.327.7030

Maintenance

TEL 650.330.6780
FAX 650.327.1953

Personnel

TEL 650.330.6670
FAX 650.327.5382

Planning

TEL 650.330.6702
FAX 650.327.1653

Police

TEL 650.330.6300
FAX 650.327.4314

Transportation

TEL 650.330.6770
FAX 650.327.5497



701 LAUREL STREET, MENLO PARK, CA 94025-3483
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May 21, 2012

California Department of Transportation
Local Development – Intergovernmental Review
Attn: Gary Arnold, District Branch Chief
111 Grand Avenue
P.O. Box 23660
Oakland, CA 94623

RE: Menlo Park Facebook Campus Project – Final Environmental Impact Report, Comment Letter Dated May 7, 2012

Dear Mr. Arnold:

Thank you for your comment letter dated May 7, 2012 regarding the Environmental Impact Report prepared for the Facebook Campus Project. The City's Transportation Consultant for the Project prepared a memorandum responding to the concerns expressed in your letter. This memorandum is included as an attachment to this letter.

As discussed on May 16, 2012 with Sandra Finegan, the City looks forward to the opportunity to meet with Caltrans to further discuss any questions or concerns you may have about the Project. If you have any questions or would like to discuss the Project further in advance of that meeting, please contact me directly at 650-330-6737 or rmgrossman@menlopark.org.

Sincerely,

Rachel Grossman
Associate Planner

Enc.: Memorandum prepared by DKS Associates, dated May 15, 2012

CC: Sandra Finegan, Caltrans
State Clearinghouse

MEMORANDUM

TO: Rachel Grossman, Atul Patel, Justin Murphy, Chip Taylor,
City of Menlo Park

FROM: Paul Stanis
DKS Associates

DATE: May 15, 2012

SUBJECT: Additional Facebook EIR Response to Comment from Caltrans' P 11014-000
May 7, 2012, Letter.

This memo provides a Response to Comments for the additional comment letter that was submitted by Caltrans to the City of Menlo Park relating to the Facebook EIR on May 7, 2012. The Caltrans letter provided additional comments on the Draft EIR and comments related to the West Campus site access, trip generation, trip distribution, mode share, and analysis years selected. DKS has reviewed the comments and provided responses to each of the concerns raised by Caltrans.

- 1 *The commentor states that Caltrans maintains access control along State Route 84 (Bayfront Expressway) where the project is located. The commentor also states that new and/or relocated access points are not normally permitted along access controlled routes and the relocated and secondary driveway along State Route 84 for the West Campus should not be assumed as part of the project. The commentor recommends meeting with Caltrans to verify access options to the West Campus.*

The City of Menlo Park staff is aware that the two proposed access points to the West Campus are along Bayfront Expressway (State Route 84) and would require coordination with Caltrans. Menlo Park acknowledges that approval from and application for encroachment permits from Caltrans would be necessary for the project. The applicant originally submitted an application for an Encroachment Permit with Caltrans on May 27, 2011, received comments on June 27, 2011, and resubmitted on April 9, 2012. The applicant submitted Encroachment Permit Application Number 0411-6MC0952 for location 04-SM-84 27.21. The City of Menlo Park and the applicant will continue to review access concerns and issues with the access points along Bayfront Expressway with Caltrans and to coordinate with Caltrans for the duration of the project.

- 2 *The commentor states that the trip generation calculation for the East Campus should be recalculated for 6,600 employees using the Institute of Transportation Engineers fitted curve equation for land use code 714. Table 3.5-11 on page 3.5-44 of the Draft EIR shows the total to be 1,820 vehicle trips.*

The trip generation for the Project was calculated for the East Campus and tailored for the specific uses at the site. The East Campus trip generation was developed using the trip cap numbers. The baseline trip generation (for 3,600 employees as currently allowed) used ITE rates plus 25% reduction. The trip generation was calculated using the fitted curve equation for land use 714 in the Institute of Transportation Engineers (ITE) Trip Generation 8th Edition, which is the industry standard for trip generation calculations. The trip generation calculations include all vehicles visiting the Project site, including, but not limited to, personal, shuttle, and vanpool vehicular trips. Additionally, the daily vehicle trip analysis included in the Draft EIR represents a higher vehicle trip total when compared to the ITE trip generation rates. The East Campus trip generation methodology is detailed in the Draft EIR on pages 3.5-31 through 3.5-34 and 3.5-43 through 3.5-44.

For the East Campus baseline (no project) conditions, a 25 percent trip reduction factor was applied based on the Sun Conditional Development Permit and Development Agreement which has governed the East Campus since 1992. This trip reduction is a conservative assumption, as the baseline conditions have lower trip generation levels. It is not considered a credit for trip generation but rather is a trip reduction requirement. Consequently, any occupancy of the East Campus under the existing permit, including occupancy by Facebook with up to 3,600 employees, would be required to adhere to this 25 percent trip reduction. The Project Sponsor is incorporating additional Transportation Demand Management (TDM) measures and a trip cap, as described on pages 2-8 through 2-9 of the Draft EIR, to further reduce vehicle trips generated by the Project. The Trip Cap Monitoring and Enforcement Policy is included in Appendix 3.5 of the Draft EIR. Please refer to Master Response 3 in the Final EIR for further information regarding the TDM program and Master Response 4 in the Final EIR for further information regarding the trip cap. Accordingly, the Project trip generation for the East Campus is correct as reported in the Draft EIR.

- 3 *The commentor states that the average occupancy of the East Campus between 2002 and 2011 was 2,854 employees and should be used for the baseline employee occupancy rather than the site-associated 3,600 employee cap. The commentor asks for a reevaluation of the transportation analysis with a 2,854 employee baseline.*

Caltrans states that the baseline should be the average of 2,854 employees for the 10-year horizon from 2002 - 2011 rather than the 3,600 permitted employees. There is no legal basis for concluding that the 10-year average must be the baseline. The *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316 case used the permitted level as the baseline, noting that the average level was not substantially lower. In fact, rather than concluding that the average number was the appropriate baseline, the court concluded that to use anything other than the permitted level would be misleading. The same is true here. The average occupancy numbers were provided to evidence that the site had a history of occupancy with substantially the same number of employees as was permitted. The average occupancy for the years 2002 - 2010 was 3,121 with some years above the permitted 3,600 employees and other years below. The average occupancy for the years 2002 - 2011, which

included the year that the East Campus transitioned from Sun to Oracle to Facebook and had a more reduced occupancy, had an average 2,854 employees. Then, exercising its discretion and reaching the conclusion identified in the *Cherry Valley* case as legally appropriate, the City used the permitted 3,600 employees as the baseline. As detailed in Master Response #1, no modification to the baseline is necessary.

- 4 *The commentor states that 20-year horizon for the Cumulative Condition analysis should be extended to 2030 or 2035. Even though the City of Menlo Park uses 2025 as the cumulative horizon, the commentor suggests 2035 to correspond with a future General Plan Update with a 2030 or 2035 build-out year.*

The Cumulative Condition year provides a 15-year horizon consistent with the accepted cumulative year timeline for the City of Menlo Park. The use of the 2025 Cumulative Conditions analysis year is consistent with other EIRs completed in the City of Menlo Park and consistent with the City's TIA guidelines. As such, no changes will be made to the Draft EIR. The City of Menlo Park may consider a longer horizon after a General Plan Update is adopted by the city.

- 5 *The commentor states that the 25% trip reduction and the 40% non-drive alone figures are over-estimated and unattainable for the following reasons:*

a) The Facebook Campuses are farther from the urban core, have limited transit services, and lack adequate proximity to public transportation infrastructure;

b) Resident employees may drive alone for an easy and convenient commute;

c) High car ownership and flexible working hours do not guarantee the success of a Transportation Demand Management (TDM) program in the short or long term while economic incentives are likely to be less sensitive to high-income commuters;

d) The TDM program with transit service may have a limited 2% to 2.5% vehicle trip reduction without transit service (applied to existing conditions, Figure 3.5-2) and a 2.5% to 5% vehicle trip reduction with transit corridor according to the June 2004 ITE Trip Generation;

e) Provide documentation that shows modal share of the current 3,600 employees at the East Campus that fulfills the 40% non-drive alone share over the last two year and if this rate is not being met it may be difficult for this program to be expanded to 6,600 employees;

f) Please provide further details on the Trip Cap enforcement and penalty including who will benefit from the financial penalties received and what action would be taken if the Trip Cap program is not successful.

Please refer to the response to comment 2 for a discussion relating to the 25% trip reduction. Fehr and Peers surveyed the Facebook Palo Alto headquarters in July and December 2010, as detailed on page 3.5-31 of the Draft EIR, and found that 41 percent of employees commute by alternative modes (shuttles, public transit, walking and bicycling). Table 2 on page 3 of Appendix 3.5-E of the Draft EIR shows that 41 percent of employees carpooled, used shuttles, walked, or cycled to Facebook. These mode splits served as the basis for the Trip Cap methodology and is detailed in Appendix 3.5-E of the Draft EIR.

The Facebook TDM program would include their own shuttle service to the urban core of Menlo Park, long distance destinations such as San Francisco, the South Bay and other Peninsula communities, and transit hubs such as Caltrain stations to reduce the number of drive alone vehicle trips. These measures plus others that would be included as part of the TDM program, as described on page 3.5-32 of the Draft EIR, would provide a variety of transportation alternatives to driving alone.

While the June 2004 ITE Trip Generation may indicate that up to a 5% decrease in vehicle trip reduction may be possible with a TDM plan, Facebook has chosen to pursue an aggressive TDM plan with multiple options for employees. Employees have already accepted the TDM program implemented at Facebook. As documented in Appendix 3.5-E of the Draft EIR, a Fehr and Peers survey of Facebook's Palo Alto campus in July and December of 2010 indicates that 41% of employees carpool, bike, walk, use a company-sponsored shuttle. Additionally, alternative modes of transportation have been a part of Facebook employees' commute habits and would be required by the Trip Cap with an increase in employees from 3,600 to 6,600.

The proposed Trip Cap would limit the total number vehicle trips (autos, trucks, buses, etc.) entering and leaving the campus during the morning and afternoon peak hours, as well as an overall trip cap for daily trips to and from the campus. The Project sponsor has committed to the Trip Cap which as developed based on the survey data at the Palo Alto site described above. The Trip Cap Monitoring and Enforcement Document in Appendix 3.5-F of the Draft EIR provides more detail about the trip cap monitoring and enforcement policy.

Facebook, the City of Menlo Park, and the City of East Palo Alto have established a memorandum of agreement stating a violation of the trip cap program would designate 25% of the financial penalties to East Palo Alto and 75% of the financial penalties to Menlo Park. Additionally, the financial penalties for violating the Trip Cap are high and serve as a deterrent for violation.

- 6 *The commentor requests the following information about the assumptions for and implementation of the Trip Cap to determine if the Trip Cap is within reasonable and tolerable levels:*

- a) *Please provide the number of non-resident employees who live outside the City versus resident employees including the breakdown of the 9,400 employees between the East and West Campuses*
- b) *Please provide the trip length of all employees particularly the breakdown of East and West Campuses in the form of distribution trip length (y-value) versus employee (x-value).*
- c) *Please provide the travel time of all employees particularly the breakdown of East and West Campuses in the form of distribution travel time (y-value) versus employee (x-value).*
- d) *Analysis of future mode split of all employees, incorporating reasonable travel time and costs for high income and high time value of employees*
- e) *Please provide any comparable cases in the nine Bay Area counties that have shown a sustainable 25% vehicle trip reduction with measures of trip cap and TDM.*

Employee zip code data was used to refine the City's CSA distribution in the Draft EIR and was used for the air quality/greenhouse gas (VMT estimates) analysis. However, it is the policy of Facebook not to release zip code data to protect the safety of their employees. Also, Facebook uses current employee residence data and frequent input from employees to continuously adapt and expand the TDM program strategies to meet the needs of its employees and the Trip Cap Requirements. In terms of similar efforts to reduce the number of single-occupancy vehicles, the Stanford University Medical Center project would expand on the current TDM program in operation. Designating an on-site TDM coordinator for the facility, providing transit passes, expanding bus service, and improving pedestrian and bicycle facilities are all suggested as mitigations measures in the Stanford University Medical Center EIR. These measures would reduce the number of single-occupancy vehicles and encourage the use of alternative means of transportation.

Google's campus in Mountain View currently utilizes a fleet of biodiesel employee shuttles and an electric vehicle carsharing program, and has constructed bicycle facilities to encourage the use of alternative modes of transportation. Apple's TDM program includes on-site amenities, a transit center, employee shuttles, transit pass subsidies, pedestrian- and bicycle-friendly design, and on-site electric vehicle charging stations to encourage the use of alternative modes of transportation. These efforts at Apple have resulted in single occupancy vehicle utilization rates of 72% and 68% in the respective AM and PM peak hours and are measured against 82.6% for other workplaces in Cupertino. Stanford University and Genentech are nearby employers who have a successful TDM plan. The TDM Program and Trip Cap associated with the Facebook Project would seek to improve on these numbers at similarly oriented headquarters and maintain or exceed the 41 percent utilization of non-single occupancy vehicles.

- 7 *The commentor states that the 25% trip reduction and Trip Cap should be considered an experimental pilot test and should not be factored into the trip generation tables before the 25% trip reduction and Trip Cap can be proven successful over a substantial period of time. The commentor recommends that the EIR applies reasonable TDM reductions until the proposed trip cap and TDM program are found to be successful and rates sustainable over time.*

The Trip Cap would be part of the project and the applicant would be required to meet the peak period and daily vehicle caps detailed in the Trip Cap Monitoring and Enforcement Document in Appendix 3.5-F of the Draft EIR. Real-time monitoring on a daily basis would be required as part of this policy. If the applicant does not comply with the document, the corresponding penalties would be enforced at that time.

- 8 *The commentor provides information with regards to obtaining encroachment permits for work in Caltrans right of way.*

The applicant originally submitted an application for an Encroachment Permit with Caltrans on May 27, 2011, received comments on June 27 2011, and resubmitted on April 9, 2012. The applicant submitted Encroachment Permit Number 0411-6MC0952 for location 04-SM-84 27.21.

This memo was designed to respond to the comments contained in Caltrans' May 7, 2012 letter to the City of Menlo Park relating to the Facebook EIR. If you should have any additional questions or comments, please feel free to contact me at 510-267-6645.

Sincerely,

Paul Stanis