

Final Environmental Impact Report (FEIR)
Exhibit B
Additional Responses to Comments and Revisions

CEQA Process for the Project

A Draft Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code [PRC], Section 21000 et seq.), was prepared by the City of Santa Clara (City) to disclose the potential environmental effects of the City Place Santa Clara Project (Project). The Draft EIR, issued for public review on October 9, 2015, includes a description of the Project, an assessment of its potential effects, a description of mitigation measures to reduce significant effects that were identified, and consideration of alternatives that could address potential significant environmental impacts. The Draft EIR was released on October 9, 2015 for a 45-day review period, ending on November 23, 2015 (and subsequently extended to December 7, 2015). During this review period, the document was reviewed by various State, regional, and local agencies, as well as by interested organizations and individuals. Comment letters on the Draft EIR were received from 22 agencies, 9 organizations, and 8 individuals.

The Final EIR, which includes the Draft EIR and the Responses to Comments document, responds to written comments on the Draft EIR that were raised during the public review period, and contains revisions intended to correct, clarify, and amplify the Draft EIR. The responses and revisions in this document 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.

CEQA requires public review only at the Draft EIR stage. In this case, although not required by CEQA, the lead agency elected to provide an opportunity for the public to review and comment on the Final EIR prior to making a decision on the Project, as expressly allowed under Section 15089(b) of the CEQA Guidelines. The Final EIR was released for a 10-day public review period on April 19, 2016. During the 10-day public review period, letters were received from 8 public agencies, 5 organizations, and 2 individuals.

As set forth in Section 15089(b) of the CEQA Guidelines, if an opportunity for public review of a Final EIR is provided, the review should focus on the Final EIR's responses to comments on the Draft EIR, including any inadequacies in the responses to comments. Pursuant to Section 15088(a) of the CEQA Guidelines, lead agencies may provide, but are not required to provide, responses to comments received after a Draft EIR review period (including comments received during a Final EIR review period). Accordingly, this Exhibit provides clarification and further documentation to support the analysis and conclusions presented in the Final EIR based on the comments that were received during the Final EIR comment period. As set forth in Section 15089(b) of the CEQA Guidelines, if public review of a Final EIR is provided, the review should focus on the Final EIR's responses to comments on the Draft EIR. Further, Section 15088 of the CEQA Guidelines stipulates that responses should pertain to major or significant environmental issues raised by commenters. Therefore, comments that express an opinion about the merits of the Project or Project alternatives rather than raise questions about the adequacy of the responses to comments or the Draft EIR analysis are not examined in detail in this document. In addition, this document does not provide a response regarding financial concerns or Project design that would not have a physical environmental impact.

How to Use This Exhibit

This document addresses comments received after the release of the Final EIR and consists of five sections:

- *Chapter B.1 – Introduction.* Reviews the purpose and contents of this Responses to Comments document.
- *Chapter B.2 – Responses to Individual Comment Letters.* Provides responses to comment letters that were received from two public agencies, the City of San Jose and the Santa Clara Valley Transportation Authority (VTA), after the release of the Final EIR.
- *Chapter B.3 – Responses to General Comments.* Provides a response to general comments that were raised in multiple comment letters received after the release of the Final EIR. As discussed above, as allowed under CEQA, this chapter responds only to those general comments that require further explanation or comments that were not previously submitted to the City. All comments that were addressed in the Responses to Comments document and Final EIR are not readdressed or reproduced. Comments that express an opinion about the merits of the Project or Project alternatives rather than raise questions about the adequacy of the responses to comments or the Draft EIR analysis are not examined in detail in this document, in accordance with the CEQA Guidelines.
- *Chapter B.4 – Additional Revisions to the Draft EIR.* Provides a comprehensive listing of new text changes that have been made to the Draft EIR that are in addition to those that were made in Chapter 5, *Revisions to the Draft EIR*, of the Final EIR. These additional changes have resulted from responding to comments received after the release of the Final EIR or staff-initiated changes. New text that has been added to the Draft EIR is indicated with underlining. Text that has been deleted is indicated with ~~striketrough~~. The base text that is being edited represents text from the Draft EIR as revised in Chapter 5 of the Final EIR.
- *Chapter B.5 – Comment Letters.* Contains the compiled comment letters that were received after release of the Final EIR, with the exception of those comment letters provided in Chapter B.2. The comment letter responses are included in Chapter B.3, as explained above.

Table B.1-1. List of Commenters and Location of Responses

Commenter (Date)	Location of Comment Letter
Public Agencies	
City of San José, The Sohagi Law Group, PLC, Margaret M. Sohago (letter dated April 29, 2016)	B.2
Santa Clara Valley Transportation Authority, Jeannie Bruins (letter dated May 5, 2016)/ Nuria Fernandez (letter dated April 29, 2016)/VTA Talking Points for Public Presentation (public hearing on April 26, 2016)	B.2
San Joaquin Regional Rail Commission, Stacey Mortenson (letter dated May 4, 2016)/ Altamont Corridor Express, Corrine M. Winter (email dated March 21, 2016)	B.2
Santa Clara Unified School District, Mark Allgire (letter dated April 28, 2016)	B.5
County of Santa Clara Department of Environmental Health, Jim Blamey (letter dated April 29, 2016)	B.5
Santa Clara Valley Water District, Usha Chatwani, P.E., CFM (letter dated April 29, 2016)	B.5
San Francisco Bay Regional Water Quality Control Board, Terry Seward (letter dated May 9, 2016)	B.5
Organizations	
Sierra Club, Committee for Green Foothills, Friends of Caltrain and Santa Clara Valley Audubon, Gita Dev, Alice Kaufman, Adina Levin, and Shani Kleinhaus (letter dated March 21, 2016)	B.5
Greenbelt Alliance, Matt Vander Sluis (letter dated April 25, 2016)	B.5
Irvine Company, Carlene Matchniff (letter dated April 26, 2016)	B.5
Friends of Caltrain, Adina Levin (email dated May 9, 2016)	B.5
Sierra Club, Gita Dev and Gladwyn D'Souza (letter dated May 9, 2016)	B.5
Individuals	
Sudhanshu Jain (no date)	B.2
Jan Hintermeister (no date)	B.5

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Chapter B.2 Responses to Individual Comment Letters

Introduction

Written comments received after release of the Final Environmental Impact Report (EIR) from the City of San José, the Santa Clara Valley Transportation Authority (VTA), San Joaquin Regional Rail Commission, Stacey Mortenson/Altamont Corridor Express (ACE), and Sudhanshu Jain are reproduced in this section. These comments were provided to the City of Santa Clara by letter or via email. Responses immediately follow each comment letter. The italicized text in the beginning of each response provides a summary of each distinct comment. The comment letters and responses begin on the following page.

**Letter from City of San José, The Sohagi Law Group, PLC, Margaret M. Sohagi
(dated April 29, 2016)**

Response to City of San José, The Sohagi Law Group, PLC, Margaret M. Sohagi (dated April 29, 2016)

The Project is Consistent with the City of Santa Clara General Plan

General Plan Consistency Requirements

San José asserts that the Project is inconsistent with the jobs/housing goals of the Santa Clara General Plan, and that the Project's proposed land use designation would result in an internally inconsistent General Plan. This issue is addressed in detail in Master Response 1 on page 3-1 of the Final EIR (3-1). The City agrees that a project must be consistent with the terms of the General Plan, though courts have made clear that "precise conformity" is not required, i.e., the project need not be "in rigid conformity with every detail" of the General Plan.

To that end, courts afford cities "great deference" in determining whether a project under consideration is consistent with a General Plan. *Eureka Citizens for Responsible Govt. v. City of Eureka*, 147 Cal. App. 4th 357, 373-74 (2007); *San Franciscans Upholding the Downtown Plan v. City and Cnty. of San Francisco*, 102 Cal. App. 4th 656, 677-79 (2002) ("*SFUDP*"); *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 816 (2007) (*citing SFUDP*, 102 Cal. App. 4th at 677-78) (noting that "[a] reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.'"). Agencies are permitted to weigh and balance the range of competing interests reflected in a General Plan, and courts generally refrain from strictly scrutinizing these determinations. *Pfeiffer v. City of Sunnyvale City Council*, 200 Cal. App. 4th 1552, 1563 (2011).

Similarly, the "internal consistency" of a General Plan is also afforded significant flexibility and deference. *See Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 74, 113 (2000) (finding a General Plan amendment internally consistent with the General Plan despite incompatibilities between the proposed landfill and the General Plan's open space element). A conclusion regarding internal consistency "rests with the city council and will not be set aside unless the council acted arbitrarily, capriciously or without any evidentiary basis." *Karlson v. Camarillo*, 100 Cal. App. 3d 789, 801 (1980).

The Project is Consistent with the General Plan

While The Project Would Negatively Impact the City's Existing Jobs/Housing Imbalance, The Project is Consistent With the Vast Majority of the General Plan's Remaining Goals and Policies

San José states that the Project's projected jobs/housing ratio conflicts with several goals and policies in the Santa Clara General Plan. Draft EIR Table 3.1-7 identified and evaluated over 150 General Plan goals and policies that are (1) applicable to the Project and (2) were adopted for the purpose of avoiding or mitigating an environmental effect. This table also described environmental effects and the Project's potential inconsistencies with each goal or policy. The exhaustive analysis in the EIR shows that the Project is consistent with the vast majority of the applicable General Plan goals and policies.

The General Plan also contains many other goals and policies that were not reflected in the Draft EIR, all of which come into play in the ultimate determination of whether the Project is consistent with the General Plan when viewed as a whole. In addition to the goals and policies identified in Table 3.1-7, the Project is consistent with the following General Plan goals and policies: (1) maximize opportunities for

the use and development of publicly-owned land to achieve the City's economic development objectives and to provide public services and amenities. (Policy 5.3.1-P19); (2) provide a mix of retail and commercial uses to meet the needs of local customers and draw patrons from the greater region. (Policy 5.3.3-P1); (3) A City that continues to be a major employment center in Silicon Valley. (Goal 5.3.5-G1); and (4) Higher-intensity employment centers located near major transit services and major transportation corridors to reduce vehicle miles traveled. (Goal 5.3.5-G2).

The Project is furthermore consistent with the General Plan's seven "Major Strategies," as it would (1) Create a mixed-use, transit-oriented development pattern that would contribute to the City both economically and socially; (2) Preserve and Cultivate Neighborhoods — Promote the creation and cultivation of a new, mixed-use urban neighborhood; (3) Promote Sustainability — Further the City's goals of achieving new and improved methods to minimize water and energy consumption and protect water quality; (4) Enhance City Identity — Reinforce the unique entertainment and mixed-use qualities already inherent in that geographical area of the City; (5) Support Focus Areas and Community Vitality — Provide a mixed-use destination that would contribute socially and economically to the local and regional attractions in the area; (6) Maintain the City's Fiscal Health and Quality Services — Strengthen and diversify the City's tax base, thereby promoting its fiscal health and its capability to provide quality public services to its residents; and (7) Maximize Health and Safety Benefits — Maximize health and safety benefits by implementing state of the art landfill protection systems and promoting a multi-modal environment for workers, residents, and those seeking recreation.

The Draft EIR also determined that the General Plan did not account for pending or conceptual residential projects, which would lessen any potential jobs/housing inconsistencies created by the Project. While the Project would increase the jobs/housing ratio, the EIR identified an additional 9,576 units proposed for development that were not taken into account by the General Plan. Although the Project cannot presume that the aforementioned 9,576 units would be constructed, these units could alleviate most of the Project's impacts on the City's Jobs/Housing Balance. Moreover, as observed in the Final EIR, it cannot be expected that any single Project would maintain the overall job/housing balance for the entire City. (Final EIR at 3-2.)

Implementing Mitigation Measure LU-1.1 would also help increase Santa Clara's housing stock. This would improve the jobs/housing ratio within Santa Clara and would help to minimize the Project's physical environmental impacts associated with increased commuting times and associated emissions.

The Draft EIR acknowledges that, despite implementing all feasible mitigation and despite the additional residential units not considered in the General Plan, the Project would result in cumulatively considerable Land Use impacts because it would exacerbate the City's job/housing imbalance significantly, which would manifest in other significant secondary physical environmental impacts. The Draft EIR also acknowledges that Mitigation Measure LU-1.1 would not mitigate the Project's contribution to this imbalance with certainty because implementation of this measure, which relies on future approval from the City Council, cannot be assured. Because no feasible mitigation measures are available to reduce this impact to a less-than-significant level, this is considered a significant and unavoidable cumulative impact.

In the comments that follow, San José highlights several potential traffic, air quality, GHG and other Project impacts that were exhaustively analyzed in the Draft EIR and applies them to the general goals and policies in the Santa Clara General Plan in an attempt to manufacture impermissible conflicts. The Draft EIR comprehensively addresses potential land use, traffic, air quality, and GHG impacts in each

respective section of the EIR. A potentially significant traffic, air quality, GHG, or other Project impact is not a *de facto* derivative land use impact.

Specifically, San José states that the Project's increase in development would result in vehicle miles traveled (VMT) that would lead to longer commutes, traffic congestion and increases in air quality pollution and GHG emissions, which is inconsistent with General Plan Goal 5.3.1-G3, and Policies 5.3.1-P18 and 5.3.1-P29. The Draft EIR carefully considered General Plan Goal 5.3.1-G3, and Policies 5.3.1-P18 and 5.3.1-P29 in determining whether they were consistent with the Project. First, the Project capitalizes on public investment in transit and infrastructure, consistent with Goal 5.3.1-G3. The Project site is within walking distance of two VTA light-rail stations and the heavy-rail Great America Station, which is served by Amtrak, Capital Corridor, and ACE. The Project is also largely consistent with surrounding commercial uses including Levi's Stadium, the Hyatt Regency Hotel, the Convention Center, Great America Amusement Park, and the Santa Clara Gateway office complex adjacent to the site.

The Draft EIR conservatively assumes that Policy 5.3.1-P18, which encourages metering of jobs created to housing created within the City, applies to the Project despite the General Plan amendments proposed as part of the Project approval. In this context, the Draft EIR acknowledges that the Project includes commercial development not identified in the City's General Plan, and would thus be inconsistent with Policy 5.3.1-P18 by increasing the number of jobs in the City as compared to available housing in the City. This inconsistency with Policy 5.3.1-P18 is not fatal to the Project, where the Project is consistent with nearly all of the remaining General Plan goals and policies. See SFUDP, 102 Cal. App. 4th at 677-79; Pfeiffer, 200 Cal. App. 4th at 1565 (citing Friends of Lagoon Valley, 154 Cal. App. 4th at 817) (explaining that "[s]tate law does not require perfect conformity between a proposed project and the applicable general plan").

Furthermore, as noted above, the Project proposes General Plan amendments as part of the Project approvals, and these amendments would make Policy 5.3.1-P18 inapplicable to the Project (in the same manner it is already inapplicable to myriad other projects). Thus, Policy 5.3.1-P18 would not be implicated by the Project.

Finally, the Project is compatible with and sensitive to nearby and existing planned development, which is consistent with General Plan Policy 5.3.1-P29. Individual parcel development would be required to adhere to the design guidelines and development standards in the Project's Master Community Plan and Development Area Plan. This would help integrate the Project with the nearby large commercial uses identified above.

San José states that the Project's vehicle trips would increase congestion and air emissions and would negatively impact the existing character and quality of adjacent neighborhoods, which is inconsistent with General Plan Goal 5.3.2-G4 and Policy 5.3.3-G4. Goal 5.3.2-G4 ensures that new projects are consistent with surrounding neighborhoods from a land use and design perspective; air-quality and GHG goals are addressed by other General Plan goals and policies. The Draft EIR adequately concluded that the Project was consistent with General Plan Goal 5.3.2-G4 because views of the Project site are largely blocked from nearby residential neighborhoods. From a distance, the Project buildings would appear integrated and visually consistent with surrounding development in the overall landscape. In addition, developing each individual Project parcel requires the Developer to adhere to the design guidelines and development standards in the Master Community Plan and Development Area Plan, which require the Project to integrate with any nearby residential development.

The Draft EIR correctly determined that the Project was consistent with Goal 5.3.3-G4 because new commercial (retail) uses would be concentrated mainly in the southern portion of the Project site (Parcels 2, 4, and 5), which would help reduce potential conflicts with the residential uses to the south by concentrating retail uses in areas that would be most accessible by alternate modes of transit. Concentrating retail uses in the south of the site would divert vehicle traffic to alternate modes of transit, lessening any potential impacts to the southern neighborhoods. In addition, the retail uses would be easily accessible from the neighborhoods to the south of Tasman Drive. Office uses, on the other hand, would be largely concentrated in the northern parcels. The office uses would still be accessible to local and regional public transit but located away from neighborhoods to reduce land use conflicts.

In sum, the Draft EIR carefully considered the Project's impact on the surrounding residential neighborhoods, and correctly concluded that the Project would be consistent with Goals 5.3.2-G4 and 5.3.3-G4.

San José states that commute lengths to new jobs on the Project site would increase use of personal vehicles and resulting VMT, resulting in traffic, air quality, and GHG impacts, which is inconsistent with General Plan Goals 5.3.5-G3 and 5.8.1-G3 and Policies 5.8.1-P4 and 5.8.1-P5. Goal 5.3.5-G3 encourages higher-intensity employment centers to be located near major transit services and major transportation corridors to reduce vehicle miles traveled. The Draft EIR concluded that the Project was generally consistent with Goal 5.3.5-G3 because the Project site was within walking distance of two VTA light-rail stations and the heavy-rail Great America Station, two transit options that would support a higher-intensity employment center.

Goal 5.8.1-G3 encourages transportation networks that promote a reduction in the use of personal vehicles and vehicle miles traveled. Consistent with Goal 5.8.1-G3, the mass transportation features mentioned above and the Project's on-site amenities would reduce the effect of the greater VMT to the greatest extent possible. The Project features new roadways, bicycle paths, and sidewalks that would connect to existing transit options within walking distance of the site. VTA operates three local, one limited-stop, and two express bus routes at the Old Ironsides/Great America stop located south of the Project site. VTA also operates several light-rail stops along Tasman Drive, south of the Project site, including Champion Station, Lick Mill Station, and Great America Station. Amtrak, Capitol Corridor, and ACE operate in the UPRR right-of-way and provide service to the Project area at the heavy-rail Great America Station. Construction of minor arterials, collector roads, and local streets with sidewalks and bike paths that connect to existing major arterials would allow greater access to the Project site and greater access to different modes of transit.

Policy 5.8.1-P4 seeks to expand transportation options and improve alternate modes that reduce greenhouse gas emissions. The Project's dense, compact bicycle and pedestrian networks that link to the bus and rail system south and east of the Project site would allow greater flexibility and transportation choices that would have comparatively less GHG emissions, consistent with Policy 5.8.1-P4.

Policy 5.8.1-P5 encourages Santa Clara and Developers to work with local, regional, State and private agencies, as well as employers and residents, to encourage programs and services that reduce vehicle miles traveled. The Draft EIR analyzed the Project's commitment to implementing a Traffic Demand Management Plan ("TDM Plan") over the lifetime of the Project, which would identify and implement vehicle trip-reducing measures and strategies with several public and private stakeholders, including the site tenants and the Transportation Management Association. These efforts are consistent with Policy 5.8.1-P5.

San José states that the Project improperly promotes the use of single-occupancy vehicles by proposing sufficient parking for Project employees, residents and visitors, and providing overflow parking for Stadium events, which is inconsistent with General Plan Goal 5.8.3-G2 and Policy 5.8.3-P9. In fact, as explained on pages 3.3-174 to 176 of the Draft EIR, the Master Community Plan for the Project authorizes parking ratios that result in fewer parking spaces than would be required under the general provisions of the City Code. For example: the ratio for restaurant parking is decreased from 5.0 per 1000 gsf to 1.5 per 1,000 gsf; the ratio for entertainment parking is reduced from 5.0 per 1000 gsf to 2.5 per 1000 gsf; the ratio for retail is reduced from 5.0 per 1000 gsf to 4.5 per 1000 gsf; and the ratio for office is reduced from 3.3 per 1000 gsf to 3.0 per 1000 gsf. Furthermore, the Master Community Plan provides for parking supplies of future phases of Development Area Plans beyond the initial phase to be reduced by up to 25 percent through an administrative approval process (page 46 of the Master Community Plan).

Goal 5.8.3-G2 encourages a transit network that supports a reduction in automobile dependence for residents, employees and visitors. The Project is consistent with Goal 5.8.3-G2 because it would construct new roadways, sidewalks, and bicycle lanes that would connect to the transit network south of the Project site. With the Project's proposed pedestrian paseos, Parcels 2, 4, and 5 would be a 5-minute walk from the heavy-rail Great America Station on the UPRR right-of-way. All parcels would be a 10-minute walk from the Great America Station and Lick Mill VTA Station. Parcels 4 and 5 would be a 10-minute walk from the Great America VTA Station. While the Project also provides sufficient parking for Project employees, residents, and visitors, San José overlooks that the Project's location and design features would strengthen area transit network opportunities.

Policy 5.8.3-P9 requires new development to incorporate reduced on-site parking and provide enhanced amenities, such as pedestrian links, benches and lighting, in order to encourage transit use and increase access to transit services. The Draft EIR determined that the Project is consistent with Policy 5.8.3-P9, in that pedestrian access to transit would be provided throughout the Project site. Benches and lighting would also be provided on all of the parcels to facilitate pedestrian access.

In sum, the Project's parking strategy is consistent with the transit-oriented goals and policies in the Santa Clara General Plan.

San José states that the TDM program is unenforceable, and that the jobs/housing ratio would increase VMT and single-occupancy vehicles, which is inconsistent with Goal 5.8.5-G1 and Policy 5.8.5-P5. Goal 5.8.5-G1 encourages transportation demand management programs for all new development to decrease vehicle miles traveled and single occupant vehicle use. Policy 5.8.5-P5 encourages transportation demand management programs that incentivize alternative travel modes to reduce the use of single-occupant vehicles. This goal and policy are considered in the context of new development and area transportation programs, and are not ultimate prohibitions on approving projects with the potential to increase VMT and the use of single-occupant vehicles.

Consistent with Goal 5.8.5-G1 and Policy 5.8.5-P5, the Project's TDM Plan would reduce the number of vehicle trips per each development parcel and/or the entire Project site. On-site design measures may include preferred carpool and vanpool parking. Office employers would be required to participate in programs that would reduce the amount of driving, such as efforts that would promote private commuter bus service, carpooling, vanpooling, ridesharing, subsidized transit passes for employees, secure bicycle facilities, telecommuting, and flexible work schedules. Similar requirements are included for residential developments, and retail developments are required to implement a series of TDM measures as well.

San José states that many of the TDM's measures are not enforceable. In fact, the TDM mitigation measure is a legally binding requirement enforceable by the City in the same manner as any mitigation measure. The Project is legally required to prepare a TDM plan and the measure specifies a comprehensive list of measures to be considered for inclusion in the plan. In approving the TDM plan, the City must determine that the Plan includes measures projected by experts to be sufficient to achieve specified trip reduction targets. The Project's actual progress toward achieving the trip reduction targets would be measured and evaluated by the City annually, and if the trip reduction targets have not been met, the City will legally require the Project to develop and implement enhanced TDM measures aimed at achieving the numeric goals of the TDM Plan. The TDM mitigation measure has been expanded to detail precisely the process and substance of the TDM Plan requirements, including independent third party monitoring.

Under CEQA, a lead agency can "defer specifically detailing mitigation measures as long as the lead agency commits itself to mitigation and to specific performance standards[.]" (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119. "[I]t is sufficient to articulate specific performance criteria and make further [project] approvals contingent on finding a way to meet them." (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 945 [citation omitted]). Here, the Draft EIR includes vehicle trip reduction targets and associated vehicle trip thresholds; specifically, an overall target of reducing Project office-generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent. While the TDM Plan requires additional approval from the Santa Clara Director of Planning and Inspection, the Draft EIR articulates specific performance criteria sufficient to ensure that the TDM Plan will mitigate to the extent feasible the potentially significant impacts.

San José states that the Project's tree removal is inconsistent with Policy 5.10.1-P4, and that mitigation for tree removal impacts is insufficient. Policy 5.10.1-P4 encourages the protection of all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way. The Draft EIR acknowledges that the Project will remove trees over 36 inches in circumference measured from 48 inches above-grade and is therefore inconsistent with this component of Policy 5.10.1-P4. However, as the Draft EIR also notes, the Project Developer is required to replace removed trees at a 2:1 ratio. Furthermore, the EIR discloses that Project construction would not result in the removal of any heritage trees, as defined by the City's Heritage Tree List. Per Mitigation Measure IM-BIO-1, all replacement trees would be planted in accordance with the tree preservation policies or ordinances of the jurisdiction in which the improvements are constructed.

The Project's inconsistency with a component of Policy 5.10.1-P4 is something to be considered alongside the Project's consistency with the majority of the General Plan, and the Project features and mitigation measures that at least partly address the foregoing partial inconsistency. See, e.g., SFUDP, 102 Cal. App. 4th at 677-79; Pfeiffer, 200 Cal. App. 4th at 1565.

San José states that the increased VMT associated with the Project would result in significant unavoidable air quality and GHG impacts, which is inconsistent with Goal 5.10.2-G1, Goal 5.10.2-G2, and Policy 5.10.2-P2. San José misunderstands the scope of Goal 5.10.2-G1. As discussed in the Draft EIR, only projects that are designed specifically to improve air are consistent with Goal 5.10.2-G1. Because many if not most development projects are inconsistent with Santa Clara General Plan Goal 5.10.2-G1, inconsistency with

this goal is simply something that must be considered alongside the Project's consistency with other goals and policies.

Goal 5.10.2-G2 encourages the reduction of greenhouse gas emissions to meet the State and regional goals and requirements to combat climate change. While the Project's significant and unavoidable impacts on long-term GHG reduction targets would be inconsistent with Goal 5.10.2-G2, Mitigation Measure TRA-1.1 would mitigate impacts associated with vehicle miles traveled, which is an important contributing factor to GHG emissions.

Policy 5.10.2-P2 encourages development patterns that reduce vehicle miles traveled and air pollution. Because the Project would result in an increase in VMT, which would in part lead to significant air quality impacts, the Draft EIR acknowledges that the Project would be inconsistent with Policy 5.10.2-P2. However, the Project site would be located adjacent to major regional transit stations, which could help mitigate these impacts by providing on-site residents and employees commuting options. In addition, regional trail networks are adjacent to the Project site. Bicycle and pedestrian connections would link the Project site to these alternative modes of transportation and trails.

Overall, the Project's inconsistency with Goals 5.10.2-G1 and 5.10.2-G2 and Policy 5.10.2-P2 is something to be considered alongside the Project's consistency with the majority of the General Plan, and the Project features and mitigation measures that at least partly address those inconsistencies. *See, e.g., SFUDP*, 102 Cal. App. 4th at 677-79; *Pfeiffer*, 200 Cal. App. 4th at 1565.

San José states that the Project would significantly worsen local and regional air quality, which is inconsistent with Policy 5.10.2-P5. San José misunderstands the plain meaning of Policy 5.10.2-P5. Policy 5.10.2-P5 states that the City should "Promote regional air pollution prevention plans for local industry and businesses." This simply means that the City should encourage local industry and businesses to take steps to reduce air pollution. The City has imposed a number of air pollution reduction measures on the Project consistent with Policy 5.10.2-P5. For example, Mitigation Measure GHG-1.2 requires the implementation of technological advances to reduce the generation of air pollutants. These technological advances include purchasing green power, energy efficiency, on-site solar energy, electric landscaping equipment, and electric vehicle charging stations. In addition, the Project Developer would pursue Leadership in Energy & Environmental Design (LEED) for Neighborhood Development (LEED-ND) certification for the proposed City Center, LEED v2009 Gold for the proposed commercial buildings, and LEED v2009 Silver for the proposed residential buildings. (Draft EIR at page 3.1-50.)

Additionally, the Project site would support the alternative transportation modes and efficient parking mechanisms outlined for the new land use designation to improve air quality. New bicycle and pedestrian facilities proposed for the Project site would connect it to regional bus and rail systems, including VTA, Amtrak, Capitol Corridor, and ACE. With the proposed pedestrian connections, Parcels 2, 4, and 5 would be a 5-minute walk from the heavy-rail Great America Station on the UPRR right-of-way. All parcels would be a 10-minute walk from the Great America Station and Lick Mill VTA Station. Parcel 4 would be a 10-minute walk from the Great America VTA Station. Easy connections and accessibility to public transportation stations would help reduce the number of vehicle trips and air quality emissions. In addition, the Project could include electric vehicle charging stations in the surface parking lots and/or parking structures. (Draft EIR at page 3.1-49.)

The Project is Consistent with the City's Housing Element and Does Not Violate the Regional Welfare Doctrine

San José states that the Project is inconsistent with General Plan Housing Element Policy B-5 and the Project's induced housing impact on San Jose would be "untenable," and that shifting the housing burden to San Jose violates the regional welfare doctrine. As to Housing Policy B5, San José misunderstands scope of this policy. This policy states that the City should "Work towards the mitigation of jobs/housing ratio impacts created by developments with significant employment." This policy obligates the City to explore ways to alleviate a jobs/housing imbalance created by the Project, and the City is presently fulfilling its obligations under this policy. Per the General Plan Housing Element, the City will carry out Policy B5 by complying with the terms of Housing Element Implementation Action #13. Implementation Action #13 directs the City to:

- Continue to require housing impact studies as part of project related environmental reviews for new developments or businesses that generate a high number of jobs.
- Continue to require Housing Impact Studies through development agreements with new projects, to address the impact on the affordable housing supply.
- Consider, in 2015-2016, establishing an affordable housing mitigation fee for office and industrial developments that propose a significant square footage of area where persons are to be employed.

The Draft EIR contains the required housing impacts study in the form of the jobs/housing balance analysis and resulting impact conclusions. The City has taken the steps necessary to establish an affordable housing mitigation fee for office development. On October 27, 2015, the City Council authorized the City Manager to enter into an MOU with the Silicon Valley Community Foundation to fund a multi-jurisdictional effort to develop a nexus study for an affordable housing impact fee. The City Manager signed the final agreement on April 12, 2016. In accordance with the terms of the Development Agreement between the City and the Developer, the Developer has agreed 10 percent of its residential units as affordable units at a moderate affordability level or below. In the event that residential development is either not allowed on Parcel 4 (Phases 2 and 3) or proves infeasible on Parcel 4 as a result of the environmental regulatory agency controls on the landfill, then the Developer will pay an in lieu fee to satisfy the 10 percent housing commitment for housing provided on Parcel 5 (Phase 1).

In sum, Housing Policy B5 does not prohibit the construction of projects that worsen the jobs/housing ratio or render such project inconsistent with Policy B5. Rather the policy obligates the city to take a series of steps to mitigate any ratio imbalance created. The City has clearly taken such steps and the Project is therefore not inconsistent with Housing Policy B5.

The "regional welfare" doctrine exists as a constitutional limit on a government entity's ability to take actions that exceed the scope of its police power. *Associated Home Builders of Greater Eastbay v. City of Livermore*, 18 Cal. 3d 582, 604 (1976). It has typically been used to challenge "negative" ordinances passed by a local entity; that is, ordinances that restrict growth or development in some way. *See, e.g., Arnel Dev. Co. v City of Costa Mesa* (1981) 126 CA3d 330 (striking down ordinance that rezoned three parcels to prevent a multi-family housing development). So long as a project "reasonably relates to the welfare of those whom it significantly affects" in that, "in light of its probable impact, [the project] represents a reasonable accommodation of the competing interests," its approval is constitutionally permissible. *Associated Home Builders of Greater Eastbay v. City of Livermore*, 18 Cal. 3d 582, 607 (1976); *City of Del Mar v. City of San Diego*, 133 Cal. App. 3d 401, 410 (1982).

The Draft EIR demonstrates that the Project, if approved, would not violate the regional welfare doctrine. Because of the lack of adequate housing throughout the Bay Area, residential demand could occur as far away as Monterey or San Joaquin counties (See Draft EIR at page 4-6). There is no indication that San Jose would bear a disproportionate burden relative to the City or surrounding jurisdictions. The Draft EIR considered the types of cumulative impacts that could result from the combination of the Project with other foreseeable projects in the vicinity or region. Table 4-1 on page 4-7 of the Draft EIR identified the types of impacts that could result from induced residential development in urban, suburban, and rural residential development. Yet, as concluded in the Draft EIR, these cumulative impacts are likely to occur even without the Project. The “urban decay” analysis on pages 4-8 through 4-17 of the Draft EIR concludes that cumulative demand for retail space, office space, and entertainment venues is sufficiently strong in the region that it can absorb the increased supply generated by the Project without resulting in significant increased vacancies of existing retail, office, and entertainment complexes. This analysis supports a conclusion that, if the Project were not developed, similar amounts of job-generating retail, office, and entertainment uses would be developed elsewhere in the region to meet market demand, and would likely exacerbate the region’s job housing imbalance. In sum, the Project reasonably relates to the welfare of Santa Clara residents and visitors, which is all that is required to comply with the “regional welfare” doctrine.

There are potential efficiencies gained from locating the Project at its proposed location, as the Draft EIR discusses on page 3.1-14. Developing the Project site, a former landfill, may reduce the demand for developing “greenfield” areas throughout the region, which tend to have substantially more impact on biological resources and generate more vehicle miles traveled. Even if the additional job-generating retail, office, and entertainment uses were distributed across other infill areas (rather than greenfield areas), they would not be consolidated in the manner allowed by the Project site’s unique size and zoning. Such scattered projects would therefore be likely to cumulatively generate more vehicle trips and associated emissions of air pollutants and greenhouse gases because more trips would be necessary for workers and consumers to do what they could do in a single trip to the Project site. This conclusion is supported by the Draft EIR’s “shared parking” analysis, which allowed the Project to provide fewer parking spaces than standard City ratios because a percentage of site visitors are assumed to be visiting the site for more than just one use. (See Table 3.3-45 on page 3.3-175 of Section 3.3, Transportation.)

San José also states that Project growth was not anticipated in the City’s Regional Housing Needs Allocation (“RHNA”) for the period ending in 2022. The Draft EIR, however, recognized the limitations of the RHNA calculations and independently evaluated the housing demands caused by various iterations of the Project, which results in a more robust analysis (see Draft EIR at 3.1-11 to 3.1-12).

The General Plan Amendment Does Not Result in Unlawful Internal Inconsistency

San José states that the Project’s proposed General Plan Amendment is inconsistent with the General Plan because it fails to propose additional residential development to offset the job growth attributable to the Project. In order to accommodate high intensity, urban-oriented development, the City proposes a new General Plan land use classification (Urban Center/Entertainment District) within the Mixed-Use Designations category. The proposed General Plan Amendment would meet the intent of Santa Clara’s land use policies as described in Draft EIR Table 3.1-7. The Project, including the General Plan Amendment, is either consistent with, or does not implicate, the General Plan goals and policies related to Residential Land Use. Such goals and policies include encouraging higher density and transit-oriented residential development (See Draft EIR at 3.1-26 to 3.1-27).

There is no “rigid approach” to evaluating the internal consistency of a General Plan. *Hernandez v. City of Encinitas*, 28 Cal. App. 4th 1048, 1070-71 (1994). The Draft EIR determined that any potential conflicts with the General Plan related to the new land use classification would be less than significant. Because a project (including a General Plan Amendment) can be generally consistent with a general plan even though it may not promote every applicable goal and policy, the General Plan Amendment is not fatally inconsistent with the existing General Plan simply because it is inconsistent with a handful of specific goals or policies, particularly where the General Plan Amendment is consistent with the goals and policies to which it is most closely related.

In any event, the Draft EIR addressed the potential cumulative impacts of residential development that would be needed to offset the Project’s job growth, concluding that cumulative land use impacts related to policy consistency were considered significant and unavoidable because unplanned growth from the Project and Tasman East combined could result in significant impacts on the environment. No other feasible mitigation exists to mitigate these impacts. While San José may wish that the Project description would be expanded to include additional residential requirements in the General Plan Amendment, the Draft EIR adequately analyzed the Project’s consistency with the General Plan. *See also Pfeiffer v. City of Sunnyvale City Council*, 200 Cal. App. 4th 1552, 1563 (2011) (holding that agencies should weigh and balance a General Plan’s competing interests and that courts generally refrain from strictly scrutinizing plan elements.); *Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 74, 113 (2000) (finding amendment internally consistent with the General Plan despite conclusion in EIR that proposed landfill “is not compatible with the open space element of the general plan”); *Karlson v. Camarillo*, 100 Cal. App. 3d 789, 801 (1980) (upholding General Plan amendment after city recognized “some potentially slight variations”); *Federation of Hillside & Canyon Assns. v. City of Los Angeles*, 126 Cal. App. 4th 1180, 1195 (2004) (concluding that “[a] court . . . cannot disturb a general plan based on violation of the internal consistency and correlation requirements unless, based on the evidence before the city council, a reasonable person could not conclude that the plan is internally consistent or correlative.”).

The Final EIR Sufficiently Analyzes the Project’s Significant Land Use Impacts

San José states that the Final EIR and Mitigation Measure LU-1.1 impermissibly defer the analysis and mitigation of significant land-use impacts by not incorporating a General Plan Amendment that requires the development of additional residential units. The Draft EIR acknowledges that the Project would increase the jobs/housing balance and conflict with certain Santa Clara Land Use Plans and Policies (See Draft EIR Impact LU-1). Despite the implementation of Mitigation Measure LU-1.1, which would help increase the housing stock within Santa Clara, the Draft EIR concluded that such impacts would remain significant and unavoidable because implementing Mitigation Measure LU-1.1 relies on future City Council approval, which cannot be assured.

“CEQA does not require analysis of every imaginable alternative or mitigation measure.” *Gilroy Citizens for Responsible Planning v City of Gilroy* (2006) 140 CA4th 911, 935. Rather, an EIR should focus on mitigation measures that are feasible, meaning those “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.*, 24 Cal. App. 4th 826, 841 (1994) (citing CEQA Guidelines section 15364). Despite San José’s suggestions, and after considering the land use-related comments of several other agencies and organizations, no other feasible mitigation measures are available.

Regarding the concerns about the validity of Mitigation Measure LU-1.1, the Draft EIR acknowledges on page 3.1-15, Land Use and Planning, that this mitigation measure relies on an iterative General Plan process ultimately requiring City Council approval and that it cannot be stated with certainty whether and when the mitigation measure can be implemented. The Draft EIR goes on to acknowledge that adding new housing to the City's General Plan would only potentially reduce some of the impacts within the more immediate Project vicinity, but would not fully mitigate the Project's effect on induced growth in the region and beyond.

This analysis and mitigation is sufficient under CEQA. Mitigation Measure LU-1.1 does not impermissibly defer mitigation of potentially significant land use impacts. It requires Santa Clara to target areas closest to major employment and transit hubs and explore permitting up to 11,000 residential units. Mitigation Measure LU-1.1 thus provides a standard by which its effectiveness can be gauged and identifies the method that would be used to mitigate the jobs/housing imbalance. Thus, the mitigation is not improperly deferred and will be effective to minimize potentially significant land use impacts when implemented. Contrary to San José's arguments, it is not necessary for the Project to include a General Plan Amendment with additional residential housing strategies. Such a General Plan Amendment would be well outside of the Project's scope, and would rely on a multi-stakeholder process that could not be accomplished in a successful manner within a reasonable period of time, and certainly not consistent with the Project objectives. The Draft EIR concluded that the Project would have significant and unavoidable impacts with land use plans and policies with regard to the Jobs/Housing balance, and no other mitigation measures or alternatives were feasible.

The Final EIR Adequately Responds to Land Use-Related Comments on Mitigation Measure LU-1.1

San José states that the Final EIR did not adequately respond to commenters' critiques on Mitigation Measure LU-1.1. Responses to comments on a Final EIR need not be exhaustive; what is required is a "good faith, reasoned analysis" supported by factual analysis or with reference to source materials. Towards Responsibility in Planning v. City Council, 200 Cal. App. 3d 671, 683 (1988).

The Final EIR included a "Master Response" that addressed the combined comments of various commenters on the sufficiency of the Draft EIR's land use analysis. The Master Response thoroughly analyzed the critiques of Mitigation Measure LU-1.1, and in response revised Mitigation Measure LU-1.1 to include a standard by which the Mitigation Measure's effectiveness could be gauged, and identified the method that would be used to address the jobs/housing imbalance (see analysis in I.E, above). Santa Clara has provided a good faith, reasoned response regarding how Mitigation Measure LU-1.1 specifically addresses jobs/housing-related land use impacts to the extent feasible. That is all that CEQA requires.

THE FINAL EIR'S ANALYSIS OF TRAFFIC IMPACTS IS ADEQUATE

The Final EIR's Evaluation of Project Area Intersections is Adequate

VTA staff approved the methodology used to select the study intersections. The study intersections were selected using an objective process that included the amount of added Project traffic and a comparison of the amount of added traffic to the intersection's capacity. They included intersections where the Project would contribute at least two percent of the roadway capacity based on a select zone analysis using the travel demand forecasting model. A second step was taken to refine the list of study intersections to exclude intersections with minor side streets where little to no Project traffic would be added.

The selection criteria were applied to intersections regardless of jurisdiction including those in Santa Clara and the adjacent communities of San José and Sunnyvale. The resulting study area included an extensive area with boundaries extending to I-880 to the east, I-280 to the south, and US 101 and SR 237 to the west and north. The list of intersections presented by the City of San José was considered but did not meet the selection criteria. Therefore, no additional analysis is warranted.

The Final EIR demonstrates That the Transportation Mitigation Measures Would be Financially Feasible and Effective

San José contends that the fee-based mitigation measures in the Final EIR are not sufficiently precise. Under CEQA, fee-based mitigation measures to address cumulatively significant impacts are lawful so long as they are part of a "reasonable plan of actual mitigation" that the agency is committed to implementing. *Anderson First Coalition v City of Anderson*, 130 CA4th 1173, 1189 (2005). *See also Save Our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors*, 87 Cal. App. 4th 99, 140-41 (2001) ("SOPC") (noting that CEQA does not require "that the EIR set forth a time-specific schedule . . . to complete specified road improvements."). Here, the Draft EIR plainly presents a reasonable plan of mitigation sufficient to comply with CEQA's fee-based mitigation requirements. Mitigation Measure TRA-1.2 requires the Project Developer to pay the fair-share contributions for the specific intersection improvements and offsetting mitigation measures identified in Table 3.3-20. Mitigation Measure TRA-1.3 requires fair-share funding of the preparation and implementation of a Multimodal Improvement Plan (MIP) that must be prepared in accord with VTA regulations, submitted to VTA within one year after Project approval, and implemented thereafter. The requirement to prepare an MIP is a regulatory requirement independent of CEQA. A condition requiring compliance with environmental regulations is a common and reasonable mitigating measure. (*See Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 430.) "Deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation." (*Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 237 (2011)).

Cost estimates for the mitigation measures were obtained from a variety of sources, such as engineering cost estimates (including design, permitting, construction, and inspection costs) based on conceptual plans prepared for intersection mitigation measures, City CIPs and deficiency plans, and adopted plans such as VTP 2040 and the County's Expressway Study for major improvements. The cost estimates presented in appendix 3.3-D: List of Transportation Improvements summarizes the VTP 2040 cost estimates in the financially constrained transportation improvement plan as adopted by the VTA board in October 2014. The estimates referred to in the comment are from a VTA staff report that presents a preliminary project list for the Envision Silicon Valley, an update to VTP 2040. The cost information was provided for a potential sales tax measure to fund the plan that could be on the ballot in November 2016. Therefore, it is not applicable for this project.

The City of Santa Clara will provide to the City of San José the conceptual plans and engineering cost estimates for mitigation measures for City of San José intersections that are not included in the County's expressway study, or in the Valley Transportation Plan 2040, or in the North San Jose Deficiency Plan. The cost estimates in appendix 3.3-D: List of Transportation improvements were provided for informational purpose. The fair share calculation methodology is consistent with what has been done with other projects in Santa Clara and San José in the past, such as the San José Soccer Stadium. The Project's fair share contribution is 100 percent for locations where the Project has a significant impact and the mitigation measure is not currently planned and no established funding source has been identified.

There are many locations with significant Project impacts where the mitigation measure is already identified in a funded plan. For these large scale improvements, such as grade separations at County intersections, the construction cost from the County Expressway Plan or VTP 2040 is used as a starting point. The cost is reduced by 50 to 80 percent based on the number of jurisdictions involved and expectation that the County will be obtaining grants or other outside funding to complete the improvement project. Santa Clara County has agreed to this approach in the past. The Project's contribution is based on the percent of total traffic under the scenario with the impact.

For City Place the fair share amounts for all of the mitigation measures and the voluntary contribution to the VTA will be broken down into a general \$/trip amount that will be paid at each phase of development based on the building square footages and land use proposed in the DAP. Since Santa Clara will be over-riding the impacts under the jurisdiction of other agencies, each respective agency can prioritize which fair share mitigation is constructed first as funds are collected and cost sharing agreements are worked out.

Project's fair share contributions will be established in the Development Agreement and funding agreements to be negotiated with other jurisdictions.

The Final EIR Does Not Present Accurate Estimates of Total Costs and Project Fair Share Costs for City of San José Transportation Mitigation Measures

As discussed in the previous response, cost estimates for mitigation measures at San José intersections will be provided to the City of San José. The method used to establish the Project's fair share is based on the same method used to developed fair share contributions for other large projects such as the San José soccer stadium. This method is based on the project's contribution to the total traffic volume to account for the Project's ability to displace existing traffic due to its large scale. The City of San José will be provided the fair share contributions for its intersections; fair share contributions for county expressway intersections in San José will be provided to Santa Clara County. The fair share contributions paid to San José can be used for preliminary engineering and design and construction extending beyond five years after Project approval; these items will be included in the cost sharing agreement between the Cities of Santa Clara and San José.

The Project Phasing and Transportation Mitigation Measures Are Described in Adequate Detail

San José states that the Final EIR does not discuss how implementation of transportation mitigation measures would be integrated with Project phasing, and requests that the Project description be revised to include a detailed phasing schedule to guide additional analysis in the EIR. The exact order in which the Project phases would be developed has not yet been determined. The Project would be built over time and, therefore, its development can be responsive to changing travel behaviors and the effect of new technologies such as decreased parking due to autonomous vehicles.

CEQA does not require Santa Clara to modify the Project description to include a detailed phasing schedule. The Project description should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. CEQA Guidelines § 15124. Given the scope of the Project and its objectives, the Draft EIR's Project description is sufficient to inform an analysis of the potential environmental impacts, and how mitigation measures will be implemented on an iterative basis as appropriate to address those potential environmental impacts.

In any event, the Draft EIR adequately considers transportation impacts over the life of the Project, however construction of the Project is ultimately phased. The Draft EIR includes separate traffic impact and mitigation analyses for the Project as a whole, and also for Phases 1, 2, and 3. The MMRP (through Mitigation Measure TRA-1.1) requires a TDM Plan to be submitted concurrent with the first building permit application for the first building under each Development Area Plan ("DAP") associated with development under the DAP; and to obtain approval prior to the issuance of the certificate of occupancy; it further requires annual reporting, surveys and revisions to the TDM Plan with enhanced trip reduction measures if trip reduction targets are not achieved.

The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multitenant offices (e.g., measures aimed at increased transit use), which are expected to be developed during the first three phases of development. The TDM Plan may then provide for more expansive TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). Additionally, Mitigation Measure TRA-1.3 requires the Project Developer to fund the preparation of (including CEQA review for) a Multimodal Improvement Plan ("MIP"). Once the MIP is adopted by the VTA, it shall be implemented in accord with its terms and commensurate with the phasing of the development that its measures are intended to offset. The flexibility in Mitigation Measures TRA-1.1 and TRA-1.3 is important to address impacts and implement mitigation as construction is phased at appropriate times.

The transportation mitigation measures that require physical improvements to intersections and roads or require that fair share payments be made toward improvements will likewise be implemented in a logical manner that correlates the impacts of the Project as it builds out to the transportation improvements needed to ameliorate or lessen impacts. The Mitigation Monitoring and Reporting Program dictates that, as to each improvement that the Project developer is responsible to implement, the measures must be in place before the certificate of occupancy for the building that will trigger the trip threshold necessitating the improvement. As to the fair share mitigation contributions, as is quite typically the case and consistent with constitutional nexus concepts, the Project will pay as development occurs, on a per trip basis.

The Transportation Impact Analysis Methodology is Sufficient

*San José states that the background conditions in the Final EIR improperly include certain North San José Phase I roadway improvements, and underestimates cumulative transportation impacts because the Final EIR did not evaluate alternative transportation policies or incorporate San José General Plan growth projections. As provided in response to comment A17b in the Final EIR, to be consistent with CMP guidelines regarding use of a model to prepare traffic forecasts, the VTA travel model was used. The model's land use data and transportation networks for 2020 were used for the analysis of Background Conditions, which includes traffic associated with existing and approved developments. Although the level of development for build-out of North San José has been approved, it would not all be constructed and occupied in the time frame that coincides with the VTA's definition of Background Conditions. Therefore, the model's land use data (an increase of 23,530 jobs and 6,800 households within North San José between 2014 and 2020) was used. "CEQA imposes no 'uniform, inflexible rule for determination of the existing conditions baseline,' instead leaving to a sound exercise of agency discretion the exact method of measuring the existing environmental conditions upon which the project will operate." *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439, 452-453 (2013) (citation omitted.)*

As with the Background Conditions, the land use and transportation assumptions from the VTA travel demand model for 2040 were used as the basis of the Cumulative Conditions transportation analysis. This includes the ABAG land use projections for Santa Clara County. The potential horizon year for General Plan build-out of each local General Plan was not modeled because it is considered speculative and highly unlikely that every general plan would be built out by 2040. Each jurisdiction is given the opportunity to comment on the land use inputs that the VTA uses for its regional planning.

The Draft EIR was not required to use San José General Plan growth projections to address transportation impacts. The transportation improvements included in the Background and Cumulative Conditions analyses are listed in Appendix 3.3-D. The improvements listed by the commenter (e.g., Montague/Trimble Flyover and Montague/McCarthy-O'Toole Square Loop Interchange) were not included in the Background Conditions. The widening of Zanker Road from four to six-lanes, a project in the list of financially constrained local streets projects in the Valley Transportation Plan 2040, was the only improvement in North San José included under Background and Cumulative Conditions.

The Draft EIR also included an evaluation of intersection impacts (including intersections in North San José) under Existing plus Project conditions where the traffic volumes included existing volumes obtained from counts plus estimates for development projects that were under construction when the analysis was conducted. The roadway network did not include any roadway improvements in North San José. Project impacts were identified on the basis of the results of both Existing plus Project and

Background plus Project conditions. Therefore Project impacts were addressed for conditions with no North San José roadway improvements.

San José also states that the Draft EIR improperly omits analysis of a CEQA Guideline requiring an evaluation of whether the project conflicts with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities. However, the Draft EIR Table 3.1-7 evaluates many Santa Clara plans and goals related to public transit, bicycle, pedestrian, and other transportation management strategies (*see, e.g.,* Goal 5.3.1-G3, Policy 5.3.1-P12, Policy 5.3.1-P13, Policy 5.3.1-P14, Policy 5.3.1-P15, Policy 5.3.2-P2, Policy 5.3.2-P21, Goal 5.3.3-G3, Goal 5.3.4-G3, Policy 5.3.4-P13, Policy 5.3.4-P14, Policy 5.3.4-P15, Goal 5.3.5-G3, Goal 5.8.1-G3, Policy 5.8.1-P2, Policy 5.8.1-P4, Goal 5.8.2-G3, Policy 5.8.2-P1, Goal 5.8.3-G2, Policy 5.8.3-P8, Policy 5.8.3-P9, Policy 5.8.3-P11, Goals 5.8.4-G1 to G3, Policies 5.8.4-P1 to P13, Goals 5.8.5-G1 to G2, Policies 5.8.5-P1 to P9, Goal 5.8.6-G2, Policy 5.8.6-P3, Goal 5.9.1-G2, Policy 5.9.1-P4, Policy 5.10.2-P1, Policy 5.10.2-P2:). The Draft EIR determined that the Project was consistent with each of these Goals and Policies. This analysis is sufficient under CEQA.

The CEQA Guidelines require an EIR to discuss “any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.” (emphasis added) CEQA Guidelines § 15125(d). Here, the Draft EIR was not required to discuss San José plans, policies, and programs (e.g., the Envision San José 2040 Plan) because those plans and programs on their face are not applicable outside of the boundaries of the City of San José. The Draft EIR does not ignore broader planning considerations that apply to the Project site, however, as evidenced by its evaluation of consistency with Plan Bay Area.

The Final EIR Adequately Analyzes the Project’s Transit - Related Impacts

San José states that the Final EIR fails to adequately support its conclusion that the Project would support greater transit ridership and meet the EIR’s objective of promoting transit-oriented infill development. San José also states that the Final EIR fails to demonstrate how the Project would affect the existing employer shuttle system. San José also states that the Final EIR uses incorrect peak hour load factors to assess impact TRA-9. There is substantial evidence in the Draft EIR that the Project would support greater transit ridership. The Draft EIR estimated the amount of public transit ridership generated by the Project by using the transit walk trips from the mixed-use trip generation estimates. It assumed a 5 percent reduction in vehicle trips in the southern portion of the Project site within 0.5 mile (walking distance) of the Great America VTA light-rail station and the multimodal Great America station served by ACE passenger rail, Capitol Corridor intercity passenger rail, and eight connecting ACE shuttle routes (further explanation is provided in the technical memorandum titled City Place Santa Clara – Trip Generation Estimates [Fehr & Peers, 2015] in Appendix 3.3-J). *See* Draft EIR at 3.3-169.

San José claims that Great America/Santa Clara station is not designed in a manner to support the passenger rail transit service as described in the Final EIR, citing the Draft EIR starting at 3.3-168. In fact, the discussion of Impact TRA-10 on page 3.3-172 of the Draft EIR states: “The existing platform waiting area with a capacity of 2,440 waiting passengers can accommodate projected PM Peak Hour ridership of 617 passengers under existing with-Project conditions with TDM.” San José does not present contrary evidence.

The Draft EIR also addressed Local Transit Network Connectivity on page 3.3-31. The walking distance to Great America Station is approximately 1,500 feet from the center of Parcel 4. Eight shuttle routes connect the passenger rail station to major employers in Silicon Valley during commute hours. Three of

these shuttle routes have two shuttle vehicles with each ACE train (the Gray, Red, and Yellow shuttle routes). VTA peak load factor data indicate that excess seating capacity exists on all seven bus lines that serve the City Place site as well as light-rail Route 902. While VTA has no specific plans to increase bus service in the City Place area, it does have a standard policy of improving frequency and extending operating hours when operating funds become available. The VTA is planning express light rail service along Tasman Drive corridor between the Mountain View and Alum Rock stations to expedite access to/from the BART station at Montague. Each of these factors promotes greater connections with local transit networks.

The Draft EIR adequately addresses the existing employer shuttle system. Mitigation Measure TRA-18.1 requires that the Project Developer prepare a Construction Management Plan to minimize the effects of construction activities on the operations of the shuttles to the Great America station. The new Tasman Drive Intersection under Variant 2 would allow for an enhanced transit plaza that would provide room for an additional six transit bus loading positions, potentially improving employer shuttle performance. Providing shuttle service to the Great America rail station is a possible strategy of the TDM Plan in Mitigation Measure TRA-1.1. The Project would also integrate existing Great America station operations by connecting Stars and Stripes Drive to the existing shuttle bus-loading plaza. The Draft EIR evaluated signal preemption for shuttles, but ultimately found it was not recommended given the adverse secondary impacts on other modes of transportation.

The Draft EIR determined that under Impact TRA-9, the bus and rail lines serving the Project site would have sufficient capacity to accommodate the Project's anticipated increased in public transit ridership. This determination was based on a near-term public transit capacity analysis for commuter rail, light rail, and buses conducted during the PM Peak Hour when the Project's estimated public transit ridership is highest. The best available transit ridership information and existing transit service schedules were used after transit ridership data was requested from all service providers. The weekday peak hour load factor for ACE is based on information provided by the San Joaquin Regional Rail Commission for the Great America Station for January 2015. The results show that the Project's transit ridership would not exceed available existing transit capacity

The Final EIR Adequately Responds to San José's Traffic-Related Comments

*San José states that Santa Clara ignored its comments recommending an updated traffic analysis, that the Project pay a fair-share contribution toward roadway and intersection improvements in North San José, and that the Project implement other traffic-related improvements. San José has included additional technical comments in an Exhibit H. Responses to comments on a Final EIR need not be exhaustive; what is required is a "good faith, reasoned analysis" supported by factual analysis or with reference to source materials. *Towards Responsibility in Planning v. City Council*, 200 Cal. App. 3d 671, 683 (1988). Failure to provide a specific response to a comment is not fatal if the response would be cumulative to other responses. *Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection* (2008) 44 C4th 459, 483, 487. Here, Santa Clara responded to San José's two comment letters with twelve pages of good faith, reasoned analysis that specifically addressed each particular comment raised by San José's letters.*

As explained above, the Draft EIR used the ABAG 2020 projections to ensure consistency with CMP Guidelines. Santa Clara provided a detailed response to each of San José's fair share comments. While several of San José's comments addressed issues outside of the adequacy of the Draft EIR's environmental analysis, Santa Clara considered in detail each recommended improvement, and in some

cases modified the Draft EIR to address a perceived deficiency (*see, e.g., Trimble Road/Montague Expressway response at Final EIR 4-163*).

Responses to Exhibit H Technical Comments

1) In 2007, San José adopted the North San José Area Development Policy which conformed to the transportation policy in place at that time. In 2011, San José adopted the Envision 2040 General Plan which updated transportation policy and standards to recognize multimodal travel as a vital and viable transportation system. This vision is subsequently promoted statewide, countywide, as well as other city jurisdictions. Therefore, the City Place Final EIR should support the updated transportation standards adopted by all jurisdictions rather than relying on what were adopted in relatively more outdated transportation standards, including those in the North San José Deficiency Plan 2006.

The Project embraces multimodal travel as it is located within walking distance of two light rail stations, the heavy rail Great America station, and multi-use paths along San Tomas Aquino Creek and the Guadalupe River. The Project features new roadways, bicycle paths, and sidewalks to provide connections to these stations and paths.

The Project description does not include transportation improvements in San José. Therefore it is not inconsistent with existing or planned transportation improvements or policies of the City of San José. In the case of impacted intersections in San José, the improvements included in the mitigation measures were developed to accommodate all modes of travel consistent with the intent of City of San José's multimodal street policies. As fair share financial contributions will be made to the City of San José for these improvements, the City has discretion to use them in a manner to meet their standards once they are created and adopted.

2) As stated in Section II.C of the City's Final EIR comment letter, the Final EIR's reliance on North San José traffic impact fees as mitigation for the Project's North San José impacts is misplaced. The North José Traffic Impact Fee Plan did not include Project traffic because the Project was not included in the Santa Clara General Plan. The North San José traffic impact fee rate is not intended to provide mitigation measures for the Project, and thus should not be used as basis for mitigation. Based on the Final EIR, San José estimated that the Project's fair share contribution towards San José's acceptable mitigation measures for 14 project-level, significant impacts is approximately \$45.3 million. This estimate includes additional fair share mitigation for the significant impact at North First Street and Old Bayshore Parkway that was omitted from the Final EIR. Moreover, this estimate does not account for administrative costs or construction index changes. In addition, this estimate does not account for fair-share contribution towards all considerable Cumulative impacts since the information provided in both Final EIR and the Response to Comment Letter A17b.4 is not adequate for such determination. San José estimated that fair-share contribution towards all considerable Cumulative impacts could increase the total Project responsibility by approximately an additional \$10 million.

The mitigation measure for impacted intersections in North San José is stated as payment of the North San José fee or fair-share contribution of the alternative or off-setting improvements if no feasible physical roadway improvement has been identified. The North San José fee was first referenced as it is an adopted fee based on identified transportation improvements that are physically and financially feasible. The City of Santa Clara recognizes that the fee program may not include all of the mitigation measures identified as part of the Draft EIR analysis.

The City of Santa Clara will continue to work with the City of San José regarding reasonable fair share contributions to impacted locations including the land use assumptions for North San José and City Place. We are not clear on the land use assumptions used in the fair share table provided by the City of San José; it is not clear where the Project trips for North San José come from and what land use scenario it reflects. At build-out, North San José is estimated to generate three times the vehicle trips as the City Place Santa Clara project, and it would be appropriate to consider the proportional build-out of each project in a fair share contribution.

3) (#15) Renaissance Drive/Tasman Drive (Table 3.3-50) Impacts: Cumulative with Project. *Based on the Response to Comment Letter A17b.4, San José asserts that the Project contribute fair-share towards a mitigation acceptable to San José for the Cumulative impact; however, the information provided in Final EIR and the Response to Comment Letter A17b.4 is not adequate to determine if the Cumulative impact is considerable and the appropriate fair-share calculations.*

A cumulative impact was identified at this intersection because its level of service degraded from an acceptable level to an unacceptable level between Existing and Cumulative with Project conditions during the AM peak hour. The Project's contribution to the cumulative impact is considerable because it causes the intersection's LOS to degrade from an acceptable level to and unacceptable level between Cumulative No Project and Cumulative with Project conditions.

No feasible improvements were identified for this intersection in the North San José Deficiency Plan (NSJDP) or based on further investigation as part of the Draft EIR. Therefore, off-setting mitigation from the list of transit, bicycle and pedestrian improvements in the NSJDP, capital improvements to improve light rail operations, was identified. The Project would pay its fair share of the mitigation measure.

4) (#17) Rio Robles/Tasman Drive (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. *As stated in Comment Letter A17b.4, San José has identified acceptable mitigation to include among other improvements, one left-turn lane, one through lane, and one right-turn lane at the southbound approach, as opposed to the Draft EIR-proposed one left-turn lane and one shared through/right-turn lane. Table 3.3-20, Table 3.3-26, and Table 3.3-50 have not been revised correctly to reflect this modified and acceptable mitigation. San José recommends that the Project contribute fair-share to the modified and acceptable mitigation.*

The mitigation measure in the Draft EIR is a better alternative than the measure proposed by the City of San José. It addresses the Project's impact by returning the intersection to a better level of service than before the project. The improvement suggested by the commenter would not improve the intersection operations further than the proposed mitigation. Rather the additional right-turn lane would increase bicycle and pedestrian crossing distances and exacerbate the secondary impact of widening the intersection. Therefore, it would not be consistent with City of San José multimodal transportation policies. The intersection level of service results are attached for reference.

5) (#18) North First Street/Tasman Drive (Table 3.3-20, Table 3.3-50) Impacts: Background with Project, Cumulative with Project. *Based on the Response to Comment Letter A17b.4, San José disagrees that the new shuttle bus stop is used as the basis to determine fair share contribution. The proposed mitigation is established based on outdated transportation standards. The transportation standards provided in the adopted Envision 2040 General Plan should be used to determine the appropriate*

mitigation measure. The Project should contribute fair share to a mitigation that is developed from such standards and acceptable to San José.

No feasible improvements were identified for this intersection in the North San José Deficiency Plan or based on further investigation as part of the Draft EIR. Therefore, off-setting mitigation from the list of transit, bicycle and pedestrian improvements in the NSJDP, new shuttle bus stop, was identified. This improvement was developed to accommodate non-auto modes of travel consistent with City of San José's multimodal policies.

6) (#19) Zanker Road/Tasman Drive (Table 3.3-50) Impacts: Cumulative with Project. *Based on the Response to Comment Letter A17b.4, San José asserts that the Project contribute fair-share towards a mitigation acceptable to San José for the Cumulative impact; however, the information provided in Final EIR and the Response to Comment Letter A17b.4 is not adequate to determine if the Cumulative impact is considerable and the appropriate fair-share calculations.*

A cumulative impact was identified at this intersection because its level of service degraded from an acceptable level to an unacceptable level between Existing and Cumulative with Project conditions during the AM peak hour. The Project's contribution to the cumulative impact is considerable because it increases the critical delay by more than four seconds between Cumulative No Project and Cumulative with Project conditions.

The improvements identified for this intersection in the North San José Deficiency Plan (second eastbound and westbound left-turn lanes) are already in place. No other feasible improvements were identified based on investigation conducted as part of the Draft EIR. Therefore, off-setting mitigation from the list of transit, bicycle and pedestrian improvements in the NSJDP, capital improvements to improve light rail operations, was identified. This improvement was developed to accommodate non-auto modes of travel consistent with City of San José's multimodal policies.

The fair share calculation methodology is consistent with what has been done with other projects in Santa Clara and San José in the past, such as the San José Soccer Stadium.

7) (#24) North 1st Street/Montague Expressway (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. *Final EIR stated that the Project would contribute fair share to the off-setting mitigation based on the percentage of project trips to total traffic at the intersection. As mentioned in this letter, however, San José asserts that fair share contribution is calculated based on the percentage of project trips to the total of future added trips at the intersection, since the cost of the mitigation should be borne by only future new roadway users.*

Montague Expressway has eight lanes at its intersection with N. First Street, an improvement identified in North San José Deficiency Plan (NSJDP). No other feasible improvements were identified for this intersection based on investigation conducted as part of the Draft EIR. Therefore, off-setting mitigation, a future interchange with grade separation of the light rail consistent capital improvements to improve light rail operations from the list of transit, bicycle and pedestrian improvements in the NSJDP, was identified.

The fair share calculation methodology is consistent with what has been done with other projects in Santa Clara and San José in the past, such as the San José Soccer Stadium.

For these large scale improvements, such as grade separations at County intersections, the construction cost is used as a starting point. The cost is reduced based on the number of jurisdictions involved and expectation that the County will be obtaining grants or other outside funding to complete the improvement project. Santa Clara County has agreed to this approach in the past. The Project's contribution is based on the percent of total traffic under the scenario with the impact.

8) (#25) Zanker Road/Montague Expressway (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. *The Response to Comment Letter A17b.4 does not address San José's modified mitigation measure to include not only the widening of Zanker Road and the second northbound and southbound left-turn lanes, but also separated bike lanes on both sides of the street, crosswalk treatments, and other improvements consistent with San José's updated transportation standards and multimodal mobility goals.*

The widening of Zanker Road is an approved improvement project anticipated to be completed by 2020 was included under Background and Cumulative Conditions. The Project has an impact under Existing Conditions; the planned Zanker Road widening would mitigate that impact. But since it is already planned, the Project would not be required to pay a fair share towards it. The second northbound and southbound left-turn lanes (in addition to the widening are sufficient to mitigate the Project's impact to a less-than-significant level according to Santa Clara County and CMP standards. (The intersection would operate at LOS E during the PM peak hour, an unacceptable level according to City of San José standards.)

9) (#26) Montague Expressway/Plumeria Drive-River Oaks (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. *After evaluating the intersection based on information provided in the Response to Comment Letter A17b.4 and Final EIR, San José is concerned that the proposed partial mitigation would not be sufficient to facilitate the eastbound right-turn traffic of 660 PM peak hour volumes under the Background with Project Conditions. TRAFFIX calculations indicated that the PM 95th percentile queue is approximately 135 vehicles per lane, the average delay for the movement is approximately 424 seconds (or 7 minutes) per vehicle, and the total cycle length is 211 seconds (or 3.5 minutes). San José recommends fair share contribution towards the Zanker Road Widening as a secondary mitigation, which would be a more viable transportation improvement.*

The forecasted eastbound right turn traffic volume is due to approved and under construction projects in North San José, not due to the Project. The widening of Zanker Road is a planned improvement project and therefore not subject to a fair share contribution from the Project. The proposed partial mitigation improvement provides additional vehicle operational benefits and therefore should be retained.

10) (#27) Trimble Road/Montague Expressway (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. *The North San José EIR 2005 that attempted to address future trips associated with North San José developments and land use programs of other jurisdictions identified at that time.*

Inconsistent with the City of Santa Clara's land use program, City Place would add trips to the intersection beyond all previously identified future trips associated with City of Santa Clara's General Plan. Therefore, San José asserts that it is equitable that the Project contributes fair-share to the mitigation based on the percentage of Project trips to the total of future added trips at the intersection.

The flyover that is identified as the improvement at this intersection is the full responsibility of the City of San José per the North San Jose settlement agreement between the City of San Jose and Santa Clara County. Therefore, the City of Santa Clara has no funding obligation.

11) (#28) McCarthy Boulevard-O'Toole Avenue/Montague Expressway (Table 3.3-50) Impacts: Cumulative with Project. *The North San José EIR 2005 that attempted to address future trips associated with North San José developments and land use programs of other jurisdictions identified at that time. Inconsistent with the City of Santa Clara's land use program, City Place would add trips to the intersection beyond all previously identified future trips associated with City of Santa Clara's General Plan. Therefore, San José asserts that it is equitable that the Project contributes fair-share to the mitigation for the cumulative impact based on the percentage of project trips to the total of future added trips at the intersection.*

There is no Cumulative impact at this intersection as shown correctly in the Final EIR. Therefore, the Project has no obligation to contribute to improvements at this location.

12) (#29) De La Cruz Boulevard/Trimble Road (Table 3.3-20, Table 3.3-50) Impacts: Background with Project, Cumulative with Project. *Based on the Response to Comment Letter A17b.4, San José does not deem adding a third southbound left-turn lane a viable and acceptable mitigation. San José asserts that the Project works with San José to determine a viable and acceptable mitigation, based on which the Project contribute fair share. The City of Santa Clara is proposing to provide a financial contribution based on the Project's fair share of a third southbound left-turn lane.*

13) (#30) North First Street/Trimble Road (Table 3.3-20, Table 3.3-50) Impacts: Background with Project, Cumulative with Project. *The Response to Comment Letter A17b.4 the off-setting mitigation identified in the Final EIR needs to address regional, VTA's and San José's updated transportation standards and include adequate treatments at the intersection to facilitate safe and comfortable bicycle left-turns, pedestrian crossing, and other improvements consistent with regional multimodal mobility goals. The mitigation measure is to add a second eastbound left-turn lane and an exclusive westbound right-turn lane.*

14) (#31) Zanker Road/Trimble Road (Table 3.3-50) Impacts: Cumulative with Project. *Based on the Response to Comment Letter A17b.4, San José asserts that the Project contribute fair-share towards a mitigation acceptable to San José for the Cumulative impact; however, the information provided in Final EIR and the Response to Comment Letter A17b.4 is not adequate to determine if the Cumulative impact is considerable and the appropriate fair-share calculations.*

A cumulative impact was identified at this intersection because its level of service degraded from an acceptable level to an unacceptable level between Existing and Cumulative with Project conditions during the AM and PM peak hours. The Project's contribution to the cumulative impact is considerable because it increases the critical delay by more than four seconds between Cumulative No Project and Cumulative with Project conditions.

No feasible improvements were identified for this intersection in the North San José Deficiency Plan (NSJDP) or based on further investigation as part of the Draft EIR. Therefore, off-setting mitigation based on the list of transit, bicycle and pedestrian improvements in the NSJDP, pedestrian facilities along both sides of Zanker Road between Trimble Road and Charcot Avenue, was identified.

15) (#34) North First Street/Brokaw Road (Table 3.3-20, Table 3.3-26, Table 3.3-50) Impacts: Existing with Project, Existing with Project Phases 1-3, Background with Project, Cumulative with Project. Based on the Response to Comment Letter A17b.4, San José asserts that the Zanker Road connection from Old Bayshore Highway over US 101 to Skyport Drive along a partial US 101 interchange is a viable and appropriate mitigation acceptable to San José. Fair share calculations should be based on this mitigation, regardless of the timeline of the mitigation. The mitigation measure is to add a third westbound left-turn lane.

16) (#36) Zanker Road/Brokaw Road (Table 3.3-50) Impacts: Cumulative with Project. Based on the Response to Comment Letter A17b.4, San José asserts that the Project contribute fair-share towards a mitigation acceptable to San José for the Cumulative impact; however, the information provided in Final EIR and the Response to Comment Letter A17b.4 is not adequate to determine if the Cumulative impact is considerable and the appropriate fair-share calculations. A cumulative impact was identified at this intersection because its level of service degraded from an acceptable level to an unacceptable level between Existing and Cumulative with Project conditions during the AM and PM peak hours. The Project's contribution to the cumulative impact is considerable because it increases the critical delay by more than four seconds between Cumulative No Project and Cumulative with Project conditions.

The proposed mitigation measure is the addition of a second eastbound left-turn lane, a second northbound left-turn lane, and a second southbound left-turn lane as identified in the North San José Deficiency Plan.

17) (#57) Great America Parkway/SR 237 WB Off-Ramp (Table 3.3-20, Table 3.3-26, Table 3.3-35, Table 3.3-50) Impacts: Existing with Project, Existing with Project Variant Access Scheme, Existing with Project Phases 1-3, Existing with Project Phases 1-3 Variant Access Scheme, Background with Project, Background with Project Variant Access Scheme, Cumulative with Project. San José does not accept the Response to Comment Letter A17b.4 that the Project would pay fees to San José for only construction of the third westbound left-turn lane and associated receiving lane under the SR 237 underpass and an additional second westbound right-turn lane. The proposed mitigation would lead to a secondary impact of bikeway connection that needs to be addressed. San José asserts that the Project is fully responsible for funding and implementing the acceptable mitigation that includes (1) right-of-way acquisition, (2) relocation and realignment of bicycle facility affected by the improvements, and (3) construction of the third westbound left-turn lane and associated receiving lane under the SR 237 underpass and an additional second westbound right-turn lane.

The bicycle facility near this intersection, the Bay Trail, will not be affected by the mitigation measure. The proposed mitigation measure will be fully funded by the Project.

18) (#84) Gold Street/Gold Street Connector (Table 3.3-20, Table 3.3-35, Table 3.3-50) Impacts: Existing with Project, Existing with Project Variant Access Scheme, Background with Project, Background with Project Variant Access Scheme, Cumulative with Project. As stated in the Comment Letter A17b.4, San José supports a mitigation measure that would not affect the alignment of the Highway 237 Bikeway connection, or would include relocation and realignment of bicycle facility if affected by such improvements. San José asserts that the Project is fully responsible for funding and implementing an acceptable mitigation that includes (1) right-of-way acquisition, (2) relocation and realignment of bicycle facility affected by the improvements, and (3) construction of the Gold Street widening and geometric and signal modifications at the intersection. The proposed mitigation measure includes these items.

19) (#109) Liberty Street/North Taylor Street. Based on the Response to Comment Letter A17b.4, San José asserts that implementation of traffic control devices, equivalent to the cost of a new traffic signal, is the full responsibility of the Project to protect the Alviso neighborhood from the Project traffic. Noted. This is the proposed mitigation.

20) (#125) San Tomas Expressway/Stevens Creek Boulevard (Table 3.3-20, Table 3.3-50). Impacts: Background with Project, Cumulative with Project. San José does not have any comments to the Response to Comment Letter A17b.4.

This comment is noted.

THE FINAL EIR'S ANALYSIS OF AIR QUALITY IMPACTS MEETS THE REQUIREMENTS OF CEQA

The Air Quality Analysis Adequately Explains how the Air Pollutants Emitted by the Project would Impact Public Health

San José contends that the Final EIR fails to adequately discuss the health and safety impacts caused by project emissions, preventing informed public participation and decision-making. The EIR appropriately discusses impacts associated with pollutants that would be emitted as a result of the Project. *See, e.g.*, Draft EIR at 3.4-6 to 3.4-7; 3.4-14 to 3.4-15 (discussing health and safety impacts associated with ROG, NOx, and PM emissions). The EIR also adequately evaluated project emissions in accordance with Appendix G of the State CEQA Guidelines, including an analysis against BAAQMD thresholds. *See* Draft EIR at 3.4-12. Identifying the potential adverse health effects of exposure to each of the pollutants emitted by the project is sufficient under CEQA. *Beverly Hills Unified Sch. Dist. v. Los Angeles Cnty. Metro. Transp. Auth.*, 241 Cal. App. 4th 627, 667 (2015) (“*Beverly Hills*”).

With respect to analysis directly correlating Project emissions to specific changes in public health outcomes, the EIR explained that “translating Project-generated criteria pollutants to specific health effects would produce meaningless results,” due to the difficulty in assessing small changes in criteria pollutant concentrations. *See* Draft EIR at 3.4-14. Here, incremental Project emissions are far too low to register a change in modeled health impacts. The EIR explained further that “the BAAQMD’s Multi-Pollutant Evaluation Method (MPEM) requires a 3 to 5 percent increase in regional ozone precursors to produce a material change in modeled human health impacts. Based on 2008 ROG and NOX emissions in the Bay Area, a 3 to 5 percent increase equates to over 20,000 pounds per day of ROG and NOX.” Draft EIR at 3.4-14. The EIR appropriately excluded such analysis, given the level of emissions. *See* Draft EIR at 3.4-14 (explaining that, for instance, “increases in regional air pollution from Project-generated ROG and NOX would have no effect on specific human health outcomes that could be attributed to specific Project emissions.”); Draft EIR at 3.4-14, 3.4-15 (“the incremental contribution of the Project to specific health outcomes from criteria pollutant emissions would be limited and cannot be solely traced to the Project”). This analysis is adequate under CEQA. *See also Beverly Hills*, 241 Cal. App. 4th at 667 (holding that there is no CEQA requirement “to include an analysis showing how . . . actual construction emissions will specifically impact public health.”).

The Final EIR's Air Quality Mitigation Measures are Adequate

The Final EIR Appropriately Concluded that Offsetting Operational ROG and NOx Emissions at a Projected Cost of \$76,000,000 Was Not Feasible

San José claims that the Final EIR fails to adequately support its conclusion that acquiring \$76 million dollars' worth of NOx and ROG offsets would place an undue economic burden on the project and is thereby not considered economically feasible. *San José* fails to note that the BAAQMD's comments did not include purchase of operational offsets in its list of recommended feasible mitigation measures for excess ROG and NOx emissions. In its comments on the Draft EIR's discussion mitigation for operational emissions, the BAAQMD did not raise any concerns about the Draft EIR's conclusions that operational offsets were not feasible for this Project. Where such operational offsets can be secured for a reasonable cost, BAAQMD has recommended them as feasible mitigation measures (See BAAQMD July 20, 2015 comment letter on Golden State Warriors Event Center and Mixed Use Project recommending operational offsets at a cost of \$620, 922, available at:

www.gsweventcenter.com/Post_DSEIR_Correspondence/2015_0720_Roggenkamp.pdf).

Requiring payment of approximately \$76 million in fees which were not recommended by BAAQMD would be a facially-unreasonable amount in incremental project cost that would materially affect the financial viability of the Project and the fiscal and other benefits it would bring to the City of Santa Clara. CEQA recognizes that a finding of infeasibility may be based on economic considerations, supported by relevant economic evidence. Pub. Res. Code § 21081; CEQA Guidelines § 15091(a)(3). Courts "have eschewed requiring any particular economic showing, and have, instead, recognized that what is sufficient will depend on the particular context." *SPRAWLDEF v. San Francisco Bay Conservation & Dev. Comm'n*, 226 Cal. App. 4th 905, 921 (2014.) NOTE: Rather than recommending offsets, BAAQMD recommended a set of additional mitigation measures. To the extent they are feasible, the Project is incorporating such measures into the Project. See Response to Comments at 4-139 to 4-141 ("The City and Project Developer have carefully evaluated the additional mitigation measures proposed by BAAQMD in this comment, and have agreed to incorporate those measures that they have determined to be feasible."). Moreover, while the Project's operational NOx emissions would exceed thresholds, the Project itself would actually result in VMT reductions in excess of those of typical of land use development given the proximity to transit and due to the mixed-use and walkable nature of the project. See Master Response 2 at 3-8 to 3-9. Due to the mixed-use and efficient Project design, emissions are anticipated to be below BAAQMD's efficiency metric for GHGs for 2020. This demonstrates that while the Project would exceed the mass emission threshold or NOx, it constitutes an efficient use of the site relative to the residents and jobs it creates.

The Draft EIR Includes Feasible Mitigation Measures to Reduce the Project's Significant Air Quality Impacts

Measures to Reduce Criteria Pollutant Emissions

San José asserts that the Final EIR fails to include feasible mitigation measures to reduce the project's significant air quality impacts, including measures designed to reduce exceedances of BAAQMD criteria pollutants. *San José* cites measures recommended by BAAQMD, and asserts that while the Final EIR incorporated certain recommendations, those rejected would reduce the Project's air quality and GHG impacts. *San José* is correct that each of the mitigation measures proposed by BAAQMD in its comment

letter could potentially help reduce Project air quality and GHG impacts. While the Draft EIR adopted the significant majority of BAAQMD's proposals, it appropriately concluded after careful consideration that several of BAAQMD's recommendations were infeasible. *See* Response to Comments at 4-139 to 4-141 ("The City and Project Developer have carefully evaluated the additional mitigation measures proposed by BAAQMD in this comment, and have agreed to incorporate those measures that they have determined to be feasible."). Specifically, in accord with BAAQMD's recommendations, Santa Clara expanded GHG-1.2 to require, among many other things, greater use of renewable electricity; full participation of all retail restaurants in any City composting program that may be developed; use of only electrical landscape equipment in the City Center; that leases for businesses that base a diesel truck fleet within the Project site ensure that those fleets meet the highest CARB engine-tier standard in place at the time of issuance of the building permits for the building that such businesses occupy, or the execution of a lease, whichever comes first; and that leases for businesses receiving deliveries include a prohibition on idling for more than two minutes. A detailed description of the measures adopted can be found in the Final EIR. *See* Response to Comments at 4-139 to 4-141; Final EIR at 5-39 to 5-41. The City's analysis and conclusions in this regard are therefore adequate under CEQA. *See Gilroy Citizens for Responsible Planning v. City of Gilroy*, 140 Cal. App. 4th 911, 935 (2006) ("CEQA does not require analysis of every imaginable alternative or mitigation measure."); *See also San Franciscans for Reasonable Growth v. City and County of San Francisco*, 209 Cal. App. 3d 1502, 1519 (1989) (An agency "need not, under CEQA, adopt every nickel and dime mitigation scheme brought to its attention or proposed").

Measures to Reduce Diesel Particulate Matter Emissions from Project-Related Heavy Truck Traffic

*San José contends that the Project should impose more stringent standards to reduce DPM emissions from on-road material delivery and haul trucks than are currently imposed under Mitigation Measure AQ-2.2, contending that such measures would further reduce the Project's DPM emissions and attendant air quality and health impacts. Under Mitigation Measure AQ-2.2, "[t]he Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for PM10 and NOX (0.01 grams per brake horsepower-hour [g/bhphr] and 0.20 g/bhp-hr, respectively)." By incorporating Mitigation Measure AQ-2.2, coupled with Mitigation Measures AQ-2.1, AQ-2.3 and AQ 6.1, cancer risks related to DPM exposure during construction would be reduced below the applicable BAAQMD threshold. Draft EIR at 3.4-36. Accordingly, the EIR appropriately concluded that the impact would be less than significant with these measures in place. *Id.* Likewise, the EIR concluded that Mitigation Measure AQ-7.1 would further reduce on-site receptor exposure to DPM during operation, such that impacts would also be less than significant. Draft EIR 3.4-46.*

CEQA requires only that feasible mitigation measures be implemented, such that impacts are reduced to an insignificant level. Existing mitigation measures adequately ensure that DPM emissions are less-than-significant. Santa Clara therefore does not need to adopt this measure. *See San Franciscans for Reasonable Growth v. City and County of San Francisco*, 209 Cal. App. 3d 1502, 1519 (1989).

Mitigation Measure AQ-2.3 is Adequately Drafted

*San José asserts that Mitigation Measure AQ-2.3 is impermissibly drafted and wrongfully permits agency staff to approve alternate measures in lieu of agency decision-makers. Mitigation Measure AQ-2.3 is appropriately drafted and adequate under CEQA. "CEQA permits a lead agency to defer specifically detailing mitigation measures as long as the lead agency commits itself to mitigation and to specific performance standards[.]" *Gray v. Cnty. of Madera*, 167 Cal. App. 4th 1099, 1119 (2008); *see also City of**

Long Beach v. Los Angeles Unified Sch. Dist. (2009) 176 Cal.App.4th 889, 915 (“Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”). “Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended performance criteria . . . , such that they afford the applicant a means of avoiding mitigation during project implementation, [and] it would be unreasonable to conclude that implementing the measures will reduce impacts to less than significant levels.” *Rialto Citizens for Responsible Growth v. City of Rialto*, 208 Cal. App. 4th 899, 945 (2012). By establishing a clear threshold of effectiveness and by virtue of its binding effect, Mitigation Measure AQ-2.3 is permissibly drafted under CEQA.

The Final EIR Includes Adequate Air Quality Analysis and Adequately Responds to Air Quality-Related Comments

In addition to reiterating earlier comments, San José asserts that the Final EIR fails to adequately respond to its comment on the Draft EIR requesting Mitigation Measures AQ-6.1 and AQ-7.1 be applied to construction along the eastern portion of the Project site. Santa Clara appreciates San José’s comment regarding Project construction phasing and respective distances to residences across the Guadalupe River; this data was incorporated within the impact analysis included in the Draft EIR. The EIR assessed exposure to construction DPM emissions by predicting the health risks in terms of excess cancer and non-cancer risks at both on- and off-site receptor locations. Exposure to carcinogens is expressed in terms of the number of people in 1 million who would contract cancer over a lifetime of exposure. The BAAQMD project threshold is an increased risk of contracting cancer of 10 in 1 million (which means that out of 1 million exposed people, 10 would contract cancer). Chronic exposure to non-carcinogens is expressed with use of a hazard index (HI), which is the ratio of expected exposure level to an acceptable reference exposure level. A HI greater than 1.0 is considered significant. As shown in EIR Table 3.4-11, Project construction would result in an increase in cancer risk in excess of BAAQMD thresholds only at residential and daycare receptors within Parcel 5, which would be constructed during Phase 1. This is the only significant impact. By implementing Mitigation Measures AQ-2.1, AQ-2.2, AQ-2.3 and AQ-6.1, however, cancer risks related to DPM exposure during construction would be reduced below the BAAQMD threshold for this impact at residential and daycare receptors within Parcel 5.

As Santa Clara provided in its response to Comment A17a.6, “[r]isk at the residential areas east of the site across Guadalupe River is below applicable BAAQMD risk thresholds. For example, maximum incremental cancer risk at these areas, due to Project construction, at the nearest affected residences (the Stonegate Apartments along Renaissance Drive, north of Tasman Drive and immediately east of the river trail; Receptor 295 in the AERMOD output), is approximately 1.01 cases per million, which is below BAAQMD’s threshold of 10 cases per million.” Response to Comments at 4-153. *See also* Draft EIR at 3.4-35, Appendix 3.4. This impact would therefore be less than significant, and insignificant impacts need not be mitigated under CEQA. Pub. Res. Code §§21100(b)(3), CEQA Guidelines §15126.4(a)(3) (“Mitigation measures are not required for effects which are not found to be significant”).

THE FINAL EIR’S ANALYSIS OF GREENHOUSE GAS IMPACTS IS ADEQUATE

The Analysis of Impact GHG-1 Appropriately Considers Project Construction GHG Emissions

San José contends that it was unreasonable for the Final EIR to consider GHG emissions from project construction on a 30-year amortized basis. As discussed in the Draft EIR, BAAQMD’s CEQA Guidelines do not identify a GHG emission threshold for construction-related emissions, instead merely advising that

such emissions should be quantified, disclosed, and evaluated for significance before recommending implementation of Best Management Practices (“BMPs”) to help control and reduce those emissions. Implementing the construction and demolition plan (“C&D”) plan and compliance with Mitigation Measure AQ-2.4 and GHG-1.1 would reduce Project GHG emissions shown in Table 3.5-4 and ensure that construction-related GHG emissions are consistent with the City’s CAP and BAAQMD-recommended BMPs. Draft EIR at 3.5-16.

In an effort to determine the significance of these construction-generated GHG emission impacts in a reasonable manner, Santa Clara amortized construction emissions over a typical 30-year project lifetime to obtain an annual average figure compatible and incorporable with evaluating full build-out operational emissions against BAAQMD’s 4.6 MT CO₂e per service population annual efficiency threshold and the 2030 “substantial progress” 2.7 MT CO₂e efficiency metric. Santa Clara believes this approach is appropriate and consistent with the established approaches to evaluating construction GHG emissions recommended by numerous other air districts, including the South Coast Air Quality Management District (“SCAQMD”), which recommends amortizing construction over an assumed 30-year project lifetime, combining those emissions with operational emissions, and then comparing the combined emissions to the applicable significance threshold. See SCAQMD, *Guidance Document - Interim CEQA Greenhouse Gas (GHG) Significance Threshold* (2008). Santa Clara’s approach to evaluating construction GHG emissions was thus reasonable and consistent with CEQA requirements.

The Final EIR’s Analysis of Impact GHG-3 is Adequate

San José asserts that the California Supreme Court’s decision in California Building Industry Association v. Bay Area Air Quality Management District (“CBIA v. BAAQMD”) requires Impact GHG-3 to be reanalyzed consistent with its holding. The California Supreme Court concluded in the *CBIA v. BAAQMD* decision that “CEQA generally does not require an analysis of how existing environmental conditions will impact a project’s future users or residents.” The *CBIA v. BAAQMD* ruling provided for several exceptions to the general rule where an analysis of the project on the environment is warranted, including if the project would exacerbate existing environmental hazards. Thus, as a general matter, an EIR is still not required to examine the effects of the environment, such as sea level rise, on a project pursuant to *Ballona Wetlands Land Trust v. City of Los Angeles*, 201 Cal. App. 4th 455 (2011) (“*Ballona*”), except to the extent the proposed project would exacerbate those effects. See *CBIA v. BAAQMD*, 62 Cal. 4th at 392 (citing *Ballona* as consistent with its holding that environmental effects on a project generally need not be considered).

As explained in the Draft EIR, climate change is a global problem, and GHGs are global pollutants. GHGs are thus unlike criteria air pollutants (such as ozone precursors) that are primarily of regional and local concern. Given their long atmospheric lifetimes, GHGs emitted by countless sources worldwide accumulate in the atmosphere. No single emitter of GHGs, including the Project, is large enough to trigger global climate change on its own; that is, no single development project would result in sufficient GHG emissions to affect global warming or climate change in isolation.

Thus, while in the long run certain low-lying parts of the Project site and parts of adjacent roadways providing Project access may be susceptible to flooding influenced by climate-change induced sea level rise, and while additional potential climate change effects may affect the Project, including increased temperatures and heat stress days, Project GHG emissions would not exacerbate these effects in any measurable or mitigable way. To the contrary, the Project’s energy efficiency strategies could reduce potential heat-related climate change impacts on area residents. Likewise, although regional water

supplies are subject to potential future climate change effects that could impact water supplies, the Project includes water-efficiency measures that would help alleviate demand for scarce statewide water resources. See Draft EIR at 3.5-27. Thus, no further analysis is required under *CBIA v. BAAQMD*.

The Final EIR's Evaluation of the Cap-and-Trade Program as Mitigation for GHG Emissions is Adequate

San José contends that discussion of offsets as a mitigation measure were inadequate, specifically that the Final EIR should have considered offsets outside the Cap-and-Trade program and that the Final EIR's conclusion that purchase of offsets within the Cap-and-Trade program would risk duplication and exceed the project's fair share was not adequately supported. The Draft EIR explained in detail that the vast majority of the Project's GHG emissions, after mitigation, result from mobile sources and energy. Draft EIR at 3.5-21 (determining that these emissions would constitute over 93 percent under either of Schemes A and B). The Draft EIR also explained that sectors subject to GHG compliance obligations under the Cap-and-Trade program include transportation fuels, natural gas, and electricity derived from fossil fuels. *Id.* The EIR therefore appropriately concluded that the vast majority of the Project's mobile source and energy GHG emissions would already be accounted for in the Cap-and-Trade Program through the regulation of upstream electricity producers and fuel suppliers (*i.e.*, the ultimate source of the GHG emissions attributable to "Mobile Sources" and "Electricity" within the EIR. Draft EIR at page 3.5-21 (Table 3.5-6). These sources would be required to reduce GHG emissions to the extent necessary to achieve AB 32's goals, whether by surrendering offset credits or achieving additional reductions beyond those already required by other elements of the AB 32 scoping plan. Thus, the EIR appropriately concluded that acquisition of offsets would risk duplication and would also risk going beyond the Project's fair share mitigation, and declined to propose GHG offsets as mitigation. With respect to the post-2020 reduction targets in S-03-05 or B-30-15, moreover, and as discussed in the EIR, the State does not yet have an adopted plan to meet those targets, which can only be achieved through significant, systemic changes in electricity production, transportation fuels and industrial processes. Thus, in this regard too, acquisition of offsets would risk duplication of measures which are outside the scope and control of this Project.

THE FINAL EIR ADEQUATELY ANALYZES BIOLOGICAL RESOURCES IMPACTS

The Final EIR Adequately Considers the Project's Consistency with the Regional Conservation Plan

San José states that the Final EIR inadequately evaluated the Project's inconsistency with the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP" or "Plan"). San José also states that the Final EIR mischaracterizes the Project's impacts on burrowing owl, which in fact are CEQA impacts, and that the HCP/NCCP conflicts would also result in significant impacts to other species such as the bay checkerspot butterfly.

The Draft EIR adequately addresses potential impacts to the threatened Bay checkerspot butterfly. Suitable habitat is not present on the Project site, and the Draft EIR recognizes that the Project is located farther from serpentine grassland habitat (which hosts the Bay checkerspot butterfly) than average development within the Santa Clara Valley HCP/NCCP area. Because the Project falls outside the HCP/NCCP area, it is not required to contribute nitrogen deposition fees to the Santa Clara Habitat Agency, which would help mitigate potential impacts. Mitigation Measure BIO-C.1, however, requires the Project to make a fair-share nitrogen deposition fee contribution to the Santa Clara Habitat Agency's Voluntary Fee Payment Program. Considering the lack of suitable habitat and the required mitigation, the Draft EIR adequately analyzed potential impacts to the Bay checkerspot butterfly.

The Final EIR Adequately Analyzes the Effects of Nitrogen Deposition on Serpentine Grassland Habitat

San José states that the Final EIR does not adequately address nitrogen deposition impacts on serpentine grassland, and fails to require the Project to implement appropriate mitigation. The Draft EIR recognized that nitrogen emissions from stationary, area and mobile sources lead to nutrient enrichment in the serpentine grasslands south and east of San José (and other areas). This serpentine grassland provides habitat for several listed and rare plants. Nitrogen deposition favors nonnative vegetation to the detriment of common native and rare plant species, including the host plant for the threatened Bay checkerspot butterfly.

The relative impact of nitrogen emissions on nitrogen deposition in sensitive grassland areas depends on the proximity of the emissions to the sensitive grasslands and the direction relative to prevailing wind patterns. In general, the farther a source of emissions is from a receptor point, the greater the dispersion and the lower the deposition. The prevailing wind direction from the Project site is to the southeast. The sensitive grassland areas that are a concern for nitrogen deposition downwind of the Project site are in the eastern and western grassland slopes south of San José. The Project site is located approximately 14 miles northwest and upwind from the nearest large area of sensitive grassland habitat (Metcalf Critical Habitat for the Bay checkerspot butterfly also referred to as Coyote Ridge) and farther away from other critical habitat south of San José. Although mobile emissions associated with trips to and from the Project site would include some trips that proceed southeasterly in areas closer to sensitive grassland habitat, the Project's overall trip generation would be in a radial pattern and would include many trips that head north and west toward locations farther away from sensitive grassland habitat south of San José. Thus, it is a reasonable approach to assume the average location of mobile emissions is at and in the immediate vicinity of the Project site.

Because it is not located within the HCP/NCCP, there is no basis for requiring the Project to pay the Habitat Agency an amount commensurate with Plan Area applicants, or otherwise provide additional mitigation. Despite San José's suggestion to the contrary, the Project's emissions constitute only a portion of the regional nitrogen emissions and thus on their own would not result in nitrogen deposition above the threshold value. As explained in the Draft EIR, Section 3.8, ICF used the same air quality model used to support development of the SCVHP and analyzed the difference in nitrogen deposition from emissions in the vicinity of City Place compared with the average deposition from emissions in the SCVHP as a whole. Analysis indicated that mobile and non-mobile emissions in the area containing the City Place Santa Clara Project would result in 34 percent and 60 percent, respectively, of the nitrogen deposition per unit of emissions compared to the average nitrogen deposition per unit of mobile and non-mobile emissions in the HCP/NCCP area.

With regard to species impacts, the Draft EIR adequately addressed potential impacts to the threatened Bay checkerspot butterfly. Suitable habitat is not present on the Project site, and the Draft EIR recognizes that the Project is located farther from serpentine grassland habitat (which hosts the Bay checkerspot butterfly) than average development within the Santa Clara Valley HCP/NCCP area.

While nitrogen emissions from the Project would contribute to cumulative nitrogen deposition, on a per-unit of emissions basis, Project emissions would have a lesser effect on nitrogen deposition than average development in the HCP/NCCP area. The Draft EIR determined that cumulative development in upwind areas outside the Santa Clara Valley HCP/NCCP will also result in nitrogen emissions and deposition that will also affect downwind habitat areas. Regarding mitigation, Mitigation Measure BIO-C.1 would require the Project Developer to make a contribution to the nitrogen deposition fee program of the

Santa Clara Habitat Agency. The Santa Clara Habitat Agency uses such voluntary fees to help manage serpentine grasslands and address adverse nitrogen deposition effects. The amount of the fee is based on the same formula used by the Santa Clara Valley Habitat Agency under its Voluntary Fee Payments Policy. Although the Project is not in the HCP/NCCP Plan area, it is appropriate to compare it to the hypothetical average for a development within the Plan area. Implementation of Mitigation Measure BIO-C.1 would reduce the Project's contribution to cumulative nitrogen deposition impacts on serpentine grassland and supported special status species to a less-than-considerable (i.e., less-than-significant) level.

The Final EIR Adequately Analyzes Impacts to Burrowing Owl

Please see the response to comments on burrowing owls in Chapter B.3, *Responses to General Comments*.

The Final EIR's Analysis of Impacts to Wetland Habitat is Adequate

San José states that the Final EIR should extend compensatory mitigation to mitigate impacts to non-jurisdictional wetlands, and should assess the presence of wetlands using USFWS or California Coastal Act criteria. San José does not cite any legal authority for the statement that CEQA requires analysis of non-jurisdictional wetlands, nor any authority for applying the Coastal Act's definition of wetlands to a project outside of the coastal zone governed by the Coastal Act. Under Appendix G of the CEQA Guidelines, the threshold of significance for impacts to wetlands is: "have a substantial adverse impact on federally protected wetlands as defined by Section 404 of the Clean Water Act . . ." The Final EIR goes beyond this, and identifies potential waters of the U.S. and State. The Final EIR provides two new figures and one new table reflecting an expanded evaluation of potential wetlands and other waters of the U.S. and State. (Final EIR at 5-42 to 5-44.)

The Final EIR's Analysis of Impacts to Anadromous Fish is Adequate

San José states that the Final EIR fails to adequately analyze the post-construction Project impacts to central California steelhead and Central Valley fall-run Chinook salmon, and fails to consider "critical habitat" for both species. The Draft EIR adequately addressed the habitat and potential impacts to steelhead and Chinook salmon resulting from Project operations. The Draft EIR noted that the Guadalupe River reach adjacent to the Project site served as a migratory route to upstream spawning habitat for central California coast steelhead and Central Valley fall-run Chinook salmon. The Guadalupe River reach also provides critical habitat for steelhead salmon.

The Draft EIR states that Project operations could result in increased stormwater runoff from an increase in the amount of impervious surfaces that may contain contaminants that could affect water quality in San Tomas Aquino Creek and the Guadalupe River. This runoff could also potentially impact steelhead, Chinook salmon, and other native fish species that are potentially present in either channel. The Draft EIR concluded that the effects from increased stormwater runoff would be the same as the construction-related impacts. The Draft EIR also discussed the potential effects of sediment, contaminants, turbidity on fish habitat and mortality.

To mitigate operational impacts resulting from stormwater runoff, the Project would be required to comply with San Francisco Bay Municipal Separate Storm Sewer Systems Permit, Provision C.3, Stormwater Technical Guidance (SF Bay MS4 Permit). This would involve the replacement of impervious surface area equal to 50 percent or more of the pre-Project impervious surface area.

Because normal Project operations would not require disturbances within the Guadalupe River, and the Project would treat stormwater runoff prior to discharge through an on-site stormwater collection and conveyance system, the Draft EIR concludes that Project operations (other than maintenance) would not contribute to impacts on salmonids. For maintenance activities, Mitigation Measure BIO-4.1 restricts maintenance activities near the Guadalupe River riverbank to the low precipitation period in the summer (June 1 to October 15) to reduce the likelihood of adverse effects on adult and juvenile salmonid migration. In sum, the Draft EIR appropriately analyzed potential impacts to central California steelhead and Central Valley fall-run Chinook salmon (including habitat) arising from Project operations.

THE FINAL EIR'S ANALYSIS OF HAZARDS AND HAZARDOUS MATERIALS IMPACTS IS ADEQUATE

Impact HAZ-4 Includes Enforceable Mitigation for Long-Term Landfill Monitoring Requirements

San José states that the mitigation measures regarding the Project's long-term monitoring and maintenance needs, particularly for Impact HAZ-4, lack sufficient detail and are unenforceable or not legally binding. The Draft EIR analyzed the potential impacts associated with Project parcels 1, 2, 3, and 4 being located on a closed landfill. There is the potential for hazardous materials in the landfill soil gas, soil, and/or groundwater to pose significant health risks to groundskeepers, indoor commercial workers, and residents.

To mitigate these risks to a less-than-significant level, the Draft EIR requires the City and Project Developer implement the following mitigation measures: HAZ-4.1 (Landfill Closure, Monitoring, and Maintenance Plans); HAZ-4.2 (Landfill Gas Collection and Removal System); HAZ-4.3 (Landfill Gas Protection Systems); HAZ-4.4 (Landfill Gas Monitoring and Control System Maintenance); HAZ-4.5 (Building Restrictions); and HAZ-4.6 (HAZ-4.6: Landfill Hazards Disclosure).

These mitigation measures will be enforced through their inclusion in three plans that are required by regulations independent of CEQA: a Closure Plan ("CP"), Post-Closure Maintenance Plan ("PCMP"), and a Post-Closure Land Use Plan ("PCLUP"). The Final EIR requires each of these plans to be prepared pursuant to Title 27 of the California Code of Regulations, and each plan must be reviewed and approved by LEA, CalRecycle, and the Regional Water Board. The Project Developer would also be required to ensure that Project-related health risks to residents and commercial workers are mitigated below the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and hazard index ("HI") (i.e., adverse non-cancer risk) of 1.0 established for the Project.

Mitigation Measures HAZ-4.1 through 4.6 are sufficiently detailed and enforceable to address the Project's long-term monitoring and maintenance needs. A condition requiring compliance with environmental regulations is a common and reasonable mitigating measure. (*See Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 430.) "Deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the Project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation." (*Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 237 (2011)). Here, the Draft EIR recommends that the CP, PCMP, and PCLUP to abide by the requirements of Title 27, and the LEA, CalRecycle, and Regional Water Board are responsible for ensuring compliance with a specific cumulative incremental cancer risk and HI.

The Draft EIR also contains analysis that would ensure that a viable party would be available to deal with ongoing control, maintenance or health and safety issues. Under the Disposition and Development Agreement (“DDA”) to be entered into by the City and the Project Developer (which will be considered by the City Council for approval in conjunction with its consideration of certification of the Final EIR), the City would continue to own the Project site in perpetuity and will execute one or more long-term ground leases with the Project Developer or its assignees, which, in turn, would ultimately enter into subleases with building occupants. The DDA would require the City and the Project Developer to enter into a Landfill Operation and Maintenance Agreement that is consistent with a Memorandum of Understanding as to Landfill Operation and Maintenance that is appended to the DDA. The Memorandum of Understanding allocates responsibilities for health and safety issues between the City and the Project Developer. This Memorandum of Understanding (among other things) provides that the City would continue to be responsible for the Landfill protection systems, including the Landfill cap and cover, the enhanced Landfill gas collection system, and the leachate collection and treatment system.

The Project Developer would assume initial responsibility for ownership and operation of the new building protection systems, which would be designed to mitigate the potential building occupants’ exposure to methane and other compounds from the subsurface, including vapor barrier membranes, passive vapor collection and venting systems, and a contingent active blower system. Ultimately, responsibility for the building protection systems would be transferred to an association of building owners and tenants, subject to approval by the City and the regulatory agencies. The revised Post-Closure Maintenance Plan and the revised Corrective Action Plans (which require approval from the regulatory agencies) would set forth the specific long-term operation, as well as measures and responsibilities and the financial assurance, mechanisms.

The Final EIR’s Analysis of Impact HAZ-8 is Adequate

San José states that the Final EIR’s analysis of emergency response and evacuation plans fails to acknowledge the large numbers of people that would be present on the Project site during an emergency, and ignores the risks presented by the former landfill on the Project site. The Draft EIR fully evaluates the number of residents, employees, and visitors that would be present on the Project site, and comprehensively analyzes the health and safety impacts to all Project users. The Draft EIR notes that Santa Clara has adopted a Local Hazard Mitigation Plan. As described in the plan, the Santa Clara Fire Department (“SCFD”) is responsible for coordinating emergency response and evacuation procedures in the event of a major disaster within the Santa Clara. Emergency access and evacuation routes to and from the Project site would be available along the adjacent State Route 237, Great America Parkway, and Tasman Drive. While the Project would increase the amount of traffic in the area, the Draft EIR determined that it would not be expected to interfere with emergency response and evacuation procedures described in the adopted plan. Evacuations for any landfill methane-related incidents would be very similar to evacuations related to a common building fire. Therefore, the Project would have a less-than-significant impact on emergency response or evacuation plans. No further mitigation or analysis is required under CEQA.

The Final EIR Adequately Responds to Hazards-Related Comments Regarding the DDA

San José states that the Disposition and Development Agreement (“DDA”) should be made available for public review and comment. The DDA proposed to be entered into by the City and the Project Developer (and the attached MOU described above) will be made public prior to the date the City Council considers

certification of the Final EIR, as part of the agenda packet for that City Council meeting, in accordance with applicable law.

THE FINAL EIR ADEQUATELY ANALYZED THE IMPACTS OF SUPPLYING WATER TO THE PROJECT

The Final EIR's Analysis of Project Water Supply is Adequate

San José states that the Final EIR's conclusion that the Project would have sufficient water supplies relies on faulty assumptions and is unsupported by evidence. The Project would result in a total water demand of between 1,602 afy and 1,911 afy. As shown in Draft EIR Table 3.14-7 and the Water Supply Assessment in Appendix 3.14 ("WSA"), when taking into account other approved development and Project water demand along with existing demand, there is adequate projected water supply to provide water out to 2035 under normal year, single dry year, and multiple dry year scenarios. The WSA indicates that under normal year demands there is ample opportunity to expand recycled water service both at the Project site and in other areas in Santa Clara through existing infrastructure. In addition, as described in the WSA, there is approximately 85,000 afy of unutilized groundwater supply in the groundwater basin below the basin's safe yield, taking into account cumulative demands of Santa Clara and other nearby cities that utilize the same groundwater basin. Under single and multiple dry year scenarios, the City could implement several specific mandatory water use prohibitions and enforcement mechanisms that can readily reduce temporary water demand by at least 20 percent. Under reasonably foreseeable conditions, cumulative water demands, including the Project, would not exceed available water supplies. Additionally, because the Project demand estimates do not take into account the Project's on-site water reduction strategies, the Draft EIR likely overstates the expected demand. Implementing the Project would have a less-than-significant impact on water supplies in SCVWD's service area, and expansion of existing water entitlements would not be necessary to accommodate the Project.

San José also notes the possibility that Hetch-Hetchy water will not be available after 2018, due to Santa Clara's contract with SFPUC being up for renegotiation at that time. There is no evidence that Santa Clara will not be able to secure Hetch-Hetchy water after 2018. In any event, even under a multiple dry year scenario, the Draft EIR concludes that there will be an adequate water supply until 2025, even without Hetch-Hetchy water. Santa Clara can implement specific, mandatory water use prohibitions and enforcement mechanisms to reduce water demand as necessary to address water supply limitations in the future if shortfalls were to actually be realized.

The Final EIR Adequately Respond to Water Supply- Related Comments

San José restates the Santa Clara Valley Water District's ("SCVWD") comments on the Draft EIR regarding the Draft EIR's conservative water use assumptions being rendered unrealistic by changing economic conditions. San José states that the Final EIR must evaluate the potential for the Project to rely on groundwater. The Draft EIR used the most up-to-date and available groundwater figures from the SCVWD regarding safe yield. While SCVMD notes that the safe yield figures may be reconsidered for the upcoming Sustainable Groundwater Management Plan, there is no indication of whether SCVMD's reconsideration will increase or decrease the safe yield figures, or by how much. Further, SCVWD itself recognizes that groundwater elevations are determined by many factors. For instance, years of high groundwater pumping do not necessarily result in lowered groundwater levels.

The Draft EIR and WSA analyzed recent groundwater use in the Santa Clara Valley Groundwater Basin and concluded that Santa Clara was using less groundwater than projected. According to the WSA, the

actual groundwater use projections are substantially lower than that estimated in the 2010 Urban Water Management Plan (“UWMP”). By 2035, the WSA estimates indicate that Santa Clara Valley Groundwater Basin extractions, including Santa Clara’s use of 23,048 afy, will be approximately 114,955 afy, or more than 50,000 afy lower than estimated in the 2010 UWMP and approximately 85,000 afy less than the safe yield for the aquifer. Although the current projected water supplies already cover the higher estimates in the 2010 UWMP, the remaining available safe yield groundwater supplies coupled with the City’s lower than projected current groundwater demands provide room for growth above and beyond 2035 projections.

Comparing the figures in the WSA and 2010 UWMP does not show that increased water use is correlated perfectly with improving economic conditions. Table 10 on page 20 of the WSA includes water demand data through 2014, which continues to show substantially lower than projected water demands despite a period of rapid economic growth (albeit with a very minor demand increase in 2012 and 2013 compared to 2010 and 2011).

Given the Project’s conservative water use assumptions and recent data showing that water demand has been less than anticipated, there is no uncertainty regarding the availability of future water supplies. Moreover, under the *Vineyard* framework referenced by San José, alternative supplies need only be discussed where “it is impossible to confidently determine that anticipated future water sources will be available.” See *Vineyard Area Citizens or Responsible Growth v. City of Rancho Cordova*, 40 Cal. 4th 412, 432 (2007). This standard was added by the Supreme Court in a subsequent modification to the initial opinion, replacing the previous standard which would have required alternative supply analysis where “a full discussion leaves some uncertainty regarding actual availability of the anticipated future water sources” See *Vineyard Area Citizens or Responsible Growth v. City of Rancho Cordova*, 40 Cal. 4th 412, 432 (2007); *Santa Clarita Org. for Planning the Env’t v. Cnty. of Los Angeles*, 157 Cal. App. 4th 149, 162 (2007) (finding that the change in language provides agencies greater flexibility under CEQA). Here, the EIR amply demonstrates that anticipated future water sources will be available, satisfying the requirements of CEQA. See *Santa Clarita*, 157 Cal. App. at 162-63 (Rejecting claim that additional analysis of alternative water sources was required, despite acknowledgment in EIR of some uncertainty associated with principal source).

THE FINAL EIR’S ANALYSIS OF HYDROLOGY AND WATER QUALITY IMPACTS IS ADEQUATE

The Analysis of Impact WQ-2 is Adequate

San José states that the Final EIR’s analyses of Impact WQ-2 and cumulative groundwater recharge and supply are inadequate, because the Project water supply analysis shows that water supplies in 2035 would be inadequate under most scenarios. As described above, the Draft EIR correctly concluded that the Project’s groundwater impacts would be less than significant based on substantial evidence that water supplies would be adequate, that area water demands were less than originally anticipated, that the City could implement several specific mandatory water use restrictions under single and multiple dry year scenarios, and that existing groundwater supplies are available if needed. SCVWD’s comments do not alter this conclusion.

The Analysis of Flood Impacts is Adequate

San José states that the Final EIR should include pending FEMA maps in its baseline of existing conditions and revise Impacts WQ-6, WQ-7, WQ-8, and C-WQ-1. The Draft EIR adequately analyzes potential flood

impacts and mitigates those impacts to a less-than-significant level with flood warning measures by recommending Mitigation Measure WQ-6.1.

The Draft EIR also recognizes that the SCVWD maintains flood control facilities (e.g., existing levees) along the San Tomas Aquino Creek and the Guadalupe River, and that the City manages conveyance of stormwater to these waterways. Because the existing levees adjacent to the Project site are certified by FEMA, any impacts on or modifications to the levee will require SCVWD review and approval and may require a submission to FEMA for levee recertification.

The Draft EIR recognizes that FEMA is in the process of revising flood and wave data for the Santa Clara County Flood Insurance Study ("FIS") report and FIRM panels along the San Francisco Bay shoreline, and that the FIS may result in an expansion of the 100-year floodplain into adjacent off-site areas. The SCVWD's levee modifications and any related work by Santa Clara to stormwater conveyances would help protect these areas. There is no need for the Final EIR to address the revised FEMA maps, which were not final at the time of the issuance of the Final EIR.

The Final EIR Adequately Responds to Hydrology-Related Comments

San José states that the Final EIR does not acknowledge the potential impact that an expanded 100-year floodplain would have on the Project, and that WQ-6, WQ-7, WQ-8, and C-WQ-1 must be reanalyzed in the context of the CBIA v. BAAQMD case. As described above, the Final EIR adequately considers the possibility of an expanded 100-year floodplain and notes that any associated SCVWD levee modifications would help protect the affected areas of the Project site. See, e.g., Final EIR at 5-51 to 5-55.

In December 2015, the California Supreme Court ruled in *California Building Industry Association v. Bay Area Air Quality Management District (CBIA v. BAAQMD)* that the general rule under CEQA is that the impacts of the environment on a project are not CEQA impacts because they are not impacts of the project on the environment. The Final EIR noted specifically that the *CBIA v. BAAQMD* ruling provided for several exceptions to the general rule, including that if the project would exacerbate existing environmental hazards (such as exposing hazardous waste that is currently buried), then that can be considered an impact of the project on the environment. Here, the Draft EIR analyzed Impacts WQ-6, WQ-7, WQ-8, and C-WQ-1 prior to the *CBIA v. BAAQMD* decision and evaluated the potential impacts associated with placing housing or structures within a 100-year flood plain, the structural impedance of flood flows, the exposure of people or structures to flooding due to levee failure, and cumulative hydrology and water quality impacts, finding that each impact was less-than-significant or less-than-significant with mitigation. There is no evidence that the revised FEMA maps (which in any event are not final and subject to appeal) would change the analysis or conclusions. See also *Chaparral Greens v. City of Chula Vista* 50 Cal. App. 4th 1134 (1996) (holding that regional conservation plans issued in draft form while the EIR was being prepared need not be analyzed, and their subsequent finalization post-EIR certification did not require any action on the part of the agency).

THE FINAL EIR'S ANALYSIS OF IMPACTS TO PUBLIC SERVICES AND RECREATION IS ADEQUATE

San José states that the Final EIR inadequately analyses the loss of parkland because there is no information about the types or locations of facilities that might be constructed with the Project's in lieu fees. San José also states that there is no evidence that the parkland dedication will mitigate the loss of 162 acres of existing recreational uses. San José's letter was submitted prior to the decision of the project developer to make Parcel 3 available to the City for 35 acres of parkland, rather than being used for

office buildings, and before the inclusion of a requirement in the DDA for the developer to build an access road to this parkland and provide \$5 million to the City to plan and develop the park. This Parcel 3 Park, along with the already planned public open spaces and parks within Parcels 1, 2 & 4 (including the North Park, East Park and West Park), would satisfy the obligations of the Project Developer with respect to the establishment of parks for the residential uses. Therefore, in lieu fees would not be necessary. This Enhanced Open Space (“EOS”) Variant is fully analyzed in Appendix 5.3 to the Final EIR, prepared after initial release of the Final EIR.

The Draft EIR carefully analyzed the loss of recreational facilities caused by the elimination of 162 acres of golf course, tennis courts, and BMX track. The vast majority of the recreational space eliminated is comprised of a public golf course. The Draft EIR determined that closing the golf course would shift up to six rounds of golf per day to other area courses. By design, golf courses are meant to accommodate foot traffic and concentrated public uses, and this relatively small increase in players at other golf courses is not expected to result in substantial deterioration or a demand great enough to warrant construction of a new golf course. The Draft EIR also concluded that, although the tennis players and BMX participants would be displaced by the Project, the 114 existing tennis courts and five existing BMX tracks in the area would be able to accommodate the users who currently use the Project site.

In sum, while the closure of the existing on-site recreational facilities, including the golf course, tennis courts, and BMX track, would force users to seek alternative recreational venues, the alternative recreational venues that would see increased use have sufficient capacity and are not expected to experience a substantial physical deterioration. While San José cites to *City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, in *City of Hayward*, the court found that the EIR essentially failed entirely to analyze impacts to neighboring recreational facilities. That is not the case here, where the Draft EIR evaluated each on-site recreational use and analyzed how displacing such uses would affect nearby golf courses, tennis courts, and BMX tracks. See Draft EIR at 3.13-6 to 3.13-13, 3.13-19 to 3.13-22, 3.13-24.

San José references comments by the Santa Clara Unified School District (“SCUSD”) that nearby school facilities will not be able to absorb additional recreational use displaced or generated by the Project. According to SCUSD, the open space and fields at the schools and parks within Santa Clara are already used to capacity. This comment, however, is limited to school facilities and does not address the other recreation options available to area and Project residents, including approximately 299 acres of community, mini, and neighborhood parks and open space areas that serve the community, as well as area trails and bike paths. While the Draft EIR recognizes that several SCUSD facilities dually serve students and the surrounding community, continued recreational use of the facilities is subject to, and could be limited to, SCUSD need.

THE FINAL EIR’S ANALYSIS OF IMPACT AES-1 IS ADEQUATE

San José states that the Project’s tree removal would result in a significant aesthetic impact under AES-1, and that General Plan Policy 5.3.1-P10 should have been identified as a mitigation measure. The Draft EIR adequately considered the Project’s tree removal in connection with its analysis of potential visual impacts. Because the Project site is elevated compared to its surroundings, the features at the top of the Project site are visually isolated and are generally not perceptible to viewers outside of the Project site. The most noticeable features from the surroundings are the slopes of the landfill mounds and trees at the top. The Project would provide landscaping throughout the Project site in a manner that supports sustainability goals and the Complete Streets design, encourages active use of the outdoors, enhances

the visual aesthetics, and reflects various adjacent native environments. Although the Project site currently includes expansive open space area, it is not considered a sensitive viewer location or a scenic resource per the City's General Plan, due to its location surrounded by several large commercial developments.

Policy 5.3.1-P10 does not need to be applied as a mitigation measure. Compliance with relevant regulatory requirements can serve as basis for concluding that an impact is not significant, and therefore does not require mitigation. *Tracy First v. City of Tracy*, 177 Cal. App. 4th 912, 934 (2009). The Draft EIR explained that Santa Clara would require the Project to adhere to the City of Santa Clara General Plan, Policy 5.3.1-P10, which requires developments to replace trees at a ratio of 2:1 (replaced/lost) of 24-inch box specimen trees. Although this General Plan policy is not specified in the City Code, the Santa Clara applies this policy as a requirement. The Draft EIR considered the effect of the Project's replacement trees, which would be located throughout the Project site, in concluding that on-site visual impacts are expected to be less than significant. This is sufficient under CEQA.

The Draft EIR also recommends related mitigation measures that address visual impacts and trees. Mitigation Measure AES-1.2 will ensure that the existing golf course trees along the eastern edge of Parcel 2 are retained (leaving the view from the Guadalupe River trail unchanged) until such time as development on the eastern portion of Parcel 2 would necessitate their removal. The Project Developer is also required to implement the Landscaping Plan, as presented in the Master Community Plan, at the earliest feasible period, given the constraints and pacing of the development. Prior to planting and installation, the Landscaping Plan shall be submitted to the Planning Director for approval.

San José also states that the Policy 5.3.1-P10 should be applied as a mitigation measure for Impact BIO-6. Under Impact BIO-6, the Draft EIR determined that the Project would have a less-than-significant impact on local policies or ordinances protecting biological resources because no heritage trees, as defined by the City's Heritage Tree List, are present that would be impacted by Project construction, and because the Project will adhere to Policy 5.3.1-P10. Requiring Policy 5.3.1-P10 as a mitigation measure is unnecessary for the reasons stated above.

THE EIR CONSIDERS A REASONABLE RANGE OF ALTERNATIVES

Master Response 5 on pages 3-23 to 3-29 of the Final EIR discusses the basis for the selection of alternatives in detail. As stated in Section 15126.6(a) of the State CEQA Guidelines, "an EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." CEQA Guidelines § 15126.6(c). "Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." *Id.* "The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." CEQA Guidelines § 15126.6(f).

Increased Housing Alternatives

San José states that the Final EIR's increased housing alternative is insufficient to reduce the Project's significant effects, and that additional alternatives increasing housing were not shown to be economically

infeasible. The Draft EIR thoroughly explains why additional increased housing alternatives were considered but determined to be infeasible and inconsistent with Project objectives. First, construction of housing on Parcels 1, 2, 3 and the northwest portion of Parcel 4 is not feasible because it would be cost-prohibitive to expand the extraordinarily expensive elevated podium structure planned for the Parcel 4 portion of the City Center, and the regulatory agencies with jurisdiction over the landfill have made it clear that any proposal for residential use over the landfill should propose the residential use over the podium structure and not directly over the landfill cap.

Second, increasing the height of the residential structures planned for Parcels 4 and 5 in the City Center enough to accommodate significant additional residential units would also not be feasible because the alternative would create significant design, cost, and marketing issues that would adversely affect the ability of the Project to create a vibrant live, work, and play environment consistent with the Project objectives. To maximize density near transit, the residential structure in Parcel 5 is likely to be the maximum height contemplated under the entitlement documents for the site. Likewise, the residential structures planned near the convention center are also close to transit and likely to be at heights approaching the maximum. These two residential areas are located on the edge of the Project site, and higher structures would not interfere with connectivity within the Project site. The residential area adjacent to it should therefore also consist of medium height buildings to assist with visual integration and not create a “wall” between City Center and the rest of the development. The construction of high rise residential structures in Parcel 4 would significantly increase the cost per unit to construct because building codes for high-rises require steel or concrete frames rather than wood frames and additional design features related to emergency response.

Third, replacing the office space planned under the Project for the Parcel 5 portion of the City Center would not be feasible because it would eliminate any office space in City Center (because the Increased Housing Alternative already eliminates the office space in the Parcel 4 portion of City Center), thereby not meeting the basic Project objective of creating a vibrant, mixed-use “live, work, play environment.” This alternative would also impede the Project objective of providing shared parking opportunities for events at Levi’s Stadium.

Finally, replacing or redistributing any other uses (e.g., retail, food and beverage, hotel, or entertainment) in the City Center with residential uses would not be feasible because it would minimize the entertainment, dining, and shopping options, thereby not meeting the basic Project objective of creating a vibrant, mixed-use “live, work, play environment” by conglomerating the uses at the City Center.

CEQA recognizes that a finding of infeasibility may be based on economic considerations, supported by relevant economic evidence. Pub. Res. Code § 21081; CEQA Guidelines § 15091(a)(3). Courts “have eschewed requiring any particular economic showing, and have, instead, recognized that what is sufficient will depend on the particular context.” *SPRAWLDEF v. San Francisco Bay Conservation & Dev. Comm’n*, 226 Cal. App. 4th 905, 921 (2014.)

Increased Housing Alternatives Were Adequately Analyzed

San José states that the Final EIR must include a Project alternative that includes a sufficient number of housing units and reduction of jobs to reduce the Project’s jobs/housing balance to 1.0. As discussed above, the Draft EIR considered (but ultimately did not analyze) Project alternatives that would substantially increase the number of residential units on the Project site, which would improve the jobs/housing

ratio. Those alternatives were determined to be infeasible and inconsistent with Project objectives. CEQA only requires an EIR to analyze a reasonable range of alternatives that would potentially meet Project objectives, and a Project alternative incorporating the amount of housing sufficient to bring the jobs/housing ratio to 1.0 would not sufficiently meet the Project's mixed-San use objectives.

Also, as explained above, the Draft EIR adequately analyzed the jobs/housing issue and applied all feasible mitigation measures. Despite land use impacts that would remain significant and unavoidable, the Project is consistent with the vast majority of Santa Clara General Plan Goals and Policies.

General Plan Amendments to Increase Residential Density Are Not Required

San José states that the Final EIR must include an alternative with a General Plan Amendment that increases residential density city-wide to reduce Project impacts on VMT, traffic congestion, air quality and GHG emissions. The Draft EIR identified a reasonable range of alternatives that would potentially mitigate Santa Clara's jobs/housing imbalance and that could fulfill most Project objectives. The Project is not required to implement Mitigation Measure LU-1.1 into a General Plan amendment. "[A]n EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." CEQA Guidelines § 15126.6(a). "The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." CEQA Guidelines § 15126.6(f).

Increasing the residential density requirements through the mechanisms in the City's General Plan involves the consideration of many elements and features of the City's General Plan, and would ultimately require detailed CEQA review and approval from the City Council. Conditioning Project approval on a General Plan amendment involving so many iterative processes would be unreasonable, and would be outside the scope of the Project and would not accomplish the Project's objectives.

Clean Closure Alternatives

San José states that the Final EIR improperly ignored alternatives that could reduce Project impacts related to hazardous materials. As stated in Section 15126.6(a) of the State CEQA Guidelines, "an EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." The Draft EIR determined that the Project as proposed would result in less-than-significant hazards and hazardous materials impacts with mitigation. The Draft EIR also analyzed a reduced intensity alternative that would have similar less-than-significant-with-mitigation hazards and hazardous materials impacts, but would reduce the amount of employees and residents on the site. The reduced intensity alternative would necessarily limit the number of receptors to any potential hazard and hazardous materials impacts. The Draft EIR also evaluated two "No Project" alternatives that would eliminate or reduce the magnitude of most hazard and hazardous materials impacts.

The Draft EIR fulfilled its duty under CEQA to examine a reasonable range of alternatives that would could reduce Project impacts related to hazardous materials, which in any event were found to be less-than-significant. While San José cites *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal. 3d 376, 403 (1988), in that case the court found inadequate an EIR that contained less than two full pages of analysis regarding project alternatives. Here, the Draft EIR analyzed various

Project alternatives over approximately 100 pages, and the Final EIR provided an additional seven pages globally responding to alternatives-related comments.

San José's "Clean Closure" comments are addressed below, and there is no indication that the Draft and Final EIR's consideration of alternatives was insufficient.

Clean Closure of Entire Site

San José states that the Final EIR improperly rejected the "Clean Closure" alternative for additional analysis because it did not provide comparative data demonstrating the difference between waste removal, on the one hand, and closure and long-term monitoring, on the other. The "Clean Closure" alternative was rejected for a variety of reasons, many unrelated to cost. As discussed in the Draft EIR, it was estimated that removal of the waste would take at least 20 months. This would create substantial project delay, but even more importantly there would be substantial odors, noise and emissions of dust and methane gas during that lengthy period. Furthermore, the truck trips during construction, and those trips would be 10 to 50 times longer than normal construction truck trips. Therefore, the alternative would result in substantially-greater construction-traffic-related air emissions, GHG emissions, noise and traffic associated with removal of the waste would more than quadruple the number of truck trips.

To the extent cost was a factor in rejecting this alternative, CEQA recognizes that an alternative can be found infeasible based on economic considerations, supported by relevant economic evidence. Pub. Res. Code § 21081; CEQA Guidelines § 15091(a)(3). Courts "have eschewed requiring any particular economic showing, and have, instead, recognized that what is sufficient will depend on the particular context." *SPRAWLDEF v. San Francisco Bay Conservation & Dev. Comm'n*, 226 Cal. App. 4th 905, 921 (2014).

The estimate of the costs associated with waste removal and associated transportation, off-site disposal, and site restoration has been updated since initial publication of the Final EIR, to correct an arithmetic error in the calculation of the contingency and to reflect cost escalation in the same manner escalation has been reflected in the Project transactional documents between the City and the Project Developer. The updated costs of removal are \$998 million. The estimated cost premium to build the Project above the existing landfill condition is approximately \$420 million. The \$578 million of additional cost to remove the waste would make the Project economically infeasible. In order to achieve minimally acceptable return-on-cost levels, the Developer would need to set asking rents for retail, office and residential, as well as hotel rates, that would be far in excess of current market rates or what the market could reasonably support in the future. It would require substantial public financing in order to close the gap in obtaining private financing of this magnitude to fund waste removal with no resulting economic return. Furthermore, the additional time needed to remediate the site would result in protracted period of construction for each phase and land parcel which would have a critical impact on required Project timing and a substantially negative impact on Project returns.

Clean Closure of Parcel 4 Only

San José states that the Final EIR improperly omitted an alternative that would have removed all waste from Parcel 4. Although the Draft EIR considered only an alternative that would remediate the entire Project site, the Final EIR confirmed that cleanup of Parcel 4 only would also not be feasible. Parcel 4 is a little less than 40 percent of the acreage of the Landfill, although the refuse layer is a little shallower than it is on other parcels, so it is likely that about 30 percent of the waste to be removed would be from

Parcel 3. This would still result in substantially greater construction-traffic-related air emissions, GHG emissions, noise, and traffic. It would also still result in substantial costs – using the updated cost estimate, the removal would cost approximately \$300 million. Furthermore, this alternative would not improve the project’s impacts on jobs/housing balance; for the reasons stated above, it is not feasible to build housing on Parcels 1, 2 and 3, and with incorporation of the Increased Housing Alternative, Parcels 4 and 5 cannot accommodate any additional housing. This alternative is also not necessary to address impacts related to potential land-fill related exposures, because no significant and unavoidable impacts associated with the construction of housing on top of a landfill were identified in the Draft EIR. Mitigation Measures HAZ-4.1 through HAZ 4.6 would reduce impacts on residents to less than significant.

San José notes that in 1985 the waste beneath Parcel 4’s tennis courts was removed and replaced with clean fill. Parcel 4, however, includes only seven tennis courts that occupy a minute fraction of Parcel 4’s 86.6 acres. Such limited removal efforts have no bearing on whether remediating the remainder of Parcel 4 is feasible.

Additional Reduced Project Size Alternatives

San José states that the Final EIR should have considered a Project alternative with less density than the “Reduced Intensity Alternative.” As stated in Section 15126.6(a) of the State CEQA Guidelines, “an EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.” “The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.” CEQA Guidelines § 15126.6(c).

The Draft EIR analyzed the Reduced Intensity Alternative among a spectrum of alternatives ranging from two No Project alternatives to the Project to the Increased Housing Alternative. The Draft EIR determined that the Reduced Intensity Alternative would meet the Project objectives of modernizing the Landfill for more productive uses, creating a vibrant, “live, work, play environment” in the City Center, and stimulating economic development and job creation in the City, although not to the same extent as the Project. The discussion of the Reduced Intensity Alternative was sufficient to foster informed decision-making and public participation regarding the types of potential impacts associated with a smaller Project.

Contrary to San José’s suggestion, CEQA does not require an EIR to analyze various iterations of the Project and determine at exactly what point an alternative stops meeting Project objectives. It is likely that reducing the Project’s floor area or retail, restaurant, entertainment and hotel uses by 50 percent or more would not feasibly accomplish most of the Project’s mixed-use objectives and would not provide the financial incentives to adequately remediate the Site. .

Transit-Oriented Alternative

San José states that the Final EIR should have considered a Transit-Oriented Alternative to address the significant impacts created by the vehicle trips associated with the Project, specifically, an alternative that would include significant improvements to Great American station. Under CEQA, an EIR must consider a reasonable range of potentially feasible alternatives that could feasibly accomplish most of the project’s basic objectives. Not every conceivable alternative must be considered. CEQA Guidelines § 15126.6(a).

The Draft EIR discusses several transit improvements associated with the Project. Of the many Project objectives, one is to “[p]romote transit-oriented infill development by placing job-creating commercial buildings, residential units, and entertainment, dining, and shopping options in close proximity to each other and to existing transit and other multimodal transportation facilities.” The Project would include construction of new roadways, sidewalks, and bicycle lanes that would connect to the transit network south of the Project site. With the proposed pedestrian paseos, Parcels 2, 4, and 5 would be a 5-minute walk from the heavy-rail Great America Station on the UPRR right-of-way. All parcels would be a 10-minute walk from the Great America Station and Lick Mill VTA Station. Parcels 4 and 5 would be a 10-minute walk from the Great America VTA Station. The TDM plan required by Mitigation Measure TRA-1.1 could include a shuttle service to/from the nearby transit stations and the on-site businesses and residences, and provide programs to facilitate access to local transit services within the City, including buses, light rail, and ACE. The new Tasman Drive Intersection under Variant 2 would allow for an enhanced transit plaza with a new vehicle turnaround just beyond the northern end of the station, which would provide room for an additional six transit bus loading positions, potentially improving employer shuttle performance.

Each of the above-identified Project features would collectively promote the use of public transportation. Given the Project’s objectives and existing transit improvements and mitigation, CEQA does not require the Final EIR to specifically consider a separate transit-oriented alternative.

The Final EIR Adequately Respond to Comments on Project Alternatives

San José generally comments that the Final EIR failed to provide a good-faith reasoned response to certain commenters’ requests for additional alternatives to avoid or reduce the Project’s significant effects. Per CEQA’s requirements, Santa Clara developed a list of potential Project alternatives that would reduce the identified significant and unavoidable impacts while also meeting the majority of Project objectives. As discussed throughout the Draft EIR, the Project would result in significant and unavoidable impacts associated with land use, transportation, air quality, greenhouse gases (GHGs), noise, biological resources, and utilities.

Under CEQA, agency responses to comments need not be exhaustive; what is required is a “good faith, reasoned analysis.” CEQA Guidelines 15088(c); *Towards Responsibility in Planning v. City Council*, 200 Cal. App. 3d 671, 683 (1988). It is “perfectly appropriate” for an agency to refer to parts of a draft EIR analyzing the impact raised by the comment. *Paulek v. Dep’t of Water Resources*, 231 Cal. App. 4th 35, 49 (2014). Moreover, because responses are part of the EIR itself, “their sufficiency should be viewed in light of what is reasonably feasible.” *See, e.g., City of Irvine v. Cnty. of Orange*, 238 Cal. App. 4th 526, 550 (2015) (citations and internal quotation marks omitted). Agency responses will not be cause to overturn an EIR unless “prejudice in some purported inadequacy of a response [is] shown.” *Id.* at 557.

Here, the Final EIR carefully considered each comment in its response to comments, which totaled hundreds of pages. The Final EIR included a “Master Response” generally explaining its analysis of a reasonable range of alternatives, and included specific, good-faith responses to comments submitted by many agencies, organizations, and individuals. The Final EIR explained that alternatives were not required to specifically address impacts that were not significant and unavoidable, and that none of the changes to the Draft EIR involve a feasible Project alternative or mitigation measure considerably different from others analyzed.

OTHER ISSUES

The Project Description Is the Whole of the Action

San José states that the Final EIR is deficient because it inadequately analyzes the relocation of the BMX track, or other uses displaced from the Project Site. San José's statement that the relocated BMX track must be analyzed in the Final EIR is inaccurate because relocation of the BMX track to another site is not part of the Project. The City has not determined that relocating the BMX track is feasible; neither has it committed to providing another location for the BMX track. Any future proposal that may be considered related to a new home for the BMX track would be subject to its own environmental review. An EIR is not required to produce detailed information about the environmental impacts of a "future regional facility whose scope is uncertain and which will in any case be subject to its own environmental review." (Towards Responsibility in Planning v City Council (1988) 200 CA3d 671, 681).

The Development Agreement and the Disposition and Development Agreement Will be Made Available for Public Review

San José states that it is impossible to determine whether the Final EIR's analysis of long-term monitoring and maintenance is legally adequate because the Final EIR did not include the Development Agreement ("DA") or DDA. The DA and DDA to be entered into by the City and the Project Developer (and the attached MOU described above) will each be made public prior to the date the City Council considers certification of the Final EIR, as part of the agenda packet for that City Council meeting, in accordance with applicable law.

The Exclusive Negotiating Rights Agreement

San José states that the Exclusive Negotiating Rights Agreement entered into between Santa Clara and Related Santa Clara left Santa Clara with too little discretion over the Project, and "predetermined" approval of the Project in violation of CEQA. As San José notes, Santa Clara and Related Santa Clara entered into an Exclusive Negotiating Rights Agreement ("ENR Agreement") in April 2013 that stated clearly and explicitly that it was not a commitment by either party to approve or proceed with the Project. The ENR Agreement further stated that nothing in the ENR Agreement "shall be construed to compel [Santa Clara] to approve or make any particular findings with respect to [CEQA]." The Notices of Preparation that would eventually become the City Center Project were issued in late Spring/Summer 2014.

A public agency can consent to explore a well-defined project—indeed, can even be inclined to support such a project—without formally "approving" the project and triggering CEQA. *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116, 136 (2008). The California Supreme Court held that "[a]gencies sometimes provide preliminary assistance to persons proposing a development in order that the proposal may be further explored, developed or evaluated. Not all such efforts require prior CEQA review." *Id.* "[P]rivately-conducted projects often need some form of government consent or assistance to get off the ground, sometimes long before they come up for formal approval." *Id.* Under similar circumstances, a court has found that agreements binding parties to negotiate in good faith are not "approvals" under CEQA, concluding that "[a] contract to negotiate an agreement is distinguishable from the ultimate agreement that parties hope to eventually reach." *See Cedar Fair, L.P. v. City of Santa Clara*, 194 Cal.App.4th 1150, 1171 (2011).

The key is whether an agency has taken any action that “significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.’” *Save Tara*, 45 Cal.4th at 138. To determine whether an “approval” has occurred sufficient to trigger CEQA, “courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.” *Id.* at 139.

The ENR Agreement, as its name and provisions indicate, was not a Project “approval” that foreclosed adequate environmental analysis or reasoned consideration of the Project. The ENR Agreement obligated Santa Clara and Related to negotiate with each other, but did not contractually or irreversibly bind Santa Clara to proceed with the Project. Rather than foreclose alternatives, the Draft EIR exhaustively analyzed two “No Project” alternatives, a reduced intensity alternative, and an increased housing alternative. This wide-ranging analysis left the City with a multitude of options.

CONCLUSION

The Draft Final EIR adequately analyzed potential environmental impacts under CEQA, applied all feasible mitigation measures, and reviewed several feasible Project alternatives that would accomplish all or most of the Project objectives. Public comments on the Draft EIR did not result in any substantial Project changes or identify any new or more severe environmental impacts that would necessitate recirculating the Final EIR for additional public comment.

Intersection	Scenario	Peak Hour	No Project		With Project		With Project With DEIR Proposed Mitigation*		With Project With San Jose Proposed Mitigation**	
			Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
Int. 17 Rio Robles / Tasman Drive	Counted Volume	AM	24.3	C	---	---	---	---	---	---
		PM	27.5	C	---	---	---	---	---	---
	Existing (Full Project)	AM	24.2	C	28.2	C	27.8	C	27.8	C
		PM	46.4	D	101.8	F	47.0	D	46.8	D
	Existing (Partial Project)	AM	24.2	C	25.6	C	25.2	C	25.2	C
		PM	46.4	D	92.7	F	41.5	D	41.3	D
	Background	AM	26.3	C	62.1	E	55.6	E	55.6	E
		PM	54.2	D	68.6	E	34.4	C	34.3	C
	Cumulative	AM	48.3	D	127.2	F	44.3	D	44.2	D
		PM	105.6	F	125.8	F	60.0	E	59.8	E

*DEIR mitigation measure for the Rio Robles / Tasman Drive intersection includes one left-turn lane and one shared through/left-turn lane for the southbound approach.

**San Jose proposed mitigation measure for the Rio Robles / Tasman Drive intersection includes one left-turn lane, one through lane, and one right-turn lane for the southbound approach.

Letter from Santa Clara Valley Transportation Authority, Jeannie Bruins (dated May 5, 2016)/Nuria Fernandez (dated April 29, 2016)/VTA Talking Points for Public Presentation (public hearing on April 26, 2016)

Response to Santa Clara Valley Transportation Authority, Jeannie Bruins (dated May 5, 2016)/Nuria Fernandez (dated April 29, 2016)/VTA Talking Points for Public Presentation (public hearing on April 26, 2016)

1. VTA Speaker Notes dated April 26, 2016

- 1) *As the lead agency, the City is required to identify feasible mitigation measures that avoid, minimize, rectify, reduce, or compensate for a significant impact. In the Draft EIR, the City found that the impact to transit operations was significant and unavoidable. However, in its comments, VTA suggested mitigation measures to reduce and/or avoid the impact. In the Final EIR, the City dismissed all of VTA's suggested mitigation measures and did not offer any other measures, even though additional feasible measures exist. For example, if the City chooses not to implement full transit signal preemption, as VTA's requested, the City could implement strengthened transit signal priority for light rail, with a developer-funded monitoring and maintenance program to ensure the priority stays in place over time. VTA believes the EIR does not adequately address this impact.*

The City of Santa Clara intends to cooperate with the VTA to enhance light rail operations on the Tasman corridor. We understand that the VTA would prefer full transit signal pre-emption as mentioned in the comments on the Draft EIR and Final EIR. The City's traffic control system on Tasman Drive would require extensive revisions and updating to implement full transit signal pre-emption. Plus, the City is responsible for the movement of pedestrians, bicycles, and vehicles both along Tasman Drive and across Tasman Drive. Full transit signal pre-emption would prioritize light rail over all of these other modes and therefore would not maximize mobility on the corridor when the volumes and ridership for all modes are considered, especially since LRT ridership is low. Providing strengthened transit signal priority for light rail is an option that the City may support. The City will work with the VTA to assess its feasibility and associated impacts. As, traffic signal control technologies are constantly changing and improving, we will continue to assess traffic signal operations in the corridor as traffic, pedestrian, bicycle, and transit volumes change in the future.

- 2) *VTA opposes the proposed new intersection on Tasman Drive, in part due to the delay caused to light rail. The City's analysis of transit delay due to the new intersection concluded the average would be less than 5 seconds of delay per train, with a maximum of 15-20 seconds. VTA believes the delay is substantially greater. The City failed to adequately describe in the Final EIR the methodology used in performing the transit delay analysis, nor has it released this analysis despite repeated requests from VTA over several months.*

Two site access variants are being considered, one with the new intersection on Tasman Drive at Avenue C and one without. The intersection of Tasman Drive and Avenue C would be designed to limit LRT delay; eastbound left turns would be prohibited and the only movement crossing the LRT tracks would be the southbound left-turn movement. The proposed design would include pedestrian barriers to prohibit pedestrians from crossing the LRT tracks.

A traffic analysis to estimate LRT delay at the proposed intersection of Tasman Drive with Avenue C has been updated and peer reviewed¹. The analysis was conducted for the AM and PM peak hours under Existing plus Project and Background (2020) plus Project Conditions. Signal

¹ *Traffic Analysis for LRT on Tasman Drive with City Place Project*, Brian Sowers of Kimley-Horn, May 23, 2016. Peer reviewed by Hexagon Transportation Consultant. Inc.

timings and LRT setting were prepared for the new intersection under each scenario. Traffic models, with the proposed LRT settings, signal timings, LRT arrival patterns, and controller software capabilities, were used to estimate LRT and vehicular delay. The results of that analysis are that LRT delays would not significantly increase with introduction of the new intersection; the maximum LRT delay increase would be 15 to 20 seconds, with the most probable delay increase less than 5 seconds.

Project Developer will provide the information needed by VTA and the California Public Utilities Commission (CPUC) to consider approval of a new rail crossing including addressing delay to light rail vehicles.

- 3) *Light rail would likely suffer from delay at existing intersections as well, which the City did not attempt to analyze in the Draft or Final EIR. Delays to light rail in this segment of Tasman Drive are an ongoing problem, and we believe the City is minimizing the importance of this issue. Small delays can have a cascading effect on the light rail system, and increase costs and reduce the attractiveness of transit. VTA needs to protect the \$90 million taxpayer investment made over the last two years to speed up the light rail system.*

The City acknowledges that the Project would increase the delay to light rail vehicles at other intersections on Tasman Drive as identified in Impact TRA-11: Transit Operations. "The Project would generate considerable amounts of traffic congestion at intersections on bus and light-rail routes in the study area, thereby increasing the travel times of buses and light-rail vehicles. (SU)." The Draft EIR identifies mitigation measures at some of the intersections that will reduce the impact to light rail vehicle delay by reducing the delay to other vehicles using the intersection. The City will also review operational improvements to reduce light rail vehicle delay.

- 4) *VTA also strongly opposes the proposed new intersection due to safety concerns to pedestrians, light rail vehicles and autos. As noted in the Final EIR, any new crossing of the tracks would require approval of VTA and California Public Utilities Commission (CPUC). The new crossing described as Tasman Variants 1 and 2 in the EIR will not be supported by VTA.*

The City requests that the VTA continue to consider a new intersection at Tasman Drive/Avenue C as a viable site access location, pending future studies. If the new intersection at Tasman Drive/Avenue C is determined to be needed to provide adequate site access, it would be designed to meet applicable safety regulations.

- 5) *VTA requested an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard to ensure the safety of the travelling public, which the City dismissed in the Final EIR. The Project would likely require extensive CPUC/VTA review of existing and proposed crossings, considering safety of all modes, which may conclude that one or more grade-separated crossings are warranted. In any case, we believe existing and future conditions, as well as pedestrian traffic during stadium events, warrants the grade-separated crossings as part of the first phase of the Project.*

The City shares VTA's concerns regarding pedestrian safety. As discussed above any new intersection on Tasman Drive would be designed to meet applicable safety regulations. Plus safety improvements would be added to the existing intersections.

Pedestrian activity on Tasman Drive would vary based on the type of event occurring at Levi's Stadium. On most days there will be no event at Levi's Stadium and pedestrian activity would be light. Many events at Levi's Stadium have attendances of less than 20,000 and parking is provided south of Tasman Drive (the stadium side of Tasman Drive). Pedestrian activity would be heavy during the one to two-hour period before the event and one-hour period after the event. It is only during the major events, that occur approximately 37 times a year, that there is heavy pedestrian activity for several hours before and after the event. The Project Developer is required to prepare a traffic and parking management plan to address traffic, parking, and pedestrian circulation during stadium events.

Additional grade-separated crossings would only be of benefit when there are major stadium events (there are two existing undercrossings – one at San Tomas Aquino Creek Trail and another via Stars and Stripes Drive) and Tasman Drive were to remain open, which is not the case for major stadium event. For major stadium events Tasman Drive is closed. As stated in the Draft EIR response to comments, an overcrossing is not being considered. Plus overcrossings may be physically infeasible as they require a lot of space for their ramping systems and there is limited right-of-way on the south side of the road due to the presence of Levi's Stadium.

- 6) *In the Final EIR, the City stated that only with the new intersection on Tasman Drive would there be room to provide the enhanced transit plaza and additional bus/shuttle loading positions discussed between the City, VTA, ACE, and the developer. VTA believes sufficient room exists to provide these near-term transit center improvements in the base scheme without the new intersection. We believe that the developer and the City are leveraging these improvements to push VTA and other public agencies to accept the proposed new intersection on Tasman Drive.*

The EIR does not identify any significant environmental impacts which require mitigation through an enhanced Great America Station platform and adjacent transit center. The discussion of Impact TRA-10 on page 3.3-172 of the Draft EIR states: "The existing platform waiting area with a capacity of 2,440 waiting passengers can accommodate projected PM Peak Hour ridership of 617 passengers under existing with-Project conditions with TDM." Neither ACE nor VTA present contrary evidence. Therefore, this is not a CEQA issue, but rather an issue related to Project design.

The Project Developer has proposed a conceptual station improvement plan that would complement the Project design under its preferred access configuration that involves the relocation of Stars and Stripes Drive and a new street connection (Avenue C) to Tasman Drive. The principal benefit of the station improvements is to enhance access to and from the station, by allowing more buses to go in and out of the station more efficiently; this benefit can only meaningfully be achieved if the Project Developer's preferred access configuration is incorporated into the Project. The new intersection would be located immediately west of the Great America ACE/Capitol Corridor Station, and would provide a direct connection between Tasman Drive and the Great America station for shuttle buses and station traffic. Without this connection, buses and other traffic would need to use either Avenue B (for right turns only) or Centennial Drive (for left turns) and travel through the 'front door' of the project, where pedestrian activity and vehicular activity would be concentrated. The Avenue C connection would also distribute southbound left turns across two intersections, relieving pressure on the Centennial/Tasman intersection and significantly reducing congestion, delay and traffic queuing.

The station improvements concept would work in conjunction with the new Avenue C connection, and the relocation of Stars and Stripes Drive not only to provide space at the station for the additional bus queuing but would reduce bus queues and decrease bus circulation times by providing more ready access to Tasman Drive while also increasing pedestrian safety by minimizing bus and other traffic in pedestrian zones. Without this access configuration, there would be less room for additional buses because the connection to Stars and Stripes Drive would be similar to its current configuration, and any additional room for buses that could be provided by station improvements would not enhance service because the buses would not be able to circulate through the site to Tasman Drive as efficiently.

- 7) *Regarding Transportation Demand Management (TDM), VTA believes that the City can and should specify that TDM monitoring will be performed by the City or a third party. In the Final EIR the City stated that the monitoring party will be approved in the TDM Plan at a later date. This leaves open the possibility that monitoring will be self-reported by the developer. This does not match best practices in Santa Clara County, such as in recent EIRs for development projects in Mountain View, Sunnyvale, Cupertino, and at Stanford University. The monitoring party will be a third party that must be approved by the Santa Clara Director of Planning and Inspection.*
- 8) *VTA is also concerned that in Final EIR Master Response 2, it appears that the City is weakening the commitment to the TDM targets discussed in the Draft EIR text. The Final EIR states that the trip reductions "are stated as goals rather than as requirements." This, combined with the lack of penalties and ambiguity regarding the monitoring party, combine to form a weak TDM framework. VTA requests that the City revise this mitigation measure to require the TDM targets and an enforcement mechanism.*

In response to multiple comments regarding the TDM mitigation measures, the City has comprehensively revised the language of the TDM measure to clarify that the City will oversee an independent third party to monitor compliance with the program, and to specify multiple details about the manner in which the program will be implemented and enforced.

The TDM mitigation measure is a legally binding requirement enforceable by the City in the same manner as any mitigation measure. The Project is legally required to prepare a TDM plan and the EIR specifies a comprehensive list of measures to be considered for inclusion in the plan. In approving the TDM plan, the City must determine that the Plan includes measures sufficient to achieve specified trip reduction targets. The Project is then legally required to implement the measures approved by the City. The Project's actual progress toward achieving the numeric trip reduction targets would be measured and evaluated annually by a third party approved by the Santa Clara Director of Planning and Inspection. If the City determines that insufficient progress has been made, it would legally require the Project to revise the plan with enhanced TDM measures.

The City has required numerous developments to prepare TDM plans, and has never provided for the assessment of monetary penalties for failure to achieve numeric trip targets. A decision to begin imposing such monetary penalties would be a major policy decision with city-wide ramifications that is not appropriate in the context of approving a single development. The City's current practice appropriately triggers legal consequences on whether the implementing party has done what is within the implementing party's direct control, i.e. preparing a plan specifying measures, and implementing those measures. The effect of those actions on actual trip reductions is not within the direct control of the implementing party. It depends upon a variety

of social, economic and psychological factors affecting thousands of decisions by individual employees and tenants.

9) *VTA supports the City's addition of Mitigation Measure TRA-1.3, to prepare and implement a Multimodal Improvement Plan (MIP). We agree with much of the discussion in Master Response 3, but would like to make several points.*

- *Based on VTA's Board-adopted guidelines and past precedent in Santa Clara County, the MIP should include County-controlled as well as City-controlled intersections.*
- *Also based on the guidelines and precedents, the City of Santa Clara must participate fully in the North San José Deficiency Plan for impacted intersections in the City of San José.*
- *The MIP is intended to identify multimodal actions that can help offset auto congestion impacts on the regional roadway system. Therefore, the City should address the Tasman light rail line, bus and shuttle service and facilities, and pedestrian and bicycle accommodations in the MIP.*
- *It is worth noting that per state law, the VTA Board will also need to approve the MIP after approval by the Santa Clara City Council.*

The MIP will be prepared according to VTA's requirements and will require approval by the VTA Board. The City will consult with the VTA to finalize the scope of the MIP, including adding the county-controlled intersections with significant Project impacts that cannot be fully mitigated.

The Draft EIR addressed Project impacts to intersections in the North San José Deficiency Plan – both CMP and non-CMP intersections. The Project Developer is contributing funds to the City of San José that they can use at their discretion to construct improvements identified in the Deficiency Plan or any other transportation improvements. Coordination between the City of Santa Clara's MIP and the North San José Deficiency Plan will be clarified during the scoping process.

The MIP will identify multimodal actions and consider improvements related to the light rail line, bus and shuttle service and facilities, and pedestrian and bicycle accommodations.

2. VTA Cover Letter Dated May 5, 2016

1) *The Draft EIR identified a significant and unavoidable impact to transit operations; in our comments, VTA suggested mitigation measures to reduce and/or avoid the impact, such as Transit Signal Pre-emption for light rail and commitment of resources to monitor and maintain traffic signals to ensure Transit Signal Pre-emption during the 15-year Project construction period. The Final EIR dismisses all of VTA's suggested mitigation measures with minimal explanation and does not offer any other measures, even though additional feasible measures exist. VTA believes the EIR does not adequately address this impact. Furthermore, VTA opposes the Project Variants that would include a new intersection across the light rail tracks, due to impacts to transit operations and safety, and believes that the Project could do more to enhance transit accommodations at the ACE/Capitol Corridor Great America Station, with or without the proposed new intersection. Additionally, VTA strongly believes a grade-separated pedestrian crossing of Tasman Drive is warranted as part of the first phase of the project.*

Response: See Responses 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6, above.

- 2) *The Draft EIR also identified significant impacts due to increased vehicle congestion to a large number of Congestion Management Program (CMP) facilities, including intersections and freeway segments both inside and outside the City of Santa Clara. We recommend stronger mitigation measures to address these impacts, including stronger trip reduction targets and City/third-party monitoring procedures for the Transportation Demand Management (TDM) Program. However, the City's Master Response on TDM in the Final EIR weakens the project's commitment to establishing TDM targets, and fails to commit to establishing reliable monitoring and enforcement mechanisms for the program.*

VTA supports the City's addition of a new Mitigation Measure to prepare and implement a Multimodal Improvement Plan (MIP) (i.e., a deficiency plan under California Government Code section 65089.4) to address significant and unavoidable impacts to CMP facilities. Given the significance of the Project to VTA and Santa Clara County, VTA is prepared to work closely with the City to prepare and implement the MIP, which requires review and approval by the VTA Board of Directors per state law.

See Responses 1.7, 1.8, and 1.9, above.

3. VTA Technical Notes dated April 29, 2016

- 1) CEQA Analysis/Mitigation Measures: *VTA believes the EIR does not adequately address the identified significant impact to transit travel times. As the Lead Agency, the City is required to identify available and feasible mitigation measures to avoid, minimize, rectify, reduce, or compensate for a significant impact (2015 CEQA Statute and Guidelines, Section 15370). In the Draft EIR, the City found that the impact to transit operations was significant and unavoidable (TRA-11). However, in our comments, VTA suggested several mitigation measures including Transit Signal Pre-emption for light rail, commitment of resources to monitor and maintain traffic signals to ensure Transit Signal Pre-emption during the 15-year Project construction period, construction of an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard, and grade separation of VTA light rail through the Tasman corridor. The Final EIR dismissed all of VTA's suggested mitigation measures with minimal explanation, and did not offer any other measures, even though additional feasible measures exist. For example, if the City chooses not to implement full Transit Signal Pre-emption as VTA requested, the City could implement strengthened Transit Signal Priority for light rail with a Project Developer-funded monitoring and maintenance program.*

See Responses 1.1 and 1.2, above. Grade-separating light rail along the Tasman corridor was not considered to be a feasible mitigation measure for this Project for several reasons. Two reasons are the physical feasibility and visual impacts of the track profile. Tasman Drive currently has an overcrossing of Lafayette Street and the UPRR tracks. Therefore, the LRT would need to be on an elevated structure. An elevated structure on top of an overcrossing is technically challenging to design and construct. It would be very expensive and therefore would be beyond the ability of the City and the Project to fund. A third reason is that grade-separating light rail would reduce its accessibility for existing and future riders. One of the goals of the Project is to enhance transit ridership. Plus, the City is concerned that grade separations can create barriers and separate neighborhoods. The City would be interested in participating in a VTA-sponsored study to evaluate grade separation of VTA light rail through the Tasman Corridor if VTA wishes to pursue it as an option.

- 2) *Transit Signal Pre-emption: Final EIR Response A12a.2, in part, opposes VTA's suggested Transit Signal Pre-emption mitigation measure because the City believes such a measure would favor only light rail to the exclusion of other modes, including emergency response vehicles, vehicles, bicyclists, and pedestrians. VTA does not concur with the EIR's conclusion and notes that traffic signal technology can allow emergency response vehicles a higher level of pre-emption than all other modes. VTA believes that a reasonable balance between all modes that still prioritizes light rail movement can be developed in partnership between VTA and the City. Additionally, VTA, as the designated Santa Clara County Congestion Management Agency (CMA) overseeing the Congestion Management Program (CMP) exempts the effect of transit priority measures and allows intersections to be analyzed as if transit priority didn't exist in order to promote transit use.*

See Response 1.1, above.

- 3) *Monitoring and Maintenance of Signals: VTA appreciates the Final EIR's discussion regarding the City's monitoring of signalized intersections and updating of signal timings when traffic patterns change, and its commitment to monitoring signals during construction (Final EIR pg. 4-74). VTA requests that the City commit to closely coordinating with VTA on such monitoring and signal timing modification activities to ensure that transit priority measures are not significantly degraded as they have been over the past two years. The City and VTA entered into a Cooperative Agreement in 1999, which defines mutual expectations for light rail system operation and maintenance. This Agreement must be updated to address transit delay issues (described further below), as well as to ensure that maintenance obligations are met.*

The City of Santa Clara will work with the VTA to update the Cooperative Agreement regarding mutual expectations for light rail system operation and maintenance. Responses to comments regarding specific sections are presented in the following sections.

- 4) *New Intersection – Delay to Light Rail: The documentation in the EIR regarding delay to light rail due to the proposed new intersection is inadequate, and VTA has determined that the delay would be substantially greater than stated in the Final EIR. VTA's Draft EIR comments strongly opposed the introduction of a new signalized intersection at Tasman Drive and Avenue C, in part due to the delay caused to light rail. The City's purported analysis of transit delay due to the new intersection in the Final EIR concluded "that this new signalized intersection would cause small increases in light rail vehicle delay (an average of less than 5 seconds per train and a maximum of 15 to 20 seconds per train)" (Final EIR pg. 4-74). VTA has determined the delay would be substantially greater. The City failed to adequately describe in the Final EIR the methodology used in performing the transit delay analysis, nor has it released this analysis despite repeated requests from VTA over several months. As such, the documentation in the EIR is inadequate. In addition, as stated in our Draft EIR comment letter, VTA recommends that the City condition the Project Developer to construct new roadway connections identified in the Draft EIR early in the Project phasing, such as the extension of Lick Mill Boulevard north of Tasman Drive and the connection of Great America Way to Lafayette Street, and explore other ways to improve connectivity in the Project vicinity. These new roadway connections would provide additional options for vehicular access to the Project site and would reduce the need for the proposed new intersection.*

See Response 1.2, above. As part of the MMRP the City is requiring the Project Developer to conduct a detailed traffic operations analysis using microsimulation to determine the number, size, location and ultimate design of the access roadways and intersections needed to provide adequate site access prior to the approval and construction of each phase of development. The

analysis will identify when roadways, such as the Lick Mill Boulevard extension and connection of Great America Way to Lafayette Street, are needed and require that they be constructed with that phase of development.

- 5) Existing Intersections – Delay to Light Rail: The Final EIR response only addresses additional light rail delay at the proposed new intersection. Light rail would suffer from delay at existing intersections as well, due to the increased congestion along Tasman Drive caused by the Project. Prior to the issuance of the Draft EIR, VTA requested an analysis of light rail delay at additional intersections along Tasman Drive within the Project vicinity. VTA was not provided with or consulted about this analysis, and the Final EIR does not include such analysis. VTA underscores the ongoing reliability issues with the existing signal operations on Tasman Drive, operated by the City of Santa Clara. This has resulted in VTA light rail trains delayed by an average of approximately 45 seconds per train, resulting in estimated increases in operating costs of approximately \$101,000 per year. VTA expects to double the number of trains passing through this segment in late 2017 concurrent with the opening of BART Silicon Valley Phase 1, which would likely double the operating cost impact of any delays experienced along this segment. The Project would exacerbate this situation both at the new intersection (if built) and at other intersections along Tasman Drive where traffic congestion would increase as a result of the Project, as documented in the EIR. The Final EIR's focus on average delay per vehicle is misleading. Due to the nature of light rail operations, a small delay at one intersection can lead to cascading delays at other intersections throughout the system, ultimately reducing transit speed and reliability and inconveniencing transit passengers. This reduces the attractiveness of transit as a mode of travel, counteracts VTA's efforts to improve transit ridership system-wide, and results in a greater share of Project trips taken by automobile, leading to increased environmental impacts from transportation associated with the Project. VTA needs to protect the \$90 million taxpayer investment made over the last two years to speed up the light rail system.

See Response 1.3, above.

- 6) New Intersection – Safety: VTA's Draft EIR comments strongly opposed the introduction of a new signalized intersection at Tasman Drive and Avenue C due to safety concerns to pedestrians, light rail vehicles, and autos. As noted in the Final EIR, any new crossing of the light rail tracks would require approval of VTA and California Public Utilities Commission (CPUC). The new crossing described as Tasman Variants 1 and 2 in the EIR will not be supported by VTA.

See Response 1.4, above.

- 7) Grade-separated Pedestrian Crossing: VTA's Draft EIR comments requested an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard to protect the safety of the travelling public, which the City dismissed in the Final EIR. VTA is authorized by the California Public Utilities Code to assure the safety of passengers, pedestrians, vehicles and the system itself, and must comply with applicable CPUC regulations. Prior to the construction of the Project roadways, CPUC/VTA would likely require safety review of existing and proposed crossings, which may conclude that one or more grade separated crossings are warranted. VTA has concerns about the safety of pedestrians, especially during stadium event days, in spite of the special closure of Tasman and guided event control. Given these existing conditions and the additional pedestrian activity that would be generated by the Project, VTA's position is that grade-separated crossings are warranted as part of the first phase of the Project.

See Response 1.5, above.

- 8) ACE/Capitol Corridor Great America Station Integration with the Project: VTA's Draft EIR comments requested that the City require the Project Developer to construct the near-term transit center at the ACE/Capitol Corridor Great America Station, discussed between the City, VTA, ACE, and the Project Developer prior to the issuance of the Draft EIR. The near-term transit center concepts were not acknowledged in the Draft EIR. The Final EIR describes the Project's integration with the ACE/Capitol Corridor Great America Station, and clarified two integration options, the "Base" and "Variant 2" schemes. The Base scheme allows for the continued operation of VTA/ACE shuttle buses with no enhancements, and the Variant 2 scheme permits the creation of an enhanced transit plaza and additional bus/shuttle loading positions. In VTA's review, the same land area is available for near-term transit center improvements in each scheme; only the roadway configurations are different. Specifically, Variant 2 includes the new intersection on Tasman Drive, which allows left turns crossing the tracks. VTA's position is that other feasible options exist that do not cross that tracks, i.e. right in-right out access at Tasman (see attached Exhibit A). The Final EIR states that only with the Variant 2 scheme would there be room to provide the enhanced transit plaza and additional bus/shuttle loading positions. VTA believes sufficient room exists to provide these near-term transit center improvements in the base scheme without the new intersection. VTA believes the Project Developer and the City are leveraging these improvements to push VTA and other public agencies to accept the proposed new intersection on Tasman Drive.

See Response 1.6, above.

- 9) Transportation Demand Management Program: Mitigation Measure TRA-1.1 requires the Project Developer to prepare and implement a TDM Plan to reduced vehicle trips generated by the Project and, therefore, minimize roadway system impacts and greenhouse gas emissions. In VTA's Draft EIR comment letter, VTA provided a number of comments on the Project's Transportation Demand Management (TDM) program. Several of our comments are addressed adequately in the Final EIR; however, VTA would like to highlight three areas where we believe the City is not taking every feasible action to mitigate the Project's transportation impacts.

See Responses 1.7 and 1.8.

- 10) The Monitoring Party: VTA believes that the City can and should specify that TDM monitoring will be performed by the City or a third party at the Project approval stage. The language in the Final EIR leaves open the possibility that monitoring will be self-reported by the Project Developer. This does not match best practices in Santa Clara County, such as in recent EIRs for development Projects in Mountain View, Sunnyvale, Cupertino, and at Stanford University. There is no reason why having the City or a third party conduct the monitoring is infeasible. A City or third-party monitoring arrangement ensures that monitoring will be conducted in an objective and consistent way using methods and personnel that are accountable to the City. This arrangement is therefore more likely to lead to the achievement of the specified trip reduction targets, and therefore provides greater likelihood of reducing the significant transportation impacts of the Project.

See Response 1.7, above.

- 11) Enforcement of TDM Plan: VTA is concerned that in the Final EIR, it appears that the City is weakening the commitment to the TDM targets discussed in the Draft EIR text. The Final EIR states that the trip reductions "are stated as goals rather than as requirements." This, combined with the lack of penalties and ambiguity regarding the monitoring party, combine to form a weak TDM

framework. This weak framework makes it less likely that the Project would achieve the specified trip reduction targets, and therefore less likely to reduce the significant transportation impacts of the Project. It is feasible and prudent to convert these trip reduction targets into requirements, and to require an enforcement mechanism; and we can find no legitimate reason for not doing this. Therefore, VTA requests that the City revise this mitigation measure to set trip deduction requirements and an enforcement mechanism.

See Response 1.8, above.

12) Reduction Targets for Retail Employees: VTA disagrees with the City's Final EIR response about the practicality of setting such a trip reduction target for retail employees. Regarding the hours of travel, while it may be true that retail employees often travel outside of AM and PM peak hours, the amount of retail in the Project (up to 1.7 million square feet of retail uses, which translates to 3,000 to 5,000 retail employees given typical employee density rates) means that just the portion of retail employees traveling during AM and PM peak hours would cause a substantial contribution to roadway congestion. Given the Project's significant transportation impacts, it is therefore necessary to manage these trips. Regarding the statement about retail employee parking, all parking in the City Place development would be controlled by the Project Developer, and the vast majority would be in parking structures located in the City Center area. It is fully within the Project Developer's control to restrict retail employee parking to certain areas, which would make it feasible to monitor employee parking patterns within the framework of a retail employee trip reduction target. Therefore, implementing reduction targets for retail employees is a feasible mitigation measure and VTA reiterates our request for the City to include this action.

Retail uses would be required to incorporate best management practices (BMPs) to reduce trips generated by their employees. Some of these BMPs would be incorporated into the building and site design such as bike parking, showers and lockers, and on-site shuttle stops. All retail employers would be provided information about the transportation services provided for their employees, ways for them to encourage alternative mode use (such as rideshare matching and guaranteed ride home services), and information regarding tax-deductible options to subsidize transit passes. Trip reduction targets are not applied to retail employees because many travel outside of the peak hours when most traffic congestion that the TDM plan would address occurs, transit service is less frequent during off-peak times and therefore more difficult to use, and many work part-time or on odd shifts and are therefore not good candidates for ridesharing.

13) Multimodal Improvement Plan: The Draft EIR identified that the Project would have a significant impact on 19 CMP intersections. Of these, some have identified measures to fully mitigate Project impacts, and some have identified measures that only partially mitigate Project impacts, and others have no feasible mitigation measures. VTA commented on these impacts in our Draft EIR letter, and requested that the City prepare an area-wide Multimodal Improvement Plan (formerly 'Deficiency Plan') to address Project impacts on the CMP transportation system.

Master Response 3 states (in part): "Therefore, if the Project is improved, a MIP would be needed to address two CMP intersections that have significant Project impacts with either no feasible or only partial mitigation measures within the City of Santa Clara and three CMP intersections that have significant cumulative impacts with either no feasible or only partial mitigation measures (within the City of Santa Clara)... As the member agency, the City of Santa Clara is responsible for preparing the MIP."

See Response 1.9, above.

- 14) *VTA supports the City's addition of Mitigation Measure TRA-1.3, to prepare and implement a Multimodal Improvement Plan (MIP): As noted in the Final EIR, the purpose of a MIP is to improve system-wide traffic flow and air quality by identifying improvements to other modes in lieu of making physical traffic capacity enhancements. MIPs allow local jurisdictions to adopt innovative and comprehensive transportation strategies for improving system wide LOS rather than adhering to strict traffic level of service standards that may contradict other community goals.*

See Response 1.9, above.

- 15) *Based on VTA's Board-adopted requirements and past precedent in Santa Clara County, the MIP should include County-controlled as well as City-controlled intersections. The VTA Deficiency Plan Requirements, adopted September 2010, state on page 8: "Deficiency plan preparation for County expressways and expressway intersections within the CMP System are the responsibility of the cities through which the expressways travel. The city preparing a deficiency plan for an expressway or expressway intersection will involve the County in the development of the deficiency plan." Therefore, the proposed MIP must include the County-controlled CMP intersections within the City of Santa Clara where the Project is causing a significant impact per the CMP level of service standard and cannot fully mitigate the impact.*

See Response 1.9, above.

- 16) *Also based on the guidelines and precedents, the City of Santa Clara must participate fully in the North San José Deficiency Plan for impacted intersections in the City of San José. The VTA Deficiency Plan Requirements state on page 28: "The CMP requirements for maintaining the CMP traffic LOS standard and participation in deficiency plans are multi-jurisdictional. In other words, if a development project in City A is shown to impact a CMP System roadway in City B, which has a deficiency plan, then City A is responsible for ensuring that the development project either mitigates its impact on the deficient facility or participates fully in City B's deficiency plan." Therefore, the City of Santa Clara must participate fully in the existing North San José Deficiency Plan for any CMP intersections the Project impacts in North San José. VTA is aware that City of Santa Clara staff has been consulting with City of San José staff regarding the City Place Project and EIR, and VTA expects that this coordination will need to continue into the MIP preparation period to ensure that the City of Santa Clara meets its obligations regarding the North San José Deficiency Plan.*

See Response 1.9, above.

- 17) *The MIP is intended to identify multimodal actions that can help offset auto congestion impacts on the regional roadway system. Therefore, the City should address the Tasman light rail line, bus and shuttle service and facilities, and pedestrian and bicycle accommodations in the MIP. The VTA Deficiency Plan Requirements state on page 17: "Member Agencies, in collaboration with VTA and other participating agencies, shall include programs, actions and improvements selected from the Air District's most recent Deficiency List and transportation control measures listed in the Air District's Clean Air Plan." The list of potential measures includes but is not limited to Signal Preemption for Transit Vehicles, Preferential Treatment for Buses and In-Street Light Rail Vehicle (LRVs), Transit Centers, Stricter Travel Demand Management/Trip Reduction Ordinance, Improved Roadway Bicycle Facilities and Bike Paths, and Improved Pedestrian Facilities (see attached*

Exhibit B). Master Response 3 and responses to several individual comments letters in the Final EIR identify potential multimodal improvements that could be included in the MIP.

See Response 1.9, above. The list of potential measures in Exhibit B will be considered.

18) Per state Congestion Management Program statute, the VTA Board will need to approve the MIP after approval by the Santa Clara City Council. California Government Code Section 65089.4 (d) states in part: "A local jurisdiction shall forward its adopted deficiency plan to the agency within 12 months of the identification of a deficiency. The agency shall hold a noticed public hearing within 60 days ... Following that hearing, the agency shall either accept or reject the deficiency plan in its entirety ... Failure of a local jurisdiction to comply with the schedule and requirements of this section shall be considered to be non-conformance ... " As noted in Final EIR Master Response 3, "The City of Santa Clara would risk losing new gas sales tax revenues from Proposition 111 if the CMP facilities within its jurisdiction exceed the CMP LOS threshold and it does not have a timely-adopted MIP." Therefore, it is in the City's interest for the City and VTA to coordinate and agree upon the scope of the MIP prior to its development and the City Council's adoption. During this scoping phase, the City and VTA will discuss the extent of freeway analysis as well as other elements of the MIP scope.

See Response 1.9, above.

19) Freeway Impacts and Voluntary Contributions to Regional Improvements. The Final EIR states "The City of Santa Clara is supportive of the Project Developer making a voluntary contribution to VTA. The amount of the contribution will be determined using the process discussed between the City of Santa Clara and VTA staff and will be based on a percentage of Project traffic added to the freeway segments with significant impacts" (pp. 4-74 to 4-75). VTA reiterates our request that the Project allocate at least \$60 million in contributions to regional transportation system improvements that would lessen or offset the impacts identified in the EIR. VTA requests that the City state this commitment clearly in the Project transactional/approval documents.

VTA is requesting that the Project contribute at least \$60 million for regional transportation system improvements. The City is supportive of the Project Developer making a voluntary contribution to VTA. The contribution will be \$18.5 million with a \$16 million payment and \$2.5 million in freeway improvements.

Letter from San Joaquin Regional Rail Commission, Stacey Mortenson (dated May 4, 2016)/Altamont Corridor Express, Corrine M. Winter (dated March 21, 2016)

Response to San Joaquin Regional Rail Commission, Stacey Mortenson (dated May 4, 2016)/Altamont Corridor Express, Corrine M. Winter (dated March 21, 2016)

- 1) *In our comments on the Draft EIR, we requested that the area immediately to the west of the Great America rail station platform be included as a Project component. The developer has discussed the possibility of an enhanced bus/shuttle transit center and improved pedestrian connections to the retail portion. We would like to see these improvements included in the Project's Development agreement. In Response A9.2, the City notes that "alterations to the Great America rail station are not part of the base Project description; however, the new Tasman Drive Intersection under Variant 2 would allow for an enhanced transit plaza with a new vehicle turnaround just beyond the northern end of the station, which would provide room for an additional six transit bus loading positions." We request that the City Council de-couple the enhanced station platform Project component from the introduction of a new signalized intersection at Avenue C and Tasman in Variant 2. These two options appear to have been arbitrarily combined in the same Variant, but it is at the Council's discretion to approve only certain portions of the proposed alternatives. Whether or not a new signalized intersection is introduced bears no relevance to the creation of an enhanced station platform, particularly in light of the possibility of a right in/right out intersection. Furthermore, as response A12b.13 recognizes, any new crossing of the light rail tracks on Tasman as proposed by the Project would require the unlikely approval of VTA. An enhanced station platform and adjacent transit center would ensure that visitors, employees, and residents of the Project have high quality transit access. A pedestrian plaza adjacent to the rail platform would provide easy and comfortable access to the new City Place Project retail area. The transit center would provide slips for additional shuttles and buses to serve people traveling to and from City Place-helping to offset a portion of the traffic impacts caused by the Project.*

The EIR does not identify any significant environmental impacts which require mitigation through an enhanced Great America Station platform and adjacent transit center. The discussion of Impact TRA-10 on page 3.3-172 of the Draft EIR states: "The existing platform waiting area with a capacity of 2,440 waiting passengers can accommodate projected PM Peak Hour ridership of 617 passengers under existing with-Project conditions with TDM." Neither ACE nor VTA present contrary evidence. Therefore, this is not a CEQA issue, but rather an issue related to Project design.

The Project Developer has proposed a conceptual station improvement plan that would complement the Project design under its preferred access configuration that involves the relocation of Stars and Stripes Drive and a new street connection (Avenue C) to Tasman Drive. The principal benefit of the station improvements is to enhance access to and from the station, by allowing more buses to go in and out of the station more efficiently; this benefit can only meaningfully be achieved if the Project Developer's preferred access configuration is incorporated into the Project. The new intersection would be located immediately west of the Great America ACE/Capitol Corridor Station, and would provide a direct connection between Tasman Drive and the Great America station for shuttle buses and station traffic. Without this connection, buses and other traffic would need to use either Avenue B (for right turns only) or Centennial Drive (for left turns) and travel through the 'front door' of the project, where pedestrian activity and vehicular activity would be concentrated. The Avenue C connection would also distribute southbound left turns across two intersections, relieving pressure on the

Centennial/Tasman intersection and significantly reducing congestion, delay and traffic queuing.

The station improvements concept would work in conjunction with the new Avenue C connection, and the relocation of Stars and Stripes Drive not only to provide space at the station for the additional bus queuing but would reduce bus queues and decrease bus circulation times by providing more ready access to Tasman Drive while also increasing pedestrian safety by minimizing bus and other traffic in pedestrian zones. Without this access configuration, there would be less room for additional buses because the connection to Stars and Stripes Drive would be similar to its current configuration, and any additional room for buses that could be provided by station improvements would not enhance service because the buses would not be able to circulate through the site to Tasman Drive as efficiently.

- 2) *Multimodal Improvement Plan (MIP) Creation: We are pleased that the City of Santa Clara will be adopting a Multimodal Improvement Plan (MIP) to submit to VTA for consideration and approval, in part to avoid losing new gas sales tax revenues from Proposition 111.4 As the ACE and Capitol Corridor rail, VTA light rail, VTA buses, and ACE shuttles operate directly adjacent to the project, considering increases and enhancements to these services are particularly apropos. We would also like to request the opportunity to be a partner in the creation of the MIP.*

The MIP will be prepared by the City of Santa Clara in consultation with VTA. It will include multimodal improvements, including transit improvements. Any improvements that would affect ACE service would be coordinated with San Joaquin Regional Rail Commission.

- 3) *Transportation Demand Management (TDM) Plan: We thank the City for the excellent list of possible TDM measures mentioned in the Final EIR, that will presumably be considered by the City's Planning office in their efforts to create the TDM Plan. However, without the use of any financial penalties in the case that the goals in the TDM plan are not met, and with no monitoring party defined, we question whether this should be considered an adequate mitigation measure. Finally, we would like to share our appreciation to the City Council and your staff for the following changes and clarifications outlined in the Final EIR:*

- *The decision to make a voluntary fair share financial contribution to VTA.*
- *The commitment to close the sidewalk gap on the north side of Tasman between the Project frontage and Calle Del Sol.*
- *The assurance that the City's Public Works Department will share the Construction Management Plan for ACE's review and comment prior to the issuance of each building permit.*

In response to multiple comments regarding the TDM mitigation measures, the City has comprehensively revised the language of the TDM measure to clarify that the City will oversee an independent third party to monitor compliance with the program, and to specify multiple details about the manner in which the program will be implemented and enforced. The TDM mitigation measure is a legally binding requirement enforceable by the City in the same manner as any mitigation measure. The Project is legally required to prepare a TDM plan and the EIR specifies a comprehensive list of measures to be considered for inclusion in the plan. In approving the TDM plan, the City must determine that the Plan includes measures sufficient to achieve specified trip reduction targets. The Project is then legally required to implement the

measures approved by the City. The Project's actual progress toward achieving the numeric trip reduction targets will be measured and evaluated annually by a third party approved by the Santa Clara Director of Planning and Inspection. If the City determines that insufficient progress has been made, it will legally require the Project to revise the plan with enhanced TDM measures.

The City has required numerous developments to prepare TDM plans, and has never provided for the assessment of monetary penalties for failure to achieve numeric trip targets. A decision to begin imposing such monetary penalties would be a major policy decision with city-wide ramifications that is not appropriate in the context of approving a single development. The City's current practice appropriately triggers legal consequences on whether the implementing party has done what is within the implementing party's direct control, i.e. preparing a plan specifying measures, and implementing those measures. The effect of those actions on actual trip reductions is not within the direct control of the implementing party. It depends upon a variety of social, economic and psychological factors affecting thousands of decisions by individual employees and tenants.

The monitoring party will be a third party that must be approved by the Santa Clara Director of Planning and Inspection.

Letter from Sudhanshu Jain (no date)

Response to Sudhanshu Jain (no date)

The comments below are my own and don't represent the views of the City of Santa Clara Planning Commission.

- 1. Document states: to result in a total of 28,720 new jobs. Upon build-out of the Project, the jobs/housing ratio would increase from 2.567 (without Project) to 3.023 (with Project) in 2035, Document also says: "**an additional 11,000 units beyond those contemplated under the General Plan would need to be constructed within the City**" Additionally the Final EIR states: "County's workers per household ratio is 1.39. Using this ratio, the Project would result in a total demand of approximately 17,813 housing units to support the maximum projected employment from the Project."*

*There are many, many other office development projects proposed or under development. This Final EIR seems to ignore the housing demands of those other commercial developments and assumes that all housing in the City will be allocated to offset the impacts of this particular Project. I would like to see table in the **Master Response 1: Jobs/Housing Balance** also include other office development projects and the number of workers for each of those projects in addition to the number of proposed housing units.*

As required by CEQA, Chapters 3.1 and 3.12 of the Draft EIR contains a cumulative analysis of population and housing impacts, which examines the effects of the Project in combination with other current projects, probable future projects, and projected future growth. Please refer to Draft EIR pages 3.1-19 to 20 and 3.12-12 to 13. Compiling a list of specific other development project proposals with the number of workers for each of those projects is beyond the scope of the CEQA analysis.

I agree in general with the following statement in the Final EIR: "It cannot be expected that any single project would maintain the overall jobs/housing balance for the entire City." BUT this development is an extraordinarily large project with extraordinary impacts. This Project significantly worsens the jobs/housing imbalance. For this reason, the Reduced Intensity Option which keeps the City Center Zone as is but reduces the office space by 30 percent is preferred since it doesn't affect the jobs/housing ratio as much as also reduces trips dramatically from 140,730 to 94,240 per day.

The Reduced Intensity Alternative was identified for analysis in the EIR because the City made a determination that it was *potentially* feasible, subject to more detailed review as the CEQA process proceeded. Under CEQA, "the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18.). The City has now determined that the Reduced Intensity Alternative is not in fact feasible.

Although the Reduced Intensity Alternative would achieve many of the Project Objectives, it would achieve them to a much lesser extent than the Project. This alternative would achieve the Project objectives of modernizing the Landfill for more productive uses, but those uses would be less productive than under the Project. Compared to the Project, the Reduced Intensity Alternative would not sufficiently achieve the following important Project objectives: stimulating economic development and job creation in the City; promoting transit oriented infill

development; providing additional opportunities for major employers to locate to the City through the creation of attractive office campuses; and increasing City revenues. Compared to the Project, the Reduced Intensity Alternative would result in fewer potential weekday customers within walking distance of the retail and entertainment opportunities in the City Center, fewer job opportunities within walking distance of the residential units in the City Center, and fewer jobs overall to support the City's overall economic and job creation objectives.

Furthermore, the Reduced Intensity Alternative is not economically feasible. The Project site lacks basic infrastructure and involves premium costs associated with building on a former landfill. These infrastructure and premium site development costs can be thought of as "horizontal site development costs," as opposed to the "vertical development" costs associated with building structures. These horizontal site development costs would most likely not be meaningfully reduced under the Reduced Intensity Alternative because such costs are generally incurred regardless of how much vertical development is placed on top of horizontal site improvements. The per-square-foot costs of development would significantly increase under the Reduced Intensity Alternative because there would be 30 percent less square footage of vertical development to which the horizontal site development costs could be proportionately allocated.

By contrast, the City has determined that the Increased Housing Alternative is feasible, so the Master Community Plan proposed for adoption specifies that the maximum number of residential units in Scheme A is 1680, per the Increased Housing Alternative. Compared to the Original Scheme B, if the Project were developed as Scheme A incorporating the Increased Housing Alternative, as permitted under the Master Community Plan, it would result in 3,550 more residents and approximately 1,150 fewer employees, thereby having a smaller, but still significant, impact on jobs/housing balance. The Increased Housing Alternative also improves jobs/housing balance as compared to Original Scheme A, but to a lesser extent because the increase in residents is 760 rather than 3,550.

2. *Mitigation Measure TRA-1.1 requires the Project Developer to prepare and implement a Transportation Demand Management (TDM) Plan which includes a Transportation Management Agency (TMA). Also the City of Santa Clara is responsible for preparing a Multimodal Improvement Plan (MIP). I don't see how we can approve the EIR nor Development Agreements without having the TDM plan with TMA and MIP finalized or at the very least a draft copy released. The EIR/Final EIR lists only possible measures for a TDM plan but makes no commitments for specific measures. This document does not set any targets even for the number of EV charging stations or percentage of parking spots that will be prewired for EV charging stations. City of Santa Clara should produce at least a draft copy of Santa Clara's MIP before Council approves the EIR or the development plans. The Final EIR should list a deadline for release of a draft of the MIP – either absolute date or a relative date, committing to say "Two weeks before Council votes to adopt the EIR."*

Mitigation Measure TRA-1.1 requires the formation of a Transportation Management Association (TMA) to oversee and coordinate implementation of the TDM measures to be implemented for the Project, including coordinating activities of the various employers and tenants. A TMA is a non-profit, organization that provides transportation services in a particular area, such as a commercial district, medical center or office park, controlled by members that are building owners or tenants in that area. It therefore cannot be formed until there are identified building owners and tenants. The building owners and tenants that employ the persons whose behavior is being influenced by trip reduction measures are often in the best

position to know which particular measures are most likely to be utilized their employees, and also the appropriate party to implement many measures, such as pre-tax benefits for transit and bicycle expenses or incentive for employees to live in locations well-served by transit or shuttles, and such as in-building support facilities like showers and changing rooms, bicycle storage facilities and repair stands, cafes and fitness centers.

Mitigation Measure TRA-1.1 has been thoroughly revised since the Final EIR, and is now even more specific about what must be included in the TDM Plan. It requires the Plan to be approved by the Santa Clara Director of Planning and Inspection, and to include all trip reduction measures necessary to achieve the specified trip reduction targets. It specifies 16 different types of office trip reduction measures that must be considered for inclusion in the TDM plan, and 12 different types of retail trip reduction measures and 12 different types of residential trip reduction measures which must be considered. Every type of additional measure suggested during the public comment period on the Draft EIR has been included in these lists. To be effective, a TDM must be very specific, and set forth concrete actions (e.g., specific employee incentive programs) to be taken by particular parties (e.g., particular building owners, employers and tenants). It is simply not possible to identify those specific concrete actions and particular implementing parties until there are identified building owners, employers and tenants.

The requirement to prepare a Multimodal Improvement Plan (MIP) is independent of CEQA, and is required under the VTA's procedures for implementing the distinct statutory requirements for congestion management programs. The MIP is required to address 5 CMP intersections that have significant and unavoidable impacts. (The VTA is considering the level to which freeway impacts need to be addressed in MIPs.) The measures to be identified in the MIP are above and beyond the measures required in the EIR to mitigate traffic impacts; they are designed to offset the fact that the impacts on these 5 intersections cannot feasibly be mitigated fully. The VTA's published requirements for MIPs require an MIP to be submitted to VTA for approval no later than one year after approval of the Project triggering the requirement for the MIP. Mitigation Measure TRA-3 reflects this required timing.

Requirements for EV charging stations are addressed in the response to the next comment.

3. I take issue with the following conclusion: *"This review resulted in the conclusion that an **increase in the trip reduction targets in Mitigation Measure TRA-1.1 would not be feasible because the current trip reduction targets are aggressive and reasonably achievable and would result in trip generation rates that are below those for typical development projects. For the reasons outlined below, increasing the trip reduction targets would not be expected to be successful and therefore is not feasible.**" Trip reduction targets in the EIR/Final EIR are not nearly as aggressive as other projects in the Bay Area including some in Santa Clara like new five-story, 177,134 square foot office building at 3607 Kifer Road in which the following conditions were agreed upon:*

"Motion/Action: The Commission motioned to adopt the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program with the following additional conditions (6-1-0-0, Ikezi dissenting):

- *a 16 percent TDM commitment and monitoring and annual review by a third party*
- *provide infrastructure for 50 EV spots and provide 20 EV spots initially*

The conclusions about the infeasibility of achieving more aggressive trip reduction goals at this Project were reviewed and concurred-in by three highly respected transportation planning and engineering firms: Fehr & Peers, the firm retained to prepare the transportation impact analysis by ICF, the environmental consulting firm retained on behalf of the City to prepare the EIR; Hexagon, the traffic engineering firm directly retained by the City to peer review Fehr & Peers' transportation impact analysis; and Arup, the traffic engineering firm retained by the Project Developer to assist in traffic management planning for the Project. The bases for this conclusion are set forth on pages 3.3-85 to 3.3-86 of the Draft EIR and on pages 3-8 to 3-10 of the Final EIR.

The cited TDM measures for the Kifer Road project are similar to the City Place TDM mitigation measure, which also requires annual reports and an independent third party monitor, and which has trip reduction targets that yield a total trip reduction of 15 to 18 percent (see page 3.3-85 of the Draft EIR.) Mitigation Measure GHG-1.2 complies with Measure 6.3 of the City Climate Action Plan by requiring a total of 10 percent of residential parking spaces to have access to electric service and 5 percent to have active EV charging stations. Two percent of commercial parking spaces are required to have access to electric service and 1 percent to have active EV charging stations. (See page 5-40 of the Final EIR.)

4. *Document states that North Bayshore targets of 45 percent SOV requires tenants to implement very aggressive TDM Plans and achieve reductions not yet achieved on prior office projects in the area. That is not true because Stanford has been able to grow dramatically without adding a single SOV.*

Stanford has taken great steps to minimize the amount of traffic it adds to the roadway system while continuing to expand the uses on its campus. However, it is incorrect to state that it has not added a single SOV. Please see the attached white paper that describes the policy and Stanford's unique characteristics to shed light on whether it is directly applicable to City Place.

The key points are:

- Stanford is a university and not an office development. It has very different vehicle trip generating characteristics.
- The policy is a "no net new commute trips" policy focused on inbound vehicles during the morning peak hour and outbound vehicles during the evening peak hour.
 - Increases in traffic volumes in the reverse commute directions and at other times of the day may occur under this policy.
- Stanford has added over 2,000 housing units / beds to the campus, moving students that were living off-campus onto campus. This directly reduced the number of auto commute trips during the morning and evening peak periods.
 - Adding additional housing is not an available option, given the constraints of building on a landfill. Plus, it would not reduce trips to the same extent as adding student housing to an educational campus where other trip purposes can be met on campus.
- Stanford is the only employer and landowner and therefore has direct access to all of the employees and residents. This provides an economies of scale that makes the TDM program more effective.

- This condition does not exist in City Place where there would be multiple landowners and tenants that even with coordination could not create as effective a TDM program.
- The Stanford TDM program has unique aspects not being anticipated for the City Place TDM Plan:
 - Parking fees: Stanford charges fees for parking on-campus. Parking at other Santa Clara office and retail developments is free.
 - Marguerite shuttle: Stanford operates frequent shuttle service (Marguerite) over an extensive area including on campus and between the campus and Caltrain stations and adjacent communities.
 - Cash incentives: Stanford provides cash payments to commuters that ride a bike, take transit, or carpool and vanpool to campus. This benefit is \$660 to over \$1,200 annually when the savings of not purchasing a parking permit is included.

Also the comments in the Study session that the North of Bayshore project has essentially only one company are not true as there are large developments there proposed by Google, Linked In, Intuit, Peery-Arrillaga, Sobrato and a TMA will cover transportation among all those employers.

The Final EIR accurately states that “North Bayshore is dominated by a large technology campus (Google) and the headquarters of three high technology firms with an employee demographic particularly well-suited to respond to TDM measures. The office tenants at City Place are expected to be much more diverse – a mix of multi-tenant professional offices and some large high technology campuses.” (See page 3-0 of the Final EIR.)

For North of Bayshore:

- *Google:*
 - *Net zero parking across 4 sites*
 - *36 percent mode share across all sites*
- *LinkedIn: Parking cash-out*

The trip reduction targets for City Place are similar to the actual trip reduction achieved at North Bayshore, and are more aggressive than what actually has been achieved at the Apple Campus.

With regard to parking, parking management strategies such as paid parking and unbundled parking must be considered in the TDM Plan. As explained on pages 3.3-174 to 176 of the Draft EIR, the Master Community Plan for the Project authorizes parking ratios that result in fewer parking spaces than would be required under the general provisions of the City Code. For example: the ratio for restaurant parking is decreased from 5.0 per 1000 gsf to 1.5 per 1,000 gsf; the ratio for entertainment parking is reduced from 5.0 per 1000 gsf to 2.5 per 1000 gsf; the ratio for retail is reduced from 5.0 per 1000 gsf to 4.5 per 1000 gsf; and the ratio for office is reduced from 3.3 per 1000 gsf to 3.0 per 1000 gsf. Furthermore, the Master Community Plan provides for parking supplies of future phases of Development Area Plans beyond the initial

phase to be reduced by up to 25 percent through an administrative approval process (page 46 of the Master Community Plan).

With regard to mode shares, the EIR specifically considered and rejected establishing a mode split target, but concluded that it is more effective to establish a direct trip reduction target, for the reasons set forth on page 3-10 of the Final EIR. The TDM mitigation measure requires mode share employee surveys to help inform the employers and TMA of the effectiveness of various mode split and TDM measures.

Google offers \$260M across 4 projects

- *Non-transport: Environmental programs, playground, library play space, bike helmets in schools, affordable housing*
- *Transportation:*
 - *New bike/ped bridge across US-101, numerous bike lanes, bike connections, and safety programs*
 - *Land for street re-alignment and access road*
 - *Studies of long-term transportation options*
 - *8-to-80 Bike Gap Closure Program*
- *\$60M for city-selected transportation projects*

City Place is likewise providing substantial community benefits. The Project Developer has redesigned the Project to accommodate a new 35-acre City park, and committed to building an access road to that park and providing \$5 million for park planning and development. This park would be the centerpiece of new green network with a total of 96 acres of parks and open space and new pedestrian and bike trails. The Project includes a 10 percent affordable housing requirement, and has committed to a robust environmental sustainability program, including providing on-site PV solar to meet 10 percent of electrical demand, and obtaining renewable energy electricity corresponding to 50 percent of on-site electricity demand by 2030.

The Project Developer will be constructing hundreds of millions of dollars in transportation improvements to provide access to the Project site. In addition, the Project Developer will make four different sets of payments for off-site traffic improvements: 1) over \$21 million for off-site traffic improvements for which the Developer is paying 100 percent; 2) over \$14 million in fair share fees for off-site traffic improvements; 3) over \$16 million in voluntary contributions to the Santa Clara Valley Transportation Authority (VTA); and 4) up to \$18 million toward measures to be identified in the Multimodal Improvement Plan.

North of Bayshore Trip Cap:

- ***18,900 trips (AM inbound)***
- ***Project and district level***
- ***Annual monitoring***

If cap exceeded:

No new development

More TDM + financial penalties

Congestion pricing as a "last resort"

The basis for not adopting the North Bayshore trip cap is explained on page 3-9 of the Final EIR. Congestion pricing must be considered as part of the TDM Plan. The decision not to apply financial penalties for failure to achieve trip reduction targets is discussed in the response to comment 6 below.

5. The Final EIR says: *"The City of Santa Clara Director of Planning and Inspection shall approve all aspects of the Plan, including the monitoring party." There should be a commitment that the monitoring be performed by a 3rd party and that the monitoring results be presented to or available to the planning commission on an annual basis, similar to what was committed for the Santa Clara Square development.*

The TDM mitigation measure has been revised to incorporate these suggestions.

6. *I don't believe that "trip targets cannot reasonably be preset for each phase." We need to gate future phases based on traffic studies of previous phases. There must be some commitment to keep stacking delays and LOS, or better yet VMT, within certain limits.*

The basis for the conclusion that trip targets cannot reasonably be preset for each phase is stated on page 3-10 of the Final EIR. That explanation also notes that new trip thresholds, incorporating the reduction targets, would be calculated based on the actual development land use mix and sizes as part of the annual TDM monitoring process.

I can't believe that the City of Santa Clara agreed to the following: "The City of Santa Clara has decided that the TDM Plan and TDM reduction targets will be accomplished through collaboration among the Project Developer, future employers, and the TMA without the use of financial penalties." I also don't believe the following: "There is no reason to believe that financial penalties against the Project Developer would in any way cause drivers to alter their modes of transportation." Why else would Mountain View be applying very stiff penalties for North of Bayshore? I believe that penalties create very strong incentives for the project owner to educate employees and to provide monetary and convenience incentives for employees to not drive alone to work.

I disagree with the following statement: "There is no reason to believe that financial penalties against the Project Developer would in any way cause drivers to alter their modes of transportation" If the developer had to pay millions of dollars in penalties, the developer could rather choose to use that money to run more shuttle busses or to give out free transit passes or charge employees to park. All of those would cause some drivers to "alter their modes of transportation"

The TDM mitigation measure is a legally binding requirement enforceable by the City in the same manner as any mitigation measure. The Project is legally required to prepare a TDM plan and the EIR specifies a comprehensive list of measures to be considered for inclusion in the plan. In approving the TDM plan, the City must determine that the Plan includes measures sufficient to achieve specified trip reduction targets. The Project is then legally required to implement the measures approved by the City. The Project's actual progress toward achieving the numeric trip reduction targets will be measured and evaluated annually by a third party approved by the

Santa Clara Director of Planning and Inspection. If the City determines that insufficient progress has been made, it will legally require the Project to revise the plan with enhanced TDM measures.

The City has required numerous developments to prepare TDM plans (e.g., the Kifer Road project cited by the commenter above), and has never provided for the assessment of monetary penalties for failure to achieve numeric trip targets. A decision to begin imposing such monetary penalties would be a major policy decision with city-wide ramifications that is not appropriate in the context of approving a single development. The City's current practice appropriately triggers legal consequences on whether the implementing party has done what is within the implementing party's direct control, i.e. preparing a plan specifying measures, and implementing those measures. The effect of those actions on actual trip reductions is not within the direct control of the implementing party. It depends upon a variety of social, economic and psychological factors affecting thousands of decisions by individual employees and tenants.

I also disagree with the following statement in the Final EIR: "Therefore, trip targets cannot reasonably be preset for each phase." Trip caps for future developments can be tied to a ratio of floor area or number of employees rather than to absolute trip numbers. A formula should be applied that gets more aggressive if LOS or VMT targets are not being met for completed phases.

See above response to the first line of this Comment 6 regarding pre-set phased trip reduction targets.

7. *I take serious issue with the conclusions in Table 3.3-20 (Project-Specific (Existing with-Project/Background with-Project) Intersection Mitigation). The first issue I have is that this traffic analysis does not include the impacts of Tasman East residential developments.*

The potential rezoning of Tasman East to allow for up to 4100 residential units that is presently being studied by the City is appropriately analyzed in the cumulative impacts analysis. (See page 3-7 of the Draft EIR.) Tasman East is not part of the City Place Santa Clara Project and it would, therefore, not be appropriate to analyze it as a Project impact.

I see serious problems that are not sufficiently mitigated in Table 3.3-20. There are a number of intersections that are going from LOS of "C" to "F" including Lick Mill Boulevard/Tasman. The Final EIR states that the following intersections would have an LOS of "F" with Project after the proposed mitigation but without considering the added impacts of Tasman East:

*Great America Parkway/Tasman Drive**
Lick Mill Boulevard/Tasman Drive
Mission College Boulevard/Montague Expressway
Agnew Road-De La Cruz Boulevard/Montague Expressway
Montague Expressway/Plumeria Drive-River Oaks Parkway

As part of the analysis for the EIR, feasible physical improvements to increase capacity were investigated for all of the intersections with significant Project impacts. The improvements would return many of the intersections to acceptable operating levels. However, there are some intersections, such as those identified above, that would continue to operate at LOS E or F with the identified physical mitigation measure. The TDM mitigation measure was included in the EIR

to reduce the amount of traffic generated by the Project and reduce the severity of Project impacts to the roadway system, including the intersections Projected to operate at LOS F with mitigation. With TDM the delays will be lower than reported.

The Multimodal Improvement Plan (MIP) will identify improvements to increase transportation system mobility and will consider improvements to transit, bicycle, and pedestrian facilities. The recommendations of this plan, once implemented, would also improve intersection operations to the extent that travelers change mode from driving to transit, walking, and bicycling.

The Final EIR simply states that the traffic impacts are Significant and Unavoidable and doesn't calculate an LOS number with mitigation for the following intersections:

*Lawrence Expressway/Tasman Drive
Convention Center/Tasman Drive
Centennial Boulevard/Tasman Drive
North 1st Street/Montague Expressway*

No feasible physical mitigation measures were identified for these intersections. Therefore, the LOS with mitigation was not calculated as it would be the same as the LOS without mitigation.

I'm very surprised that Appendix 5.1 Updated Transportation Tables does not even mention the Montague/101 ramps which get very congested in the morning due to the closeness of the onramp to Great America northbound. I simply don't believe the congestion numbers for the intersection of 101 and Great America/Bowers. I don't believe the calculations include the impacts of the Santa Clara Square development, the Palo Alto Networks buildings, and the new 15 acre acquisition of a Spectra-Physics site Boston Properties on Tannery Way.

The traffic analysis commenced in 2014 and traffic volumes in the vicinity of the Project have been steadily increasing. Plus the intersection LOS method adopted by the VTA and the City of Santa Clara is based on the delay generated by vehicles entering the intersection; it does not include the delay caused by vehicles extending into the intersection from adjacent intersections. Therefore, there may be locations where the reported LOS is different from what one observes today.

Traffic generated by the portion of Santa Clara Square that was under construction in 2014 is included under Existing Conditions. Santa Clara Square (build-out) and Palo Alto Networks are approved developments that are included under Background conditions. It is likely that the 15-acre acquisition of a Spectra-Physics site Boston Properties on Tannery Way is included under Cumulative conditions but more information would be needed to confirm this. I would like to see a list of proposed and ongoing developments for the next 20 years that were included in traffic models for this EIR.

The 41 projects considered in the cumulative impact analysis are listed on pages 3-6 to 3-8 of the Draft EIR.

8. *Measures Role of Electric Vehicles (EVs). Increasing the portion of EVs in the vehicle mix that travels to and from the Project site would decrease the amount of greenhouse gases generated by the Project. However, EVs are still vehicles and do not decrease the Project's impact on intersection*

and freeway segment operations. I don't see why reducing GHG is not an important consideration for the EIR for this development

Greenhouse gas reduction is an important consideration in the EIR. The Draft EIR includes a 27-page analysis of the Project's impacts on GHG emissions. The Final EIR revises GHG-1.2 to add 5 additional GHG reduction strategies recommended by the Bay Area Air Quality Management District to the original 7 in the Draft EIR that were derived from the City's Climate Action Plan. As described in the response to comment 4 above, one of those Climate Action Plan strategies requires charging stations for Electric Vehicles.

9. *The term sheet says all buildings would be LEED Gold yet EIR says residential would be LEED Silver.*

The commenter's letter on the Draft EIR also raised the issue of why LEED Gold was not required for both commercial and residential. The response is on page 322 of the Final EIR. Initially, LEED was not written for residential projects and not all LEED criteria, the satisfaction of which contribute to the LEED rating, apply to certain types of residential development, such as wood-frame multi-family residential podium development. For that reason, the lower rating level of Silver is targeted by the Project Developer for the residential development. Should the design of the residential buildings lead to taller buildings with concrete frames, a LEED Gold designation may be achievable and, if feasible, would be pursued at that time.

10. *Reduced Intensity Alternative. From Figure 5-1 in the Draft EIR, it shows all surface parking for the office buildings on parcels 1, 2 and 3 in the Reduced Intensity Alternative. This seems like a huge waste of land that could otherwise be devoted to parkland and open space. I really don't understand how the applicant can say that the Reduced Intensity Alternative doesn't meet Project objectives.*

This comment was prepared before the developer proposed to convert the entirety of one of these parcels into open space, thereby providing more open space than would be provided by converting surface parking into open space.

The Reduced Intensity Alternative was originally considered potentially feasible because it represents the amount of office development that the parcels surrounding the City Center could accommodate without the expense of constructing parking structures on those parcels. However, the Project Developer has now determined that the reduction in Project revenues associated with developing less office space under this alternative is greater than the savings gained by not building the additional space and structured parking.

The basis for the City's conclusion that the Reduced Intensity Alternative is not feasible is set forth in the response to Comment 1 above.

11. *The City is in the process of doing a nexus study for potential impact fees for affordable housing. The vast amount of retail and office space would create a large demand for low income jobs such as waiters and janitors. While the jobs (full build-out 28,720 jobs) are good to improve unemployment, there simply are no places in Santa Clara for those people to live. In order reduce the greenhouse gas implications of long commutes, there should be some commitment towards increasing the stock of affordable housing in the City.*

The Project is being required to provide 10 percent affordable housing.

12. *I agree with the following very important objectives that are much better in the Reduced Intensity Alternative versus the main proposal for 9.1 million square feet (In Final EIR): "The Reduced Intensity Alternative, as described on pages 5-7 and 5-8 of the Draft EIR, was developed to lessen impacts associated with transportation/traffic, air quality, GHG emissions, and noise." "The Reduced Intensity Alternative would result in fewer daily trips (94,240) compared with the Increased Housing Alternative (120,690) and the Project (140,730)"*

The basis for the City's conclusion that the Reduced Intensity Alternative is not feasible is set forth in the response to Comment 1 above.

Stanford University's "No Net New Commute Trips" Policy

Stanford's vehicle trip reducing policy, often referred to as the "no net new trips" policy, has been touted as a successful program that can be applied to office campuses in the Bay Area to minimize their traffic impacts. This paper describes the source of the policy and some of Stanford's unique characteristics to shed light on whether it is applicable to other developments in Silicon Valley. The results are:

- Stanford is a university and not an office development. It has very different vehicle trip generating characteristics.
- The policy is a "no net new commute trips" policy focused on inbound vehicles during the morning peak hour and outbound vehicles during the evening peak hour.
 - Increases in traffic volumes in the reverse commute directions and at other times of the day may occur under this policy.
- Stanford has added over 2,000 housing units / beds to the campus, moving students that were living off-campus onto campus. This directly reduced the number of auto commute trips during the morning and evening peak periods.
 - Adding housing is not an available option to most office campuses. Plus, it would not reduce trips to the same extent as adding student housing to an educational campus where other trip purposes can be met on campus.
- Stanford is the only employer and landowner and therefore has direct access to all of the employees and residents. This provides an economies of scale that makes the TDM program more effective.
 - This condition does not exist in most large scale developments or business parks where there are multiple landowners and tenants that even with coordination could not create an as effective TDM program.
- The Stanford TDM program has unique aspects not included in other Silicon Valley firm TDM programs:
 - Parking fees: Stanford charges fees for parking on-campus. Parking at most firms is free.
 - Marguerite shuttle: Stanford operates shuttle service (Marguerite) on campus and between the campus and Caltrain stations and adjacent communities. The level of service provided by most private shuttles is well below Marguerite's - this service area is less extensive and the headways are less frequent.
 - Cash incentives: Stanford provides cash payments to commuters that ride a bike, take transit, or carpool and vanpool to campus. This benefit is \$660 to over \$1,200 annually when the savings of not purchasing a parking permit is included.

Background

In December 2000, the Santa Clara County Board of Supervisors approved the Stanford University General Use Permit (GUP), which placed many conditions on Stanford's land use, growth, and

development. Stanford agreed to comply with the conditions of the GUP in order to allow further development of Stanford land.

One of the conditions of the GUP, defined by Condition of Approval G.4, states that "Stanford shall mitigate the transportation impacts of its additional development and population growth either through a program of 'no net new commute trips' or through proportional funding of mitigation measures for specified impacted intersections." Stanford chose the "no net new commute trips" approach and the university's goal is not to exceed the 2001 measured number of vehicles entering and exiting the university during peak periods over the life of the GUP.

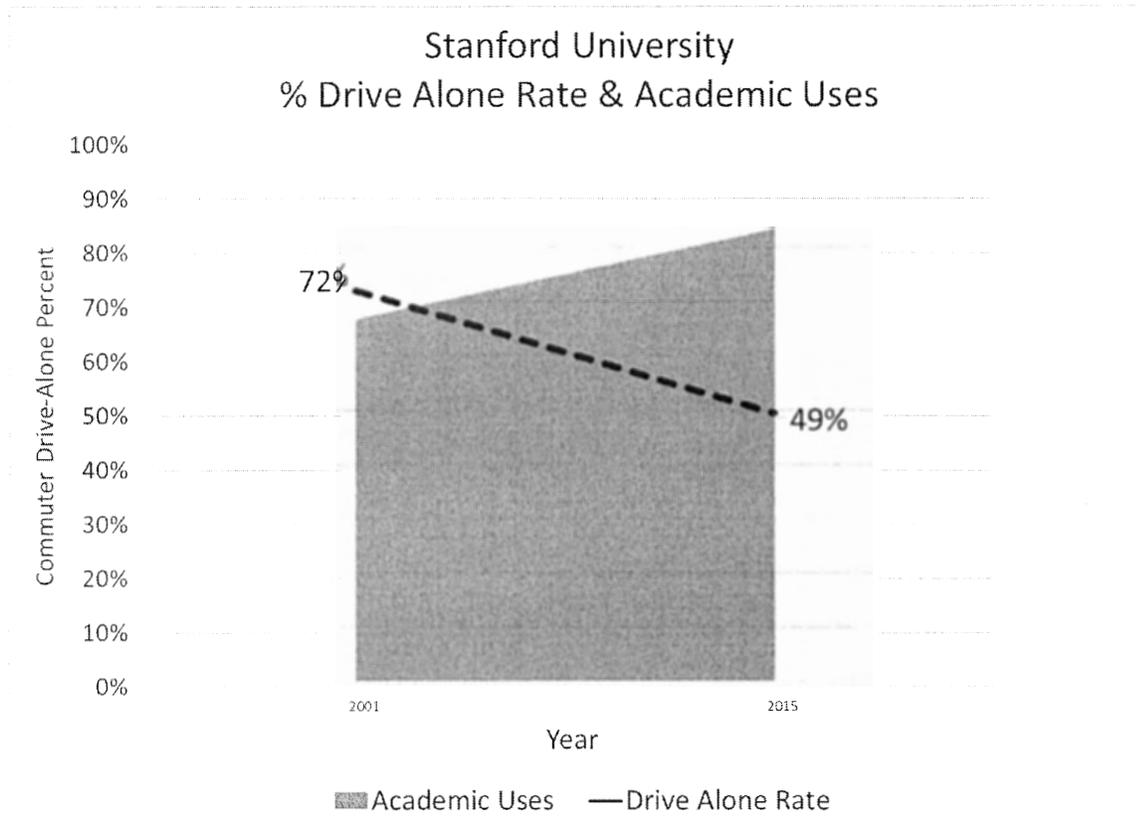
A cordon was established around the campus and existing (2001) peak hour traffic volumes were established for the morning and evening peak hours based on series of trip counts at 16 gateways to the campus. The peak hours were defined as the highest hourly volume of traffic in the peak direction occurring during the morning peak period (7:00 – 9:00 AM) and evening peak period (4:00 – 6:00 PM). Based on the initial counts, the peak direction of travel was inbound to the campus in the morning peak period and outbound from the campus in the evening peak period. Traffic volumes in the reverse commute directions and at other times of the day are not monitored.

The peak hour commute volumes are monitored annually in the fall and spring for a period of six weeks. Stanford submits a report summarizing the monitoring results to Santa Clara County each year. For 15 years, Stanford has successfully met the "no net new commute trips" through the use of TDM programs and the construction of on-campus housing for students and faculty. How Stanford has been able to achieve this goal is described below.

The 2000 GUP approved an increase of 2,035,000 square feet of additional academic space and the construction of up to 3,013 housing units for students, faculty and staff. As of August 2015, Stanford has constructed or received approval for 1,589,091 square feet of academic space and has added 2,019 housing units.

To accommodate this growth without adding new peak hour trips Stanford has used a strategy that includes increasing on-campus housing (primarily for graduate students that were previously living off campus) and implementing an aggressive TDM program for commuters (employees) traveling to campus. Stanford's extensive TDM Program has substantially reduced the share of drive-alone commuters to the campus from approximately 72 percent in 2001 to approximately 50 percent in 2015.

As shown in the figure below, the Stanford model for achieving the "no net new commute trips" goal has been successful because Stanford began with a large existing base population that drove at a typical drive-alone rate in 2001. By establishing an aggressive TDM program that reduced the drive-alone rate within the existing population it was possible to create "peak hour capacity" at the cordon to allow for the growth on campus. The addition of on-campus housing was a key factor in the success of the University reducing commute trips.



The following outlines some of the unique characteristics and steps taken by Stanford to reduce commuter trips to the Palo Alto campus during the peak periods.

Housing

Over the past 15 years, Stanford has added over 2,000 housing units / beds to the campus. The majority of this housing was for graduate and post-doctorate students along with a limited number of faculty and staff housing units. By moving students that were living off-campus onto campus, there was an opportunity to reduce the number of auto commute trips during the morning and evening peak periods. Stanford continues to pursue on-campus housing as a means to reduce auto trips and drive-alone trips to campus.

One Employer, One Landowner

Stanford has the advantage over most development projects in that they are the only employer and landowner within the monitoring GUP cordon. Therefore, Stanford has direct access to all of the employees and residents within the GUP cordon. This condition does not exist in most large scale developments or business parks where there are multiple landowners and tenants that would require coordination to create an effective TDM program.

TDM Program

Stanford's TDM program offered by Parking & Transportation Services (P&TS)² includes over 20 activities designed to meet the needs of employees and students. The TDM program is available to the majority of their employees (generally those working >20 hours per week) and there are programs designed for residents living on the campus.

Flexibility has been a key factor in the program allowing elements to be added or dropped based on their effectiveness in reducing peak hour trips and drive-alone commuters. There are no required TDM programs specified in the GUP conditions, instead there is only the requirement to establish a baseline for the AM and PM peak hour commute trips and to monitor and report the status to the County annually.

The following activities are key elements of the TDM program that helped Stanford to reduced drive-alone and peak period trips:

- **Parking Fees** – Stanford began charging for parking on campus in 1972. While the parking fees are low as compared to peer campuses, the program has been an effective element of the overall TDM program. The parking fees apply to employees, visitors and residents. Money generated by the parking program is used to offset the cost of the TDM program, but the TDM program is not revenue/cost neutral.
- **Local Bus Service & Last Mile Connections** – Stanford began operating the Marguerite bus service to provide internal circulation on campus, connections into the adjacent communities, and last-mile service to the Caltrain commuter rail service in downtown Palo Alto. All of the Marguerite bus service is free and open to the public. The local Marguerite service extends into downtown Palo Alto and to a shopping center located in Mountain View, California. As the Caltrain commuter rail service has expanded, Stanford has increased its shuttle service operating last mile bus service to three local Caltrain stations. The Caltrain shuttle service is designed around the train schedules so that the buses meet each train.
- **Transit Passes** – Stanford offers two transit passes to all eligible employees that live off-campus and outside the City of Palo Alto. The Caltrain Go Pass allows Stanford employees to use the commuter rail service that extends between San Francisco and San José. In addition to the Caltrain Go Pass, Stanford provides all eligible employees with the Santa Clara Valley Transportation Agency's (VTA) Eco Pass. The Eco Pass allows Stanford employees to use the local VTA bus and light rail service for free.
- **Clean Air Cash** – Stanford provides financial incentives to commuters that ride a bike, take transit, or carpool and vanpool to campus. The Clean Air Cash (CAC) program was one of the earliest programs implemented by Stanford and today offers a maximum benefit of \$300 per year (2015 - 2016). Since CAC participants do not purchase a campus parking permit, the real value to a CAC member ranges from \$660 to over \$1,200 annually.
- **Flexible Work Hours** – In addition to programs that get commuters out of their autos, Stanford provides opportunities for employees to work non-traditional hours which allows them to travel outside the normal peak periods.

² https://transportation.stanford.edu/alt_transportation/AlternativeTransportation.shtml

- **No Freshman Cars** - Freshmen at Stanford are not allowed to have cars on campus. This is enforced by P&TS through the parking permit program. The program gets new students familiar with the available campus transportation services so that they may elect to forego having a car in subsequent years.

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Chapter B.3

Responses to General Comments

Introduction

In addition to the two comment letters included in Chapter B.2, *Responses to Individual Comment Letters*, other written comments were received after the release of the Final Environmental Impact Report (EIR). These comments, which were submitted to the City of Santa Clara by letter or email, are reproduced in Chapter B.5, *Comment Letters*. As discussed in Chapter B.1, *Introduction*, lead agencies are not required to provide an opportunity for the public to comment on a final EIR, nor are lead agencies required to respond to comments received after a draft EIR public review period (including comments received during a final EIR public review period). As set forth in Section 15089(b) of the CEQA Guidelines, if public review of a Final EIR is provided, the review should focus on the Final EIR's responses to comments on the Draft EIR. Further, Section 15088 of the CEQA Guidelines stipulates that responses should pertain to major or significant environmental issues raised by commenters. Thus, as allowed under CEQA, this chapter responds only to those general comments that require further explanation or comments that were not previously submitted to the City. Comments are responded to by the environmental review topics, as presented in the Draft EIR. All comments that were addressed in the Responses to Comments document and Final EIR are not readdressed or reproduced here.

Responses to Written Comments

Comment letters and responses begin on the following page and are organized by EIR topic.

3.8 Biological Resources

Burrowing Owls

Three sets of comments on the Final EIR included questions or observations about burrowing owls. These comments came from the City of San José, the Santa Clara Audubon Society (submitted by Shari Kleinhaus Ph.D.), and Jan Hintermeister. The issues raised by the Final EIR comments are addressed in turn below.

The Project does not conflict with the 2000 Directive. Commenters again suggested that the 2000 Directive constituted a commitment by the City of Santa Clara definitively to preserve approximately 24 acres of the Project site as part of an overall total of 44.5 acres of burrowing owl habitat. As discussed in Master Response 4 of the Final EIR (pages 3-17 to 3-23), this is not the case. City representatives have verified the plain language of the 2000 Directive itself, which makes clear that there was no strict mandate to preserve any of the overall 44.5 acres as burrowing owl habitat. Even if there had been such a mandate, however, it could still be satisfied by the establishment of all 44.5 acres in question on the site of the San José/Santa Clara Water Pollution Control Plant (the “WPCP”), as explained in Master Response 4. In fact, Mr. Hintermeister stated in his letter that do to so would be a “viable option to meet the 2000 Directive.” Since the City could comply with the 2000 Directive (to the extent necessary) even with development of the Project, the Project is not inconsistent with the 2000 Directive. Since there are no conflicts between the 2000 Directive and the Project, it is not necessary to impose any mitigation for such alleged conflicts.

Even if City staff were required to attempt to preserve land for burrowing owl habitat, the fact that City staff allegedly has not done so does not constitute a failure of the Project. The function of an EIR is not to provide a performance review for staff members on issues not directly related to the impacts of the project under consideration. Rather, if the commenters wish to pursue the preservation of 44.5 additional acres of burrowing owl habitat on the WPCP property, it would be more appropriate to provide input to the City independently of the Project.

There is no evidence that the Project site should be deemed to be “occupied” by burrowing owls. Commenters suggested that the CDFW had concluded that the Project site was “occupied” by burrowing owls, but this is not the case. According to the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (the “2012 CDFW Staff Report”), a site is deemed to be “occupied” if at least one burrowing owl has been observed occupying a burrow within the last three years. The CDFW’s comment letters on the 2014 Notices of Preparation for the Project did not establish that any burrowing owls have been observed occupying a burrow on the site within the last three years. Although the comment letters stated that a pair of owls had bred near Levi’s Stadium during the past two years, they did not give any dates for the other burrowing owls they stated had been observed on the Project site itself. In fact, the Draft EIR documents that burrowing owls were last observed nesting on the Project site ten years ago, in 2006, and that biologists conducting site-specific surveys conducted in 2014 and 2015 did not observe any burrowing owls. Therefore, while it is true that the Project site is located in an area that also includes “the remaining burrowing owl breeding and foraging areas” in the general vicinity (as the CDFW stated in its NOP letters), the Project site itself does not constitute “breeding and foraging area” pursuant to the guidance in the 2012 CDFW Staff Report

The CNDDDB map that was attached to the CDFW's NOP comments does not contradict these conclusions. The CNDDDB map represents a cumulative database, meaning that records and sightings are added over time, but they are never removed. The CNDDDB map is based on a log of occurrences, but does not include the dates of those occurrences. The determination in the EIR that the last recorded occupation of the site by burrowing owls was in 2006 was derived from the log on which the CNDDDB map is based.

Nor do the two very old pellets found on the Project site in 2014 and 2015 contradict these conclusions. The biologists who conducted the 2014 and 2015 Project site surveys concluded, in their expert judgment, that the pellets were deposited there sufficiently long ago that they did not constitute evidence of burrowing owl "occupancy." In fact, there is no evidence that those pellets were definitively owl pellets, let alone any evidence to indicate that they were deposited in the past three years.

The existing mitigation measures adequately address any impacts related to dispersal habitat or "linkage" habitat. Some comments have noted that the Project may have "regionally significant impacts that may warrant additional mitigation." However, it is clear that the Project site does not contain "occupied habitat" pursuant to the 2012 CDFW Staff Report's definition, which means that the only possible value the Project site may have with respect to burrowing owls is potentially as dispersal or "linkage" habitat. The Final EIR does not deny the Project site *may* qualify as "dispersal habitat" or a "habitat linkage." However, almost any grassy site anywhere in the region could be considered "dispersal habitat" or "linkage habitat" if burrowing owls could land on it. If the destruction of any such grassy area automatically constituted the destruction of "dispersal habitat" or "habitat linkage" for burrowing owls, businesses that simply installed new landscaping in their outside areas could be considered to be destroying burrowing owl habitat and required to mitigate that alleged impact. There is really no way of knowing what precise areas would qualify as "dispersal habitat" or "habitat linkage" unless burrowing owls are ultimately actually found there. Therefore, Mitigation Measure BIO-2.2 requires mitigation for scenarios where burrowing owls are actually found on the site.

The Santa Clara Valley Habitat Conservation Plan (the "SCV HCP") does not apply to the Project. Some comments suggested that the Project must comply with all of the recommendations and requirements of the SCV HCP. As noted in the Draft EIR and Final EIR, while the HCP/NCCP does contain recommendations regarding the preservation of burrowing owl habitat, the City is not part of the HCP/NCCP and thus the policies in that document are not applicable to the Project site.

There is no conflict between using data that was developed for the SCVHCP and declining to use methodologies set forth in the SCVHCP. Data is factual; methodologies are not. The EIR for the Project uses the most up to date data available, and then applies the most pertinent methodology by applying the 2012 CDFW Staff Report Guidelines.

Other Specific Responses

- One commenter indicated that the deletion of certain text concluding that the Project site did not contain occupied burrowing owl habitat must mean that the Project site really did have occupied burrowing owl habitat. To the contrary, the text that was deleted (originally located on Draft EIR p. 3.8-13; edits to text shown on Final EIR p. 5-44) was not deleted because it was incorrect. Instead, the text was deleted because it did not pertain to the subject matter of the section in question, which addressed the issue of whether the Project conflicted with a habitat conservation plan. The EIR elsewhere makes it quite clear that no occupied burrowing owl habitat is located on the Project site.

- One commenter alleged that the Final EIR “acknowledges that the Project site provides forage habitat for burrowing owls.” This is not the case. As Master Response #4 specifically states (Final EIR p. 3-20), “under the definitions in Appendix B to the 2012 CDFW Staff Report, the Project site does not include any foraging habitat.”
- The City of San José suggested text changes to Mitigation Measure BIO-2.1, which mainly address the timing of pre-construction surveys. These text changes are unnecessary because Mitigation Measure BIO-1.1 (“Protect Nesting Birds”) already requires surveys for nesting birds no more than three days prior to the commencement of ground disturbance and vegetation removal in areas that would be affected by Project construction activities. Mitigation Measure BIO-1.1 also requires that if a burrowing owl nest is identified during pre-construction surveys, no-activity buffers must be established that adhere to the recommendations in the 2012 CDFW Staff Report.

Waters of the State

The commenter states that the EIR does not demonstrate adequate mitigation for impacts to waters of the State. As stated in the Final EIR in response to this comment when originally received, the Draft EIR mitigation stands on its own to address the impact. CEQA does not require that the precise form and location of the mitigation must be identified in the EIR as long as there is an adequate performance standard and sufficient identification of how and when and what the mitigation will require. The Draft and Final EIR have detailed the minimum mitigation ratio and that the performance standards shall be based on a no-net loss of functions and values. The mitigation measure also includes additional details of what would be required such the endowment, 5-year monitoring plan, 5-year maintenance plan, etc.

Additional details on the mitigation monitoring plan (MMP) cannot be provided because a wetland delineation has not been conducted. Thus, the precise extent of wetlands and how they could be impacted is currently not known. A wetland delineation is not required for CEQA. It is understood that the mitigation measure lacks the information necessary to issue a Section 401 Water Quality Certification for the Project, but issuance of a permit is not the intent of the mitigation measure. As stated, a wetland delineation has not been performed and is not required for CEQA, but will be conducted during the regulatory permitting process. The mitigation measures includes all those factors that would be required for the MMP with enough detail to adequately mitigate for the impacts that would occur from the Project, once it is know which features are under jurisdiction of the state.

3.10 Hydrology and Water Quality

Any in-channel work that would need to be conducted to remove sediment under the proposed San Tomas Aquino Creek bridge would be required to comply with all pertinent regulations and no additional environmental impacts would result. The Project would comply with the National Pollutant Discharge Elimination System, would prepare a Stormwater Pollution Prevention Plan, and would obtain a Section 401 Water Quality Certification (which requires the evaluation of water quality considerations associated with dredging or placement of fill materials) and Section 404 permit (for dredge and fill) in accordance with the Clean Water Act. The Project would also be required to comply with regulations requiring that conveyance capacity be similar to existing conditions.

It is also acknowledged that the levee along the Guadalupe River is owned and maintained by the SCVWD and not USACE as specified in the Final EIR. The acknowledgement of accurate ownership does not change the discussion in a meaningful way. The technical documentation upon which the Draft EIR analysis is based provided used NAVD 88 datum.

A request was received to add additional clarification on when levees can fail, how a project affects flood potential, and specifics regarding dam failure. While the suggested revisions are accurate, they do not change the conclusions in the analysis and no changes have been made.

Regarding comments related to well supply, the City's analysis in the Water Supply Analysis is based on current available analyses. The City will work with the Santa Clara Valley Water District (SCVWD, District) on the update of their Groundwater Management Plan and estimates of sustainable yield, but results of those analyses are merely speculation at this point. In addition, while the District mentions a shortfall of conservation goals in 2014, 2015 adjustments to conservation efforts coupled with operational adjustments by both retailers and the District yielded a county wide 25 percent conservation rate.

3.11 Hazards and Hazardous Materials

Landfill Hazards

The San Francisco Bay Regional Water Quality Control Board ("RWQCB") and the County of Santa Clara Department of Environmental Health (acting as the local enforcement agency ("LEA")) for the state's solid waste regulations, each provided comments on the Final EIR noting that they believe it is premature to conclude that risks associated with building the development over the landfill have been adequately mitigated because they have not reviewed regulatory-required plans and reports, and made a final decision to authorize the change in post-closure land use for the landfill by approving a Post-Closure Land Use Plan ("PCLUP"), a revised Closure Plan ("CP") and a revised Post-Closure Maintenance Plan ("PCMP"). A Draft PCLUP was made available to the public in conjunction with the circulation of the Draft EIR, and it describes the types of measure that will be included in the CP and PCMP. Final version of these plans would not be submitted and approved by the RWQCB, LEA and Cal Recycle until after EIR certification. In fact, those agencies' approval of these plans cannot occur until after EIR certification, because they will be relying upon the EIR for CEQA compliance in association with their approvals.

To mitigate risks associated with development over the landfill, the EIR requires the City and Project Developer implement the following mitigation measures: HAZ-4.1 (Landfill Closure, Monitoring, and Maintenance Plans); HAZ-4.2 (Landfill Gas Collection and Removal System); HAZ-4.3 (Landfill Gas Protection Systems); HAZ-4.4 (Landfill Gas Monitoring and Control System Maintenance); HAZ-4.5 (Building Restrictions); and HAZ-4.6 (HAZ-4.6: Landfill Hazards Disclosure). These mitigation measures will be enforced through their inclusion in the CP, PCMP and PCLUP, which are required by regulations independent of CEQA. The Final EIR requires each of these plans to be prepared pursuant to Title 27 of the California Code of Regulations, and each plan must be reviewed and approved by LEA, CalRecycle, and the Regional Water Board. The Project Developer would also be required to ensure that Project-related health risks to residents and commercial workers are mitigated below the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and hazard index ("HI") (i.e., adverse non-cancer risk) of 1.0 established for the Project.

Mitigation Measures HAZ-4.1 through -4.6 are sufficiently detailed and enforceable to address the

Project's long-term monitoring and maintenance needs. A condition requiring compliance with environmental regulations is a common and reasonable mitigating measure. (*See Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 430.) "Deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation." (*Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 237 (2011)). Here, the Draft EIR recommends that the CP, PCMP, and PCLUP to abide by the requirements of Title 27, and the LEA, CalRecycle, and Regional Water Board are responsible for ensuring compliance with a specific risk standard.

The LEA also expresses concern that it cannot confirm the adequacy of the mitigation for subsurface fires, because it has not yet seen the Subsurface Fire Prevention, Detection and Response Plan required by Mitigation Measure HAZ-9.1. Mitigation Measures HAZ-9.2 and HAZ-9.3 describe specific prevention, detection and response actions to be included in this plan. The mitigation measures are adequate under CEQA. "CEQA permits a lead agency to defer specifically detailing mitigation measures as long as the lead agency commits itself to mitigation and to specific performance standards[.]" Gray v. Cnty. of Madera, 167 Cal. App. 4th 1099, 1119 (2008); see also City of Long Beach v. Los Angeles Unified Sch. Dist. (2009) 176 Cal.App.4th 889, 915 ("Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."). "Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended performance criteria . . . , such that they afford the applicant a means of avoiding mitigation during project implementation, [and] it would be unreasonable to conclude that implementing the measures will reduce impacts to less than significant levels." Rialto Citizens for Responsible Growth v. City of Rialto, 208 Cal. App. 4th 899, 945 (2012). By establishing a clear threshold of effectiveness and by virtue of its binding effect, Mitigation Measures HAZ-9.1, HAZ-9.2 and HAZ-9.3 are adequately drafted.

Similarly, the LEA references the requirement in Mitigation Measure HAZ-5.3 for the Project Developer to implement the gas migration mitigation measures identified in Title 27, Section 21190(g) in Parcel 5, even though that regulation does not apply in Parcel 5. The actions to mitigate gas migration measures are set forth with specificity, and nothing in CEQA requires the exact plans to implement such specific actions to be prepared prior to EIR certification.

Finally, the LEA expresses concern that it has not seen the memorandum of Understanding related to landfill operation and maintenance to be attached to the Development and Disposition Agreement ("DDA") to be entered into by the City and the Project Developer. The DDA, with the MOU attached, will each be made available to the public prior to the date the City Council considers certification of the Final EIR, as part of the agenda packet for that City Council meeting, in accordance with applicable law.

In addition to its general concerns about it being premature to determine that landfill-related risks have been adequately mitigated until it completes its review of the legally-required plans, approves revisions to the Waste Discharge Requirements ("WDRs") order for the landfill, the RWQCB expresses specific concern about residential uses over the landfill. The EIR provides for two development with schemes – Scheme A which allows for residential development over the landfill, and Scheme B, which does not. Scheme A cannot be implemented unless the RWQCB approves revised WDRs changing the authorized post-closure land use, and unless the RWQCB LEA and CalRecycle approve the CP, PCLUP and PCMP, which will specify measures to protect residents.

We also note that the RWQCB's comment letter on the Final EIR was issued before it issued its letter on May 26, 2016 concurring in the final Site Investigation and Risk Assessment ("Final Risk Assessment") dated May 6, 2016. In this letter, the RWQCB concurred that the cancer and non-cancer risks to future residents from potential exposure to chemicals of potential concern (COPCs) from the subsurface are acceptable.¹

The Final Risk Assessment identified benzene, ethylbenzene, trichloroethene (TCE) and vinyl chloride as COPCs in landfill gas because the maximum concentrations were reported above the Regional Water Board's residential and/or commercial/industrial ESLs for soil gas.

The human health risk assessment (HRA) evaluated chronic risks and hazards from exposure risks to chemicals of potential concern in relevant site media (soil, vapor, and groundwater) to four categories of potential receptors (construction workers; groundskeepers; indoor commercial workers; and apartment residents future workers and residents). In addition, TCE was evaluated for potential short-term inhalation exposure hazard in indoor air to future workers and/or residents.

The Final Risk Assessment found that no unacceptable cancer or non-cancer risks would be posed to construction workers or groundskeepers at the Project site, and that neither construction workers nor groundskeepers workers would be exposed to COPCs in soil at the Project site above applicable health risk thresholds. For the commercial indoor worker, the cumulative cancer risk is below the risk management range, and the cumulative non-cancer hazard index is below the threshold of 1.0. The predicted indoor air concentration is well below the short-term response action limit for TCE of 8 µg/m³ (USEPA 2014), which indicates there is no short-term hazard posed by exposure to TCE.

For the apartment resident, the predicted indoor air concentration is well below the short-term response action limit for TCE 2 µg/m³; USEPA 2014), which indicates there is no short-term hazard posed by exposure to TCE. The cumulative non-cancer hazard index is below the threshold of 1.0. Cumulative chronic cancer risk for apartment resident is considered a significant impact because it slightly exceeds the RWQCB's default 1 X 10⁻⁶ risk threshold. However, in this instance, the RWQCB concluded that, with implementation of the mitigation measures set forth above, this chronic cancer risk for future residents in the lower end of the risk management range is considered acceptable. The RWQCB concurrence letter noted that the risk assessment model used to evaluate the human health risks posed by the COPCs was conservative because the model does not consider the following key protective measures from Table 1: 1) groundwater concentrations of volatile organic compounds are expected to decline over time from natural attenuation; 2) landfill gas extraction will continue; and 3) the passive venting component of the landfill gas mitigation system will be operational. The RWQCB also noted that the model overestimates the risk posed by the COPCs that was determined to pose the most risk (vinyl chloride).

The RWQCB concurrence letter noted that because of landfill regulatory requirements, there is an existing array of protective measures in place to mitigate hazards posed by methane in landfill gas or hazards caused by landfill settlement. These measures also serve to mitigate or remediate the VOCs in groundwater or in the refuse/landfill gas that could pose a vapor intrusion risk in future buildings. During redevelopment, these measures will be improved (e.g., enhanced landfill gas and VOC extraction

¹ The Final Risk Assessment did not address issues related to explosion risk from methane releases, which is addressed in the PCLUP, and which is also a basis for the RWQCB's concern about residential use.

system, landfill clay cap repair, removal of preferential pathways) and additional components will be added that will also serve to mitigate methane hazards or VOC risks. The redevelopment plan also integrates protective design components (e.g., residential apartments above podium parking garage or above first floor commercial space). Lastly, institutional controls will be implemented that will ensure the continued protectiveness of these measures as well as provide financial assurance necessary for long-term stewardship. These many measures serve to provide multiple, redundant levels of protectiveness for the planned redevelopment provided they are adequately constructed and maintained.

3.13 Public Services

Santa Clara Unified School District

The commenter states that the Final EIR was completed prior to the determination of the number or percentage of affordable housing units to be included in the Project. Please refer to Response A4.2 in the Final EIR. As explained in Response A4.2, and stated on page 3.13-18 of the Draft EIR, the student generation rates used to calculate the students generated by the Project were provided by the Santa Clara Unified School District (SCUSD). It would be speculative to use a likely future student generation rate to determine potential impacts of the Project. In addition, as explained in Response A4.2, the City does not currently impose affordable housing requirements, other than the voluntary provisions of the Density Bonus Ordinance (Chapter 18.78 of the City Code). Affordable housing will be considered during the design process for the Project and the Development Area Plan for each parcel, but it would be speculative at this time to assume that affordable housing would be included as part of the Project. Even if the affordable housing generation rates were used to estimate the number of students that would be generated by the Project, the SCUSD's four closed school sites, as well as the payment of SB 50 School Impact Fees by the Project Developer, would ensure that the Project's impact with respect to schools would be less than significant.

The commenter states that the closed school sites are in the southern portion of the City and would not help to alleviate impacts from the Project, which is located in the northern portion of the City. As stated on page 3.13-18 of the Draft EIR, since the SCUSD is at capacity and the closed schools are in the southern portion of the City, adding students to the school district could result in a redistribution of students in SCUSD facilities. Alternatively, school attendance boundaries could be modified or modular classrooms could be used to accommodate the new students generated by the Project. Regardless, methods for accommodating students within the SCUSD is not a CEQA issue. No further response is required.

The commenter states that the SB 50 School Impact Fees only cover one-third of the cost of the State-calculated full mitigation. Page 3.13-19 of the Draft EIR provides an explanation of the school impact fees. As a result of the wide-ranging changes in the financing of school facilities, including the passage of State school facilities bonds intended to provide a major source of financing for new school facilities, Section 65996 of the State Government Code explains that payment of school impact fees established by SB 50 is deemed to constitute *full and complete* mitigation for school impacts from development that may be required from a developer by any State or local agency. Although the payment of the school impact fee by the Project Developer could contribute toward the construction or expansion of schools, any actual construction or expansion of school facilities would not be a direct result of the Project and would be required to undergo a separate CEQA review process.

Under CEQA, the Project Developer is not required to pay additional impact fees; payment of SB 50 school impact fees are sufficient to reduce impacts to less than significant. Payment of additional fees, as

requested by the commenter, is not a CEQA issue. Per CEQA Guidelines Section 15131, the focus of the EIR is on the physical environmental effects rather than social or economic issues. Fiscal issues and community benefits from the Project are topics that will be considered by the City Council and the Commission during the decision-making process. Therefore, no further response is necessary.

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Chapter B.4

Additional Revisions to the Draft EIR

This chapter includes new text changes that have been made to the Draft EIR that are in addition to those made in Chapter 5, *Revisions to the Draft EIR*, of the Final EIR. The revisions are presented in the order they appear in the Draft EIR, with the relevant page number(s) indicated with italicized print. New or revised text is shown with underline for additions and ~~strike-out~~ for deletions. The base text that is being edited represents text from the Draft EIR *as revised* in Chapter 5 of the Final EIR (where relevant).

All text revisions are to provide clarification or additional detail. After considering all comments received on the Draft EIR and Final EIR, the Lead Agency has determined that the changes do not result in a need to recirculate the EIR. Under the CEQA Guidelines, recirculation is required when new significant information identifies at least one of the following:

- A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure, considerably different from others previously analyzed, that clearly would lessen the significant environmental impacts of the project, but that the project's proponents decline to adopt.
- The EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded (Guidelines Sec. 15088.5[a]).

Recirculation of an EIR is not required where the new information merely clarifies, amplifies or makes minor modifications to an adequate EIR (Guidelines Sec. 15088[b]). The information provided below meets those criteria.

General Revisions to the Draft EIR

Section 3.3 – Transportation

Mitigation Measure TRA-1.1, which was presented on page 3.3-85 of the Draft EIR and revised on page 5-26 of the Final EIR, has been replaced with the following revised mitigation measure:

TRA-1.1: Vehicle Trip Reduction with Transportation Demand Management (TDM). The Project Developer shall prepare and implement a TDM Plan approved by the Santa Clara Director of Planning and Inspection. The TDM Plan shall include trip reduction measures necessary to achieve an overall target of reducing Project office-generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent, compared to the traffic estimates used in this EIR. The TDM Plan shall also include and implement TDM Best Management Practices (BMPs) for the retail uses. The TDM Plan shall include measures to reduce the amount of vehicle traffic generated by City Place by shifting employees, customers, and residents from driving alone to using transit, carpooling, cycling, and walking modes through TDM measures, strategies, incentives, and

policies. The TDM obligation in this measure is to apply for the lifetime of the Project. The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multi-tenant offices (e.g., measures aimed at increased transit use and carpooling), which are expected to be developed during the first three phases of development, and then provide for TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). The Santa Clara Director of Planning and Inspection shall have the authority and discretion to permit modification of the measures provided that the modifications continue to achieve the overall trip reduction objective and/or the Santa Clara Director of Planning and Inspection is satisfied that all feasible TDM measures are being implemented if the overall trip reduction objective is not being met. Specific requirements as to the TDM Plan, its contents, target reductions, monitoring and remedial action are as follows:

- a) *Vehicle Trip Thresholds.* Vehicle trip reductions will be measured through counts of vehicles that enter and exit the site and by comparison of the results to established trip thresholds. As part of the annual TDM Plan monitoring process, as described below, vehicle trip generation estimates, based on the land uses and their sizes, will be prepared by a transportation professional funded by the Transportation Management Association described below, and working under the direction of the City, who will use the trip generation rates and internalization and public transit ridership reductions used in the EIR transportation analysis. The TDM reduction targets will be applied to create the thresholds. The estimates and thresholds will be reviewed and approved by the City's Traffic Engineer. While no thresholds are established for retail uses because it is difficult to enforce trip reductions for retail customers, this measure requires implementation of TDM BMPs for retail portions of the Project, as described below.

- b) *Transportation Management Association* Some TDM measures and strategies shall be incorporated into the design of the site and the buildings. A Transportation Management Association (TMA) is a non-profit, organization that provides transportation services in a particular area, such as a commercial district, medical center or office park, controlled by members that are building owners or tenants in that area. A TMA shall be formed to oversee and coordinate implementation of the TDM measures to be implemented for the Project, including coordinating activities of the various employers and tenants. The TDM Plan shall identify the vehicle trip-reducing measures and strategies to be provided and implemented directly by the Project Developer, those to be implemented directly by the TMA and those to be implemented directly by individual tenants/employers, and any to be implemented directly by the City. The TDM Plan shall describe the roles and responsibilities of the TMA and its members, which shall be codified in a binding agreement with the City of Santa Clara, approved by the Director of Planning and Inspection, and recorded with the County of Santa Clara Clerk Recorder.

- c) Office TDM Measures. TDM measures that target office employees shall be described in detail in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, and tenants and employers.). The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the office development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:
- On-site Support Facilities: shuttle bus stops with shelters, bicycle paths and lanes, pedestrian paths linking buildings and transit stations, priority parking for carpools and vanpools
 - In-building Support Facilities: showers and changing rooms, bicycle storage rooms and bicycle racks, and bicycle repair stands, cafes, and fitness centers
 - Private shuttles for both long distance commute and last-mile service from nearby public transit
 - Ridesharing options for long distance commuters such as carpool and vanpool matching services
 - Guaranteed ride home services for commuters who carpool, take transit, or bicycle to work
 - Financial incentives such as pre-tax benefits for transit and bicycle expenses (e.g., Commuter Check) or subsidized transit passes (e.g., Commuter Checks, Clipper Cards or VTA EcoPass) for all employees
 - Additional support services for employees who use transit or rideshare, such as flexible work hours
 - A website and marketing program to disseminate information on commute options; access to TMA management services
 - A TDM information packet to be provided to all new City Place employees upon commencement of work at City Place and, the benefits of alternative commute methods stressed during new employee orientation programs
 - Incentives for employees to live in locations well served by transit or shuttles
 - Bike share pods to enable trips on-site and to nearby destinations to be made by bicycle
 - Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc.
 - Multi-passenger demand responsive ride services for local employees that are competitive with drive alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services
 - Yet-to-be developed new services, programs, strategies and emerging technologies
 - Congestion cordon (boundary) pricing scheme¹³
 - Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.¹⁴

¹³ Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.

¹⁴ These parking management strategies can be paired with a residential permit parking program (RPPP) to ensure that Project residents seeking parking do not park in nearby neighborhoods.

- d) Residential TDM Measures. TDM measures that target residents shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the residential development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:
- Bicycle infrastructure improvements
 - Bicycle parking room or lockers
 - Bicycle riders guide
 - On-site bicycle repair facilities
 - Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses
 - A website and marketing program to disseminate information on commute options; access to TMA management services
 - Rideshare matching services
 - On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations
 - Bus stops located near buildings
 - Pedestrian-oriented site design
 - Congestion cordon (boundary) pricing scheme
 - Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.
- e) Retail Site Design BMPs. BMPs that target retail employees and customers shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following BMPs shall be considered for inclusion in the TDM Plan for some or all portions of the retail development, to the extent feasible and appropriate:
- Bicycle infrastructure improvements
 - Bicycle rider encouragement program
 - Bicycle parking, showers and lockers
 - Bicycle riders guide
 - On-site bicycle repair facilities
 - Pre-tax commuter incentives
 - Rideshare matching services
 - On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations
 - A website and marketing program to disseminate information on commute options; access to TMA management services
 - Bus stop locations near building entrances
 - Pedestrian-oriented site design
 - Congestion cordon (boundary) pricing scheme
- f) Monitoring and Reporting. The TDM Plan shall be monitored annually to gauge its effectiveness in meeting the thresholds; while general guidelines are provided here, the monitoring and reporting process shall be explained in detail in the TDM Plan. A transportation professional working at the City's direction and pursuant to a scope of work

approved by the City's Traffic Engineer shall conduct traffic counts annually using mechanical counters or other devices approved by the City of Santa Clara to measure the daily and peak-hour entering and exiting vehicle volumes for a 72-hour period, Tuesday through Thursday. The counts shall include traffic counts at all City Place driveways, traffic counts at the driveways to office parking locations, and traffic counts at the driveways to residential parking locations. The counts shall be conducted when schools are in session and during non-holiday weeks with fair weather. The individual driveway volumes will be summed to provide the total site traffic volumes. The volumes at the driveways to the office and residential parking locations will be summed to provide the office- and residential-generated traffic volumes. The volumes will be compared to the trip thresholds to determine whether the reduction in vehicle trips is being met. The TMA will assist with the monitoring activities that will be conducted.

In addition to monitoring driveway volumes, a survey will be developed by the transportation professional and administered in coordination with the TMA and individual office employers to determine actual mode splits for employees. The survey will also gather information on usage of individual TDM Plan components as well as gauge employee perception of the overall TDM Plan. After an initial survey is conducted, subsequent surveys shall be conducted in years where the previous year's annual report has concluded that trip thresholds and trip reduction targets are not being met.

The results of the annual vehicle counts and survey (if one is conducted that year) will be reported in writing by the transportation professional to the Santa Clara Director of Planning and Inspection. The report will include descriptions of the TDM measures in place, highlighting new or modified measures, summarize the results of the counts, summarize the results of the employee survey (if one is conducted that year), and conclude whether the trip thresholds and trip reduction targets are being met. The report (as well as any remedial action taken as a result) will be summarized in an annual informational report to the Planning Commission on the progress of TDM efforts throughout the City of Santa Clara.

- g) Remedial Action. If TDM Plan monitoring results show that the trip reduction targets are not being met, the TDM Plan shall be updated to identify replacement and/or additional feasible TDM measures to be implemented. The updated TDM Plan shall be submitted to the City and approved by the Santa Clara Director of Planning and Inspection. The updated TDM Plan shall also identify other TDM measures that were considered but determined to be infeasible or ineffective. The TMA shall oversee and coordinate the implementation of the feasible additional TDM measures and continue to explore methods of making other potential TDM measures feasible.

~~TRA-1.1: Vehicle Trip Reduction with Transportation Demand Management (TDM). The Project Developer shall prepare and implement a TDM Plan with an overall target of reducing Project office-generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent, compared to the traffic estimates used in this EIR. The TDM Plan shall also include and implement TDM Best Management Practices (BMPs) for the retail uses. The TDM Plan shall reduce the amount of vehicle traffic generated by City Place by shifting employees, customers, and residents from driving alone to using transit, carpooling, cycling, and walking modes through TDM measures, strategies, incentives, and policies. The TDM obligation in this measure is to apply for the~~

lifetime of the Project. The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multi-tenant offices (e.g., measures aimed at increased transit use), which are expected to be developed during the first three phases of development, and then provides for more expansive TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). The Santa Clara Director of Planning and Inspection shall have the authority and discretion to permit modification of the measures provided that the modifications continue to achieve the overall trip reduction objective and/or Santa Clara Director of Planning and Inspection is satisfied that all feasible TDM measures are being implemented if the overall trip reduction objective is not being met.

Vehicle Trip Reduction Targets

The vehicle trip reduction targets are a 10 percent reduction in peak-hour trips and a 4 percent reduction in daily trips for the office uses as well as a 4 percent reduction in peak-hour trips and 2 percent reduction in daily trips for the residential uses. These reductions are in addition to the trip reductions that are attributable to the mixed-use nature of the Project, site design, and proximity to public transit.

The office vehicle trip estimates used in the analysis include some reductions that are attributable to TDM as well as transit use,¹¹ given the design and location of the Project. The added 10 percent reduction in peak-hour trips would yield a total trip reduction of 15 to 18 percent. This level of reduction is similar to that achieved currently by the technology offices in the North Bayshore Area of Mountain View, which is similar to City Place Santa Clara, with limited vehicle access due to roadway congestion during the morning and evening peak periods, the amount and mix of land use, and the above-average employee density. Therefore, the 10 percent peak-hour vehicle trip reduction target for the office uses is appropriate.

¹¹ The incorporated TDM reductions are a 5 percent vehicle trip reduction during the morning peak hour and a 7 percent vehicle trip reduction during the evening peak hour compared to estimates for general office uses without a TDM program and lower employee density based on general office rates on a per employee basis from ITE with 20,720 employees.

The majority of vehicle trip reductions for the office uses will occur during the AM and PM Peak Periods because TDM is most effective in reducing the number of commute trips, particularly those generated by solo drivers. Therefore, the percent reduction during peak hours will be higher than the daily reduction. Based on the characteristics of the Project, a 4 percent¹² reduction is to be applied to the number of daily office trips.

The residential vehicle trip estimates used in the analysis include some reductions that are attributable to the mixed-use nature of the development as well as transit use, given the design and location of the Project. The added 4 percent reduction in peak-hour trips would yield a total trip reduction of 14 to 34 percent.

Vehicle Trip Thresholds

The number of peak-hour vehicle trips needs to be reduced from the estimates used in this environmental document to demonstrate a lessening of the severity of the signalized intersection

impacts as well as the freeway and unsignalized intersection impacts, which are discussed later. These reductions will be measured through counts of vehicles that enter and exit the site and comparing the results to established trip thresholds.

- **Build-out:** The vehicle trip thresholds at build-out of the individual land uses at City Place, as well as all of the uses at City Place combined, under Scheme B, with the reduction targets, are shown in Table 3.3-19. The thresholds will be recalculated should other land use programs be constructed.
- **Interim Phases:** City Place will be built in phases. The exact order in which the phases will be developed has not yet been determined. As part of the annual monitoring process, vehicle trip generation estimates, based on the land uses and their sizes, will be prepared by a transportation professional, who will use the trip generation rates and internalization and public transit ridership reductions used in this EIR transportation analysis. The TDM reduction targets will be applied to create the thresholds. The estimates and thresholds will be reviewed and approved by the City's Traffic Engineer.
- **Retail:** No thresholds are established for retail uses because it is difficult to enforce trip reductions for retail customers. Instead, this measure requires implementation of TDM BMPs for retail portions of the Project, as described below.

¹²—The 4 percent reduction in daily office trips is calculated by applying the peak hour TDM reduction target because of (10 percent) to the AM and PM Peak Hour trip estimates multiplied by 2 (to account for the reductions that affect trips during the 2-hour peak periods) and subtracting the results from the daily vehicle trip estimates.

Table 3.3-19. City Place Vehicle Trip Thresholds at Build-out (Scheme B)

Item	Daily	AM Peak Hour	PM Peak Hour
Office			
Vehicle Trips (EIR Estimates)	68,450	7,210	6,790
TDM Reduction Target ^a	-2,800	-720	-680
Vehicle Trip Thresholds	65,650	6,490	6,110
Retail/Restaurant/Entertainment/Hotel			
Vehicle Trips (EIR Estimates)	71,190	2,720	5,430
TDM Reduction Target ^b	0	0	0
Vehicle Trip Thresholds	71,190	2,720	5,430
Residential			
Vehicle Trips (EIR Estimates)	1,090	90	90
TDM Reduction Target ^c	-20	-5	-5
Vehicle Trip Thresholds	1,070	85	85
Total			
City Place Vehicle Trips (EIR Estimates)	140,730	10,020	12,310
TDM Reduction Target	-2,820	-725	-685
City Place Vehicle Trip Thresholds	137,910	9,295	11,625

Notes:

^a—Daily TDM mitigation reduction for office = 4 percent; AM Peak Hour TDM mitigation reduction = 10 percent; PM Peak Hour TDM mitigation reduction = 10 percent (relative to office subtotal with mixed-use and public transit reductions).

^b No daily or peak-hour TDM mitigation reductions have been applied to retail, restaurant, entertainment, or hotel land uses.

^c Daily TDM mitigation reduction for residential = 2 percent; AM Peak-Hour TDM mitigation reduction = 4 percent; PM Peak-Hour TDM mitigation reduction = 4 percent (relative to residential subtotal with mixed-use and public transit reductions).

Vehicle volumes rounded to the nearest five vehicles.

Source: Fehr & Peers, September 2015.

TDM Measures and Strategies

Some TDM measures and strategies shall be incorporated into the design of the site and the buildings. A Transportation Management Association (TMA) will be formed to coordinate the TDM activities of the various employers. Therefore, the TDM Plan shall identify the vehicle trip-reducing measures and strategies to be provided and implemented by the Project Developer, those overseen by the TMA, and those to be provided by individual tenants/employers.

Transportation Management Association: TMA is a non-profit, member-controlled organization that provides transportation services in a particular area, such as a commercial district, medical center or office park. The TMA will oversee and coordinate implementation of the TDM measures to be implemented for the Project. The TDM Plan would describe the roles and responsibilities of the TMA and its members, which would be codified in a binding agreement to be approved by the City of Santa Clara and shall be recorded with the County of Santa Clara Clerk Recorder.

Office TDM Measures: TDM measures that target office employees would be described in detail in the TDM Plan, including information regarding the implementing party (e.g., developer, City, tenant, etc.).

The following TDM measures should be considered for inclusion in the TDM Plan for some or all portions of the office development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:

- On-site Support Facilities: shuttle bus stops with shelters, bicycle paths and lanes, pedestrian paths linking buildings and transit stations, priority parking for carpools and vanpools
- In-building Support Facilities: showers and changing rooms, bicycle storage rooms and bicycle racks, and bicycle repair stands, cafes, and fitness centers
- Private shuttles for both long distance commute and last-mile service from nearby public transit
- Ridesharing options for long distance commuters such as carpool and vanpool matching services
- Guaranteed ride home services for commuters who carpool, take transit, or bicycle to work
- Financial incentives such as pre-tax benefits for transit and bicycle expenses (e.g., Commuter Check) or subsidized transit passes (e.g., Commuter Checks or VTA EcoPass) for all employees
- Additional support services for employees who use transit or rideshare, such as flexible work hours
- A website and marketing program to disseminate information on commute options
- A TDM information packet to be provided to all new City Place employees upon commencement of work at City Place and, the benefits of alternative commute methods stressed during new employee orientation programs
- Incentives for employees to live in locations well served by transit or shuttles
- Bike-share pods to enable trips on-site and to nearby destinations to be made by bicycle
- Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc.

- ~~Multi-passenger demand responsive ride services for local employees that are competitive with drive-alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services~~
- ~~Yet-to-be developed new services, programs, strategies and emerging technologies~~
- ~~Congestion cordon (boundary) pricing scheme¹³~~
- ~~Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.¹⁴~~

¹³ ~~Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.~~

¹⁴ ~~These parking management strategies can be paired with a RPPP to ensure that Project patrons seeking parking do not park in nearby neighborhoods.~~

Residential TDM Measures: ~~TDM measures that target residents will be described in the TDM Plan, including information regarding the implementing party (e.g., developer, City, tenant, etc.). The following TDM measures should be considered for inclusion in the TDM Plan for some or all portions of the residential development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:~~

- ~~Bicycle infrastructure improvements~~
- ~~Bicycle parking room or lockers~~
- ~~Bicycle riders guide~~
- ~~On-site bicycle repair facilities~~
- ~~Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses~~
- ~~Rideshare matching services~~
- ~~On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations~~
- ~~Bus stops located near buildings~~
- ~~Pedestrian-oriented site design~~
- ~~Congestion cordon (boundary) pricing scheme¹⁵~~
- ~~Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.¹⁶~~

¹⁵ ~~Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.~~

¹⁶ ~~These parking management strategies can be paired with a residential permit parking program (RPPP) to ensure that Project parkers do not park in nearby neighborhoods.~~

Retail Site Design BMPs: ~~BMPs that target retail employees will be described in the TDM Plan, including information regarding the implementing party (e.g., developer, City, tenant, etc.). The following BMPs should be considered for inclusion in the TDM Plan for some or all portions of the retail development, to the extent feasible and appropriate:~~

- Bicycle infrastructure improvements
- Bicycle rider encouragement program
- Bicycle parking, showers and lockers
- Bicycle riders guide
- On-site bicycle repair facilities
- Pre-tax commuter incentives
- Expanded carpool matching
- Rideshare matching services
- On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations
- Bus stop locations near building entrances
- Pedestrian-oriented site design
- Congestion cordon (boundary) pricing scheme¹⁷

¹⁷ Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.

Monitoring

The TDM Plan shall be monitored annually to gauge its effectiveness in meeting the thresholds and to make modifications to add, intensify, or change TDM measures. General guidelines are provided; the monitoring and reporting process shall be explained in detail in the TDM Plan.

The TMA will assist with the monitoring activities that will be conducted. The monitoring activities shall include traffic counts at all City Place driveways, traffic counts at the driveways to office parking locations, a survey of employee transportation mode shares and travel preferences, and traffic counts at the driveways to residential parking locations. The results will be reported to the City of Santa Clara.

Monitoring Counts and Surveys: Traffic counts shall be conducted annually using mechanical counters or other devices approved by the City of Santa Clara to measure the daily and peak-hour entering and exiting vehicle volumes for a 72-hour period, Tuesday through Thursday. The counts shall be conducted when schools are in session and during non-holiday weeks with fair weather. The individual driveway volumes will be summed to provide the total site traffic volumes. The volumes at the driveways to the office and residential parking locations will be summed to provide the office- and residential-generated traffic volumes.¹⁸ The volumes will be compared to the trip thresholds to determine whether the reduction in vehicle trips is being met.

¹⁸ The method(s) to isolate office and residential demand in shared-use parking facilities will be based on the site conditions, configuration, occupancy at the time of the survey and will be approved by the City at that time.

In addition to monitoring driveway volumes, a survey will be developed and administered by the TMA and individual office employers to determine actual mode splits for employees. The survey will also gather information on usage of individual TDM Plan components as well as gauge employee perception of the overall TDM Plan. The results will allow the TMA and employers to enhance the program and implement new TDM measures that will attract more employee participation. After an initial survey is conducted, subsequent surveys shall be conducted in years where the previous year's annual report has concluded that trip thresholds and trip reduction targets are not being met.

Reporting: ~~The TMA will use the results of the annual vehicle counts and survey (if one is conducted that year) to prepare an annual report to be submitted to the City of Santa Clara presenting progress towards achieving the vehicle trip reduction target. The report will include descriptions of the TDM measures in place, highlighting new or modified measures, , summarize the results of the counts, summarize the results of the employee survey (if one is conducted that year), and conclude whether the trip thresholds and trip reduction targets are being met.~~

Remedial Action

~~If TDM Plan monitoring results show that the trip reduction target is not being met, the TDM Plan shall be updated to identify replacement and/or additional feasible TDM measures to be implemented. The updated TDM Plan shall be submitted to the City and approved by the Santa Clara Director of Planning and Inspection. The updated TDM Plan shall also identify other TDM measures that were considered but determined to be infeasible or ineffective. The TMA shall oversee and coordinate the implementation of the feasible additional TDM measures and continue to explore methods of making other potential TDM measures feasible.~~

Section 3.6 – Noise

The following changes have been made to Table 3.6-15, *Cumulative Year 2040 and Cumulative Year 2040 plus-Project Noise Levels at Actual Distance to Off-Site Receptors*, presented on page 3.6-35 of the Draft EIR.

Table 3.6-15. Cumulative Year 2040 and Cumulative Year 2040 plus-Project Noise Levels at Actual Distance to Off-Site Receptors

Roadway	Segment	Approximate Distance to Nearest Receptor (feet)	Receptor Land Use Type	Existing L _{dn} at Nearest Receptor	Cumulative L _{dn} at Nearest Receptor	Cumulative plus-Project L _{dn} at Nearest Receptor	Cumulative Increase (Difference between Existing and Cumulative plus Project)	Significant Cumulative Impact?	Project Contribution to Noise Level	Cumulatively Considerable Contribution?
Tasman Drive	Centennial Boulevard to Calle Del Sol	105	R	70.0	71.5	72.9	2.9	No	1.3	NA
Agnew Road – De La Cruz Boulevard	Montague Expressway to Greenwood Drive	50	R	65.2	70.6	71.6	6.4	Yes	1.0	Yes
Great America Parkway	SR-237 to Yerba Buena Way/Great America Way	200	O	70.9 73.5	73.8	74.5	3.6 1.0	Yes	.7	No
Great America Parkway	Yerba Buena Way/Great America Way to Old Mountain Road	80	O	74.6 73.4	74.1	75.8	1.2 2.4	No	1.7	NA
Lafayette Street	SR-237 to Great America Way	No Existing Receptor	NA	NA	NA	NA	NA	NA	NA	NA
Lafayette Street	Great America Way to future driveway (south)	340	O	72.3	72.5	72.6	0.2	No	.1	NA

Table 3.6-15. Cumulative Year 2040 and Cumulative Year 2040 plus-Project Noise Levels at Actual Distance to Off-Site Receptors

Roadway	Segment	Approximate Distance to Nearest Receptor (feet)	Receptor Land Use Type	Existing L _{dn} at Nearest Receptor	Cumulative L _{dn} at Nearest Receptor	Cumulative plus-Project L _{dn} at Nearest Receptor	Cumulative Increase (Difference between Existing and Cumulative plus Project)	Significant Cumulative Impact?	Project Contribution to Noise Level	Cumulatively Considerable Contribution?
Lafayette Street	Calle Del Mundo to Tasman Drive	50	O	66.0	71.8	74.9	8.9	Yes	3.0	Yes
Lafayette Street	Tasman Drive to Hogan Drive	55	R	71.0	72.3	75.0	4.0	Yes	2.7	Yes
Lafayette Street	Hogan Drive to Hope Drive	50	R	71.3	73.0	75.4	4.2	Yes	2.4	Yes
Lafayette Street	Hope Drive to Agnew Road	60	R	72.1	72.7	74.8	2.6	No	2.1	NA
Lafayette Street	Agnew Road to Palm Drive	190	R	67.0	68.0	69.6	2.6	No	1.6	NA

Notes:

Traffic noise was modeled using AM or PM Peak-Hour traffic volumes (whichever was higher); in this case, this was the PM Peak Hour, with the exception of the Great American Parkway from Yerba Buena Way to Old Mountain Road, which had much higher AM Peak-Hour with-Project traffic volumes.

Modeled 1-hour L_{eq} values were conservatively converted into L_{dn} values by adding 2 dBA to each L_{eq} result (based on trends in the 24-hour noise measurements).

Bold = significant impact, R = residential, O = office, NA = not applicable

Mitigation Measure NOI-1.2, which was presented on page 3.6-24 of the Draft EIR and revised on page 5-41 of the Final EIR, has been further revised as follows:

NOI-1.2: Implement Off-Site Traffic Noise Reduction Measures. The Project Developer shall implement off-site traffic noise reduction measures ~~in order to reduce the Project-related increase in traffic noise to less than 3 dBA for noise receptors along the east side of Lafayette Drive between Tasman Drive and Hogan Drive such that the Project-related increase in traffic noise for noise receptors is less than 3 dBA.~~ The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Lafayette Drive between Tasman Drive and Hogan Drive unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval.

The Project Developer shall implement off-site traffic noise reduction measures along the south side of Tasman Drive between Lafayette and Calle del Sol such that cumulative with project-related increase in traffic noise for noise receptors is less than 3 dBA or the project contribution to traffic noise is less than 1 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Tasman Drive between Lafayette and Calle del Sol unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval.

The barriers shall be designed to provide shielding between areas of frequent human use (i.e., residence backyards) and the roadway. This would result in approximately 1,000 feet of noise barriers along ~~this the Lafayette segment (between Tasman Drive and Hogan Drive)~~ and up to 800 feet along the Tasman segment (between Lafayette and Calle del Sol). One effective approach would be to replace the existing privacy fences at single family residences with a solid barrier that is at least 6 feet high. The Project Developer shall prepare an off-site noise control plan that identifies the location, design, and effectiveness of the specific treatments to be implemented. This plan shall be submitted to the City for review and approval prior to the issuance of building permits. The off-site noise improvements shall be completed before Project operations commence.

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Chapter B.5
Comment Letters

Comments on the City Place Santa Clara Final EIR:

I wish to respond to Master Response 4: Burrowing Owls found in Chapter 3 of the City Place Santa Clara Final EIR, specifically the section regarding what the Final EIR calls the 2000 Directive.

The 2000 Directive refers to the May 2, 2000 City Council motion which unanimously directed the City Staff to take 9 specific actions recommended to mitigate for loss of Burrowing Owls and their habitat. City Council direction included setting aside part of the current City Place Project area as mitigation lands for the Burrowing Owl. The land use proposed by the City Place project violates the mitigation directives made by the City Council on May 2, 2000.

The basic issue here is that the City Council on May 2, 2000 took decisive action directing City staff to take specific actions for Burrowing Owl mitigation. As we now know, no action was taken by City staff. The most generous statement that could be made regarding City staff's actions is that the Council direction fell through the cracks. In fact the only action the City staff has taken regarding the 9 directives of the May 2, 2000 resolution is to deny – 16 years later – that any action was ever required.

I'll briefly review the main arguments that the Final EIR makes regarding the 2000 Directive and show why they do not address the conflict between the Project and the 2000 Directive.

First, the Final EIR quibbles over the wording of the direction “to seek the development and maintenance of 44.5 acres of burrowing owl habitat in some combination on the following three sites: the closed Lafayette landfill adjacent to the PAL/BMX Track, two of the four slopes of the relocated golf course holes and at the San Jose/Santa Clara Water Pollution Control Plant”.

The Final EIR suggests that the phrase “to seek” means that there was no obligation to actually develop or maintain burrowing owl habitat. This objection is in complete contradiction to the public record which was provided as part of my original comments. An earlier September 14, 1999 Council resolution had committed to 1:1 mitigation for burrowing owl habitat. The 44.5 acres in the 2000 directive were needed to meet the 1:1 commitment. Further, the 2000 Directive provided funding for the development of burrowing owl habitat. The voluminous documentation provided in my original comments on the Draft EIR clearly show that the intent of the Council was to develop and maintain burrowing owl habitat. The 2000 Directive contained 9 explicit statements, several of which explicitly discuss actions regarding development of Burrowing Owl habitat. The Final EIR does not provide any evidence that *a single one* of the 9 actions were ever acted on by City staff.

Recognizing the weakness of the first argument, the Final EIR authors go on to argue that even if the Council intended to maintain and develop Burrowing Owl habitat on these lands, that was a voluntary commitment, so City staff didn't really need to do it. It is true, as I stated in my original comments, that the City Council committed itself to mitigation that was beyond that required by the State. The State required 58.5 acres of mitigation. The 2000 City Council (in line with its commitment to 1:1 mitigation) committed to 44.5 additional acres of mitigation.

This was a voluntary action by the 2000 City Council. However, the City Council takes voluntary actions all the time. Once the City Council approves a resolution, that resolution is City policy, and it is mandatory (not voluntary) for the City staff to implement Council's direction. In this case, the City staff neglected to take action on direction given by City Council.

The Final EIR summarizes its argument as follows: "The City (which is the entity primarily responsible for interpreting its past directives and actions) has advised that the directive was not intended to be mandatory." (pg. 3-18) I think the current City Council would be surprised that its directives are not considered mandatory.

Finally, the Final EIR offers one final summary argument. It argues that even if the 2000 Directive meant what it said, and even if it was mandatory for City staff to implement the 2000 Directive:

"implementation of the Project would not definitively conflict with the Directive, as the City could fulfill the Directive by seeking to designate 44.5 acres of land at the WPCP site as burrowing owl habitat" (pg. 3-19)

The final Burrowing Owl Committee report (whose conclusions were approved in the 2000 Directive) identified 44.5 acres of Burrowing Owl mitigation lands; 24 acres on the project site and 20.5 acres on the Water Pollution Control Plant site. As discussed in the Burrowing Owl Committee meetings, 20.5 acres were identified on WPCP land. Because of the joint ownership of the Plant, City staff at that time thought that 20.5 acres would be possible to use as mitigation lands because that number corresponded to Santa Clara's ownership "share" of the Plant. The actual number useable for mitigation was to be determined in negotiation with San Jose. As the 2000 Directive stated in its 2nd required action, the City Manager was directed:

"to work with the City of San Jose in the identification and development of burrowing owl habitat land at the San Jose/Santa Clara Water Pollution Control Plant"

Sixteen (16) years after City Council directed the City staff to negotiate with the City of San Jose to identify and develop Burrowing Owl habitat as WPCP, the Final EIR authors now suggest that this option is still open to prevent the Project from conflicting with the 2000 Directive. If that is a viable option, why hasn't it been done in the last 16 years? Where is the conservation easement identifying 44.5 acres (or 20.5 acres as envisioned in the 2000 Directive) as mitigation land? I agree that technically this is a viable option to meet the 2000 Directive and avoid the conflict between the Project and the mitigation lands that were identified in the 2000 Directive. However given that 16 years have passed since this idea was originally brought forward, if it is a viable option, why this has already not been done in accordance with the 2000 Directive?

In conclusion, the discussion of the 2000 Directive in the Master Response section fails to address the conflict between the Project and the Burrowing Owl mitigation lands as defined in the 2000 Directive that are part of the Project site.

There are options to remove the conflict between the 2000 Directive and the Project. One option would be to do as the Final EIR suggests, negotiate an agreement with the City of San Jose on the jointly owned Plant to set aside 44.5 acres as mitigation for development in the City of Santa

Clara. Any agreement would need to be done prior to any development on the Project. A perhaps simpler option is for the Project proponents to coordinate with the Santa Clara Valley Habitat Plan (SCVHP) on a mitigation payment to the SCVHP corresponding to the 44.5 acres of mitigation land. Although the Project area is not within the boundaries of the SCVHP, the SCVHP (for Burrowing Owl-specific mitigation) has an expanded area which includes the Project area and which can be used for regional Burrowing Owl conservation activities.

Thank you for the opportunity to comment on the EIR. If you have any questions, please contact Jan Hintermeister at (408) 314-5327.

Sincerely,

Jan Hintermeister

Sudhanshu Jain comments on FEIR for Related City Place Project.

The comments below are my own and don't represent the views of the City of Santa Clara Planning Commission.

1. Document states: to result in a total of 28,720 new jobs. Upon build-out of the Project, the jobs/housing ratio would increase from 2.567 (without Project) to 3.023 (with Project) in 2035,

Document also says: *"an additional 11,000 units beyond those contemplated under the General Plan would need to be constructed within the City"*

Additionally the FEIR states:

"County's workers per household ratio is 1.39. Using this ratio, the Project would result in a total demand of approximately 17,813 housing units to support the maximum projected employment from the Project."

There are many, many other office development projects proposed or under development. This FEIR seems to ignore the housing demands of those other commercial developments and assumes that all housing in the City will be allocated to offset the impacts of this particular project. I would like to see table in the **Master Response 1: Jobs/Housing Balance** also include other office development projects and the number of workers for each of those projects in addition to the number of proposed housing units.

I agree in general with the following statement in the FEIR:

It cannot be expected that any single project would maintain the overall jobs/housing balance for the entire City.

BUT this development is an extraordinarily large project with extraordinary impacts. This project significantly worsens the jobs/housing imbalance. For this reason, the Reduced Intensity Option which keeps the City Center Zone as is but reduces the office space by 30% is preferred since it doesn't affect the jobs/housing ratio as much as also reduces trips dramatically from 140,730 to 94,240 per day.

2. Mitigation Measure TRA-1.1 requires the Project Developer to prepare and implement a Transportation Demand Management (TDM) Plan which includes a Transportation Management Agency (TMA). Also the City of Santa Clara is responsible for preparing a Multimodal Improvement Plan (MIP).

I don't see how we can approve the EIR nor Development Agreements without having the TDM plan with TMA and MIP finalized or at the very least a draft copy released. The EIR/FEIR lists only possible measures for a TDM plan but makes no commitments for specific measures. This document does not set any targets even for the number of EV charging stations or percentage of parking spots that will be prewired for EV charging stations.

City of Santa Clara should produce at least a draft copy of Santa Clara's MIP before Council approves the EIR or the development plans. The FEIR should list a deadline for release of a draft of the MIP –

either absolute date or a relative date, committing to say “Two weeks before Council votes to adopt the EIR”

3. I take issue with the following conclusion:

*This review resulted in the conclusion that an **increase in the trip reduction targets in Mitigation Measure TRA-1.1 would not be feasible because the current trip reduction targets are aggressive and reasonably achievable** and would result in trip generation rates that are below those for typical development projects. For the reasons outlined below, increasing the trip reduction targets would not be expected to be successful and therefore is not feasible.*

Trip reduction targets in the EIR/FEIR are not nearly as aggressive as other projects in the Bay Area including some in Santa Clara like new five-story, 177,134 square foot office building at 3607 Kifer Road in which the following conditions were agreed upon:

“Motion/Action: The Commission motioned to adopt the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program with the following additional conditions (6-1-0-0, Ikezi dissenting):

- a 16 percent TDM commitment and monitoring and annual review by a third party
- provide infrastructure for 50 EV spots and provide 20 EV spots initially

4. Document states that North Bayshore targets of 45% SOV requires tenants to implement very aggressive TDM Plans and achieve reductions *not yet achieved* on prior office projects in the area.

That is not true because Stanford has been able to grow dramatically without adding a single 50V.

Also the comments in the Study session that the North of Bayshore project has essentially only one company are not true as there are large developments there proposed by Google, Linked In, Intuit, Peery-Arrillaga, Sobrato and a TMA will cover transportation among all those employers.

For North of Bayshore:

- Google:
 - Net zero parking across 4 sites
 - 36% mode share across all sites
- LinkedIn: Parking cash-out
- **Google offers \$260M across 4 projects**
 - Non-transport: Environmental programs, playground, library play space, bike helmets in schools, affordable housing
 - Transportation:
 - New bike/ped bridge across US-101, numerous bike lanes, bike connections, and safety programs
 - Land for street re-alignment and access road
 - Studies of long-term transportation options
 - 8-to-80 Bike Gap Closure Program
 - \$60M for city-selected transportation projects

North of Bayshore Trip Cap:

- **18,900 trips (AM inbound)**

- **Project and district level**
- **Annual monitoring**

If cap exceeded:

No new development

More TDM + financial penalties

Congestion pricing as a "last resort"

5. The FEIR says: *The City of Santa Clara Director of Planning and Inspection shall approve all aspects of the Plan, including the monitoring party.*

There should be a commitment that the monitoring be performed by a 3rd party and that the monitoring results be presented to or available to the planning commission on an annual basis, similar to what was committed for the Santa Clara Square development.

6. I don't believe that *"trip targets cannot reasonably be preset for each phase."*

We need to gate future phases based on traffic studies of previous phases. There must be some commitment to keep stacking delays and LOS, or better yet VMT, within certain limits

I can't believe that the City of Santa Clara agreed to the following:

"The City of Santa Clara has decided that the TDM Plan and TDM reduction targets will be accomplished through collaboration among the Project Developer, future employers, and the TMA without the use of financial penalties."

I also don't believe the following:

"There is no reason to believe that financial penalties against the Project Developer would in any way cause drivers to alter their modes of transportation."

Why else would Mountain View be applying very stiff penalties for North of Bayshore? I believe that penalties create very strong incentives for the project owner to educate employees and to provide monetary and convenience incentives for employees to not drive alone to work.

I disagree with the following statement:

"There is no reason to believe that financial penalties against the Project Developer would in any way cause drivers to alter their modes of transportation"

If the developer had to pay millions of dollars in penalties, the developer could rather choose to use that money to run more shuttle busses or to give out free transit passes or charge employees to park. All of those would cause some drivers to *"alter their modes of transportation"*

I also disagree with the following statement in the FEIR:

"Therefore, trip targets cannot reasonably be preset for each phase. "

Trip caps for future developments can be tied to a ratio of floor area or number of employees rather than to absolute trip numbers. A formula should be applied that gets more aggressive if LOS or VMT targets are not being met for completed phases.

7. ***I take serious issue with the conclusions in Table 3.3-20 (Project-Specific (Existing with-Project/Background with-Project) Intersection Mitigation)***

The first issue I have is that this traffic analysis does not include the impacts of Tasman East residential developments.

I see serious problems that are not sufficiently mitigated in Table 3.3-20

There are a number of intersections that are going from LOS of "C" to "F" including Lick Mill Boulevard/Tasman

The FEIR states that the following intersections will have an LOS of "F" with project after the proposed mitigation but without considering the added impacts of Tasman East:

Great America Parkway/Tasman Drive*
Lick Mill Boulevard/Tasman Drive
Mission College Boulevard/Montague Expressway
Agnew Road-De LaCruz Boulevard/Montague Expressway
Montague Expressway/Plumeria Drive-River Oaks Parkway

The FEIR simply states that the traffic impacts are Significant and Unavoidable and doesn't calculate an LOS number with mitigation for the following intersections:

Lawrence Expressway/Tasman Drive
Convention Center/Tasman Drive
Centennial Boulevard/Tasman Drive
North 1st Street/Montague Expressway

I'm very surprised that Appendix 5.1 Updated Transportation Tables does not even mention the Montague/101 ramps which get very congested in the morning due to the closeness of the onramp to Great America northbound. I simply don't believe the congestion numbers for the intersection of 101 and Great America/Bowers. I don't believe the calculations include the impacts of the Santa Clara Square development, the Palo Alto Networks buildings, and the new 15 acre acquisition of a Spectra-Physics site Boston Properties on Tannery Way.

I would like to see a list of proposed and ongoing developments for the next 20 years that were included in traffic models for this EIR.

8. ***Measures Role of Electric Vehicles (EVs).*** *Increasing the portion of EVs in the vehicle mix that travels to and from the Project site would decrease the amount of greenhouse gases generated by the Project. However, EVs are still vehicles and do not decrease the Project's impact on intersection and freeway segment operations.*

I don't see why reducing GHG is not an important consideration for the EIR for this development

9. The term sheet says all buildings will be LEED Gold yet EIR says residential will be LEED Silver.

10. Reduced Intensity Alternative. From Figure 5-1 in the DEIR, it shows all surface parking for the office buildings on parcels 1,2 and 3 in the Reduced Intensity Alternative. This seems like a huge waste of

land that could otherwise be devoted to parkland and open space. I really don't understand how the applicant can say that the Reduced Intensity Alternative doesn't meet project objectives.

11. The City is in the process of doing a nexus study for potential impact fees for affordable housing. The vast amount of retail and office space will create a large demand for low income jobs such as waiters and janitors. While the jobs (full buildout 28,720 jobs) are good to improve unemployment, there simply are no places in Santa Clara for those people to live. In order reduce the greenhouse gas implications of long commutes, there should be some commitment towards increasing the stock of affordable housing in the City.

12. I agree with the following very important objectives that are much better in the Reduced Intensity Alternative versus the main proposal for 9.1 million square feet(In FEIR):

"The Reduced Intensity Alternative, as described on pages 5-7 and 5-8 of the Draft EIR, was developed to lessen impacts associated with transportation/traffic, air quality, GHG emissions, and noise. "

"The Reduced Intensity Alternative would result in fewer daily trips (94,240) compared with the Increased Housing Alternative (120,690) and the Project (140,730)"



IRVINE COMPANY

Since 1864

April 26, 2016

Ms. Debby Fernandez, Associate Planner
City of Santa Clara Planning Division
1500 Warburton Avenue, Santa Clara, CA 95050

Re: City Place Final EIR Review (SCH# 2014072078)

Dear Ms. Fernandez:

The purpose of this letter is to comment on the published "Response to Comment Letter 08", referencing the Irvine Company Letter dated November 18, 2015 contained in the City Place FEIR. Irvine Company considers the response in the Final EIR to be inadequate and maintains the position that the Santa Clara Gateway Variant should be excluded from the project description and DEIR. The response states the DEIR "does not consider fiscal impacts, except where they are known to have a demonstrable physical impact". Comment Letter 08 makes several observations about the physical impact of the alternative access road, including the following:

- The access road would create a separate and disconnected parcel resulting in a substandard fragment of land.
- The parcel's irregular shape and size would be impractical to use in an efficient manner for commercial purposes consistent with uses and densities found in the immediate area.
- The resulting parcel configuration will create an inconvenient and hazardous barrier to accessing a large field of existing surface parking south of the new roadway's location and negatively impact existing tenants.
- Issues with a suggested parking deck as a replacement alternative to surface parking. A new parking deck on the new roadway adjacent to existing buildings is an impractical solution to a problem caused by the project variant.
- A Land Use issue is created with the proposed application. Although damage to the underlying fee value may not be a CEQA issue, it certainly is a Land Use issue and should be evaluated when considering leaving the Variant proposal in the plan for future decision making.

The above observations address land use compatibility, traffic safety concerns, parking configuration that are part of the Scope of the DEIR. These are physical impacts that can and should be addressed by removal of this alternative access from the City Place project. It is our request that the City consider all property rights when approving projects, and for this reason we object to leaving the Variant alternative in the City Place project.

Sincerely,

Carlene Matchniff,
Vice President, Entitlements & Public Affairs



1889 Lawrence Road
Santa Clara, CA
95051
408-423-2000

Stanley Rose III, Ed.D.
Superintendent

VIA EMAIL

April 28, 2016

Debby Fernandez
Associate Planner
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
dfernandez@santaclaraca.gov

Re: City Place Santa Clara FEIR; CEQ2014-01180; SCH2014072078;

Dear Ms. Fernandez,

The Santa Clara Unified School District (SCUSD) appreciates the opportunity to respond to the California Environmental Quality Act (CEQA) Final Environmental Impact Report (FEIR) for the proposed development referred to as City Place Santa Clara (Project). The project site is located north of Tasman Drive on the west side of the Guadalupe River at 5155 Stars and Stripes Drive in Santa Clara. The 240-acre site will contain approximately 9.16 million gross square feet of mixed use space. The Project will have impacts to the community the FEIR did not study adequately.

The FEIR did not sufficiently analyze the traffic conditions around the Katherine Hughes Elementary School. Katherine Hughes Elementary is located approximately 500 feet south of Tasman Drive and has a student population of 451. The main intersection leading to the school, Lafayette Street and Calle De Primavera, is approximately 1,000 feet south of the anticipated main entrance and intersection to the Project (Tasman Drive and Lafayette Street). A traffic analysis was completed on an intersection south of Calle De Primavera and Lafayette Street at Hogan Drive however, the traffic count was not completed on a day when school was in session. According to Table 3.3-12 ID 91 (page 3.3-43), the traffic count was completed on August 12, 2014. The first day of school for the 2014-2015 school year was August 18, 2014. Due to the inaccurate traffic count, the FEIR cannot determine the true impact to the students and staff at Katherine Hughes Elementary and the surrounding traffic.

The FEIR was completed prior to the determination of the number or percentage of affordable housing units to be included in the Project. The SCUSD plans for future student growth by the type of residential unit and the average number of students generated by the housing type. The student generation rate for affordable units is vastly higher than it is with market rate units. Without this determination made prior to the issuance of the FEIR, the SCUSD cannot adequately respond to the EIR or FEIR.

The Project is located within the attendance boundaries of George Mayne Elementary, Don Callejon Middle, and Wilcox High Schools. A large student enrollment increase would cause the need for at least another elementary school. George Mayne Elementary is at capacity and due to the FEMA Flood Zones, additional portables cannot be placed on the campus for expansion. Any additional

Board
of Education

...

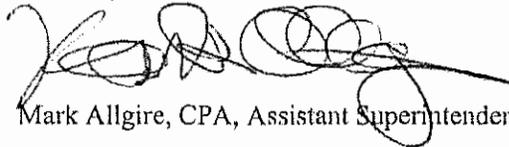
Jim Canova
Albert Gonzalez
Jodi Muirhead
Andrew Ratermann
Michele Ryan Ph.D.
Noelani Sallings
Christopher Stampolis

students in the George Mayne attendance boundary will cause the school to be over capacity. The response to SCUSD comments for the EIR, stated the SCUSD has four closed schools. All of these schools are in the southern portion of the SCUSD and when reopened, the schools will not alleviate any of the overcrowding in the north of the SCUSD. The southern portion of the SCUSD is already impacted and SCUSD is reopening one of the schools in August 2016. The SCUSD will need to locate another elementary school near the Project due to the effect of all of the upcoming development. The SCUSD does not have plans for new school sites in this area, since major development was not anticipated until after 2035, per the City of Santa Clara 2010-2035 General Plan.

California Senate Bill 50 (SB 50) School Impact Fees only cover one third of the cost of the State calculated full mitigation and does not adequately cover the land purchase, design and construction costs incurred by the SCUSD for new or expanded school facilities. The Santa Clara Unified School District is requesting the Project mitigate its impact on the District by paying three times the residential and commercial/industrial School Impact Fee mandated by SB 50 per square foot of the Project.

Please contact Michal Healy, mhealy@scusd.net with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Allgire', with a long horizontal stroke extending to the right.

Mark Allgire, CPA, Assistant Superintendent, Business Services

MA:mh

County of Santa Clara

Department of Environmental Health

1555 Berger Drive, Suite 300
San Jose, CA 95112-2716
(408)918-3400 FAX (408)298-6261
www.EHinfo.org



April 29, 2016

Debby Fernandez, Associate Planner
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1500 Warburton Avenue
Santa Clara, CA 95050
dfernandez@santaclaraca.gov

State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
State.Clearinghouse@opr.ca.gov

RE: City Place Santa Clara Project-Final Environmental Impact Report (FEIR) SCH
2014072078

Dear Ms. Fernandez,

Thank you for the opportunity to comment on the City Place Santa Clara Project - Final Environmental Impact Report (FEIR). The County of Santa Clara Department of Environmental Health is designated as a Local enforcement Agency (LEA) by the California Department of Resources Recycling and Recovery (CalRecycle) and works with CalRecycle to carry out regulatory oversight of solid waste handling and disposal sites at the local level. As a responsible Agency, the LEA would like to make these comments to the FEIR.

The City of Santa Clara's "Response to Comment Letter A7" regarding the November 19, 2015 County of Santa Clara's Department of Environmental Health (SCCDEH) comments (to the DEIR), do not fully address several of the concerns identified in the FEIR. Specifically, responses regarding **A7.1**, **A7.2** and **A7.3** all refer to a **non-existing** "Disposition and Development Agreement (DDA)". SCCDEH is unaware of any such document, any prior meetings addressing the DDA or any draft/final copy of the DDA. Therefore, because of existing circumstances, no statement of mitigation or compliance can be implied.

Additionally, response to comment **A7.4** refers to a **non-existing** "Subsurface Fire Prevention, Detection and Response Plan". SCCDEH is unaware of any such document and no statement of mitigation or compliance can be implied.

Board of Supervisors: Mike Wasserman, Dave Cortese, Ken Yeager, S. Joseph Simitian
County Executive: Jeffrey V. Smith

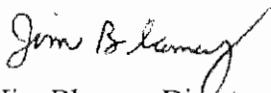
Response to comment **A7.5** refers to a “revised Closure Plan and Post-Closure Maintenance Plan (PCMP). The SCCDEH LEA has not received any application or technical documentation of the PCMP to date. No statement of mitigation or compliance can be implied.

Finally, response to comment **A7.6** refers to proposed buildings on Parcel 5 voluntarily meeting the post-closure land use design requirements consistent with CCR Title 27 Section 21190 (g) for construction within 1,000 feet of landfill waste..... SCCDEH has not received and application, plans or agreements, to date.

Based on the above mentioned SCCDEH responses to the FEIR, we feel the protection for health and safety of the community for years to come, have not been adequately mitigated. We would like to continue to work closely with the City of Santa Clara to adequately address the outstanding concerns of this Department.

Thank you for the opportunity to review and comment on this FEIR. Should you have any questions or concerns, please feel free to contact Paul Tavares, Program Manager (408) 918-1990 Paul.Tavares@deh.sccgov.org or Stan Chau (408) 918-1961 Stan.Chau@dch.sccgov.org.

Sincerely,



Jim Blamey, Director
Department of Environmental Health
County of Santa Clara

Cc: Terry Seward, San Francisco Bay RWQB
Wes Mindermann, CalRecycle
Bob Van Heuit
Barry Milstone



April 29, 2016

Rajeev Batra, Acting City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Subject: City Place Santa Clara Final Environmental Impact Report (FEIR)

Dear Mr. Batra:

VTA has reviewed the Final Environmental Impact Report (FEIR) for the City Place Santa Clara Project (Project), which contains the City's responses to VTA comments on the Draft EIR. We have the following concerns:

Significant Impacts on Transit Travel Times

CEQA Analysis/Mitigation Measures

VTA believes the EIR does not adequately address the identified significant impact to transit travel times. As the Lead Agency, the City is required to identify available and feasible mitigation measures to avoid, minimize, rectify, reduce, or compensate for a significant impact (2015 CEQA Statute and Guidelines, Section 15370). In the DEIR, the City found that the impact to transit operations was significant *and unavoidable* (TRA-11). However, in our comments, VTA suggested several mitigation measures including Transit Signal Pre-emption for light rail, commitment of resources to monitor and maintain traffic signals to ensure Transit Signal Pre-emption during the 15-year Project construction period, construction of an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard, and grade separation of VTA light rail through the Tasman corridor. The FEIR dismissed all of VTA's suggested mitigation measures with minimal explanation, and did not offer any other measures, even though additional feasible measures exist. For example, if the City chooses not to implement full Transit Signal Pre-emption as VTA requested, the City could implement strengthened Transit Signal *Priority* for light rail with a Project Developer-funded monitoring and maintenance program.

Transit Signal Pre-emption

FEIR Response A12a.2, in part, opposes VTA's suggested Transit Signal Pre-emption mitigation measure because the City believes such a measure would favor only light rail to the exclusion of other modes, including emergency response vehicles, vehicles, bicyclists, and pedestrians. **VTA does not concur with the EIR's conclusion and notes that traffic signal technology can allow emergency response vehicles a higher level of pre-emption than all other modes.** VTA believes that a reasonable balance between all modes that still prioritizes light rail movement can be developed in partnership between VTA and the City. Additionally, VTA, as the designated Santa Clara County Congestion Management Agency (CMA) overseeing the Congestion

Management Program (CMP)¹ exempts the effect of transit priority measures and allows intersections to be analyzed as if transit priority didn't exist in order to promote transit use.²

Monitoring and Maintenance of Signals

VTA appreciates the FEIR's discussion regarding the City's monitoring of signalized intersections and updating of signal timings when traffic patterns change, and its commitment to monitoring signals during construction (FEIR pg. 4-74). **VTA requests that the City commit to closely coordinating with VTA on such monitoring and signal timing modification activities** to ensure that transit priority measures are not significantly degraded as they have been over the past two years. The City and VTA entered into a Cooperative Agreement in 1999, which defines mutual expectations for light rail system operation and maintenance. This Agreement must be updated to address transit delay issues (described further below), as well as to ensure that maintenance obligations are met.

Proposed New Intersection/Crossing of Light Rail

New Intersection – Delay to Light Rail

The documentation in the EIR regarding delay to light rail due to the proposed new intersection is inadequate, and VTA has determined that the delay will be substantially greater than stated in the FEIR. VTA's DEIR comments strongly opposed the introduction of a new signalized intersection at Tasman Drive and Avenue C, in part due to the delay caused to light rail. The City's purported analysis of transit delay due to the new intersection in the FEIR concluded "that this new signalized intersection would cause small increases in light rail vehicle delay (an average of less than 5 seconds per train and a maximum of 15 to 20 seconds per train)" (FEIR pg. 4-74). VTA has determined the delay will be substantially greater. The City failed to adequately describe in the FEIR the methodology used in performing the transit delay analysis, nor has it released this analysis despite repeated requests from VTA over several months. As such, the documentation in the EIR is inadequate.

In addition, as stated in our DEIR comment letter, VTA recommends that the City condition the Project Developer to construct new roadway connections identified in the DEIR early in the project phasing, such as the extension of Lick Mill Boulevard north of Tasman Drive and the connection of Great America Way to Lafayette Street, and explore other ways to improve connectivity in the Project vicinity. These new roadway connections would provide additional options for vehicular access to the project site and would reduce the need for the proposed new intersection.

¹ VTA oversees the methodologies for evaluating the transportation impacts of land use decisions on the CMP System.

² Valley Transportation Authority. *Traffic Level of Service Analysis Guidelines*, June 2003. Available at <http://www.vta.org/cmp/technical-guidelines>

Existing Intersections – Delay to Light Rail

The FEIR response only addresses additional light rail delay at the proposed new intersection. Light rail would suffer from delay at existing intersections as well, due to the increased congestion along Tasman Drive caused by the Project. Prior to the issuance of the DEIR, VTA requested an analysis of light rail delay at additional intersections along Tasman Drive within the Project vicinity. VTA was not provided with or consulted about this analysis, and the FEIR does not include such analysis.

VTA underscores the ongoing reliability issues with the existing signal operations on Tasman Drive, operated by the City of Santa Clara. This has resulted in VTA light rail trains delayed by an average of approximately 45 seconds per train, resulting in estimated increases in operating costs of approximately \$101,000 per year³. VTA expects to double the number of trains passing through this segment in late 2017 concurrent with the opening of BART Silicon Valley Phase 1, which would likely double the operating cost impact of any delays experienced along this segment. The Project will exacerbate this situation both at the new intersection (if built) and at other intersections along Tasman Drive where traffic congestion will increase as a result of the Project, as documented in the EIR.

The FEIR's focus on average delay per vehicle is misleading. Due to the nature of light rail operations, a small delay at one intersection can lead to cascading delays at other intersections throughout the system, ultimately reducing transit speed and reliability and inconveniencing transit passengers. This reduces the attractiveness of transit as a mode of travel, counteracts VTA's efforts to improve transit ridership system-wide, and results in a greater share of Project trips taken by automobile, leading to increased environmental impacts from transportation associated with the Project. VTA needs to protect the \$90 million taxpayer investment made over the last two years to speed up the light rail system.

New Intersection – Safety

VTA's DEIR comments strongly opposed the introduction of a new signalized intersection at Tasman Drive and Avenue C due to safety concerns to pedestrians, light rail vehicles, and autos. As noted in the FEIR, any new crossing of the light rail tracks would require approval of VTA and California Public Utilities Commission (CPUC). **The new crossing described as Tasman Variants 1 and 2 in the EIR will not be supported by VTA.**

Grade-separated Pedestrian Crossing

VTA's DEIR comments requested an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard to protect the safety of the travelling public, which the City dismissed in the FEIR. VTA is authorized by the California Public Utilities Code to assure the safety of passengers, pedestrians, vehicles and the system itself, and must comply with applicable CPUC regulations. Prior to the construction of the Project roadways, CPUC/VTA will likely require

³ This delay estimate is based on observed data about train dwell times and the percent of trains stopping at signals between Lick Mill Boulevard and Great America Parkway on Tasman Drive, from VTA Automated Passenger Counters in March through May 2014. The operating cost estimate is based on VTA's fully allocated operating costs for light rail service as of Spring 2016.

safety review of existing and proposed crossings, which may conclude that one or more grade-separated crossings are warranted. VTA has concerns about the safety of pedestrians, especially during stadium event days, in spite of the special closure of Tasman and guided event control. **Given these existing conditions and the additional pedestrian activity that will be generated by the Project, VTA's position is that grade-separated crossings are warranted as part of the first phase of the Project.**

ACE/Capitol Corridor Great America Station Integration with the Project

VTA's DEIR comments requested that the City require the Project Developer to construct the near-term transit center at the ACE/Capitol Corridor Great America Station, discussed between the City, VTA, ACE, and the Project Developer prior to the issuance of the DEIR. The near-term transit center concepts were not acknowledged in the DEIR. The FEIR describes the Project's integration with the ACE/Capitol Corridor Great America Station, and clarified two integration options, the "Base" and "Variant 2" schemes. The Base scheme allows for the continued operation of VTA/ACE shuttle buses with no enhancements, and the Variant 2 scheme permits the creation of an enhanced transit plaza and additional bus/shuttle loading positions. In VTA's review, the same land area is available for near-term transit center improvements in each scheme; only the roadway configurations are different. Specifically, Variant 2 includes the new intersection on Tasman Drive, which allows left turns crossing the tracks. VTA's position is that other feasible options exist that do not cross that tracks, i.e. right in-right out access at Tasman (see attached **Exhibit A**).

The FEIR states that only with the Variant 2 scheme would there be room to provide the enhanced transit plaza and additional bus/shuttle loading positions. **VTA believes sufficient room exists to provide these near-term transit center improvements in the base scheme without the new intersection. VTA believes the Project Developer and the City are leveraging these improvements to push VTA and other public agencies to accept the proposed new intersection on Tasman Drive.**

Transportation Demand Management Program

Mitigation Measure TRA-1.1 requires the Project Developer to prepare and implement a TDM Plan to reduced vehicle trips generated by the Project and therefore minimize roadway system impacts and greenhouse gas emissions. In VTA's DEIR comment letter, VTA provided a number of comments on the Project's Transportation Demand Management (TDM) program. Several of our comments are addressed adequately in the FEIR; however, VTA would like to highlight three areas where we believe the City is not taking every feasible action to mitigate the Project's transportation impacts.

The Monitoring Party

Master Response 2 states (in part):

It has been recommended that the monitoring party be specified as the City or a third party. The monitoring process and monitoring party will be detailed in the TDM Plan. The City of Santa

Clara Director of Planning and Inspection shall approve all aspects of the Plan, including the monitoring party.

VTA believes that the City can and should specify that TDM monitoring will be performed by the City or a third party at the Project approval stage. The language in the FEIR leaves open the possibility that monitoring will be self-reported by the Project Developer. This does not match best practices in Santa Clara County, such as in recent EIRs for development Projects in Mountain View, Sunnyvale, Cupertino, and at Stanford University. There is no reason why having the City or a third party conduct the monitoring is infeasible. A City or third-party monitoring arrangement ensures that monitoring will be conducted in an objective and consistent way using methods and personnel that are accountable to the City. This arrangement is therefore more likely to lead to the achievement of the specified trip reduction targets, and therefore provides greater likelihood of reducing the significant transportation impacts of the Project.

Enforcement of TDM Plan

Master Response 2 states (in part):

The City of Santa Clara has decided that the TDM Plan and TDM reduction targets will be accomplished through collaboration among the Project Developer, future employers, and the TMA without the use of financial penalties... The City of Santa Clara Director of Planning and Inspection would have authority to approve the TDM Plan in circumstances when the monitoring process shows that the trip reduction targets are not being met. The Director of Planning and Inspection would do so based upon his or her reasonable and professional judgment, and this would be allowable as the trip reductions are stated as goals rather than as requirements.

VTA is concerned that in the FEIR, it appears that the City is weakening the commitment to the TDM targets discussed in the DEIR text. The FEIR states that the trip reductions “are stated as goals rather than as requirements.” This, combined with the lack of penalties and ambiguity regarding the monitoring party, combine to form a weak TDM framework. This weak framework makes it less likely that the Project will achieve the specified trip reduction targets, and therefore less likely to reduce the significant transportation impacts of the Project. It is feasible and prudent to convert these trip reduction targets into requirements, and to require an enforcement mechanism; and we can find no legitimate reason for not doing this. Therefore, VTA requests that the City revise this mitigation measure to set trip deduction requirements and an enforcement mechanism.

Reduction Targets for Retail Employees

Master Response 2 states (in part):

A trip reduction target for retail employees was not set for practical reasons: 1) traffic impacts are identified during the AM and PM peak hours and retail employees often travel outside of these hours, and 2) retail employee parking is not typically in a separate area, making monitoring difficult.

VTA disagrees with the City’s FEIR response about the practicality of setting such a trip reduction target for retail employees. Regarding the hours of travel, while it may be true that

retail employees often travel outside of AM and PM peak hours, the amount of retail in the Project (up to 1.7 million square feet of retail uses, which translates to 3,000 to 5,000 retail employees given typical employee density rates) means that just the portion of retail employees traveling during AM and PM peak hours will cause a substantial contribution to roadway congestion. Given the Project's significant transportation impacts, it is therefore necessary to manage these trips. Regarding the statement about retail employee parking, all parking in the City Place development will be controlled by the Project Developer, and the vast majority will be in parking structures located in the City Center area. It is fully within the Project Developer's control to restrict retail employee parking to certain areas, which would make it feasible to monitor employee parking patterns within the framework of a retail employee trip reduction target. Therefore, implementing reduction targets for retail employees is a feasible mitigation measure and VTA reiterates our request for the City to include this action.

Multimodal Improvement Plan

The Draft EIR identified that the Project would have a significant impacts on 19 CMP intersections⁴. Of these, some have identified measures to fully mitigate Project impacts, and some have identified measures that only partially mitigate Project impacts, and others have no feasible mitigation measures. VTA commented on these impacts in our DEIR letter, and requested that the City prepare an area-wide Multimodal Improvement Plan (formerly 'Deficiency Plan') to address Project impacts on the CMP transportation system.

Master Response 3 states (in part):

Therefore, if the Project is improved, a MIP would be needed to address two CMP intersections that have significant project impacts with either no feasible or only partial mitigation measures within the City of Santa Clara and three CMP intersections that have significant cumulative impacts with either no feasible or only partial mitigation measures (within the City of Santa Clara)... As the member agency, the City of Santa Clara is responsible for preparing the MIP.

VTA supports the City's addition of Mitigation Measure TRA-1.3, to prepare and implement a Multimodal Improvement Plan (MIP). As noted in the FEIR, the purpose of a MIP is to improve system-wide traffic flow and air quality by identifying improvements to other modes in lieu of making physical traffic capacity enhancements. MIPs allow local jurisdictions to adopt innovative and comprehensive transportation strategies for improving system wide LOS rather than adhering to strict traffic level of service standards that may contradict other community goals.

VTA agrees with much of the discussion in the 'Response' section of Master Response 3 on Multimodal Improvement Plans. However, we would like to make several points:

- **Based on VTA's Board-adopted requirements and past precedent in Santa Clara County, the MIP should include County-controlled as well as City-controlled**

⁴ Reflects Existing With-Project conditions.

intersections. The VTA Deficiency Plan Requirements, adopted September 2010⁵, state on page 8: “*Deficiency plan preparation for County expressways and expressway intersections within the CMP System are the responsibility of the cities through which the expressways travel. The city preparing a deficiency plan for an expressway or expressway intersection will involve the County in the development of the deficiency plan.*” Therefore, the proposed MIP must include the County-controlled CMP intersections within the City of Santa Clara where the Project is causing a significant impact per the CMP level of service standard and cannot fully mitigate the impact.

- **Also based on the guidelines and precedents, the City of Santa Clara must participate fully in the North San Jose Deficiency Plan for impacted intersections in the City of San Jose.** The VTA Deficiency Plan Requirements state on page 28: “*The CMP requirements for maintaining the CMP traffic LOS standard and participation in deficiency plans are multi-jurisdictional. In other words, if a development project in City A is shown to impact a CMP System roadway in City B, which has a deficiency plan, then City A is responsible for ensuring that the development project either mitigates its impact on the deficient facility or participates fully in City B’s deficiency plan.*” Therefore, the City of Santa Clara must participate fully in the existing North San Jose Deficiency Plan for any CMP intersections the Project impacts in North San Jose. VTA is aware that City of Santa Clara staff has been consulting with City of San Jose staff regarding the City Place Project and EIR, and VTA expects that this coordination will need to continue into the MIP preparation period to ensure that the City of Santa Clara meets its obligations regarding the North San Jose Deficiency Plan.
- **The MIP is intended to identify multimodal actions that can help offset auto congestion impacts on the regional roadway system. Therefore, the City should address the Tasman light rail line, bus and shuttle service and facilities, and pedestrian and bicycle accommodations in the MIP.** The VTA Deficiency Plan Requirements state on page 17: “*Member Agencies, in collaboration with VTA and other participating agencies, shall include programs, actions and improvements selected from the Air District’s most recent Deficiency List and transportation control measures listed in the Air District’s Clean Air Plan.*” The list of potential measures includes but is not limited to Signal Preemption for Transit Vehicles, Preferential Treatment for Buses and In-Street Light Rail Vehicle (LRVs), Transit Centers, Stricter Travel Demand Management/Trip Reduction Ordinance, Improved Roadway Bicycle Facilities and Bike Paths, and Improved Pedestrian Facilities (see attached **Exhibit B**). Master Response 3 and responses to several individual comments letters in the FEIR identify potential multimodal improvements that could be included in the MIP.

⁵ Valley Transportation Authority. *Deficiency Plan Requirements*, September 2010. Available at <http://www.vta.org/cmp/technical-guidelines>

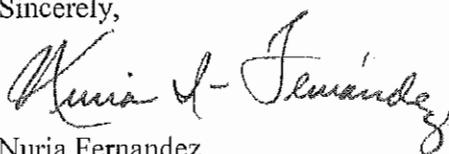
- **Per state Congestion Management Program statute, the VTA Board will need to approve the MIP after approval by the Santa Clara City Council.** California Government Code Section 65089.4 (d) states in part: *“A local jurisdiction shall forward its adopted deficiency plan to the agency within 12 months of the identification of a deficiency. The agency shall hold a noticed public hearing within 60 days... Following that hearing, the agency shall either accept or reject the deficiency plan in its entirety... Failure of a local jurisdiction to comply with the schedule and requirements of this section shall be considered to be non-conformance...”* As noted in FEIR Master Response 3, “The City of Santa Clara would risk losing new gas sales tax revenues from Proposition 111 if the CMP facilities within its jurisdiction exceed the CMP LOS threshold and it does not have a timely-adopted MIP.” Therefore, it is in the City’s interest for the City and VTA to coordinate and agree upon the scope of the MIP prior to its development and the City Council’s adoption. During this scoping phase, the City and VTA will discuss the extent of freeway analysis as well as other elements of the MIP scope.

Freeway Impacts and Voluntary Contributions to Regional Improvements

The FEIR states *“The City of Santa Clara is supportive of the Project Developer making a voluntary contribution to VTA. The amount of the contribution will be determined using the process discussed between the City of Santa Clara and VTA staff and will be based on a percentage of Project traffic added to the freeway segments with significant impacts”* (pp. 4-74 to 4-75). VTA reiterates our request that the Project allocate at least \$60 million in contributions to regional transportation system improvements that would lessen or offset the impacts identified in the EIR. VTA requests that the City state this commitment clearly in the Project transactional/approval documents.

Please do not hesitate to contact John Ristow, Director of Planning and Program Development, at (408) 321-5713 if you have any questions or to discuss the topics that VTA has raised in this letter.

Sincerely,



Nuria Fernandez
General Manager/CEO

**Table 4-1
Deficiency Plan Action List**

A. BICYCLE AND PEDESTRIAN MEASURES

- A1. Improved Roadway Bicycle Facilities and Bike Paths
- A2. Transit and Bicycle Integration
- A3. Bicycle Lockers and Racks at Park and Ride Lots
- A4. Bicycle Facilities and Showers at Developments
- A5. Improved Pedestrian Facilities
- A6. Pedestrian Signals
- A7. Lighting for Pedestrian Safety

B. TRANSIT

- B1. Improvement of Bus, Rail, and Ferry Transit Service
- B2. Expansion of Rail Transit Service
- B3. Expansion of Ferry Services
- B4. Preferential Treatment for Buses and In-Street Light Rail Vehicle (LRVs)
- B5. Transit Information and Promotion
- B6. Transit Pricing Strategies to Encourage Ridership and Reduce Transit Vehicle Crowding
- B7. Transit Fare Subsidy Programs
- B8. Transit Centers
- B9. Improved and Expanded Timed Transfer Programs
- B10. Improved and Expanded Fare Coordination
- B11. Signal Preemption by Transit Vehicles
- B12. Bus Stop Bulbs
- B13. School Bus Transit Service

C. CARPOOLING, BUSPOOLING, VANPOOLING, TAXIPOOLING, JITNEYS, CASUAL CARPOOLING AND OTHER SHARED RIDES (Ridesharing)

- C1. Preferential Treatment for Shared Ride Vehicles
- C2. Increased Use of Commuter/Employer Services

D. HIGH OCCUPANCY VEHICLE (HOV) FACILITIES

- D1. Preferential Treatment for HOVs
- D2. Bus and Carpool/Buspool/Vanpool/Taxipool Priority Lanes on Local Arterials
- D3. Accelerated Implementation of the 2005 HOV Master Plan
- D4. HOV to HOV Facilities
- DS. Direct HOV Lane Entrance/Exit Ramps to Arterials and Space Generators

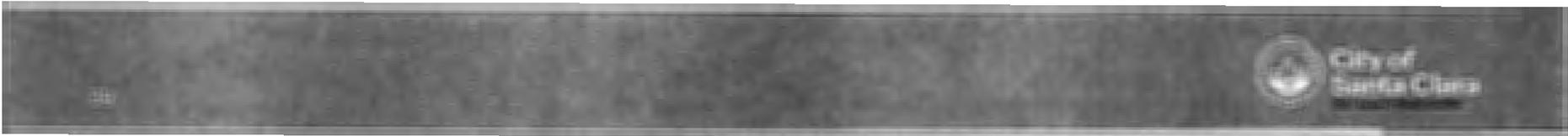
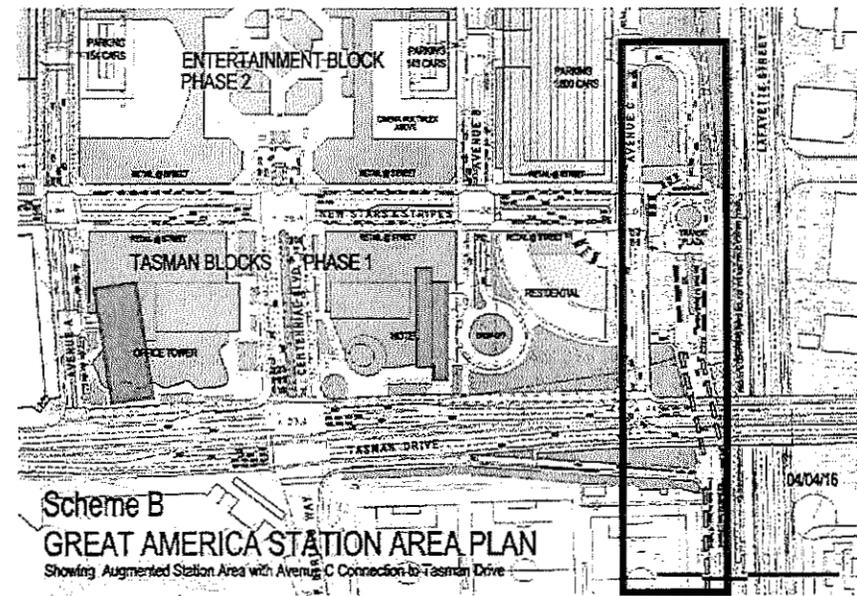
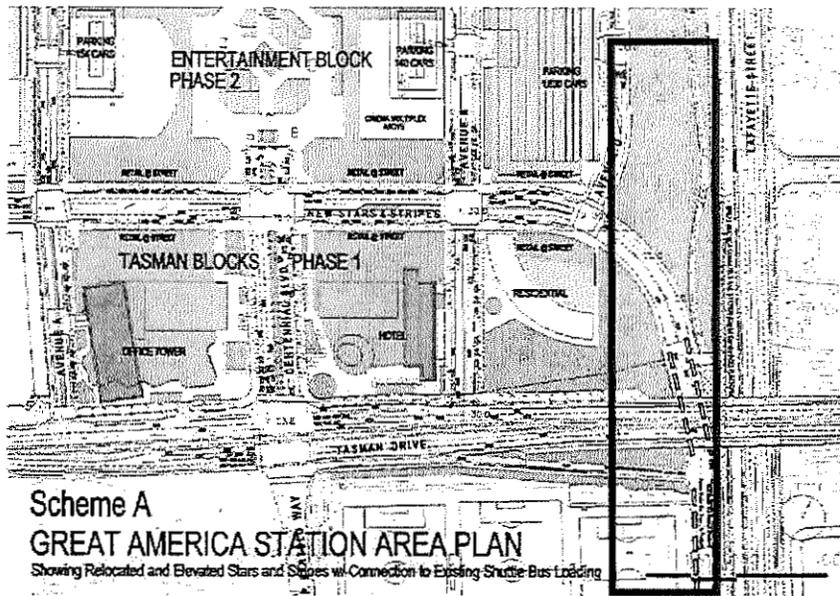
E. OTHER TCMs, RELATED MEASURES

- E1. Stricter Travel Demand Management/Trip Reduction Ordinance
- E2. Expanded Public Education Programs
- E3. Child Care Facilities at or close to Employment Sites, Transit Centers and Park and Ride Lots
- E4. Retail Services at or close to Employment Sites, Transit Centers and Park and Ride Lots
- E5. Telecommuting Centers and Work-at-Home Programs
- E6. Parking Management

F. TRAFFIC FLOW IMPROVEMENTS

- F1. Preferential Treatment of HOVs (See measures B4 and C1)
- F2. Ramp Metering
- F3. Auxiliary Lanes
- F4. Signalization Improvements
- F5. Computerized Traffic and Transit Control/Management on Arterials
- F6. Turn Lanes at Intersections
- F7. Turn Restrictions at intersections
- F8. Reversible Lanes
- F9. One-Way Streets
- F10. Targeted Traffic Enforcement Programs
- F11. Restrictions on Curb Side Deliveries and On-Street Parking

Transit Improvements



File: 33212
San Tomas Aquino Creek

April 29, 2016

Ms. Sharon Goei
Acting Director of Planning and Inspection
City of San Clara
Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

Subject: City Place Santa Clara Final Environmental Impact Report

Dear Ms. Goei:

The SCVWD staff reviewed the subject document for response to our comments on the Draft Environmental Impact Report (DEIR), in our letter dated November 23, 2015. Following are our comments to the responses.

Response A11.3, second Paragraph, first sentence: There are environmental impacts associated with alternate means of conducting sediment removal that the bridge installation will impose on the District. These alternate methods would require in-channel work, and have environmental impacts different from current removal methods. There may also be a loss of conveyance capacity if in-channel work is not possible due to physical or regulatory constraints.

Response A11.5, the sentence: "The levee along..... by USACE" is not correct. The levees are owned by the District. Operations and maintenance are conducted in compliance with USACE requirements because the project was sponsored by the USACE.

Response A11.8, last paragraph on page 4-62: The sentence "The existing design flow in San Tomas at Tasman Drive" must be revised to state "The existing 100-year flow in San Tomas at Tasman Drive. The corresponding 100-year water surface elevations must be verified with respect to the appropriate datum, either NGVD 29 or NAVD 88.

Response A11.10, page 4-65: Please add the sentence in bold "Levees can fail because of earthquakes or storm events, if not properly maintained or reinforced to withstand potential stresses. **Levees can also fail in the event of storms of greater magnitude than considered in project design i.e. the 100-year event, irrespective of maintenance.**"

Furthermore, the discussion under levee failure states that “This would reduce the potential for the project ... flood risks.” A project design that does not increase flows will **not reduce** flood potential, the design will simply **not increase** the potential.

The second paragraph in response to levee failure seems be mix discussion of levee failure and dam inundation. The discussion on dam failure should also recognize the distance from the dam, the time for flow to reach the site and the depth of flow. While risk of dam failure is remote, the impact of damage may be large and should be recognized and discussed in greater detail.

Responses A11.11 through A11.13 relate to District comments on groundwater pumping, “safe yield,” and the potential for subsidence to resume. Sustainable yield is defined in the Sustainable Groundwater Management Act as “the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.” It’s important to note that this definition refers to the “maximum quantity,” implying that this volume may not be available in all years without causing undesirable results such as overdraft or subsidence.

The response notes demand reduction through the Water Shortage Contingency Plan as a means to prevent water levels from falling below subsidence thresholds. However, in 2014, countywide water use reduction fell short of the District’s 20% water use reduction target, reaching only 13%. That fall, water levels in Santa Clara and San Jose came within 15 feet of subsidence thresholds in areas with over 10 feet of historical subsidence. This is despite City groundwater use of only 14,096 acre-feet as noted in the Water Supply Assessment (WSA). Total 2014 pumping in the Santa Clara Plain was basically equivalent to the cumulative projection of 114,000 acre-feet noted for individual water service providers in Table 2 of the WSA. In 2015, groundwater levels improved due to significant water use reduction by the community, retailers’ shift to non-groundwater sources, and increased recharge, but groundwater storage has not recovered to the normal stage. Water use reduction measures through Water Shortage Contingency Plans are an important tool, but related success in preventing undesirable results is not guaranteed.

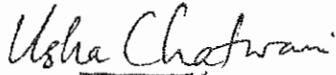
As noted previously, the District will be working to update estimates of sustainable yield. We look forward to continued collaboration with the City of Santa Clara on groundwater management issues, and encourage City input during update of the District’s Groundwater Management Plan.

Thank you for the opportunity to comment on the FEIR and we look forward to the resolution of the comments.

Ms. Sharon Goel
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April 29, 2016

I can be reached either by phone at (408) 630-2731 or by email at uchatwani@valleywater.org with any further questions.

Sincerely,



Usha Chatwani, P.E. CFM
Associate Civil Engineer
Community Projects review Unit

CC: L. Lee, S. Tippets, A. Rouhani, Liang Xu, E. Zedler, V. De La Piedra, T. Hemmeter,
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April 29, 2016

VIA E-MAIL AND FEDERAL EXPRESS

Debby Fernandez, Associate Planner
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Santa Clara, CA 95050

Sharon Goei, Acting Director of Planning & Inspection
(SGoei@SantaClaraCA.gov)
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Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

Re: *City Place Santa Clara Project*
Environmental Impact Report SCH No. 2014072078
Planning/CEQA File No. PLN2014-10554/CEQ2013-01180

Dear Ms. Fernandez:

We have been retained by the City of San José in the above-referenced matter. San José appreciates the opportunity to comment on the Final Environmental Impact Report ("Final EIR") for the proposed City Place Santa Clara Project ("Project"). San José has reviewed the Project from the outset, and has submitted comments on the Draft Environmental Impact Report released in 2015 ("Draft EIR"), as well as on the previous environmental documents prepared for the Project.¹

¹ See Comment Letters A17a and A17b from Harry Freitas, Director, Department of Planning, Building & Code Enforcement, dated November 23, 2015, and incorporated in

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April 29, 2016
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San José is gravely concerned about the Project's numerous and far-reaching significant, unavoidable environmental effects on a site currently planned for recreational use through 2035. The growth that would result from the Project is not envisioned in the City's recently adopted General Plan, or in *Plan Bay Area*, the Bay Area's Sustainable Communities Strategy ("SCS") under SB 375, adopted in 2013. Instead of a golf course, the City now proposes to approve a massive commercial center that will flood the area with traffic, clogging roadways and intersections surrounding the Project site, including North San José.

There is nothing remotely sustainable or green about the Project as proposed, which would add more than 140,000 daily vehicle trips to a transportation network that is already bursting at the seams, and would dump thousands of additional vehicles into the City of San José without proposing feasible mitigation measures. By adding almost 20 times more jobs than housing units, the Project would conflict with numerous General Plan policies designed to reduce the City's existing jobs/housing imbalance. By focusing on commercial and retail uses over housing, the Project would also conflict with the balanced growth objectives of *Plan Bay Area*, and its mandate to reduce greenhouse gas emissions from vehicle use. The environmental consequences of this unplanned growth are severe. The Final EIR identifies 28 significant unavoidable impacts, ten of which are cumulative, including impacts to traffic, air quality, greenhouse gas emissions, and noise. The Final EIR also recognizes that, due to the unplanned nature of the development, the Project's induced housing demand would have to be borne by other jurisdictions in the region, including the City of San José. In short, while the Project would bring more than \$80 million in annual revenue to the City of Santa Clara, its impacts would be borne by the residents of neighboring San José. The City's consideration of a Project that in one fell swoop would bring tens of thousands of people and cars to a site planned for recreational use turns responsible planning on its head.

To address the Project's General Plan inconsistency, the City proposes to amend the General Plan to add a new land use designation designed to accommodate the Project. This amendment does nothing to cure the Project's inconsistency with General Plan policies balancing jobs and housing or the resulting severe secondary environmental effects. Equally problematic, the limited scope of the amendment creates internal inconsistencies, resulting in a legally inadequate General Plan.

The City of San José opposes any action on the Project until these issues are resolved, and requests that the City delay further consideration of this Project until it cures the Project's General Plan inconsistencies, and a legally adequate EIR is prepared

full by this reference. See also Comment Letter A1 from the Norman Y. Mineta San José International Airport, dated October 27, 2015.

City of Santa Clara
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in compliance with CEQA. As currently designed and drafted, the Project and the EIR suffer from the following legal flaws:

- The Project is fundamentally inconsistent with General Plan policies designed to promote a jobs/housing balance.
- The General Plan Amendment proposed for the Project renders the General Plan internally inconsistent.
- The Final EIR fails to identify feasible mitigation measures to reduce significant land use impacts, and associated significant secondary impacts.
- The Final EIR's evaluation of Project area intersections is under-inclusive and fails to evaluate significant traffic impacts in the City of San José.
- The fee-based transportation mitigation measures in the Final EIR are not based on an actual plan of mitigation that will be implemented, nor do they accurately estimate total costs or Project fair share costs for mitigation measures within San José.
- The Project air quality analysis fails to explain how air pollutants emitted by the Project, which greatly exceed Bay Area Air Quality Management District ("BAAQMD") thresholds, would impact public health.
- The Final EIR fails to incorporate feasible mitigation measures to reduce the Project's significant air quality impacts, and improperly rejects a measure requiring the Project sponsor to purchase emissions offsets.
- The analysis of greenhouse gas emissions fails to analyze the impacts of sea level rise on the Project's future users and residents.
- The Final EIR's consideration of the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan is legally inadequate and fails to acknowledge the Project's location in the Plan's extended study area.
- The biological resources analysis understates impacts to burrowing owl and fails to adequately analyze the effects of Project nitrogen deposition on grassland habitat.

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April 29, 2016
Page 4

- The Final EIR fails to consider a reasonable range of alternatives, omitting alternatives that would reduce the Project's significant effects while meeting its basic objectives.
- The Final EIR's project description fails to include the whole of the action, resulting in an understatement of Project impacts.

I. THE PROJECT IS INCONSISTENT WITH THE CITY OF SANTA CLARA'S GENERAL PLAN

The majority of the Project site is designated in the 2010-2035 General Plan as Parks/Open Space and assumed to operate as a golf course through 2035. (Draft EIR at 3.1-2.) The 9.16 million square feet of new development proposed by the Project, equal to almost 160 football fields of development, and the 25,270 new employees that would result, is not part of any planned development identified in the City's General Plan. As acknowledged in the Final EIR, the Project would be inconsistent with goals and policies in the City's General Plan that promote a jobs/housing balance and "would exacerbate the city's job/housing imbalance significantly" by proposing development that would create 24,760 net new jobs but at most 1,360 residential units (Scheme A proposes to house 3,270 residents). (See Draft EIR at 3.1-20; Table 3.12-6.) This exacerbated imbalance would lead to other General Plan inconsistencies, including inconsistency with Housing Element policies, policies on reducing VMT and traffic congestion, as well as policies promoting local and regional air quality and reduced GHG emissions.

The Project proposes a new General Plan land use designation – "Urban Center/Entertainment District" – intended for local and regional scale destinations that feature a mixture of uses, including commercial retail and services, urban residential, hotel, and employment generating uses. (Draft EIR at 2-3.4.) The City also proposes to amend the Climate Action Plan element of the General Plan to reflect the new land use designation. (Draft EIR at 2-34.) Unfortunately, the City stops far short of its legal mandate to maintain an internally consistent General Plan.

A. General Plan Consistency Requirements

The California Supreme Court has held that the General Plan is the "constitution for all future development." (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-71; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815 [General Plan provides "a charter for future development" and sets forth "a city or county's fundamental policy decisions about such development."].) Development projects can only be approved when they are consistent with the General

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Plan (“vertical consistency”). (See *Friends of Lagoon Valley*, 154 Cal.App.4th at 815; *Citizens of Goleta Valley*, 52 Cal.3d at 570.)

The General Plan also must be internally consistent. (Gov. Code § 65300.5.) If not, the General Plan is legally inadequate and the required finding of consistency for land use approvals cannot be made. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 286 [overruled on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 n.11].)

B. The Project is Inconsistent with the General Plan

As proposed, the Project is inconsistent with numerous General Plan policies designed to improve the jobs/housing balance. Santa Clara’s charter city status does not exempt it from the Government Code’s vertical consistency requirements. (See, e.g., Gov. Code §§ 66473.5; 66474(a); 65867.5.)

1. The Project Would Negatively Impact the City’s Existing Jobs/Housing Imbalance Resulting in Fundamental General Plan Policy Inconsistencies

The City of Santa Clara has an existing and substantial jobs/housing imbalance. As of 2008 (existing conditions at the time the City’s General Plan was prepared), Santa Clara had 106,680 jobs and only 44,166 housing units, a jobs/housing ratio of 2.42. (General Plan Table 5.2-1, Ch. 5, p. 6). With construction of the Project, the jobs/housing ratio would increase to 2.73 by 2035, significantly worse than the predicted ratio without the Project. (Draft EIR, Table 3.1-3, at 3.1-11.) Per Association of Bay Area Government’s (“ABAG”) forecasts, the ratio with the Project would be even worse – 3.15 in 2030 and 3.04 in 2040.²

According to the City’s General Plan Housing Element, “[a]t a regional scale, a jobs-housing imbalance results in longer commutes and increases traffic congestion and transportation-related environmental impacts.” (General Plan, p. 8.12-25.) This is particularly true in the Bay Area, a region that has experienced robust job growth without

² Draft EIR Table 3.1-6 at 3.1-13 (Source: ABAG, Projections 2013, <http://www.abag.ca.gov/planning/housing/projections13.html>). ABAG’s 2000-2025 growth projections for Santa Clara County show the City of Santa Clara with a 2025 jobs/housing ratio of 3.35. San José’s ratio is projected to be 1.61. (See http://www.abag.ca.gov/planning/interregional/pdf/projections/IRP_Projections-Santa_Clara_County.pdf, attached as Exhibit A).

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commensurate growth in housing units.³ The City's Housing Element acknowledges that "[l]ocal jurisdictions can help address this issue by attempting to strike a local balance between local jobs and housing." Consistent with this statement, the General Plan includes critical policies, set forth below, designed to improve the City's jobs/housing imbalance.

Jobs in Santa Clara are projected to increase by 29 percent between 2010 and 2040. (General Plan Housing Element, Table 8.12-3-8, p. 8.12-26.) "These employment projections suggest a need for housing to serve a growing and diverse workforce." (General Plan Housing Element, p. 8.12-26.) Contrary to the comprehensive planning process undertaken by the City to prepare the 2010-2035 General Plan, however, the unplanned Project proposes development that would create almost *25,000 jobs*, but a maximum of only *1,360 housing units*. This would negatively impact the City's jobs/housing balance, and would obstruct the attainment of General Plan goals and policies intended to improve it, in violation of the Government Code's General Plan consistency requirements. (See Gov. Code §§ 66473.5; 66474(a); 65867.5.)

The Project as proposed would conflict with the following fundamental General Plan goals and policies (emphases added):

- **Goal 5.3.1-G3:** Development that *minimizes vehicle miles traveled*, capitalizes on public investment in transit and infrastructure, and is compatible with surrounding uses.
- **Policy 5.3.1-P18:** Meter net new industrial and commercial development excluding "Approved/Not Constructed and Pending Project" identified on Figure 2.1-1 *so as not to exceed 2.75 million square feet in Phase I, 5.5 million square feet in Phase II and 5.5 million square feet in Phase III in order to maintain the City's jobs/housing balance* and ensure adequate infrastructure and public services.
- **Policy 5.3.1-P29:** Encourage design of new development to be compatible with, and sensitive to, nearby existing and planning development, consistent with other applicable General Plan policies.

INCONSISTENT: The Project would increase VMT by creating jobs without providing local housing for workers, an approach that leads to longer commutes, traffic

³ See, e.g., "Job growth, housing affordability, and commuting in the Bay Area," A report prepared for the Bay Area Regional Prosperity Plan Housing Working Group (May 29, 2015) available at: http://planbayarea.org/pdf/prosperity/research/Jobs-Housing_Report.pdf, attached as Exhibit B.

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congestion and increases in air quality pollution and GHG emissions. The Project would result in over nine million square feet of unplanned development, almost twice the development allowed in either General Plan Phase II or Phase III, which conflicts with the policy's fundamental purpose of imposing commercial caps to maintain the jobs/housing balance. The new and unplanned development contemplated by the Project would create traffic congestion and attendant air quality and GHG impacts on surrounding communities, incompatible with existing development and in conflict with applicable General Plan policies.

- **Goal 5.3.2-G4:** Respect for the *existing character and quality of adjacent neighborhoods from new residential development* and redevelopment.
- **Policy 5.3.3-G4:** New commercial uses that *respect surrounding neighborhoods and are sited to reduce potential land use conflicts.*

INCONSISTENT: The vehicle trips and congestion that would result from the unplanned Project development, in addition to criteria air pollutant emissions, TACs and GHG emissions, would negatively impact the existing character and quality of adjacent neighborhoods.

- **Goal 5.3.5-G3:** Higher-intensity employment centers located near major transit services and major transportation corridors *to reduce vehicle miles traveled.*
- **Goal 5.8.1-G3:** Transportation networks that promote a *reduction in the use of personal vehicles and vehicle miles traveled.*
- **Policy 5.8.1-P4:** Expand transportation options and improve alternate modes that *reduce greenhouse gas emissions.*
- **Policy 5.8.1-P5:** Work with local, regional, State and private agencies, as well as employers and residents, to encourage programs and services that *reduce vehicle miles traveled.*

INCONSISTENT: Because Project jobs far exceed Project housing, commute lengths to new Project jobs would increase use of personal vehicles and resulting VMT, resulting in traffic, air quality and GHG impacts. The Project would result in more than 140,000 daily vehicle trips, and only 8,320 daily transit riders. (Draft EIR at 3.3-62.)

- **Goal 5.8.3-G2:** A transit network that supports a *reduction in automobile dependence* for residents, employees and visitors.
- **Policy 5.8.3-P9:** Require new development to incorporate *reduced on-site parking* and provide enhanced amenities, such as pedestrian links, benches and lighting, in order to encourage transit use and increase access to transit services.

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INCONSISTENT: As discussed above, the Project would result in VMT increases. The Project proposes parking to meet the needs of all Project employees, residents and visitors, as well as providing opportunities for supplemental parking for stadium events, thereby promoting the use of single-occupancy vehicles.

- **Goal 5.8.5-G1**: Transportation demand management programs for all new development in order to *decrease vehicle miles traveled* and single occupant vehicle use.
- **Policy 5.8.5-P5**: Encourage transportation demand management programs that provide incentives for the use of alternative travel modes *to reduce the use of single-occupant vehicles*.

INCONSISTENT: Although the Project proposes to include a TDM program, many of the measures are not enforceable, and the program would not mitigate the Project's traffic impacts, including increases in VMT, resulting from the jobs/housing imbalance. The Project would increase the use of single-occupant vehicles.

- **Policy 5.10.1-P4**: *Protect all healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in circumference measured from 48 inches above-grade on private and public property as well as in the public right-of-way.*

INCONSISTENT: The Project proposes to remove almost 2,000 trees, many of which are protected, in direct conflict with this policy. Measures requiring the developer to plant other trees do not rectify the inconsistency.

- **Goal 5.10.2-G1**: *Improved air quality* in Santa Clara and the region.
- **Goal 5.10.2-G2**: *Reduced greenhouse gas emissions* that meet the State and regional goals and requirements to combat climate change.
- **Policy 5.10.2-P2**: Encourage development patterns that *reduce vehicle miles traveled and air pollution*.

INCONSISTENT: The Project would significantly increase VMT due to the need to commute to new Project jobs and would result in significant unavoidable air quality and GHG impacts.

- **Policy 5.10.2-P5**: *Promote regional air pollution prevention plans* for local industry and businesses.

INCONSISTENT: The Project as proposed would significantly worsen local and regional air quality.

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2. The Project is Fundamentally Inconsistent with the City's Housing Element and Violates the Regional Welfare Doctrine

The Final EIR acknowledges the Project's inconsistency with Housing Element Policy B-5, which mandates that the City mitigate the jobs/housing ratio impacts created by new development. The Project falls woefully short of this policy mandate by proposing to create almost *20 times more jobs* than housing units. Notably, only 13.5 percent of the total housing demand generated by the Project could occur within the City under its current General Plan. (Draft EIR at 3.12-11.) The impacts of the Project's induced housing demand on San José would be untenable, particularly given San José's projected jobs/employed resident ratio of 0.8-0.9.⁴ Moreover, the City's approval of a project that shifts the burden of providing new housing onto other cities runs afoul of the regional welfare doctrine, which requires municipalities to evaluate more than their local self-interest in enacting land use regulations. (See, e.g., *Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 607 ["if, as alleged here, the ordinance may strongly influence the supply and distribution of housing for an entire metropolitan region, judicial inquiry must consider the welfare of that region."]; *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal. App. 330, 338-340.) As proposed, the Project provides great financial benefits to Santa Clara, to the environmental detriment of neighboring jurisdictions.

The growth is also not anticipated in the City's Regional Housing Needs Allocation ("RHNA") for the current eight-year period ending in 2022.⁵ Based on information provided by the City of Santa Clara, ABAG identified 4,093 units as the City's fair share of the regional housing need for the 2014 to 2022 period. (Draft EIR at 3.12-2; General Plan Housing Element, Table 8.12-6-2.) However, this allocation did not take into account the job growth associated with the Project, its negative impact on the jobs/housing balance, or the fact that Project job growth will take place in non-PDA locations.⁶

⁴ Envision San José 2040 General Plan, Chapter 1, at 61-62.

⁵ The RHNA was prepared by ABAG as part of Plan Bay Area, available at: http://files.mtc.ca.gov/pdf/Plan_Bay_Area_FINAL/Plan_Bay_Area.pdf.

⁶ The EIR claims that Project Parcel 5 and the southern edge of Parcel 4 are within a PDA (Draft EIR at 3.1-5), but that information conflicts with documentation from both ABAG and VTA, which list El Camino Real Focus Area and Santa Clara Station Focus Area as the only City of Santa Clara PDAs, neither of which includes a portion of the Project Site. See Priority Development Areas, available at: <http://abag.ca.gov/priority/index.html#pda> (via GIS) or <http://www.abag.ca.gov/abag/events/agendas/e091715a-Item%2008,%20Attachment%201%20List%20PDAs%202015.pdf>, attached as Exhibit

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C. The General Plan Amendment Proposed for the Project Does not Cure the Project's General Plan Inconsistencies and Results in Major Internal Inconsistencies

Santa Clara's proposal to approve an unplanned 9.16 million gross square foot project flies in the face of responsible local and regional planning. At minimum, the City must consider a comprehensive amendment to the General Plan that proposes additional residential development to offset the Project's job growth. The City's proposal to add a new mixed-use land use designation to accommodate the Project in an area currently planned for open space does not accomplish this goal, and falls far short of the City's legal mandate to ensure internal consistency. (Gov. Code § 65300.5; see also *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 [land use element containing proposals expected to result in increased population was inconsistent with circulation element that failed to provide remedies for predicted traffic congestion].)

D. The Project's General Plan Inconsistencies Would Lead to Significant Local and Regional Impacts

As discussed in detail in the remainder of this letter, the Project's General Plan inconsistencies, including the increase in the City's jobs/housing imbalance, would lead to many significant local and regional impacts, including huge increases in VMT and traffic congestion and associated increases in emissions of criteria pollutants and TACs, as well as GHG. The EIR identifies 28 significant unavoidable impacts, ten of which are cumulative. (Draft EIR at 5-2 - 5-4.) Additional feasible mitigation measures or alternatives must be implemented to reduce or avoid these significant effects.

E. The Final EIR Fails to Identify Feasible Mitigation Measures to Reduce the Project's Significant Land Use Impacts

In response to the numerous General Plan inconsistencies created by the Project (which lead to numerous significant secondary environmental effects), the Final EIR proposes Mitigation Measure LU-1.1. This measure requires the City to *explore* permitting higher residential densities in the City, as well as allowing residential land uses in non-residential areas, during the next General Plan Update cycle. (Draft EIR at

C; Priority Development Areas in Santa Clara County, available at: <http://www.vta.org/sfc/servlet.shepherd/version/download/068A0000001FbMu>, attached as Exhibit D. Similarly, San Jose's County PDA map includes only two Santa Clara PDAs. (Priority Development Areas in Santa Clara County, available at: <http://www.sanjoseca.gov/DocumentCenter/View/735>, attached as Exhibit E.)

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3.1-15, emphasis added.) It further requires the City to explore permitting up to 11,000 units. (Final EIR at 3-4.) This measure is impermissibly deferred. (CEQA Guidelines § 15126.4(a)(1)(B).) The Final EIR concedes as much, concluding that the impact would remain significant and unavoidable because “it cannot be stated with certainty whether and when the mitigation measure can be implemented.” (Draft EIR at 3.1-15.)

A fundamental purpose of an EIR is to identify ways in which a proposed project’s significant environmental impacts can be mitigated or avoided. (Pub. Resources Code §§ 21002.1(a), 21061.) To implement this statutory purpose, an EIR must describe feasible mitigation measures that can minimize the project’s significant environmental effects. (CEQA Guidelines §§ 15121(a), 15126.4(a).) Rather than impermissibly deferring consideration of the Project’s severe secondary impacts to the next General Plan update cycle in 2035, which is years away, the City should consider approving a General Plan amendment as part of the Project. This amendment should incorporate the recommendations set forth in MM LU-1.1 regarding increased residential uses in the City, and require consideration of such uses concurrently with the Project.

As a starting point for such a General Plan amendment, the Final EIR identifies several locations in the city that *could be* developed for residential uses in the future, and that *could* accommodate approximately 9,576 additional residential units that were not programmed in the General Plan or considered in the General Plan EIR.⁷ (Final EIR at 3-3, 5-21.) As noted above, only 13.5 percent of the total housing demand generated by the Project could occur within the City under its current General Plan, and these additional units would help to offset the Project’s induced demand of 15,408 units which would otherwise have to be distributed throughout the region.⁸ (Draft EIR at 3.12-11.) Inclusion of a General Plan amendment identifying additional residential uses Citywide would not only reduce the Project’s significant land use impacts, it would also reduce other significant unavoidable impacts resulting from the increased jobs/housing imbalance, including cumulative traffic, air quality, GHG, noise and population and housing impacts, as well as the Project’s effect on induced growth in the region and beyond. (Draft EIR at 4-6.) The City should amend its General Plan now to facilitate development of these (and other) residential units and mitigate the Project’s significant effects.

⁷ The Draft EIR identified 6,640 units that could be developed in the future to offset the Project’s housing impact. The Final EIR identifies 9,576 units, but many of the projects it relies upon for this figure are speculative, at best. (Master Response 1, Final EIR at 3-3.)

⁸ The Final EIR’s discussion of growth inducing impacts states that the Project would create a demand for roughly 17,873 units outside the City. (Draft EIR at 4-6.) The reason for this discrepancy is not readily apparent in the document.

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F. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR's Land Use Analysis or Adequately Respond to Land Use-Related Comments

Mitigation Measure LU-1.1 does not meet CEQA's requirements for mitigation measures and the Final EIR does not remedy that deficiency, despite comment letters from San José and other Draft EIR commenters which informed the City that the mitigation measure, as drafted, was inadequate. (See, e.g., Comment Letter A17a, p. 2.) In response to these comments, the Final EIR restates the Draft EIR's conclusion that implementation of the measure is uncertain, and adds a requirement that the City "explore permitting up to 11,000 units." (Final EIR Master Response 1 at 3-4.) Contrary to the Final EIR's claims, this revision does nothing to remedy the legal inadequacy of Mitigation Measure LU-1.1. San José continues to urge the City to incorporate the requirements of LU-1.1 into a General Plan amendment to be considered as part of the Project.

II. THE FINAL EIR'S ANALYSIS OF TRAFFIC IMPACTS IS LEGALLY INADEQUATE

The Project would add more than 140,000 daily vehicle trips to already congested area roadways and intersections. The Final EIR inadequately addresses the Project's transportation impacts on the City of San José, which shares a border with the Project site, and fails to propose measures to avoid or minimize the Project's significant effects. To the extent that the Final EIR's air quality, noise and climate change impact analyses rely on the inadequate traffic analysis, they too, are inadequate.

A. The Final EIR's Evaluation of Project Area Intersections is Under-Inclusive and Results in the Failure to Evaluate Significant Traffic Impacts

Based on the Valley Transportation Authority ("VTA") Transportation Impact Analysis Guidelines (10 peak hour vehicles per lane) and the data included in the Final EIR appendices, the Final EIR should have evaluated impacts on 12 additional intersections. These intersections include:

- North First Street and Old Bayshore Highway
- East Brokaw Road and I-880 Southbound Ramps
- North First Street and Component Drive
- West Trimble Road and Orchard Parkway

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- North First Street and Plumeria Drive
- Zanker Road and Plumeria Drive
- North First Street and River Oaks Parkway
- Zanker Road and River Oaks Parkway
- North First Street and Rio Robles
- East Trimble Road and Junction Avenue
- Old Bayshore Highway and I-880 Southbound Ramps
- Airport Parkway and Old Bayshore Parkway

City of San José analyses indicate that impacts at the intersection of North First Street and Old Bayshore Parkway would be significant under existing conditions with the Project, and therefore require additional fair share mitigation.⁹ This is a new significant impact that was not analyzed in the Draft EIR and would require that the document be recirculated unless the impact is mitigated.

B. The Transportation Mitigation Measures Lack Sufficient Information to Demonstrate That They Would be Financially Feasible and Effective

Fee-based mitigation measures must be based on “an actual plan of mitigation” that will be implemented. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App. 4th 1173, 1187.) The Final EIR does not present an actual plan of mitigation showing the accurate cost of each transportation mitigation measure and the proposed “fair share” dollar amounts to be paid by the Project applicant for each mitigation measure. The roadway project cost information included in Final EIR Table D-1 is incomplete, and sources of the estimates are not provided. (Draft EIR Appendix 3.3D.)

By calculating the Project’s fair share as the Project’s percent contribution to *total* traffic at a given facility for many mitigation measures (see, e.g., Draft EIR Table 3.3-20), the Final EIR incorrectly assumes that both existing and future roadway users are financially responsible for Project mitigation measures. Only new roadway users contribute to the cost of mitigation measures. The Final EIR’s fair-share discussion and calculations should be based on the Project’s percent contribution to *added* traffic.

⁹ The impact is significant based on the Final EIR significance criteria for San José intersections. Unacceptable operations (LOS F) at this intersection would be exacerbated because critical delay would increase by more than 4 seconds and the V/C ratio would increase by more than 0.01.

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The Final EIR refers to the Valley Transportation Plan (“VTP”) 2040, published in October 2014, for cost estimates for large-scale mitigation measures that were also included on the VTP project lists. On October 1, 2015, the VTA Board of Directors approved the Envision Silicon Valley Preliminary Project Lists and updated the cost estimates to 2017.¹⁰ The Final EIR’s cost estimates for improvements included in these Project Lists should be updated to reflect 2017 estimates.

C. The Final EIR Does Not Present Accurate Estimates of Total Costs and Project Fair Share Costs for City of San José Transportation Mitigation Measures

The Final EIR fails to clearly present Project applicant responsibilities for City of San José transportation mitigation measures. In particular, it does not present accurate estimates of total costs and Project fair share costs for transportation mitigation measures within San José’s boundaries.

For mitigation measures included in the North San José area, an accurate fair share for the Project would be the ratio of Project trips to all new trips, which would include both the Project and other future developments. Although the Final EIR acknowledges that the fair share for North San José area mitigation measures would be based on the Project’s percent contribution to added traffic, this intent is not clearly demonstrated in the Final EIR’s mitigation measure tables or text. (Draft EIR at 3.3-92.) The Final EIR’s reliance on North San José traffic impact fees as mitigation for the Project’s North San José impacts is misplaced. The North José Traffic Impact Fee Plan did not include Project traffic because the Project was not included in the Santa Clara General Plan. It is not intended to provide mitigation measures for the Project.

The Final EIR should present accurate estimates of the Project’s financial obligations for mitigation measures within San José boundaries, along with commitments that these obligations will be met. Based on the updated 2017 cost estimates for VTP projects as well as the more accurate fair-share calculations discussed above, San José estimates that the Project would be responsible for \$45.3 million to either fully construct or pay its fair share for improvements on local streets and County expressways at approximately 14 locations.¹¹ This figure includes additional fair share mitigation for the

¹⁰ http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/bod_100115_agendapacket.pdf, Agenda Item 6.10, attached as Exhibit F.

¹¹ The \$45.3 million is a preliminary figure that does not account for administrative costs or construction index changes. It also does not account for fair-share contribution toward the Project’s cumulatively considerable contributions to cumulative impacts, since the

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significant impact at North First Street and Old Bayshore Parkway that was omitted from the Final EIR.

The City of Santa Clara has conditioned past projects with San José transportation impacts so that fair share contributions could be used only for construction costs for San José roadway improvements within five years of project approval. To more effectively mitigate impacts, the Final EIR should specify that Project fair share contributions for San José improvements can also cover the costs of preliminary engineering and design, as well as construction extending beyond five years after Project approval.

D. The Phasing and Funding of Transportation Mitigation Measures Should be Described in Detail

The Final EIR includes separate traffic impact and mitigation analyses for the Project as a whole and for Phases 1, 2, and 3, but does not discuss how implementation of transportation mitigation measures would be integrated with Project phasing, i.e., which traffic mitigation measures would be required to be implemented at certain points during construction of the Project.

More broadly, the Final EIR's discussion of Project phasing lacks sufficient detail to determine what specific improvements would be required for each phase of Project construction. (See Draft EIR Table 2-11, at 2-31, acknowledging that the identified phasing is hypothetical.) Without accurate information about phasing, particularly given the magnitude of the Project, it is impossible to determine whether the impacts of the Project have been adequately analyzed and would be adequately mitigated. San Jose requests that the project description be revised to include a detailed phasing schedule, and that the EIR, including the traffic analysis, be revised to identify which improvements will occur coterminous with each phase of Project development.

E. The Transportation Impact Analysis Methodology is Flawed

The background conditions in the Final EIR assume a North San José roadway network that includes future improvements that are not included as North San José Phase I improvements. The background conditions, therefore, are not based on substantial

Final EIR does not provide sufficient information to make that determination. San José estimates that the Project's fair share contribution could increase total Project responsibility for traffic improvements by approximately \$10 million. San José can provide a detailed spreadsheet supporting this cost estimate upon request. (See Exhibit H to this comment letter for additional details on Project fair share.)

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evidence and likely underestimate intersection impacts, for example, at the Montague/Trimble Flyover and Montague/McCarthy-O'Toole Square Loop Interchange.

Cumulative transportation impacts and required mitigation measures are also underestimated because the Final EIR used ABAG growth projections rather than San José General Plan growth projections. For example, the ABAG projections for San José assume a jobs/housing mix which would result in lower traffic volumes than the jobs/housing mix planned for in the San José General Plan.¹² The Final EIR omits analysis of the following CEQA Guidelines significance criterion: "Would the project conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance of such facilities?" The regulatory setting discusses applicable VTA and City of Santa Clara plans, policies and programs. Applicable San José plans, policies, and programs (e.g., from the Envision San José 2040 General Plan) should be added to this discussion, and the impact analysis should determine whether conflicts with any of these plans, policies, or programs would cause significant impacts to public transit, bicycle, or pedestrian facilities.

F. The Final EIR Does Not Adequately Analyze the Project's Transit-Related Impacts

The Final EIR lacks sufficient information with which to analyze the Project's connections to transit, and fails to provide actual details or design plans to support its conclusions that the Project will support greater transit ridership.¹³ As currently configured, for example, the Great America/Santa Clara station, served by Capitol Corridor and Altamont Commuter Express ("ACE") trains, is not designed in a manner to support the passenger rail transit service as described in the Final EIR. (Draft EIR starting at 3.3-168.) The Final EIR also fails to demonstrate whether and how active

¹² See Envision San José 2040 General Plan, which supports both job and housing growth capacity, available at: <http://www.sanjoseca.gov/DocumentCenter/Home/View/474>. Total plan growth capacity (growth above existing) is 470,000 jobs and 120,000 dwelling units. (San José General Plan, Appendix 5, p. 3.) See also Memorandum from Mayor Sam Liccardo to City Council re North San José Area Development Policy, discussing development of a framework for 1,500 additional units of housing in North San José, available at: http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2131&meta_id=567696; City of San José City Council Agenda Synopsis, April 12, 2016, Item 4.1, attached as Exhibit G.)

¹³ See Comment Letter A13 from Jim R. Allison, Manager of Planning, Capitol Corridor Joint Powers Authority, dated November 23, 2015, and incorporated in full by this reference.

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transportation connections (bicycling and walking) to and from the Project site to the Great America station would be developed, and there are currently no such connections due to functional incompatibility with existing land uses. Given that the use of transit is highly affected by design and connectivity, the Final EIR, as drafted, does not sufficiently describe how the Project meets the EIR's objective to promote transit-oriented infill development.

The Final EIR also fails to demonstrate how the existing employer shuttle system will be affected by Project construction and modifications to street design. For example, the detail provided in the roadway modification figures is not sufficient to determine whether the Capitol Corridor and ACE shuttles, which are a key party of ridership viability, would be affected. (See, e.g., Figure 3.3-15.) Employer shuttles would also be negatively affected by degraded LOS caused by the Project. As mitigation for this impact, employer shuttles should be permitted to use a connector road from Stars and Stripes Drive to Marie P Bartolo Way. Signal preemption devices should also be investigated and documented to mitigate impacts on shuttle travel time.

Impact TRA-9 concludes that the Project would generate public transit ridership that could use available transit capacity and that no mitigation would be required. (Draft EIR at 3.3-168.) However, the Final EIR uses incorrect weekday peak hour load factors for ACE. Current peak-hour ACE load factors between Fremont and Pleasanton are typically upwards of 80 percent and will clearly be impacted by the Project.¹⁴ The Final EIR does not provide a good-faith reasoned response to this comment. (See Response to Comment A9.8, Final EIR at 4-45.)

G. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR's Traffic Analysis or Adequately Respond to San José's Traffic-Related Comments

San José's comments on the Draft EIR recommended that the traffic analysis utilize updated transportation standards and land use assumptions. The comments also recommended that the Project pay a fair-share contribution toward roadway and intersection improvements in North San José, and detailed a number of specific improvements that would be needed to address Project traffic. The Final EIR's responses to these comments do not represent a good faith reasoned response as required by CEQA. (See Response to Comment A17b.) San José's additional technical comments are attached to this letter as Exhibit H.

¹⁴ Comment Letter A9 from Stacey Mortensen, Executive Director, San Joaquin Regional Rail Commission, dated November 20, 2015, and incorporated in full by this reference.

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III. THE FINAL EIR'S ANALYSIS OF AIR QUALITY IMPACTS FAILS TO MEET THE REQUIREMENTS OF CEQA

The Project would result in numerous significant air quality impacts, several of which the Final EIR determined to be unavoidable. These significant unavoidable impacts include impacts from reactive organic gases (ROG), oxides of nitrogen (NO_x) and particulate matter (PM_{2.5}) (Impacts AQ-1, AQ-3 and AQ-4.) The Final EIR also disclosed significant unavoidable cumulative air quality impacts related to criteria pollutants and health risk (Impacts C-AQ-1 and C-AQ-2.) The Final EIR concedes that long-term operational emissions generated by the Project would “far exceed” BAAQMD’s thresholds of significance, even with mitigation.

Project ROG and NO_x emissions, which are precursors to ozone, are estimated to be seven to nine times higher than BAAQMD significance thresholds, which “will make it more difficult for the region to attain and maintain National Ambient Air Quality Standards (“NAAQS”).”¹⁵ (EIR, Table 3.4-9.) PM emissions would also significantly exceed BAAQMD thresholds, PM₁₀ by a multiple of almost eight, and PM_{2.5} by double. The BAAQMD notes that as the NAAQS become more stringent over time, it will be even more important for large developments like the Project to implement all feasible mitigation measures to reduce the severity of air quality impacts.

A. The Air Quality Analysis Fails to Adequately Explain how the Air Pollutants Emitted by the Project would Impact Public Health

The Final EIR discloses, in its analysis of Impacts AQ-3 and AQ-4, that Project operational criteria pollutant emissions and regional criteria pollutant emissions during construction and operation would greatly exceed BAAQMD thresholds, but fails to correlate these adverse air quality impacts to resulting adverse health impacts. This omission precludes informed public participation and decision-making, making the Draft EIR inadequate as a matter of law. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220-1221.)

The Final EIR concedes that all criteria pollutants are associated with some form of health risk. (Draft EIR at 3.4-14.) It goes on to describe, in a general manner, the health effects associated with increased emissions of ozone precursors (ROG and NO_x). The Final EIR provides other, very general, information about health impacts associated with criteria pollutants in its discussion of the Project’s environmental setting. (See Draft EIR at 3.4-6 and -7.) Despite the inclusion of general information about the adverse

¹⁵ See Comment Letter A15 from Jean Roggenkamp, Deputy Executive Officer, BAAQMD, dated November 23, 2015, and incorporated in full by this reference.

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health impacts that could result from the Project's air quality impacts, the Final EIR does not correlate the Project's massive criteria pollutant emissions with the adverse human health impacts that would be expected to result from those emissions. A reader could certainly infer from the information provided that the Project will make air quality, and therefore human health, worse, but would need more information to truly understand the nature of the impact.

For example, the information provided in the Final EIR does not enable a reader to determine whether the daily emissions resulting from the Project might require individuals with respiratory difficulties to be concerned about health effects when they go outside in the Project area. The Final EIR also provides no information about whether the Project might affect the number of days on which the NAAQS or CAAQS might be exceeded, similar to the data provided in Table 3.4.2. Regardless of how the City chooses to provide information correlating the Project's emissions with human health impacts, it must provide additional analysis in order to meet CEQA's requirements for meaningful assessment of environmental effects.

B. The Final EIR's Air Quality Mitigation Measures are Legally Inadequate

1. The Final EIR Improperly Dismisses Mitigation Measure AQ-2.4

Mitigation Measure AQ-2.4 requires the Project developer to offset NO_x emissions generated during construction that are above BAAQMD NO_x average daily emissions thresholds. (Draft EIR at 3.4-28.) Pursuant to this measure, the Project developer is required to track construction activity, estimate emissions, and enter into a construction mitigation contract with BAAQMD to offset emissions that exceed the 54 pounds per day NO_x threshold. The City impermissibly limits MM AQ-2.4 to Project *construction* impacts only, even though the Final EIR concludes that operational ROG and NO_x emissions (as well as emissions from construction combined with operation) would greatly exceed applicable thresholds. The Final EIR states that requiring operational offsets such as those in Mitigation Measure AQ-2.4 is not considered feasible, because it would cost an estimated \$76 million in fees. In short, "[p]urchasing offsets in this magnitude and duration would place an undue financial burden on the Project that is not considered economically feasible." (Draft EIR at 3.4-32.) The Final EIR provides no evidence in support of this conclusion.

A mitigation measure may not be excluded from an EIR simply because the project proponent believes that it would not be economically viable or because it would be an undue financial burden. Rather, a determination of economic infeasibility must be

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supported by evidence showing that the additional costs or lost profits would make the project impractical. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 737.) Other decisions on economic feasibility findings have applied a “prudent person” standard, holding that a determination of economic infeasibility must be supported by information demonstrating that the cost is so great that a reasonably prudent person would not proceed if the measure were imposed. (See, e.g., *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600.)

The Final EIR provides no analysis or evidence demonstrating that the Project applicant cannot purchase emissions offsets to fully mitigate the enormous and harmful air quality impacts of the Project it wishes to construct. At minimum, Santa Clara should require the developer to purchase offsets to mitigate some portion of the Project’s air quality impacts.

2. The Draft EIR Fails to Include Feasible Mitigation Measures to Reduce the Project’s Significant Air Quality Impacts

a) Measures to Reduce Criteria Pollutant Emissions

An EIR must propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. (Pub. Resources Code §§ 21002.1(a), 21100(b)(3); CEQA Guidelines § 15126.4.) The requirement that EIRs identify mitigation measures implements CEQA’s policy that agencies adopt feasible mitigation measures when approving a project to reduce or avoid its significant environmental effects. (Pub. Resources Code §§ 21002, 21081(a).)

The Final EIR fails to include feasible mitigation measures to reduce the Project’s significant air quality impacts, particularly measures designed to reduce the Project’s severe exceedances of BAAQMD criteria pollutant thresholds. The following mitigation measures were identified by the BAAQMD and recommended for inclusion in the EIR:¹⁶

- Increase the transportation demand management (TDM) plan requirement to reduce peak-hour and daily vehicle trips from 10% to at least 25%;
- Prepare a comprehensive parking plan for the entire project area that establishes parking pricing strategies, unbundling of parking costs, and shared parking for visitors and employees;

¹⁶ The mitigation measures identified by the BAAQMD apply to Impacts AQ-1, AQ-3, AQ-4, as well as GHG-1. San José’s comments regarding the Draft EIR’s GHG analysis will be addressed later in this letter.

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- Require electrical hook-ups for diesel trucks at loading docks;
- Prohibit all diesel powered trucks from idling for more than 2 minutes;
- Require truck fleets based within the Project site to meet CARB's highest engine tier standard in place at the time that building permits are issued;
- Require only electrical landscaping equipment;
- Require solar hot water heating systems;
- Require electric heat pumps for space heating;
- Require recycling and composting programs for offices and residences;
- Require energy efficiency reductions at least 25% beyond Title 24 on all new development at the time building permits are issued;
- Require on-site photovoltaic (PV) solar to meet at least 50% of the electricity demand, and;
- For electricity not generated on-site (e.g., via PV), require that buildings receive the maximum amount achievable from renewable energy.

While portions of some of these measures were incorporated into Mitigation Measure GHG-1.2, many were rejected. (Response to Comment A15.1.) San José continues to believe that inclusion of these mitigation measures in the Final EIR would reduce the Project's air quality and GHG impacts.

b) Measures to Reduce Diesel Particulate Matter Emissions from Project-Related Heavy Truck Traffic

The Project must include feasible mitigation measures to reduce DPM emissions from heavy trucks. Diesel engines emit large amounts of NO_x and PM, both of which contribute to serious health problems. The Final EIR proposes to implement Mitigation Measure AQ-2.2, which would require use of modern fleet (EPA 2007) for on-road material delivery and haul trucks with a gross vehicle weight rating of 19,500 pounds or greater during construction. However, more stringent standards should be imposed to further reduce Project-related emissions.

The United States Environmental Protection Agency ("U.S. EPA") has promulgated stringent diesel emission standards intended to dramatically decrease discharges of PM and NO_x, and virtually eliminate these emissions from on-road diesel

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engines.¹⁷ Consistent with these standards, many jurisdictions have imposed feasible mitigation measures designed to reduce DPM impacts associated with on-road heavy-duty trucks. San José requests that the City include a mitigation measure in the EIR requiring on-road, heavy-duty trucks with a gross vehicle weight rating (“GVWR”) of greater than 14,000 pounds and transporting materials to and from (and within) the Project site to meet EPA 2010 on-road, heavy-duty diesel engine emission standards.¹⁸ In addition, the City should require the Project applicant to verify that the companies supplying the on-road heavy-duty trucks are in compliance with the CARB Truck and Bus Regulation.¹⁹ The City should also include a requirement for truck operators to submit documentation showing the following:

- Truck company name; make, model of truck, and vehicle identification number;
- EPA/CARB truck engine certification indicating truck meets or exceeds 2010 EPA on-road heavy-duty diesel engine emission standards;
- Any emission control devices installed, including, but not limited to diesel oxidation catalysts and/or diesel particulate filters/traps;
- Proof of compliance that the truck fleet of the companies, including subcontractors, from which on-road trucks are hired or dispatched for the Project are in compliance with the CARB Truck and Bus Regulation by providing one of the following documents:
 - Truck and Bus Regulation Reporting Certificate printed from CARB website (see <http://www.arb.ca.gov/msprog/truckstop/pdfs/printcert.pdf>).
 - Written statement from the truck fleet owner that verifies that they are aware of the CARB Truck and Bus regulation (Title 3, California Code of Regulations, § 2025) and their fleet is in compliance with the engine model year schedule specified in the Truck and Bus Regulation.

Inclusion of such a mitigation measure in the Final EIR would reduce the Project’s DPM emissions and attendant air quality and health impacts.

¹⁷ See U.S. EPA Regulatory Announcement, Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, available at <http://www.epa.gov/otaq/highway-diesel/regs/f00057.pdf>, attached as Exhibit I.

¹⁸ U.S. EPA, Control of Air Pollution from New Motor Vehicles: Heavy-Duty <https://www.gpo.gov/fdsys/pkg/FR-2001-01-18/pdf/01-2.pdf>, attached as Exhibit J.

¹⁹ California Air Resources Board, Truck and Bus Regulation, available at: <http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>, attached as Exhibit K.

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3. Mitigation Measure AQ-2.3 is Impermissible as Drafted

Mitigation Measure AQ-2.3 sets forth a series of BAAQMD measures to reduce construction-related dust and exhaust emissions, and the Final EIR concludes that with implementation of mitigation, impacts would be less than significant. The measure allows the Project developer or contractor to identify alternate measures, “provided that they are as effective as the measures below” and states that [a]lternative measures shall be submitted to the City of Santa Clara for approval. (Draft EIR at 3.4-27.)

Mitigation measures adopted when a project is approved may be modified or deleted if the agency gives a legitimate reason for making the change and supports those reasons with substantial evidence. (*Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359; *Katzeff v. Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614.) However, when considering whether to modify a mitigation measure, the agency also must consider whether further CEQA review is required. If modification of the measure would change the prior approval in a way that would allow a new significant impact to occur or increase the severity of a previously identified significant impact, then supplemental environmental review would be required. (See Pub. Resources Code § 21166; CEQA Guidelines § 15162; see also *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1174.) This decision must be made by the agency decision-makers subject to CEQA compliance, not approved by staff.

C. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR’s Air Quality Analysis or Adequately Respond to Air Quality-Related Comments

As noted above, the Final EIR fails to include feasible mitigation measures to reduce or avoid the Project’s severe significant impacts to air quality, despite recommendations from BAAQMD that it do so. (See Comment A15-1.) The Final EIR also fails to provide evidence supporting its conclusion that requiring emissions offsets for operational air quality impacts is infeasible, therefore failing to adequately respond to comments asserting that such offsets should be required to reduce the Project’s significant unavoidable air quality impacts. (See, e.g., Comment O3.5.)

Response to Comment A17a.6 does not represent a good faith, reasoned response to San José’s request that Mitigation Measures AQ-6.1 and AQ-7.1 be applied to construction along the eastern portion of the Project site due to the location of sensitive receptors along the Guadalupe River. According to the Final EIR, the only DPM-related risks due to exposure to construction-related emissions occur on-site after on-site residential or daycare facilities are occupied. (Response to Comment A17a.6, Final EIR

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at 4-153.) The Final EIR goes on to state that the first phase of construction (at the southwest corner of the Project site) is over 2,300 feet from the nearest San José receptor. However, as stated in the comment, construction activities on the *eastern* portion of the site will be less than 600 feet from the San José residences.

IV. THE FINAL EIR'S ANALYSIS OF GREENHOUSE GAS IMPACTS IS LEGALLY INADEQUATE

A. The Analysis of Impact GHG-1 Fails to Accurately Disclose Project Construction GHG Emissions

Impact GHG-1 amortizes construction GHG emissions over 30 years. (Draft EIR at 3.5-15.) No rationale is provided for this approach, which hides actual construction GHG emissions. The Project construction period is assumed to last only 17 years (not 30), and Table 3.5-4 shows that construction GHG emissions are clearly highest over the first four years of construction. Given the need to rapidly reduce GHG emissions in the near-term to avoid dangerous climate change, construction GHG emissions in the early years of the Project should be given more weight, not less. The calculations in Table 3.5-5 should be redone to properly account for construction GHG emissions and mitigation implemented as necessary. (Draft EIR at 3.5-17.)

B. The Final EIR's Analysis of Impact GHG-3 is Legally Inadequate

The Final EIR does not accurately describe or apply case law requiring analysis of the impact of existing conditions on the Project's future users and residents. (Impact GHG-3, see also Draft EIR at 3.5-12 and -13.) After the Draft EIR was published, the Supreme Court decided *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, which held that an EIR must consider the effects of the environment on a proposed project to the extent the proposed project would risk *exacerbating* these effects. In those specific instances, the Court held, it is the project's impact on the environment – and not the environment's impact on the project – that compels an evaluation of how future residents or uses could be affected by the exacerbated conditions. (*Id.* at 392.) While the Final EIR acknowledges the Supreme Court's decision (see Final EIR at 5-65 et seq.), its application of the legal standard is incorrect. This holding extends to future climate change impacts on the Project, including sea level rise. Impact GHG-3's discussion of sea level rise impacts should be reanalyzed consistent with the holding of this case to determine whether the Project would exacerbate sea level rise impacts. If Impact GHG-3 is determined to be significant, recirculation of the EIR would be required unless the impact is mitigated.

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C. The Final EIR's Evaluation of the Cap-and-Trade Program as Mitigation for GHG Emissions is Inadequate

The Final EIR's discussion of GHG offsets as mitigation is misleading and inadequate. (Draft EIR at 3.5-20.) The Final EIR limits its discussion of offsets to the context of the AB 32 Cap-and-Trade program. However, land use projects are not a capped sector participating in the program, so this discussion is largely irrelevant. Furthermore, it is possible for the proposed Project to directly purchase emissions offset credits outside the context of the Cap-and-Trade program. The Final EIR should have evaluated the feasibility and effectiveness of offsets outside the context of the Cap-and-Trade program as a GHG mitigation measure.

The Final EIR further states that imposing GHG offsets as additional mitigation to meet the need for additional GHG reduction in the post-2020 period "risks duplication of the economy-wide cap and trade GHG reductions and also risks going beyond the project's "fair-share" mitigation." (Draft EIR at 3.5-22.) This statement is speculative and is not supported by evidence. There is no "economy wide cap" in the AB 32 Cap-and-Trade program; rather, the cap applies only to specific capped sectors, which do not include land use projects. The Final EIR also fails to provide any evidence in support of its assertion that GHG offsets risk going beyond fair-share mitigation.

V. THE FINAL EIR'S ANALYSIS OF BIOLOGICAL RESOURCES IMPACTS IS LEGALLY INADEQUATE

A. The Final EIR Fails to Adequately Consider the Project's Inconsistency with the Regional Conservation Plan

The Final EIR's consideration of Project inconsistency with the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP" or "Plan"), and the environmental consequences of such inconsistency, is legally inadequate, regardless of whether the HCP/NCCP is an applicable regional plan under CEQA.

The Final EIR asserts that the HCP/NCCP is not an applicable plan because the City of Santa Clara is not a Plan participant, and the proposed Project site is located outside of the Plan area. (See, e.g., Draft EIR at 3.8-4.) However, the proposed Project is located within the HCP/NCCP's expanded study area for burrowing owl, and would require approval for a Project component from a Plan participant (the Santa Clara Valley

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Water District [“SCVWD”]²⁰). Even if the proposed Project is not within the Plan area, or does not include a covered activity, the HCP/NCCP is an applicable regional plan under CEQA for the purpose of evaluating the Project’s effects on the physical environment. (CEQA Guidelines § 15125(d).)

The Project’s conflicts with the HCP/NCCP’s plans to conserve burrowing owl and burrowing owl habitat clearly would result in significant impacts. Master Response 4 implicitly acknowledges this conflict, but asserts that impeding the species’ recovery is not an impact under CEQA. This is false. Moreover, the Final EIR mischaracterizes the Project’s impacts on burrowing owl, which include loss of nesting, forage and dispersal habitat, as compared to baseline conditions, discussed in detail below. These effects should have been considered as factors in extirpation of the local populations and restricting the range of the species.

The Project’s conflicts with the HCP/NCCP conservation goals and plans would also result in significant impacts to other species such as bay checkerspot butterfly.

B. The Final EIR Fails to Adequately Analyze the Effects of Nitrogen Deposition on Serpentine Grassland Habitat

The Final EIR acknowledges that nitrogen deposition in serpentine grassland habitat – attributable to the Project – would have adverse effects on special status species. (EIR at 3.8-23.) However, these impacts are discussed only in general terms in a cumulative impact discussion. Nitrogen deposition on serpentine grassland habitat alters conditions in a way that favors non-native plant species over native special status plant species. Effects on the individual plant species (which appear to be significant) should be examined in more detail, and mitigation to reduce significant effects should be identified, including impacts on bay checkerspot butterfly. Measures to be considered could include compensatory mitigation requiring preservation of replacement habitat in serpentine habitat that is less subject to nitrogen deposition including, as necessary, propagation of impacted species at the mitigation site.

The Final EIR does not remedy the deficiencies of the Draft EIR or adequately respond to comments regarding analysis of the effects of nitrogen deposition. (See Response to Comment A17a.9.) Vehicle trips associated with the Project, located immediately adjacent to San Jose, would have the same nitrogen deposition impacts as vehicle trips from projects located within San Jose. The fact that Santa Clara is not a participant in the HCP/NCCP does not reduce the Project’s obligation to mitigate its

²⁰ Comment Letter A11 from SCVWD to City of Santa Clara, dated November 23, 2015, and incorporated in full by this reference.

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significant impacts. Nitrogen deposition impacts throughout Santa Clara County are caused primarily by vehicular traffic, and Santa Clara sources within the study area are estimated to provide 63 percent of the current deposition. (See HCP/NCCP, Appendix E.) At minimum, Santa Clara must pay the Habitat Agency an amount commensurate with that paid by Plan Area applicants, with added costs of administration, and reach an agreement regarding mitigation of nitrogen deposition with the Agency or provide adequate mitigation in another manner.

The Project's reliance on a fair-share nitrogen deposition fee contribution to the SCVHA's nitrogen deposition fee program in Mitigation Measure BIO-C.1 is misplaced. Because the Project was not included in the Santa Clara General Plan, the growth it contemplates was not included in the JPA's development of the fee program. Payment of fees will therefore not adequately mitigate the Project's impacts. (See BIO-C.1, Draft EIR at 3.8-25.) In addition, there is no requirement that a voluntary contribution be used to address the Project's adverse nitrogen deposition effects, and therefore it may not be relied upon as mitigation.²¹ The measure's effectiveness is further diluted by its comparison of the Project's actual impacts to a hypothetical average for development in the HCP/NCCP plan area, which artificially dilutes the Project's nitrogen deposition impacts.

C. The Final EIR Understates Impacts to Burrowing Owl

The Final EIR fails to adequately present relevant baseline conditions for burrowing owl, and understates the Project's significant impacts to burrowing owl as well as its contribution to a significant cumulative impact to this species.²² The Final EIR fails to acknowledge that the proposed Project site should be considered "occupied" by burrowing owl. San Jose concurs with the California Department of Fish and Wildlife's ("CDFW's") conclusion that the Project site is active burrowing owl habitat, and must be treated as such in the EIR. As stated in CDFW's comment letter on the Project Notice of Preparation ("NOP"), burrowing owls were observed foraging and nesting on and near

²¹ In Master Response 4, the City of Santa Clara takes the position that its previous "voluntary" commitment to provide mitigation for burrowing owls was not actually a commitment.

²² The Final EIR does not include Project- or site-specific reports or surveys to support its conclusion that the Project site is not considered to be occupied burrowing owl habitat. The surveys discussed in the Draft EIR (starting at p. 3.8-11) are not included in an appendix, which would be particularly useful given that the EIR's conclusions are contradicted by CDFW's NOP comments.

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the Project site by burrowing owl biologists within a two-year period prior to the NOP.²³ These reported observations are sufficient to establish that the site should be considered “occupied” habitat as the baseline for existing conditions.

Even without those observations, other evidence supports the same conclusion. CDFW guidance on determining whether a site is “occupied” provides that occupancy may be indicated by conditions described in the Final EIR (i.e., pellets near a perch site) and that such signs of occupancy within the prior three years should be considered as indicators that the site is “occupied”. The Final EIR does not explain why it departs from this guidance.²⁴ Master Response 4’s discussion of burrowing owl habitat also conflicts with revisions made to the Draft EIR in response to other comments, e.g., deletion of a statement asserting that occupied burrowing owl habitat is not present at the site. (Draft EIR at 3.8-13; revised text shown in Final EIR at 5-44.) Nesting burrowing owls have been detected approximately 0.4, and 1.0 miles from the proposed Project site and the Project site is located within occupied nesting habitat as defined in the HCP/NCCP.²⁵ These occurrences are well within known adult and natal dispersal distances (generally 53 km and 150 km, respectively).²⁶ The longest recorded dispersal distance in the South Bay area is 12 km.²⁷

The Final EIR also fails to acknowledge or examine the significant effects that loss of burrowing owl habitat on the Project site would have on remaining offsite burrowing owl habitat. Habitat isolation and fragmentation are factors for effects on other small, localized offsite burrowing owl populations. Given the Project site’s proximity to the remaining burrowing owl populations along the Highway 237 corridor (as noted in CDFW’s NOP comment letter), this failure to fully characterize existing

²³ Letter from CDFW in response to EIR NOP, dated August 28, 2014, and incorporated in full by this reference.

²⁴ Master Response 4 asserts that the owl pellets located on the Project site were too old to be considered as evidence of occupation, but provides no evidentiary support for this assertion, and no reason for its determination that the pellets exceed 3 years in age. (Final EIR at 3-19.) The response also does not explain why this “determination” would outweigh reported occurrences in other surveys, as noted in CDFW’s letter.

²⁵ See Comment Letter A5 from Santa Clara Valley Habitat Agency, dated November 19, 2015.

²⁶ 2012 Staff Report on Burrowing Owl Mitigation at p. 20, available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjokJXJy6_MAhUIwGMKHRMhDvgQFggfMAA&url=https%3A%2F%2Fnrmdfg.ca.gov%2FFileHandler.ashx%3FDocumentID%3D83843&usg=AFQjCNGxKDV-Co8e68nibt4aen7MI0qaxg&sig2=Ocr4oxlg9DFUds6zOf6RAg, attached as Exhibit L.

²⁷ Santa Clara Valley HCP/NCCP Appendix M, p. M-2.

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conditions for burrowing owl requires additional investigation. The HCP/NCCP recommends preservation of burrowing owl habitat to support owl populations that are primarily outside of the study area.²⁸ Given that Santa Clara is closer to existing burrowing owl habitat and populations than most members of the HCP/NCCP, it should participate in this effort, particularly because the Project would be destroying some of the last remaining potential burrowing owl habitat in the area.

Although the Final EIR acknowledges that the Project site provides forage habitat for burrowing owls, the impact analysis does not seriously address the loss of forage habitat, and fails to identify adequate mitigation. This is a serious omission given the documented declines in the local and regional populations of this species.²⁹ Mitigation Measure BIO-2.2 fails to guarantee that burrowing owl habitat will be replaced, because implementation is tied to identification of an active nest; this limitation on implementation is inconsistent with CDFW's guidance on determining whether a site is "occupied". Mitigation Measure BIO-2.1 further undermines this mitigation strategy by ensuring that development activities take priority over burrowing owl surveys. San José recommends that BIO-2.1 be revised as follows:

BIO-2.1: Detection and Protection of Burrowing Owls. The Project Developer shall submit a plan for surveying and monitoring for burrowing owls to the City and CDFW at least 60 days prior to the scheduled start of construction or other ground disturbing activities. The survey plan shall require qualified biologists approved by the City to conduct the surveys and monitoring. Survey timing and methods shall be consistent with CDFW guidance in the 2012 Staff Report on Burrowing Owl Mitigation, as updated. The plan shall include regular and timely reporting to the City and CDFW. City approval is required before project activities begin. ~~allow access to the Project site or offsite areas for~~ Biologists who participate in the annual burrowing owl nest survey coordinated by the Santa Clara Valley HCP/NCCP shall be allowed access to the project site and offsite areas. ~~Burrowing owl surveys are conducted between March and August of each year.~~ Access to the site Appropriately timed surveys for burrowing owl

²⁸ Santa Clara Valley HCP/NCCP Appendix N, p. 4-5.

²⁹ See Comment Letter A5 from Santa Clara Valley Habitat Agency, dated November 19, 2015 and Comment Letter O4 from Santa Clara Valley Audubon Society, dated November 23, 2015; see also CDFW NOP Comment Letter, dated August 28, 2014, all incorporated in full by this reference.

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~~surveys shall be granted~~continue until the Project site and/or off-site area is completely built out. ~~The Project Developer shall not, however, be required to postpone planned development activities to provide such access, except to the extent such postponement is necessary to meet regulatory requirements.~~ Currently occupied burrows shall not be disturbed. If nesting burrowing owls are detected project activities, including construction shall be scheduled to occur outside of nesting season, to the extent possible. Disturbance buffers consistent with the guidance in the 2012 Staff Report on Burrowing Owl Mitigation, as updated, shall be established to avoid disturbing individual burrowing owls.

The Final EIR also asserts that no portion of the Project site has been set aside for burrowing owl mitigation. (Draft EIR at 3.8-6.) Commenters disagree with this assertion, and have provided details and records of the City's previous commitment to managing a portion of the site as mitigation for burrowing owl.³⁰ The Final EIR relies on a very different account of the City's approval and mitigation for the previous project. This discrepancy has generated considerable confusion for the public and decision makers as to the level of mitigation required for impacts to burrowing owl habitat, and Master Response 4 does not resolve the issue, asserting only that the City's commitment to providing mitigation habitat on the Project site was voluntary. If the City of Santa Clara previously committed some 24 acres of the Project site to be managed as mitigation for loss of burrowing owl habitat for a previous project, the loss of the mitigation site and any impacts to the mitigation site must be also be mitigated.

BIO-2.2: Mitigation for Loss of Burrowing Owl Habitat during Construction. ~~Should burrowing owls begin nesting on developable portions of the Project site or off-site areas that remain undeveloped as phases of the Project are constructed, or suitable habitat within 600 meters of an active nest is removed from the Project site, then lost burrowing owl habitat~~ Permanent impacts to suitable nesting, forage, and/or dispersal habitat for burrowing owl shall be replaced at a ratio of at least 1:1 prior to ground-disturbing activities in the area of the

³⁰ See Comment Letter 15 from Jan Hintermeister, dated November 20, 2015, including attachments relating to the Bayshore North project's burrowing owl mitigation and comment letter from Santa Clara Valley Audubon Society, dated November 23, 2015, both incorporated in full by this reference.

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Project site or off-site area with an active nest. In addition to the area previously identified as either voluntary or required mitigation land on the project site, Aaffected habitat shall be defined-determined as suitable habitat (based on the habitat mapping completed for this EIR, and pre-construction surveys) within a 600 meter radius of an active burrowing owl nest consistent with the methods and definitions in the 2012 Burrowing Owl Staff Report, as updated, and Mitigation measure BIO-2.1.

Greater than 1:1 mitigation shall be required if high quality mitigation land is not acquired and protected prior to the start of project construction; and/or if mitigation land is outside the maximum known dispersal range of local burrowing owl individuals. Mitigation lands outside this range should be identified by qualified biologists, and located on or near other conserved lands. Suitable land cover types include annual grassland, ruderal, or barren areas. Mitigation sites shall have documented nesting occurrences from at least 1 year within the previous 3 years.

Mitigation land shall be permanently protected through a conservation easement, or deed to a non-profit conservation organization of a public agency with a conservation mission, for the purpose of conserving burrowing owl habitat and prohibiting activities incompatible with burrowing owl use.

If burrowing owls move onto undeveloped portions of the Project Site or off-site areas, including the Retention Basin, once the site is fully constructed, appropriate fencing and habitat management practices (including pest management) shall be required to protect burrowing owl individuals, remaining habitat areas, and prey species; there shall be no requirement to provide replacement habitat, unless that undeveloped habitat is developed in the future.

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D. The Final EIR's Analysis of Impacts to Wetland Habitat is Inadequate

The Final EIR limits compensatory mitigation for impacts to wetlands (Mitigation Measure BIO-5.2) to jurisdictional (State or federal) wetlands. However, compensatory mitigation should also be provided for loss of non-jurisdictional wetlands or other aquatic features. Non-jurisdictional wetlands include areas that meet one of the USFWS criteria³¹ and/or the definition of wetlands in the California Coastal Act.³² The USFWS definition of wetlands is also considered biologically appropriate by the California Fish and Game Commission.³³ The definition in the California Coastal Act is statutory. (Pub. Res. Code §30121.)

E. The Final EIR's Analysis of Impacts to Anadromous Fish is Inadequate

The Final EIR's analysis of impacts to central California coast steelhead (*Oncorhynchus mykiss*) and Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*) is inadequate. The discussion in the Final EIR focuses on construction impacts, but does not explain whether or why habitat for these species would not be impacted (or impaired) under post build-out conditions. (Draft EIR at 3.8-17, 18; 3.8-26.) Freshwater migration corridors free of obstruction and excessive predation, with water quality and quantity conditions and natural cover in and near the water or side channels and other features supporting juvenile and adult mobility and survival constitute a "primary constituent element" of critical habitat for these species, regardless of whether this particular reach of the Guadalupe River is excluded from critical habitat designation. Existing conditions for fish through the Project area should be described, including features that may be considered primary constituent elements, and the Project's significant effects post-buildout should be evaluated.

³¹ USFWS Wetlands Classification System, available at <http://www.fws.gov/policy/660fw2.html>, attached as Exhibit M.

³² Public Resource Code § 30121; Cal. Code of Regulations § 13577(b); discussed at Definition and Delineation of Wetlands in the Coastal Zone, available at: <http://documents.coastal.ca.gov/reports/2011/10/W4-10-2011.pdf>, attached as Exhibit N.

³³ California Department of Fish and Game Recommended Wetland Definition, available at <http://www.fgc.ca.gov/policy/p4misc.aspx>, attached as Exhibit O

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VI. THE FINAL EIR'S ANALYSIS OF HAZARDS AND HAZARDOUS MATERIALS IMPACTS IS INADEQUATE

A. Impact HAZ-4 Must Include Enforceable Mitigation for Long-Term Landfill Monitoring Requirements

San José shares the concerns expressed by the Regional Water Quality Control Board (“RWQCB”) and the County of Santa Clara Department of Environmental Health regarding the Project’s long-term monitoring and maintenance needs.³⁴ The mitigation measures in the Final EIR to address Impact HAZ-4 (MMs HAZ 4.1-4.6; Draft EIR at 3.11-31 - 3.11-33) identify plans, systems, maintenance requirements and restrictions intended to ensure the safety of future Project residents and users, but the document is short on detail regarding the manner in which these long-term requirements would be met.

The mitigation measures adopted for a project must be enforceable through conditions of approval, contracts or other means that are legally binding. (Pub. Resources Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2). This requirement is designed to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored. As stated by the County Environmental Health Department, it is imperative that there is a viable party responsible for upkeep of the landfill control measures and post closure maintenance, as well as to deal with any imminent health or safety issues that may arise. To the extent that mechanisms to ensure that there is an entity with legal and financial responsibility to address future health and safety needs for the landfill would be in a Project development agreement, such an agreement must be made available for public review and comment. As discussed in greater detail below, if a development agreement is part of the Project, as is indicated in the project description, it should be included in the Final EIR for public review.

B. The Final EIR’s Analysis of Impact HAZ-8 is Inadequate

The Final EIR concludes that the Project would not impair implementation of adopted emergency access or evacuation plans. (Draft EIR at 3.11-36.) In reaching this conclusion, the Final EIR fails to acknowledge the large numbers of people that would be present on the Project site during an emergency, as well as the severity of the potential

³⁴ Comment Letter A13 from San Francisco Bay Regional Water Quality Control Board, dated November 23, 2015; Comment Letter A7 from County of Santa Clara Department of Environmental Health, dated November 19, 2015, both incorporated in full by this reference.

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hazards that could result from a disaster based on the Project's location on a former Landfill.

As proposed, the Project would create almost 25,000 new jobs and house more than 3,270 residents (under Scheme A). (Draft EIR Table 3.12-6). Proposed retail and entertainment uses would draw additional people to the site. As acknowledged in the Final EIR's traffic analysis, existing traffic conditions in the Project area are already severe, and made worse by events held at the recently constructed Levi's Stadium. (See, e.g., analysis of Impact TRA-19, Draft EIR at 3.3-220.)

Given the risks inherent in constructing development on a landfill, including the potential for releases of hazardous materials and subsurface fires, the Final EIR must provide additional analysis of the Project's potential to impact existing evacuation routes. Prior to considering approval of the Project, decision makers as well as members of the public must have a full understanding of how development of the Project could affect the safety of its future residents and users. The Final EIR also must propose mitigation measures to reduce significant effects and to ensure the safety of future Project users. For example, the Final EIR should include a requirement to develop a detailed evacuation plan, including measures to ensure the safety of children, the elderly, and the mobility impaired.

C. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR's Analysis of Hazards or Adequately Respond to Hazards-Related Comments

In response to comments from the RWQCB (Comment A13) and the County Environmental Health Department (Comment A7) regarding long-term maintenance and monitoring for the Landfill to ensure public health and safety, the Final EIR references the Disposition and Development Agreement ("DDA") to be entered into by the City and the Project developer. (Response to Comment A7.1, Final EIR at 4-34.) The Final EIR states that the City Council would consider the DDA for approval in conjunction with its consideration of certification of the Final EIR. If the City intends to rely on the provisions of a DDA to implement Project requirements designed to protect public health and safety, the DDA (along with the DA, as discussed in greater detail below) must be made available for public review and comment.

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VII. THE FINAL EIR DOES NOT ADEQUATELY ANALYZE THE IMPACTS OF SUPPLYING WATER TO THE PROJECT

A. The Final EIR's Analysis of Project Water Supply is Legally Inadequate

The Final EIR's discussion of Impact UT-1 concludes that the Project would have sufficient water supplies, but does not provide evidentiary support for this conclusion. (Draft EIR at 3.14-19.) Table 3.14-9 shows inadequate City water supply in 2035 under every scenario save a "normal" year, and only then with the assumption that Hetch-Hetchy water is available from the SFPUC.³⁵ Despite this identified deficit, the Final EIR concludes that the Project would have a less than significant impact on water supplies in SCVWD's service area, and expansion of existing entitlements would not be necessary to accommodate the Project. (Draft EIR at 3.14-25.) The Final EIR bases this conclusion on the assertion that the calculated shortfall "would not likely occur" due the conservative assumptions used in the water supply analysis, the potential to expand use of recycled water, and the use of groundwater from the Santa Clara Valley Groundwater Basin.

B. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR's Water Supply Analysis or Adequately Respond to Water Supply-Related Comments

The SCVWD calls the Draft EIR's assertions regarding conservative water use assumptions into question, stating that "[w]ater demand declined significantly during the economic decline late last decade, and is not by itself proof that previous demand were overestimated."³⁶ It further notes that water use has rebounded with improved economic conditions. It therefore cautions reliance on the 2010 UWMP as validation for these assumptions. The SCVWD also challenges the Draft EIR's statements regarding safe yield of the groundwater basin, noting that is not appropriate to make a conclusion regarding the safe and sustainable groundwater production volumes by the City based on these values. The SCVWD states that sustainable yields are subject to hydrology in a given year and the geographic distribution of pumping in a localized area. It also notes that some of the stated values are being reconsidered in the upcoming Sustainable Groundwater Management Plan. San José echoes these concerns. The Final EIR notes its disagreement with SCVWD's comments, but does not provide a good-faith reasoned

³⁵ The City's contract with SFPUC is up for renegotiation in 2018, so the Hetch-Hetchy water supply is not assured. (Draft EIR at 3.14-25.)

³⁶ Comment Letter A11 from SCVWD to City of Santa Clara, dated November 23, 2015, incorporated in full by this reference.

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response. (See Responses to Comments A11.11, A11.12, A11.13 and A11.15, Final EIR at 4-66, -67.)

When a full analysis of future water supplies for a project leaves some uncertainty regarding the availability of future supplies, the Final EIR must discuss possible replacement or alternative supply sources and the environmental effects of resorting to those alternative supply sources. (*Vineyard Area Citizens or Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.) Given that the Final EIR's assumptions about water use may not be as conservative as claimed, it is more likely that the Project would result in the need to rely on groundwater. The Final EIR must provide analysis of the potential impacts of relying on groundwater.

VIII. THE FINAL EIR'S ANALYSIS OF HYDROLOGY AND WATER QUALITY IMPACTS IS INADEQUATE

A. The Analysis of Impact WQ-2 is Inadequate

The Final EIR concludes that the Project's groundwater impacts would be less than significant based on the assertion that (1) projected water supply is adequate to provide water until 2035 and (2) existing groundwater supplies are sufficient to absorb any future Project groundwater use. (Draft EIR at 3.10-31 and -32.) However, as discussed above, the Project water supply analysis shows that water supply would be inadequate in 2035 under most scenarios, and the SCVWD disagrees with the Draft EIR's discussion of groundwater availability in the Santa Clara Valley Basin. The analysis should be redrafted in light of this additional information. The same holds true for the analysis of cumulative groundwater recharge and supply, which reaches a similar conclusion. (Draft EIR at 3.14-26.)

B. The Analysis of Flood Impacts is Inadequate

FEMA Region 9 is in the process of remapping the coastal flood plain.³⁷ This information should be included in the Final EIR's discussion of baseline (on pp. 3.10-17 and -18), particularly because the 100-year floodplain would expand in the Project area if the new maps are adopted. Based on this new information, the analysis of Impacts WQ-6, WQ-7, WQ-8 and C-WQ-1 (pertaining to cumulative flood impacts) should be revised.

³⁷ See FEMA Region 9 National Flood Insurance Program, available at: <http://www.r9map.org/Pages/default.aspx>, attached as Exhibit P.

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C. **The Final EIR Does Not Remedy the Deficiencies of the Draft EIR's Hydrology Analysis or Adequately Respond to Hydrology-Related Comments**

In response to comments from the SCVWD regarding new baseline flood information, the Final EIR incorporates a footnote stating that FEMA is in the process of conducting a Flood Insurance Study in the Project area. (Response to Comment A11.7, Final EIR at 4-61.) However, the Final EIR does not acknowledge the impact that an expanded 100-year floodplain would have on the analysis and therefore does not represent a good faith reasoned response. Instead, the Final EIR claims that there is no requirement to analyze flooding impacts under the *CBIA v. BAAQMD* case. The Final EIR fails to acknowledge that under *CBIA* an EIR still must consider the effects of the environment on a proposed project to the extent the proposed project would risk exacerbating these effects. Impacts WQ-6, WQ-7, WQ-8 and C-WQ-1 should be reanalyzed consistent with the holding of this case to determine whether the Project would exacerbate flooding impacts. If these impacts are determined to be significant, recirculation of the EIR would be required unless the impacts are mitigated.

IX. THE FINAL EIR'S ANALYSIS OF IMPACTS TO PUBLIC SERVICES AND RECREATION IS INADEQUATE

The Final EIR acknowledges that the Project site has served as open space and a recreation facility for more than 25 years and is the largest contiguous park/open space in the City. (Draft EIR at 3.13-20.) The Project would eliminate this existing recreational use and replace it with 9.16 million square feet of primarily commercial use, with a small component of residential. Nevertheless, the Final EIR concludes that the Project's impact to park and recreational facilities would be less than significant, because the elimination of the current use would not result in the need to construct any new recreational facilities. (Draft EIR at 3.13-21.) In a seemingly contradictory argument, the Final EIR concludes that in lieu fees paid by the developer would reduce impacts, because they would be used by the City to acquire or develop new parkland or facilities. (Id.)

The parkland dedication requirements and in lieu fees referenced in the Final EIR are based on numbers of residents. (Draft EIR at 3.13-3.) Because the Project proposes a very small amount of residential use, the requirement to dedicate parkland (8.27 acres) is also small. (Draft EIR at 3.13-21.) To the extent that the Project developer is not able to fully satisfy the park requirement with land dedication, the Final EIR states that it would pay park in-lieu fees to satisfy requirements, and concludes that this payment would represent full and complete mitigation for parkland impacts due to new development. (Id.) A commitment to pay fees is not adequate mitigation, however, if there is no evidence that mitigation will actually result. (See, e.g., *California Clean Energy Comm.*

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v. City of Woodland (2014) 225 Cal.App.4th 173, 197.) The Final EIR provides no information about the types of facilities that might be constructed with the Project's in lieu fees, or their location. However, according to the City's General Plan, opportunities for additional open space are limited, due to the current build out condition of the City. (Draft EIR at 3.13-13.) Based on the information provided in the Final EIR, there is no evidence to suggest that park impacts will be adequately mitigated through additional facilities.³⁸

The Final EIR also provides no evidence in support of the assertion that a requirement to dedicate 8.27 acres of parkland would mitigate the loss of more than 162 acres of existing recreational uses on the Project site.³⁹ The Project site currently houses a public golf course, seven lighted tennis courts, and a BMX track. The Final EIR claims that existing parks and other similar amenities would be sufficient to absorb the loss of these facilities, but provides no actual evidence of use to support its conclusions.⁴⁰ (See *City of Hayward v Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833 [overturning EIR's discussion of recreation impacts based on lack of evidence regarding use of parks].) The Final EIR's discussion of existing conditions states that several school district facilities serve the community, but the district has commented that the open space and fields at the schools and parks within Santa Clara are already used to capacity.⁴¹

X. THE FINAL EIR'S ANALYSIS OF IMPACT AES-1 IS INADEQUATE

The Project would remove all 1,405 trees which currently exist at the Project site, 951 of which are protected trees.⁴² (Draft EIR at 3.2-19.) It would also remove up to 338

³⁸ The City's own policies have led to a shortfall in open space and parkland, as acknowledged in the City's General Plan. See, e.g., Policy 5.9.1-P20, which promotes the continuation of a parks per population ratio of 2.4 per 1,000 residents, well under Quimby Act standards (3-5 acres per 1,000 residents) and those set forth in the City's Municipal Code. (Gov. Code § 66477; City Code Section 17.35.010(f); see also Draft EIR at 3.13-10.)

³⁹ The golf course is located on 155 acres of the Project site, and the BMX track occupies 7 acres. (Final EIR at 3.13-6, -7.) In addition to the golf course itself, the Santa Clara Golf and Tennis Club has other recreational facilities, including tennis courts.

⁴⁰ The City's supply of parkland falls well short of its parkland dedication standard of 3 acres per 1,000 residents. (See City Code, Section 17.35.010(f).)

⁴¹ Comment Letter A4 from Santa Clara Unified School District, dated November 18, 2015, incorporated in full by this reference.

⁴² The General Plan defines protected trees as "healthy cedars, redwoods, oaks, olives, bay laurel and pepper trees of any size, and all other trees over 36 inches in

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off-site trees, 232 of which are protected. (*Id.*) Despite the removal of almost 2,000 trees that would result from the Project, the Final EIR asserts that Impact AES-1 would be less than significant, because removal of these trees would not degrade existing visual character or quality. However, in the same analysis, the Final EIR states that the Project developer would replace these trees at a ratio of 2 to 1 of 24-inch box specimen trees pursuant to General Plan Policy 5.3.1-P10. (Draft EIR at 3.2-19.)

An EIR should indicate whether the project's environmental impacts would be potentially significant if mitigation measures were not adopted and separately determine whether the mitigation measures described in the EIR would substantially reduce or avoid the identified significant impacts. (*Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656.) The Final EIR should have identified Policy 5.3.1-P10 as a mitigation measure, and made clear whether the impact is significant or less than significant both before and after the imposition of mitigation. (*Id.* at 656.) The biological resources analysis suffers from the same flaw. (See Impact BIO-6, Draft EIR at 3.8-20.) The Final EIR does not remedy the deficiencies of the Draft EIR's analysis of impacts to trees or adequately respond to tree-related comments. (See, e.g., Response to Comment O4.7 [restating Draft EIR's rationale for failing to adequately mitigate impacts to tree and thereby failing to provide a good faith reasoned response].)

XI. THE EIR FAILS TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES

An EIR must present a reasonable range of alternatives that could feasibly attain most of the project's objectives while avoiding or substantially lessening the proposed project's significant effects. (CEQA Guidelines § 15126.6(a).) The Final EIR fails to meet this requirement.

A. Increased Housing Alternatives

The Project proposes job-generating uses that greatly exceed its proposed residential uses. This results in a greater jobs/housing imbalance that currently exists in the City, along with resulting increases in VMT, air pollution and GHG emissions. The Final EIR rejects four increased housing alternatives as infeasible, primarily because they would fail to meet Project objectives or because they would cost more to construct than would the proposed Project. (Draft EIR at 5-13 - 5-14.) The increased housing alternative that the Final EIR does include, proposes only 320 additional residential units, resulting in a net increase of 23,610 employees (instead of the 24,760 employees

circumference measured from 48 inches above-grade on private and public property as well as in the right-of-way." (Project Tree Assessment at 4, Draft EIR Appendix 3.8.)

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proposed by the Project). (Draft EIR at 5-8.) This increase is insufficient to truly reduce the Project's significant effects, as required by CEQA.

The creation of additional housing would reduce many of the Project's significant effects resulting from the jobs/housing imbalance without affecting basic Project objectives regarding mixed-use development, landfill protection systems and facilitation of jobs. As discussed previously in this letter, an alternative may not be rejected on the ground that it is economically infeasible just because it would be more expensive to construct and operate. Rather, a determination of economic infeasibility must be supported by evidence showing that the additional costs or lost profits would make the project impractical, or that a reasonably prudent person would not construct such a project due to the added expense. The City cannot make the requisite infeasibility finding without this additional evidence.

1. Include More Housing as Part of the Project

At minimum, the Final EIR must include an alternative that includes enough housing to truly minimize the Project's significant effects. San Jose requests the addition of an alternative with a sufficient number of housing units (and a commensurate reduction in jobs) to reduce the Project's jobs/housing balance to 1.0.

2. Amend the General Plan to Increase Residential Density

The Final EIR must include an alternative with a General Plan amendment to increase residential density Citywide, consistent with the approach set forth in Mitigation Measure LU-1.1. Rather than deferring the City's mandate to explore increased residential density years into the future as proposed by MM LU-1.1 and after construction of the Project, amending the General Plan to shift development capacity now would offset the job-rich development proposed by the Project and correspondingly reduce the Project's significant effects on VMT, traffic congestion, air quality and GHG emissions.

B. Clean Closure Alternatives

When considering the ability of the alternatives to avoid or substantially lessen the Project's significant impacts, the Final EIR improperly ignores alternatives that could reduce significant impacts that it claims are capable of mitigation, in particular, hazardous materials impacts. However, an EIR must discuss alternatives that avoid or substantially lessen a significant impact even if that impact can be avoided or reduced by mitigation measures. (See *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 403.) The Final EIR made a fundamental error by failing to present such alternatives.

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The Final EIR identifies significant hazards and hazardous materials impacts resulting from the Project's location on a landfill, but fails to propose Project alternatives to reduce these significant effects.

1. Clean Closure of Entire Site

The Final EIR considered and rejected an alternative involving removal of all waste in the former landfill prior to development of the site: the "clean closure" alternative. The clean closure alternative was rejected based on construction impacts and the assertion that costs of waste removal would be very high. The Final EIR's discussion of cost includes only the cost of waste removal, not the cost of closure and long-term monitoring. This approach does not provide evidence of economic infeasibility under CEQA because it provides no comparative data demonstrating the magnitude of the difference between the two approaches. (See, e.g., *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-602 [City's rejection of four rehabilitation/relocation alternatives based on economic infeasibility was not based on substantial evidence; the fact that rehabilitation of the home may cost between \$4.9 and \$10 million was insufficient to support a finding of infeasibility without any comparable information about the cost of constructing a new residence on the property].)

2. Clean Closure of Parcel 4 Only

The Final EIR failed to consider other alternatives that would reduce Project safety impacts without extensive construction impacts, namely the clean closure of only a portion of the Project site. The great majority of the residential units in Scheme A (1,160) would be located on Parcel 4, so this alternative would address many of the significant safety-related impacts resulting from siting residential uses on the landfill. As an added plus, some of the waste underlying Parcel 4 has already been removed, which would further reduce construction impacts associated with this alternative. When the Santa Clara Golf and Tennis Club, clubhouse and restaurant were constructed in 1985, waste beneath the portion of Parcel 4 currently used for tennis courts was removed and replaced with clean fill. (Draft EIR at 3.11-9.) This alternative is feasible, and should be included in the EIR.

C. Additional Reduced Project Size Alternatives

The Final EIR considers a Reduced Intensity Alternative that would reduce total floor area by 30 percent compared to the Project, but fails to consider any other alternative that would decrease the Project footprint. Given the severity of the significant and unavoidable impacts associated with the Project, an alternative that reduces FAR by 50 percent or more must be considered. The Final EIR concludes that such an alternative

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“is highly unlikely to be financially feasible” but provides insufficient evidentiary support for this assertion.

The Final EIR should also consider an alternative that would reduce the retail, restaurant, entertainment and hotel uses proposed by the Project by at least 50 percent. These uses would result in 71,190 daily vehicle trips, which would cause increased congestion and significant traffic to area roadways and intersections. (Draft EIR Table 3.3-19 at 3.3-87.)

D. Transit Oriented Alternative

Given the numerous significant impacts created by the more than 140,000 daily vehicle trips associated with the Project, including impacts to traffic, air quality and GHG emissions, the Final EIR should include a transit oriented alternative. Such an alternative would improve connections to surrounding light and heavy rail stations, and include more aggressive TDM measures, such as reduced parking ratios. Specifically, a transit-oriented alternative should include significant improvements to the Great America station to effectively integrate the Project with adjacent transit, including improved bus and shuttle access, additional bus/shuttle bays, and improved pedestrian/bicycle access.⁴³

E. The Final EIR Does Not Remedy the Deficiencies of the Draft EIR’s Alternatives Analysis or Adequately Respond to Comments on Project Alternatives

Several commenters requested that the Draft EIR include additional alternatives to avoid or reduce the Project’s significant effects. The Final EIR failed to provide a good-faith reasoned response when it rejected such requests, particularly given the Project’s numerous significant effects. (See, e.g. Comment Letters A13, O2, O3, O4, O6.)

XII. OTHER DEFICIENCIES

A. The Project Description Does Not Describe the Whole of the Action

When examining an activity to determine whether it could affect the physical environment, an agency must consider the entire activity that is the subject of its approval. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.) The project description includes the relocation of existing Santa Clara Fire Station 10, but does not include relocation of the Bicycle-Motocross (“BMX”) Track, even though the relocation process

⁴³ Comment Letter A12a from Nuria Fernandez, General Manager/CEO, Santa Clara Valley Transportation Authority, dated November 23, 2015 and incorporated in full by this reference.

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for the facility is being managed by the City of Santa Clara in cooperation with the Project developer.⁴⁴ The physical environmental impacts of relocating the BMX track are reasonably foreseeable, and must be addressed in the Final EIR. (Pub. Resources Code § 21065; CEQA Guidelines § 15378(a).) If there are plans to relocate the Santa Clara Golf and Tennis Club, or any other facilities or structures that would be demolished to make way for the Project, those activities must also be included in the EIR's project description, and any reasonably foreseeable impacts must be evaluated.

B. The Development Agreement and the Disposition and Development Agreement are Part of the Project and Must be Available for Public Review

The project description indicates that a Development Agreement ("DA") would be required prior to development at the Project site and would be informed by the EIR. As discussed above, the Final EIR states that long term monitoring and maintenance responsibilities for the Landfill would be set forth in a Disposition and Development Agreement ("DDA") which would be considered by the Council concurrently with Final EIR certification. However, neither document has been made available for public review. Without access to key documents that will dictate how the Project is constructed and implemented, it is impossible to determine whether the Final EIR's analysis is legally adequate. San José respectfully requests copies of the proposed DA and DDA so that we may evaluate the Final EIR's adequacy against these aspects of the Project.

C. The Exclusive Negotiating Rights Agreement

CEQA applies when a public agency proposes to "approve" a project. (Pub. Resources Code § 21080(a); CEQA Guidelines § 15004; see also *Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116.) The term "approval" refers to a public agency decision that "commits the agency to a definite course of action in regard to a project." (CEQA Guidelines § 15352(a).) Under this standard, an agency cannot formally approve a project, or commit itself to approve it, without complying with CEQA before doing so.

In April 2013, the City entered into an Exclusive Negotiating Rights ("ENR") Agreement with the Project developer, Related Santa Clara, LLC. The ENR Agreement contains various provisions indicating that it is a preliminary step in the process, and is not intended to represent a commitment by either party to proceed with the Project. (See, e.g., Recital E, Paragraphs 14 and 19.) Paragraph 14 states that the City would prepare

⁴⁴ See Related Santa Clara Frequently Asked Questions, available at: <http://www.relatedsantaclara.com/frequently-asked-questions/> (What will happen to the BMX track?), attached as Exhibit Q.

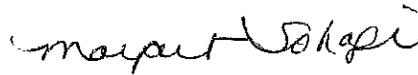
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any environmental documentation required by CEQA but that nothing in the agreement “shall be construed to compel the City to approve or make any particular findings with respect to such environmental documentation.” However, this language does not comport with existing case law on predetermination, which emphasizes that in not committing to a project as a legal or practical matter, the city should be left with complete discretion to modify the transaction or the project, to select other alternatives, and to determine not to proceed with the project at all. (See e.g., *Save Tara, supra*; *Cedar Fair LP v. City of Santa Clara* (2011) 194 Cal.App.4th 1150.)

XIII. CONCLUSION

San José urges the City of Santa Clara to rectify the severe deficiencies in the Project and the Final EIR, to consider the mitigation measures and alternative proposed in this letter, and to recirculate the Final EIR for further review and comment. San José will continue to actively participate in the environmental review process for this Project, and looks forward to working with the City to ensure each of its concerns are sufficiently addressed in a revised document.

Very truly yours,



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Enclosure: Thumbdrive with Exhibits



May 4, 2016

Council and Planning Commission
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

RE: City Place, SCH#2014072078, CEQ2014-01180 and PLN2014-10440

Dear Council and Planning Commission Members:

Thank you for the opportunity to comment on the City Place Final Environmental Impact Report (FEIR). We have appreciated the opportunity to work both with the City of Santa Clara and Related Companies in discussions focused on the Project and its impacts to our Great America rail station, ACE Shuttle operations, VTA Light Rail, and bicyclist/pedestrian connectivity.

The City Place project creates a compelling entertainment and employment destination that is unique and exciting for the City, and it has a unique opportunity to be a world-class destination served by high quality transit.

The project is estimated to generate over 140,000 trips per day. However, the FEIR generally views the significant impacts resulting from these trips as unavoidable. We feel that there is an opportunity for the City to go farther in several areas to offset these trip impacts and to create an environment in which transit will thrive.

Great America Station Area

In our comments on the Draft EIR, we requested that the area immediately to the west of the Great America rail station platform be included as a Project component. The developer has discussed the possibility of an enhanced bus/shuttle transit center and improved pedestrian connections to the retail portion. We would like to see these improvements included in the Project's Development agreement.¹

In Response A9.2, the City notes that "alterations to the Great America rail station are not part of the base project description; however, the new Tasman Drive Intersection under Variant 2 would allow for an enhanced transit plaza with a new vehicle turnaround just beyond the northern end of the station, which would provide room for an additional six transit bus loading positions."²

We request that the City Council de-couple the enhanced station platform Project component from the introduction of a new signalized intersection at Avenue C and Tasman in Variant 2. These two options appear to have been arbitrarily combined in the same Variant, but it is at the Council's discretion to approve only certain portions of the proposed alternatives.³

Whether or not a new signalized intersection is introduced bears no relevance to the creation of an enhanced station platform, particularly in light of the possibility of a right in/right out intersection. Furthermore, as response A12b.13 recognizes, any new crossing of the light rail tracks on Tasman as proposed by the Project would require the unlikely approval of VTA.

¹ Pg 4-44.

² Pg 4-44.

³ Pg 3-29.

An enhanced station platform and adjacent transit center will ensure that visitors, employees, and residents of the Project have high quality transit access. A pedestrian plaza adjacent to the rail platform will provide easy and comfortable access to the new City Place Project retail area. The transit center will provide slips for additional shuttles and buses to serve people traveling to and from City Place—helping to offset a portion of the traffic impacts caused by the Project.

Multimodal Improvement Plan (MIP) Creation

We are pleased that the City of Santa Clara will be adopting a Multimodal Improvement Plan (MIP) to submit to VTA for consideration and approval, in part to avoid losing new gas sales tax revenues from Proposition 111.⁴ As the ACE and Capitol Corridor rail, VTA light rail, VTA buses, and ACE shuttles operate directly adjacent to the project, considering increases and enhancements to these services are particularly apropos. We would also like to request the opportunity to be a partner in the creation of the MIP.

Transportation Demand Management (TDM) Plan

We thank the City for the excellent list of possible TDM measures mentioned in the FEIR, that will presumably be considered by the City's Planning office in their efforts to create the TDM Plan. However, without the use of any financial penalties in the case that the goals in the TDM plan are not met, and with no monitoring party defined, we question whether this should be considered an adequate mitigation measure.

Finally, we would like to share our appreciation to the City Council and your staff for the following changes and clarifications outlined in the FEIR:

- The decision to make a voluntary fair share financial contribution to VTA.⁵
- The commitment to close the sidewalk gap on the north side of Tasman between the Project frontage and Calle Del Sol.⁶
- The assurance that the City's Public Works Department will share the Construction Management Plan for ACE's review and comment prior to the issuance of each building permit.

If you or any member of your staff would like to discuss any of these items further, please contact Corinne Winter, ACE outreach lead in Santa Clara County, at corinne@winter.associates.

Sincerely,



Stacey Mortensen
Executive Director

Cc: Ruth Shikada, Rajeev Batra, Debbie Fernandez & Corinne Winter

⁴ See new TRA-1.3, pg 3-15.

⁵ Pg 4-74 to 4-75.

⁶ Pg 4-45.



May 5, 2016

Honorable Lisa Gillmor, Mayor
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Subject: City Place Santa Clara Final Environmental Impact Report (FEIR)

Dear Mayor Gillmor:

Congratulations on the City of Santa Clara's visionary approach to development at the City Place site. The City of Santa Clara demonstrates a sincere commitment to responsible development on this major site. On behalf of the Santa Clara Valley Transportation Authority (VTA) allow me to express my appreciation for the cooperation of your staff and consultants in working through the environmental process.

We believe this proposed development will be an important contributor to the growth and economic development of the region. However, there are still some areas that need to be addressed.

VTA has reviewed the Final Environmental Impact Report (FEIR) for the City Place Santa Clara Project. As the largest single development project in recent history in Santa Clara County, within walking distance of two VTA light rail stations and the ACE/Capitol Corridor Great America Station, this project represents an extraordinary opportunity to leverage these combined investments to provide world-class transportation options to an emerging activity center. In the spirit of ensuring the project realizes this potential for Santa Clara County, VTA submitted comments on the Draft EIR (DEIR) regarding the analysis and mitigation of project impacts to transit and other modes of transportation. Unfortunately, our comments were not adequately addressed in the FEIR. These comments when addressed will measurably improve the viability of the project.

VTA is committed to providing safe, efficient, and reliable light rail service along Tasman Drive serving the project and the adjoining areas. The DEIR identified a significant and unavoidable impact to transit operations; in our comments, VTA suggested mitigation measures to reduce and/or avoid the impact, such as Transit Signal Pre-emption for light rail and commitment of resources to monitor and maintain traffic signals to ensure Transit Signal Pre-emption during the 15-year Project construction period. The FEIR dismisses all of VTA's suggested mitigation measures with minimal explanation and does not offer any other measures, even though additional feasible measures exist. VTA believes the EIR does not adequately address this impact. Furthermore, VTA opposes the Project Variants that would include a new intersection across the light rail tracks, due to impacts to transit operations and safety, and believes that the project could do more to enhance transit accommodations at the ACE/Capitol Corridor Great

City of Santa Clara
May 5, 2016
Page 2 of 2

America Station, with or without the proposed new intersection. Additionally, VTA strongly believes a grade-separated pedestrian crossing of Tasman Drive is warranted as part of the first phase of the project.

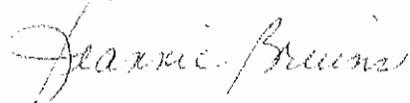
The DEIR also identified significant impacts due to increased vehicle congestion to a large number of Congestion Management Program (CMP) facilities, including intersections and freeway segments both inside and outside the City of Santa Clara. We recommend stronger mitigation measures to address these impacts, including stronger trip reduction targets and City/third-party monitoring procedures for the Transportation Demand Management (TDM) Program. However, the City's Master Response on TDM in the FEIR weakens the project's commitment to establishing TDM targets, and fails to commit to establishing reliable monitoring and enforcement mechanisms for the program.

VTA supports the City's addition of a new Mitigation Measure to prepare and implement a Multimodal Improvement Plan (MIP) (i.e., a deficiency plan under California Government Code section 65089.4) to address significant and unavoidable impacts to CMP facilities. Given the significance of the project to VTA and Santa Clara County, VTA is prepared to work closely with the City to prepare and implement the MIP, which requires review and approval by the VTA Board of Directors per state law.

This project represents an opportunity to create major quality of life and economic benefits to the City of Santa Clara and our region. It presents an opportunity to enhance transit and transportation. Without the mitigations we strongly recommend, the project will be a lost opportunity to address safety and transportation concerns.

Please do not hesitate to contact Nuria Fernandez, General Manager, at (408) 321-5539 if you have any questions or to discuss the topics that VTA has raised in this letter.

Sincerely,



Jeannie Bruins
Vice Chairperson, VTA Board of Directors

cc: Vice Mayor Teresa O'Neill, Santa Clara City Council and Planning Commission
VTA Board of Directors, Technical Advisory Committee and Policy Advisory Committee
Debby Fernandez, Rajeev Batra, Kevin Riley, Ruth Shikada, City of Santa Clara
Nuria Fernandez, Jim Lawson, Inez Evans, John Ristow, Steve Keller, Rob Fabela, VTA

Attachment: Technical Letter from Nuria Fernandez to Rajeev Batra on Final Environmental Impact Report (FEIR) for City Place Santa Clara Project



May 4, 2016

Council and Planning Commission
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

RE: City Place, SCH#2014072078, CEQ2014-01180 and PLN2014-10440

Dear Council and Planning Commission Members:

Thank you for the opportunity to comment on the City Place Final Environmental Impact Report (FEIR). We have appreciated the opportunity to work both with the City of Santa Clara and Related Companies in discussions focused on the Project and its impacts to our Great America rail station, ACE Shuttle operations, VTA Light Rail, and bicyclist/pedestrian connectivity.

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If you or any member of your staff would like to discuss any of these items further, please contact Corinne Winter, ACE outreach lead in Santa Clara County, at corinne@winter.associates.

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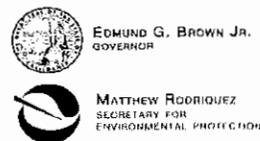
Stacey Mortensen
Executive Director

Cc: Ruth Shikada, Rajeev Batra, Debbie Fernandez & Corinne Winter

⁴ See new TRA-1.3, pg 3-15.

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⁶ Pg 4-45.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

May 9, 2016
CIWQS ID # 205075

Ms. Debby Fernandez, Associate Planner
City of Santa Clara
Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
dfernandez@santaclaraca.gov

State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044
State.Clearinghouse@opr.ca.gov

Subject: City Place Santa Clara Project – Responses to Comments on Draft Environmental Impact Report (DEIR)

Dear Ms. Fernandez:

Regional Water Quality Control Board (Water Board) staff has reviewed the Final Environmental Impact Report (FEIR) for the Santa Clara City Place Project. In particular, we reviewed the responses to comments we submitted in November 2015 on the Draft Environmental Impact Report (DEIR).

General Comment

Our final opportunity to comment on the EIR precedes our opportunity to review key project documents (i.e., the revised post-closure land use plan (PCLUP), the landfill gas pilot study report, and the geotechnical report) that are expected to contain information necessary for our evaluation of the project. As a result, we believe that certain “less-than-significant” findings, as noted in the specific comments below, are premature and not fully supported by the information provided to date.

Specific Comments

COMMENT A13.2

In our comment on the Draft EIR, we requested that the EIR include in the range of reasonable alternatives one that evaluates removal of contamination and/or an alternative that doesn't propose construction of residential units above the landfill. We noted that "Scheme B" only considers residents on Parcel 5, which does not overlie the landfill, but it was unclear how this alternative will be evaluated.

The response states the developer's preference for "Scheme A" and indicates that the developer will determine which scheme to carry forward for further evaluation. It notes that the developer "will likely proceed with Scheme A, unless it is not accepted by the responsible agencies, at which time Scheme B will be carried forward for further consideration."

As noted in the General Comment above, we have not received several key documents, including the revised post-closure land use plan (PCLUP), the landfill gas pilot study report and the geotechnical report, that are necessary for us to consider supporting Scheme A and its proposal to include residential units above buried waste. At this point, the technical feasibility of housing residents over Parcel 4 of the former landfill has not been demonstrated to our satisfaction.

COMMENT A13.5

This comment expressed our significant uncertainties regarding the proposal to house residents over a landfill that produces significant methane and requires active risk management. The comment noted that proposed mitigation measures should be presented in sufficient detail to allow us to evaluate the likelihood that impacts will be reduced to less-than-significant. Unfortunately, that detailed description of mitigation measures has not yet been provided (we anticipate it to be in the Revised PCLUP, the landfill gas pilot study report, and the geotechnical report).

The response to this comment states that the updated Waste Discharge Requirements (WDRs) and PCLUP will impose all conditions the Regional Board and LEA deem necessary to ensure protection of human health and the environment. While this is correct, at this time we could not write a WDR Finding in support of the proposed land use, considering our current incomplete understanding of the landfill gas and geotechnical issues, and the proposed mitigation measures.

At this point, Water Board staff remains concerned about the *acute* risks of methane and other gases, fire, explosion or asphyxiation hazards, especially as a result of a significant seismic event, as well as other issues relating to adequate access for maintenance and timely repair. Proposed mitigation measures to address these concerns are expected to be included in the final geotechnical report and other future design documents. We reiterate that our conditional approval of the revised draft PCLUP was based on the following requirements:

- 1) the landfill gas extraction system, as designed, will function as intended and without interruption following a major seismic event, and can be promptly accessed when repairs or maintenance are needed; and
- 2) an effective vapor protection barrier will be constructed and maintained in perpetuity beneath all occupied buildings and will function as intended following a major seismic event or major landfill settlement.

COMMENT A13.6

This comment expressed our heightened concern that the proposed number of residential units had been increased above what was initially proposed in the Notice of Preparation (NOP), in spite of our oft-repeated concern over the placement of residents over the landfill.

The response refers to a December 15, 2015, memorandum from Langan expressing their opinion that increasing the number of residents on levels 2 and above would not change the risk characterization results, and that the planned engineering controls will further reduce the vapor intrusion risk.

We agree that the chronic risks associated with long-term exposure to chemical toxins will not likely increase with a greater number of residents. However, an increase in residents does increase the number of people that are vulnerable to the acute risks noted in Comment A13.5.

COMMENT A13.13

In our comment, we noted the considerations that must be taken regarding the geotechnical/seismic effects on structures, inhabitants, and landfill gas collection systems, and that the conclusion of less-than-significant impacts seems premature.

The response notes that the project will be constructed in accordance to

specified building codes. It notes that the post-quake response would be similar to the response for a PG&E natural gas conveyance and pipeline system, that all developments and residents in the San Francisco Bay area accept a certain amount of seismic risk, and that new structures built in conformance with the latest standards would be expected to perform better in a seismic event relative to older structures.

First, the comparison to the PG&E system may not be appropriate considering that supply to any pipeline entering the site can be shut off, whereas landfill gas production cannot. Second, while it may be true that all residents assume a certain amount of risk associated with the area's seismicity, all residents on the landfill assume that same risk, but with additional risk based on the reliance of proposed mitigation measures based on seismic/geotechnical conditions that need to be adequately addressed in the geotechnical report.

COMMENT A13.14

In this comment on the Draft EIR, we expressed concern that the use of trees/planters, irrigation and domestic lines could leak or rupture, and flood the landfill gas venting system. We do not know how this could be monitored or contingent mitigation can be implemented.

The response states that the project would be designed to prevent leakages with impermeable caps and liners placed along the top and bottom of the entire landfill area. It also notes that access ports would be installed "at select locations within the venting system" to monitor the presence of, and removal of, water that might flood the system.

Please clarify the response by confirming that the impermeable caps and liners mentioned in the response refer to the landfill clay cap and structures *within* the podium, and not to the landfill base liner. The feasibility of maintaining access, monitoring, and implementing a contingency plan with respect to preventing, stopping and repairing leaks is still unclear, and will need to be addressed in the Final PCLUP.

COMMENT A13.19

At present, the EIR still does not demonstrate that adequate mitigation can be provided for the proposed Project's impacts to waters of the State. The EIR does not provide sufficient information to confirm whether or not an approved mitigation bank, with a service area that includes the Project site, has sufficient freshwater wetland mitigation credits available to mitigate for the Project's impacts to freshwater wetlands and other waters of the State

and the EIR does not identify feasible locations for on-site or offsite mitigation. Based on a maximum potential impact of fill of 1.97 acres of freshwater wetlands and other waters, full mitigation for Project impacts may require the creation or restoration of between 2 and 6 acres of freshwater wetlands, with the required amount of mitigation depending on the proximity of the mitigation site to the Project site, the type of mitigation (creation or restoration), the temporal loss of habitat between the time the Project impacts waters of the State and time at which the mitigation habitat attains its final performance criteria, and the level of uncertainty associated with successfully implementing the proposed mitigation project. In light of the large amount of mitigation that may be required, it may be difficult to obtain sufficient land with the appropriate topography and hydrology to sustain mitigation wetlands. Because of the considerable uncertainties associated with implementing mitigation projects, the EIR should have proposed feasible mitigation proposals for review in the CEQA process. Since the EIR does not even include a conceptual mitigation plan, we are not able to assess whether or not it is possible to provide sufficient mitigation to reduce Project impacts to waters of the State to a less than significant level.

Proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The current EIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level. We encourage the Project proponent to revise the EIR to include specific mitigation proposals for the Project's impacts to wetlands and other waters of the State, with sufficient detail for readers of the EIR to assess the likelihood of success in reducing impacts to less-than-significant levels. The revised EIR should be re-routed for public review.

In its present form, the EIR does not demonstrate that impacts associated with the proposed fill of wetlands and other waters of the State can be successfully mitigated to a less-than-significant level. Therefore, the EIR does not support the issuance of future permits from the Water Board for fill of waters of the State.

COMMENT A13.20

In our comment, we requested that the Draft EIR be revised to include specific mitigation measures for impacts to waters of the State. Since such measures were not included for public review in the Draft EIR, we requested that it be revised to include specific mitigation measures that could be subjected to appropriate public review under CEQA.

In the response to our comment, the Project proponent provides the bases under which an adequate CEQA document would need to be recirculated. This is not responsive to our comments that pointed out that the discussion of impacts to waters of the State and mitigation for those impacts in the Draft EIR was not adequate.

If you have any questions, please contact Cleet Carlton at (510) 622-2374 or by email: cleet.carlton@waterboards.ca.gov.

Sincerely,



Digitally signed by Terry Seward 4
DN: cn=Terry Seward 4, o=SF Water
Board, ou=GWPD,
email=tseward@waterboards.ca.gov,
c=US
Date: 2016.05.09 15:06:04 -07'00'

Terry Seward, Division Chief
Groundwater Protection Division

cc:

Ruth Shikada, City of Santa Clara (rshikada@santaclaraca.gov)

Deborah Schmall, Paul Hastings LLP (deborahschmall@paulhastings.com)

Steve Eimer, Related (seimer@related.com)

Dave Staub, City of Santa Clara (DStaub@santaclaraca.gov)

Stan Chau, Santa Clara County Dept. of Environmental Health (stan.chau@deh.sccgov.org)

Alfred Worcester, CalRecycle (alfred.worcester@calrecycle.ca.gov)



Loma Prieta Chapter serving San Mateo, Santa Clara & San Benito Counties

May 9, 2016

Debby Fernandez, Associate Planner
City of Santa Clara Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
dfernandez@santaclearaca.gov

Re: City Place Santa Clara FINAL Environmental Impact Report (FEIR) comments

Dear Ms. Fernandez,

Thank you for providing the opportunity for the Sierra Club Loma Prieta Chapter Sustainable Land Use Committee to comment on the proposed City Place Project FEIR.

We have reviewed the Responses to the comments made on the Draft EIR, attended the Study Sessions and have the following observations.

1. General Plan

we do not agree that the project is "*not in conflict with policies in the General Plan*". Given the magnitude of the impacts on jobs, housing, land use, open space, air quality and other environmental factors, it is clear that, in order for a project of this size to be considered and move forward some work on the general plan is required.

At the very least a **North Santa Clara Specific Plan** needs to be undertaken to see how the cumulative impacts of the mixed-use, entertainment, office district, the new high-density housing at East Tasman, and changes that the City may want to consider on other properties within this district will affect the quality of life for the future residents and users of this area.

2. Jobs Housing imbalance: We are pleased to see the proposed change to the EIR specifying the desire to include 11,000 new housing units.

If a North Santa Clara area Specific Plan is undertaken it would be desirable to include Mixed Use/ Housing zoning in proximity to intense office development and to include the zoning for service amenities that are needed to support a mature city center.

3. Mobility and Transportation : *The EIR projects that the development will reduce daily trips from office use by 4% and peak-hour traffic by 10%, for residential use the EIR projects daily trips reduced by 2% and peak traffic by 4%.*

"Mitigation Measure TRA-1.1 would not be feasible because the current trip reduction targets are aggressive and reasonably achievable and would result in trip generation rates that are below those for typical development projects. For the reasons outlined below, increasing the trip reduction targets would not be expected to be successful and therefore is not feasible. "

We believe that the EIR response to the transportation demand management strategies proposed in our comments, and in several other comment letters, aim to find excuses for why stronger TDM strategies are difficult and not possible. Experience indicates that when goals are set, that behavior can and will be changed.

However, if the trip reduction goals cannot be any better than are currently proposed in the EIR, and therefore the traffic impacts, locally and regionally, are going to be very significant and unmitigatable, then **the reduced intensity alternative is really the only direction to go until it can be demonstrated that traffic impacts can be absorbed by improvements to the transportation infrastructure or that stronger TDM is taking hold.**

- **This suggests that the City Council needs to seriously consider the reduced intensity alternative for regional and local traffic considerations.**

4. Need for transparency and open monitoring: We note that a TDM program is to be studied in order to meet VTA congestion management requirements. However, it is critical that this strategy be open, transparent and subject to public comment.

It is not acceptable that the program and progress be reviewed only by the planning director for final approval. We believe reporting to City Council and Council approval should be a requirement. See item 5 below.

5. Phased approvals contingent on meeting traffic mitigation, mode share changes and housing needs: Given the shortage of housing to meet job density in this location, and the importance of successful TDM to address the seriousness of regional traffic impacts being created, we suggest that the EIR needs to include the following statement:

"Final approvals for phases 2 and 3 entitlements shall be approved by City Council, and shall be contingent on meeting TDM goals set in the TDM program accepted by the City and the developer and evaluation of the progress of housing starts in the pipeline to ensure that the jobs/housing balance is not being negatively impacted."

6. Parks and Open Space:

The loss of over 240 acres of city open space is in direct conflict with general plan policy which states that the already low rate of 2.4 acres per 1000 population shall be maintained if not improved as Santa Clara continues to experience growth.

The general plan notes that the city of Santa Clara has access to the County of Santa Clara open space. As the largest city in the county, with the obvious exception of San Jose, Santa Clara needs consider its position as a civic leader and its responsibility to its citizens as well as to the region, in providing amenities such as open space for recreation and habitat.

We believe the opportunity to create a wide usable linear park and habitat along the river, as many other cities are doing that have a real, living and potentially iconic river as an asset, would be its most significant and memorable contribution to the recreational opportunities in the region rather than relying on regional open space provided by its smaller neighbors and the county.

7. Pedestrian and bicycle investments as part of TDM

As in the case of many other cities, Santa Clara needs to require and establish and require clear priority for bicycle access, for this development, so that commuting by bicycle is a realistic option. This means looking **at a radius of approximately 5 miles to ensure connected and safe bike access to the project area.** This

could entail providing bike lanes as well as improving access using trails. A Fair Share of the cost of this infrastructure should be paid for the developer.

8. Air Quality

We do not agree that greenhouse gas caused by traffic is not relevant as is suggested in the response to the comments raised with regard to traffic caused by the project.

The transportation demand management plan must prioritize and achieve transit, pedestrian and bicycle travel, safety, and connectivity, above cars, using clearly stated and measurable goals for shifting the mode share, and a pro-active program for meeting these goals. These are all currently missing in the proposed plan and associated EIR and need to be specifically noted, in the EIR, as needing to be included in the proposed TDM plan.

9. Hydrology Water Quality

Creek protection: The creeks that run along the property, are valued assets of the region. We continue to point out that new roadways proposed along San Tomas Aquino Creek and the Guadalupe River have the potential to degrade water quality by airborne dust, toxic tire does an toxic brake dust. Given the size of the properties every attempt should be made to avoid routing roads along creeks.

10. Cumulative impacts

The EIR inadequately addresses proposed projects in the pipeline in San Jose and Sunnyvale, both adjoining cities, within very close proximity to the project site. In fact, just across the river. We believe the EIR needs to be revised to include the traffic impacts of adjacent cities.

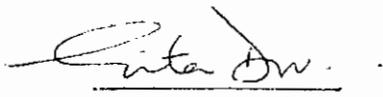
Cumulative impacts on water supply must be also be analyzed and addressed.

11. Alternatives

Given the apparently unmitigatable impacts of severe traffic, as outlined in the responses to EIR comments, it seems clear that the city needs to **seriously consider going to the reduced intensity alternative**. In that scenario, the site plan proposed by the developer indicates Parcels one, two and three as having office buildings with only on grade parking sprawled across the entire sites.

It is quite clear that the reduced office space obviously requires less land and can be accumulated on fewer parcels so that the community will be able to put its recreational open space to alternative recreational uses. We believe that development of recreational space is an appropriate community benefit for development rights on the public land.

Respectfully submitted:



Gita Dev and Gladwyn D'Souza
Co-chairs, Sustainable land use Committee
Sierra Club Loma Prieta Chapter

CC James Eggers, Executive Director, Sierra Club Loma Prieta Chapter
Mike Ferreira, Chair, Conservation Committee, Sierra Club Loma Prieta Chapter
Katja Irvin, Water Committee, Sierra Club Loma Prieta Chapter

Debby Fernandez

From: Debby Fernandez
Sent: Thursday, May 12, 2016 1:20 PM
To: Sharon Goei; Alexander Abbe; Lee Butler; Kevin Riley; Ruth Shikada
Cc: Rajeev Batra
Subject: RE: Comments on Related CityPlace EIR

Thanks.

From: Sharon Goei
Sent: Thursday, May 12, 2016 12:34 PM
To: Alexander Abbe; Debby Fernandez; Lee Butler; Kevin Riley; Ruth Shikada
Cc: Rajeev Batra
Subject: FW: Comments on Related CityPlace EIR

Here are the comments from Friends of Caltrain as mentioned earlier.

Sharon

From: Elizabeth Elliott
Sent: Thursday, May 12, 2016 10:56 AM
To: Sharon Goei
Cc: Rajeev Batra
Subject: FW: Comments on Related CityPlace EIR

FYI

From: Lynn Garcia
Sent: Wednesday, May 11, 2016 7:26 PM
To: Elizabeth Elliott
Subject: FW: Comments on Related CityPlace EIR

EE,

My apologies...I sent this without copying you on it!

Lynn Garcia | Mayor and Council Office
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**City of
Santa Clara**
The Center of What's Possible

From: Mayor and Council
Sent: Wednesday, May 11, 2016 7:25 PM
To: 'Adina Levin'
Subject: RE: Comments on Related CityPlace EIR

Hello Ms. Levin,

Thank you for your email regarding the City Place EIR. This email has been forwarded to the Mayor, Council Members and the City Manager for their reference.

Kind regards,

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**City of
Santa Clara**
The Center of What's Possible

From: aldeivnian@gmail.com [<mailto:aldeivnian@gmail.com>] **On Behalf Of** Adina Levin
Sent: Monday, May 09, 2016 5:03 PM
To: Mayor and Council
Subject: Comments on Related CityPlace EIR

Honorable Mayor Gillmor and Members of the City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mayor Gilmor, City Council Members and staff,

Thank you for the opportunity to comment on the Related CityPlace EIR.

Housing and Area Plan

Regarding housing, thanks to the City for amending the EIR explicitly mention adding 11,000 units of housing in the city to address the jobs/housing balance as part of the update of the General Plan, and locations for this housing might include areas near the Related CityPlace development. In order to reduce traffic, pollution and other impacts, the city should create an Area Plan that includes plans to facilitate non-driving access for short trips in the adjacent areas, and to maximize the value of investments in sustainable transportation in the area.

Project Phasing

Given the impacts and concerns about transportation and housing, we would recommend a strategy to phase approval of the project, based on achievement of housing and transportation goals.

Parking and Transportation Demand Management

Thank you very much for including unbundled parking and priced parking among the tools in the toolbox. These are powerful tools to incent higher use of transportation alternatives.

There were multiple comments focused on the opportunity for stronger transportation demand

management policies. Following is additional information supporting these comments

Stronger TDM Goal. The Master Comment letter indicated that the 45% mode share target set for North Bayshore is not achievable by Related CityPlace. North Bayshore and Stanford have the strictest conditions in the area. If this “Gold Standard” is not feasible, please consider the “Silver Standard” 25% trip reduction from ITE baseline used for the San Mateo Rail Corridor Plan, policy 7:17: <http://www.cityofsanmateo.org/DocumentCenter/Home/View/1812>

Like Related CityPlace, the San Mateo Rail Corridor Plan area, covering 600+ acres, has a many-year buildout, and its developments have multiple tenants (and multiple developers) rather than one big employer. The strong goal is applied in the case of multiple tenants, for whom the conditions are applied in the lease.

In addition, the San Mateo Rail Corridor Plan planned for important transit improvements to occur during the life of the project. Therefore,

Reporting. The master comment letter and answers to study session questions made the case that penalties may not be the most effective way of incenting TDM performance, and reporting was more important; however the answer about whether reporting would be public was not clear. It is essential that reporting be public, as it is in City of San Mateo. It is also important, as noted in VTA’s comments, that measurement be done by the city or a third party hired by the city.

Reinvestment clause. In addition, the San Mateo Corridor Plan has a structured approach for non-attainment that we would recommend. In the San Mateo Corridor Plan, if a development is in non-attainment of their goals, the development needs to work with the city to invest in stronger measures to reduce trips. The TDM plan is designed upfront to include stronger measures that may need to be included if the development is in nonattainment.

Fare share contribution to major multi-modal improvements. In San Mateo and Mountain View, contributions to major transportation improvements - such as a Caltrain station reconstruction and trade separation in San Mateo, and a dedicated transit lane connecting Mountain View transit center to North Bayshore, were identified as part of the transportation planning for the plan area. Major improvements that would be candidates for such investment include substantial improvements to the Great America Rail station, an elevated pedestrian walkway across Tasman Drive at Centennial Boulevard, and additional bicycle/pedestrian crossings allowing access into the project area.

North Bayshore not yet achieving goals? At the study session, the transportation consultant noted that Mountain View was not yet achieving its goals for North Bayshore. In fact, the requirement pertains to new developments that are proposed for North Bayshore. For example, the LinkedIn proposal for new development does in fact have a TDM plan that is targeted to achieve the goals.
<http://mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=15824>

Mode share assessment. The Master Comment letter made the case that it is ineffective for plan goals to include mode share, since surveys are voluntary and unreliable. However, for the City of Palo Alto’s Downtown Transportation Management Association, a reputable research firm was hired to conduct a random-sample survey assessing mode use and transportation preferences among the 10,000 worker downtown employee base. It is feasible to conduct robust and reliable research if this is a goal.
<http://www.paloaltotma.org/files/managed/Document/73/Steering%20Committee%20Meeting%204%20-%20MASTER%20presentation%20-%20Final.pdf>

Retail and service workers not covered by TDM. The Master Comment Letter made the case that the

TDM plan does not need to cover retail and service workers since their commute hours are often earlier or later than peak period. However, driving by retail workers also contribute to VMT/GHG and particulate emissions, potentially at a high level due to older cars and long commutes. One focus of Palo Alto's TMA is transit support for service workers. In addition, the comment letter notes that tracking driving rate is infeasible because their parking locations cannot be identified. However, the Palo Alto survey does assess transportation choices by employer sector. Also, Palo Alto offers discount worker parking permit prices for low-income workers, allowing the city to know the number of workers who purchase those discount permits. It is feasible and desirable to include retail and service workers, and it is inequitable not to do so.

Investments in major transit improvements. In Mountain View and San Mateo, developers are contributing substantial funding toward major transit improvements, including a Caltrain station reconstruction and grade separation in San Mateo, and a dedicated bus lane connecting North Bayshore to the Mountain View Transit Center. These projects were identified as part of the transportation planning for the area, in order to reach the trip and mode share goals. It makes sense for Santa Clara to identify key improvements that would be beneficial to increase sustainable transportation and focus on these for developer contribution.

Multimodal improvement plan. Thank you for including the Multimodal Improvement Plan. The goal of the plan is to include multimodal measures that offset LOS impacts at congested intersections. However, the most effective means of addressing congestion are often not located directly at the intersection itself. For example a light rail improvement that enables increased ridership, but is not located at the congested intersection. We recommend using Vehicle Miles Travelled and Mode Split as metrics to identify measures that would be most effective at diverting trips and reducing congestion. As an example, Mountain View is planning to use metrics including VMT and mode share in their basket of metrics to identify effective multi-modal improvements.

Thank you for your consideration,

Adina

Adina Levin
Friends of Caltrain
<http://greencaltrain.com>
650-646-4344



May 23rd, 2016

Debby Fernandez, Associate Planner
City of Santa Clara Planning Division
1500 Warburton Avenue
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Re: Final EIR for the City Place Project

Dear Ms. Fernandez,

The Santa Clara Valley Audubon Society has reviewed the Final Environmental Impact Report for the City Place Project in the City of Santa Clara. We have reviewed the responses to our comments, and we remain concerned with inadequate mitigation for impacts to burrowing owls, a species that is currently on the verge of extirpation from the south Bay

The 2000 Directive

The question is one of interpretation as to the action referred to in what the FEIR refers to as the "2000 Directive." (FEIR 3-17) The FEIR notes that the word "seek" is not a mandate to take action. This is a misreading of the 2000 Directive. At that time, lands for Burrowing Owls had not been identified. The Council directed staff to seek Burrowing Owl habitat amongst three properties "the closed Lafayette landfill, the slopes of the relocated golf course, and the San Jose/Santa Clara Water Pollution Control Plant." (FEIR, 3-17)

The FEIR acknowledges that "some combination" of these lands were to make up the 44.5 acres of Burrowing Owl habitat sought. (FEIR 3-17) The term "seek" therefore refers to the fact that a variety of lands were available to fulfill the City's commitment, though no particular lands had been identified. The term does not negate the fact that the City Council at that time gave a directive to City staff to find replacement habitat for impacts to Burrowing Owl habitat. Essentially, they set a policy for staff to implement. The fact that the staff did not follow through with that commitment simply speaks poorly of staff performance; it does not negate the clear intent of the City Council to find additional mitigation lands for the owls.

The FEIR further acknowledges that the 2000 Directive could still be implemented, yet the FEIR does not show any indication that implementation has been attempted. As the FEIR notes, "...the 44.5 acres were contemplated to consist of *some combination* of three sites—not necessarily on all three sites or any particular one of the sites. In other

words, the City Manager could still elect to seek the development and maintenance of all 44.5 acres on just the WPCP site.” (FEIR, 3-18)

This was not simply a “contemplation.” The City staff was directed to seek the mitigation lands. The fact that staff evidently did not do so does not negate the fact that, in 2000, the Council was setting policy and directing staff to implement that policy. Therefore, the EIR for this Project should have explored the potential to find additional mitigation lands for Burrowing Owls. In not doing so, the EIR is inconsistent with stated City policy—a significant impact. The EIR consultants and staff should have attempted to mitigate that impact. As the FEIR acknowledges, “the City Manager could still elect to seek the development and maintenance of all 44.5 acres on just the WPCP site.” (FEIR, 3-18) This acknowledges that mitigation is still possible, and the EIR, in an attempt to mitigate impacts to owl habitat, should have explored that possibility. The above quote is incorrect in stating that the City Manager could “elect” to pursue this option. In fact, he/she was directed to do so, and the EIR fails to deal with that directive.

The FEIR goes on to support the fact that placing conservation easement over WPCP lands is still a possibility and thus a potentially feasible mitigation for the Project’s impacts to owl habitat:

“This means that 177 acres of the 180-acre ‘conservation feature’ have explicitly been recognized as constituting an appropriate location for later conservation easements for the purpose of mitigating impacts on Burrowing Owl habitat. There is nothing to prevent that acreage from being used for conservation easements....” (FEIR, 3-18)

The FEIR, in summarizing this discussion, concludes, “implementation of the Project would not definitively conflict with the Directive, as the City could fulfill the Directive by seeking to designate 44.5 acres of land at the WPCP site as Burrowing Owl habitat.” (FEIR, 3-19) This is essentially placing mitigation for the loss of Burrowing Owl habitat in a category of purely being optional. This is contrary to CEQA law and regulations. Imagine an EIR that identifies impacts to wetlands, then states that mitigation for the impacts to those wetlands is purely optional and that development of the project under consideration does not preclude future mitigation. Such a statement would be clearly illegal under CEQA, as is the proposed action, or lack of action, in the instant situation.

At the May 3rd 20156 Joint City Council and Planning Commission, after the release of the Final EIR, the developer removed 35-acres (Parcel C) from the project development plan to serve as park and open space. To comply with the 2000 Directive, this acreage should be allocated to a burrowing owl preserve. Alternatively, land should be allocated at the San Jose/Santa Clara Regional Wastewater Plant (Water Pollution Control Plant).

Burrowing Owl Methodology

The FEIR is contradictory in its discussion of the methodology used to determine impacts to owls. At one point, the FEIR states, “The Draft EIR utilizes the most up-to-date scientific data on Burrowing Owls, which was developed for and included in the SCVHCP.” (FEIR, 3-22) Thus the FEIR acknowledges that the most current and local work has been done by the SCVHCP. Nonetheless, the FEIR at other locations rejects the SCVHCP information in favor of CDFW

standards, stating, for example, "By contrast, although the SCV HCP does regulate the mitigation of impacts on burrowing owls on lands that are close to the Project site, it has no direct regulatory authority over the Project site, nor is the City a partner agency in it." (FEIR, 3-20) The EIR seems to simply refer to that information which provides a conclusion that supports the project, rather than have a consistency of analysis throughout.

Even using the CDFW standards, the FEIR still arrives at an erroneous conclusion by picking to apply some standards and not others. The FEIR, at page 3-19, notes that the 2012 CDFW Staff Report on Burrowing Owls notes, under the heading "Significance of Impacts," that impacts to "dispersal...habitat" and "habitat linkages" should be considered significant. However the EIR goes on to focus solely on breeding and foraging habitat, concluding that the Project site does not qualify as either.

The Project site does qualify as both dispersal habitat and a potential habitat linkage. Recent Burrowing Owl records show breeding owls within one-half mile of the Project site, and the Project site is situated in between occupied owl habitats. The SCVHCP specifically identifies the Project site as a potential dispersal habitat. The FEIR acknowledges that "owl sign" has been identified during recent surveys. (FEIR, 3-19) The FEIR further acknowledges that, "the site potentially could be considered to be 'dispersal habitat,'" (FEIR, 3-21) However, the FEIR then goes on to an analysis relating to the potential for finding owls on the site in the future. This analysis ignores the fact that, even absent signs of active owl habitat, the Project would nonetheless destroy a key potential dispersal site for the owls. By focusing almost exclusively on breeding and foraging habitat, the FEIR fails to meet CEQA standards, even if only the CDFW standards are used.

Sincerely,



Shani Kleinhaus, Ph.D.
Environmental Advocate