April 7, 2020

State Clearinghouse Number 2019070377 | THE WESTPORT MIXED-USE PROJECT

RESPONSE TO COMMENTS DOCUMENT

for the City of Cupertino

CITY OF CUPERTINO EST. 1955

PLACEWORKS

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1. Introduction

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

This Response to Comment document, which has been prepared in compliance with the California Environmental Quality Act (CEQA)[1] and the CEQA Guidelines,[2] provides responses to comments received on the Draft Environmental Impact Report (Draft EIR) for The Westport Mixed-Use Project, referred herein to as "proposed project." The Draft EIR identifies significant effects on the environment (impacts) associated with the proposed project, identifies alternatives to the proposed project and identifies mitigation measures to avoid or reduce potential environmental impacts. This document also contains text revisions to the Draft EIR. This document together with the Draft EIR constitute the Final EIR for the proposed project.

1.2 ENVIRONMENTAL REVIEW PROCESS

According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project, and to provide the general public with an opportunity to comment on the Draft EIR. This Response to Comments document has been prepared to respond to comments received on the Draft EIR. A Notice of Preparation of an EIR was issued by the City on Thursday, July 11, 2019 for a 30-day-comment period. A Notice of Availability of the Draft EIR was issued on Wednesday, November 6, 2019, and the Draft EIR was made available for public review for a 46-day public review period through Friday, December 20, 2019. The Draft EIR was distributed to local, regional, and State agencies, and the general public was advised of the availability of the Draft EIR. Copies of the Draft EIR were made available for review at the City's website (www.cupertino.org/westport), at the Cupertino Library (10800 Torre Ave, Cupertino, CA 95014) and at Cupertino City Hall (10300 Torre Avenue, Cupertino, CA 95014) at the Community Development Department counter.

Written comments received on the Draft EIR are included in their original format as Appendix A, Comment Letters, of this Response to Comments document. The comments are also reproduced in Chapter 5, Comments and Responses, of this document, and responses to comments on environmental issues are provided.

The Final EIR will be presented at a Planning Commission hearing at which the Commission will advise the City Council on certification of the EIR. The Planning Commission will not take final action on the EIR or the proposed project but will provide its recommendations to the City Council. The City Council will then

[1] The CEQA Statute is found at California Public Resources Code, Division 13, Sections 21000 to 21177.

[2] The CEQA Guidelines are found at California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 to15387.

consider the Planning Commission's recommendations on the Final EIR and the proposed project during a noticed public hearing and will take final action regarding the Final EIR and the proposed project. The City Council is currently scheduled to consider certification of the Final EIR and approval of the proposed project at a public hearing in Spring 2020.

2. *Executive Summary*

This executive summary presents an overview of the proposed The Westport Mixed-Use Project, referred herein to as "proposed project," and the conclusions of the analysis contained in Chapters 4.1 through 4.9 of the Draft Environmental Impact Report (Draft EIR). This executive summary describes the organization of this document, provides a summary of the proposed project, and lists of each significant effect on the environment (impacts) with the proposed mitigation, if any, that corresponds with the environmental issues discussed in the Draft EIR (see Table 2-1). All information in Table 2-1 is a duplicate of that which was published in the Draft EIR except for Chapter 4.2, Air Quality, and Chapter 4.9, Utilities and Service Systems. The mitigation measures in these chapters have been revised pursuant to edits made in Chapter 3, Revisions to the Draft EIR, of this document.

2.1 DOCUMENT ORGANIZATION

This document is organized into the following chapters:

- Chapter 1: Introduction. This chapter discusses the use and environmental review process.
- Chapter 2: Executive Summary. This chapter is a summary of the proposed project and the findings of the Draft EIR and Response to Comments document.
- Chapter 3: Revisions to the Draft EIR. Additional corrections to the text and graphics of the Draft EIR are contained in this chapter. Underline text represents language that has been added to the EIR; text with ~~strikethrough~~ has been deleted from the EIR. These revisions do not contain "significant new information," as defined in the CEQA Guidelines Section 15088.5, which includes new or substantially more severe environmental impacts, new mitigation measures or alternatives, or information indicating that the Draft EIR is fundamentally or basically inadequate.
- Chapter 4: List of Commenters. Names of agencies and individuals who commented on the Draft EIR are included in this chapter.
- Chapter 5: Comments and Responses. This chapter lists the comments received from agencies and the public on the Draft EIR, and provides responses to those comments.
- Chapter 6: Mitigation Monitoring or Reporting Program. This chapter lists the mitigation measures included in the Draft EIR for the proposed project, and identifies programs for monitoring and reporting the progress on implementing these measures.
- Appendix: The appendix for this Response to Comment document (presented in PDF format on a CD attached to the back cover) contain the following supporting document:
  - Appendix A: Comment Letters

2.2 SUMMARY OF PROPOSED PROJECT

The 8.1-acre project site is identified as Priority Housing Element Site A3 (The Oaks Shopping Center) in the City of Cupertino General Plan (Community Vision 2015-2040). The site is currently developed with a one-story shopping center (The Oaks Shopping Center) consisting of five buildings occupied with retail stores, restaurants, and offices, which were built between 1973 and 1976. Existing development on the site consists of approximately 71,250 square feet of shopping center development. The project site also includes 201,831 square feet of paved area, which includes associated parking, sidewalks, patios, and driveways, in addition to 45,486 square feet of native and non-native landscaping.

Following approval by the Cupertino City Council, the proposed project would demolish the existing buildings and construct 18 new buildings, that would have 242 residential units and 20,000 square feet of retail space, as well as below and at-grade parking, and associated landscape and hardscape areas. The proposed residential component would consist of three rowhouse buildings, 13 townhouse buildings (attached homes), and two mixed-use (residential and retail) buildings, including market-rate units and senior housing. The proposed retail component would be located on the ground level of the two mixed-use residential buildings. Residential-Retail Building 1 would have 17,600 square feet of retail space located at the corner of Stevens Creek Boulevard and Mary Avenue. Residential-Retail Building 2 would have 2,400 square feet of retail space on the ground level fronting Stevens Creek Boulevard. The proposed project would include one access point off Stevens Creek Boulevard and three additional access points off Mary Avenue. The below-grade parking would be located under Retail-Residential Building 1 and accessed from the central access point on Mary Avenue. Off-site improvements include the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement northbound SR-85 on ramp, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp. The proposed project is described in more detail in Chapter 3, Project Description, of the Draft EIR.

2.3 SIGNIFICANT IMPACTS AND MITIGATION MEASURES

Table 2-1 summarizes the conclusions of the environmental analysis contained in the Draft EIR and presents a summary of impacts and mitigation measures. It is organized to correspond with the environmental issues discussed in Chapter 4.0 through 4.9 of the Draft EIR. The table is arranged in four columns: 1) impact statement; 2) significance prior to mitigation; 3) mitigation measures; and 4) significance after mitigation. For a complete description of potential impacts, please refer to the specific discussions in Chapters 4.1 through 4.9 of the Draft EIR. As shown in Table 2-1, some significant impacts would be reduced to a less-than-significant level if the mitigation measures recommended in the Draft EIR are implemented.

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
Air Quality			
AQ-1: The proposed project would not conflict with or obstruct implementation of the applicable air quality plan.	LTS	N/A	N/A
AQ-2: Uncontrolled fugitive dust (PM_{10} and $PM_{2.5}$) could expose the areas that are downwind of construction sites to air pollution from construction activities without the implementation of BAAQMD's best management practices.	S	**Mitigation Measure AQ-2: BAAQMD Basic Construction Measures.** Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are: ▪ All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. ▪ All haul trucks transporting soil, sand, or other loose material off-site shall be covered. ▪ All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. ▪ All vehicle speeds on unpaved roads shall be limited to 15 mph. ▪ All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. ▪ Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. ▪ All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall	LTS

EXECUTIVE SUMMARY

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		be checked by a certified mechanic and determined to be running in proper condition prior to operation. ▪ Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations. ▪ Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. ▪ All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.	
AQ-3: The proposed project would not expose sensitive receptors to substantial pollutant concentrations.	LTS	N/A	N/A
AQ-4: Implementation of the project would cumulatively contribute to air quality impacts in the San Francisco Bay Area Air Basin.	S	Implement Mitigation Measure AQ-2.	LTS
Biological Resources			
BIO-1: Tree removal and demolition activities during site clearance could destroy active nests, and/or otherwise interfere with nesting of birds protected under federal and State law.	S	**Mitigation Measure BIO-1:** Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall: ▪ Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period. ▪ Be conducted no more than 14 days prior to the start of tree removal or construction. ▪ Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped.	LTS

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		▪ Document locations of active nests containing viable eggs or young birds. Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include: ▪ Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. ▪ Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. ▪ An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. ▪ The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.	
BIO-2: Proposed development would result in removal of trees protected under City ordinance.	S	**Mitigation Measure BIO-2:** The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City.	LTS

EXECUTIVE SUMMARY

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions: ▪ Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet. ▪ Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist. ▪ No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within he TPZ. ▪ Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ. ▪ Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist	

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		shall be on-site during all operations within the TPZ to monitor demolition activity. ▪ All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist. ▪ The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures. ▪ All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied. ▪ Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans. ▪ Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300).	

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TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		▪ Any root pruning required for construction purposes shall receive the prior approval of and be supervised by the consulting arborist. ▪ Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and by supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw. ▪ Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface. ▪ All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1) ▪ The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment. ▪ Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots. ▪ Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use. ▪ Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall be between	

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees. ▪ All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.	
BIO-3: The proposed project in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to biological resources.	S	Implement Mitigation Measures BIO-1 and BIO-2.	LTS
Cultural and Tribal Cultural Resources			
CULT-1: Construction of the proposed project would have the potential to cause a significant impact to an unknown archaeological resource pursuant to CEQA Guidelines Section 15064.5.	S	**Mitigation Measure CULT-1:** If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities: ▪ All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out. ▪ The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows: ▪ If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5. ▪ If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible,	LTS

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TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		other appropriate measures (e.g., data recovery) may be implemented. ▪ All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.	
CULT-2: The proposed project would not cause a substantial adverse change in the significance of a Tribal Cultural Resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is: 1) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or 2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe.	LTS	N/A	N/A
CULT-3: Construction of the proposed project would have the potential to cause a significant impact to an unknown tribal cultural resource as defined in Public Resources Code 21074.	S	**Mitigation Measure CULT-3:** Implement Mitigation Measure CULT-1.	LTS
CULT-4: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in cumulative impacts with respect to cultural resources.	S	Implement Mitigation Measure CULT-1	LTS
Geology and Soils			

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
GEO-1: Construction of the proposed project would have the potential to directly or indirectly affect an unknown unique paleontological resource.	S	**Mitigation Measure GEO-1:** The construction contractor shall incorporate the following in all grading, demolition, and construction plans: ▪ In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted. ▪ The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery. ▪ The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. ▪ The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. ▪ If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.	LTS
GEO-2: The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.	S	Implement Mitigation Measure GEO-1.	LTS
Greenhouse Gas Emissions			
GHG-1: The proposed project would not directly or indirectly generate GHG emissions that may have a significant impact on the environment.	LTS	N/A	N/A
GHG-2: The proposed project would not conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.	LTS	N/A	N/A

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TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
GHG-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to GHG emissions.	LTS	N/A	N/A
Hazards and Hazardous Materials			
HAZ-1: The proposed project would not create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials during construction.	LTS		N/A
HAZ-2: The proposed project would not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan.	LTS	N/A	N/A
HAZ-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to hazards and hazardous materials.	LTS	N/A	N/A
Noise			
NOISE-1: The proposed project could generate a substantial temporary increase in ambient noise levels in the vicinity of the proposed project during the construction phase that could exceed the standards established in the local noise ordinance.	LTS	**Mitigation Measure NOISE-1:** Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following: ▪ Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays). ▪ At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized	N/A

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		representatives that are assigned to respond in the event of a noise or vibration complaint. ▪ At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City. ▪ During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible. ▪ During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible. ▪ Haul routes shall be selected to avoid the greatest amount of sensitive use areas. ▪ Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes. ▪ During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.	

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TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
NOISE-2: The proposed project would not generate excessive groundborne noise levels.	LTS	N/A	N/A
NOISE-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to noise.	S	Implement Mitigation Measure NOISE-1.	LTS
Transportation and Circulation			
TRANS-1: The proposed project would not conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.	LTS	N/A	N/A
TRANS-2: The proposed project would not conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b).	LTS	N/A	N/A
TRANS-3: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts.	LTS	N/A	N/A
Utilities and Service Systems			
UTIL-1: Implementation of the proposed project may result in a determination by the wastewater treatment provider, which serves or may serve the proposed project, that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.	S	**Mitigation Measure UTIL-1:** No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods: 1) Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or 2) Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.	LTS

TABLE 2-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Statement	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis. If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.	
UTIL-2: The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to wastewater treatment.	S	Implement Mitigation Measure UTIL-1	LTS

EXECUTIVE SUMMARY

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3. Revisions to the Draft EIR

This chapter contains text revisions to the Draft EIR that were made in response comments from agencies, organizations and the public, as well as staff-directed changes. These text revisions include typographical corrections, insignificant modifications, amplifications and clarifications of the Draft EIR. The following revisions also include analysis of an alternative to the proposed project that was submitted by the applicant on March 19, 2020 for consideration by the City. In each case where a revision has been made, the revised page and location on the page is presented, followed by the textual, tabular, or graphical revision. Underlined text represents language that has been added to the EIR; text with ~~strikethrough~~ represents language that has been deleted from the Draft EIR. None of the revisions to the Draft EIR constitutes significant new information as defined in CEQA Guidelines Section 15088.5; therefore, the Draft EIR does not need to be recirculated.

CHAPTER 2, EXECUTIVE SUMMARY

The text in Table 2-2, Summary of Impacts and Mitigation Measures, on page 2-15 of the Draft EIR is hereby amended as follows:

Mitigation Measure AQ-2: BAAQMD Basic Construction Measures. Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

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- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.
- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

The text in Table 2-2, Summary of Impacts and Mitigation Measures, on page 2-19 of the Draft EIR is hereby amended as follows:

Mitigation Measure UTIL-1: No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

1. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or
2. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the ~~*San Jose-Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient* table in the May 2007, *City of Santa Clara Sanitary Sewer Capacity Assessment*,[19] and *California Green Building Standards*,~~ CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019. unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis.

Footnote:

~~[19] Mark Thomas and Associates, July 19, 2018, Email communication with Cupertino Public Works.~~

CHAPTER 3, PROJECT DESCRIPTION

The text in Section 3.4.1.8 Utilities and Service Connections, starting on the fifth sentence of the second paragraph on page 3-22 of the Draft EIR is hereby amended as follows:

The existing CSD peak wet weather flow into the Santa Clara system is modeled at ~~13.29~~13.14 mgd.[32] Based on the ~~2007 *City of Santa Clara Sewer Capacity Assessment*~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ average dry weather flow (ADWF) generation rate for multi-family residential uses is 133 gallons per day (gpd) per unit, 55 gpd per person per townhome (or rowhouse), and 0.073 gpd per square foot of retail space. The proposed 242 residential units are comprised of 154 multi-family units and 88 townhomes. Based on an average household size of 2.87 persons,[33] the townhomes would generate 253 new residents. The proposed project also includes 20,000 square feet of retail space. Applying ~~this~~ these generation rates, the proposed ~~242 residential units and 20,000 square feet of retail space would generate up to 38,186 gpd or approximately 0.0382 mgpd of wastewater~~ project would generate approximately 35,833 gpd or 0.036 mgd of ADWF. The approximately 71,250 square-foot shopping center is currently 85 percent occupied (or 60,560 square feet). The shopping center currently, generates an ADWF of about ~~21,376~~4,421 gpd or ~~0.0213~~ 0.004 mgd. Therefore, the net increase in ADWF for the proposed project is ~~16,810~~31,412 gpd or ~~0.016~~ 0.031 mgd.[34] According to Benjamin T. Porter, Cupertino Sanitary District Manager-Engineer, in a letter to the City of Cupertino dated December 18, 2019, the peak wet weather flow is calculated by multiplying the average dry flow by a factor of 2.95. The peak wet weather flow for the proposed project is 105,707 gpd or 0.105 mgd. The operational shopping center currently generates about 13,042 gpd or 0.0013 mgd of peak wet weather flow. Therefore, the net increase in peak wet weather flow for the proposed project is 92,665 gpd or 0.093 mgd.

Footnotes:

[32] Mark Thomas & Co. Inc., Cupertino Sanitary District, December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*~~, February 20, 2019.~~

[33] This analysis is based on the Association of Bay Area Governments (ABAG) 2019 projections of the average household size of 2.87 persons for Cupertino in 2025. This is the standard approach for population and housing analysis in Cupertino.

[34] ~~38,186~~ 35,833 gpd proposed generation – ~~21,376~~ 4,421 gpd existing generation = ~~16,810~~ 31,412 gpd (or ~~0.0168~~ 0.031 mgd) net increase.

The text in Section 3.4.4, Required Permits and Approvals, on page 3-28 of the Draft EIR is hereby amended as follows:

Encroachment permits from the City and Caltrans would also be required as well as design review and approval for the proposed bus stop by the VTA. Additionally, Caltrans would require a Maintenance

Agreement for any proposed landscaping installed in the Caltrans right of way (ROW) and any trees in the Caltrans ROW would require prior approval from the Caltrans District Landscape Architect.

CHAPTER 4.1, AIR QUALITY

Mitigation Measure AQ-2 under Section 4.1, Air Quality, on pages 4.1-18 and 4.1-19 of the Draft EIR is hereby amended as follows:

Mitigation Measure AQ-2: BAAQMD Basic Construction Measures. Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.
- Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

CHAPTER 4.5, GREENHOUSE GAS EMISSIONS

The text in Section 4.5, Greenhouse Gas Emissions, on pages 4.5-18 and 4.5-19 of the Draft EIR is hereby amended as follows:

As discussed in Section 4.5.1.2, Regulatory Framework, the Cupertino CAP identifies sources of GHG emissions within the city's boundaries, presents current and future emissions estimates, identifies a GHG reduction target for future years, and presents strategic goals, measures, and actions to reduce emissions. Furthermore, as described in Section 4.5.1.2, the Cupertino CAP is a qualified GHG reduction program. ~~The proposed project would be consistent with the overall goals of the Cupertino CAP, which is the City's strategic planning document to reduce GHG emissions. As an infill project on a currently developed site within a designated PDA and TPA (CAP Measure C-T-6, Transit-Oriented Development), the proposed project would support efforts to reduce GHG emissions from VMT (CAP Goal 1, Reduce Energy Use). Consistent with CAP Measure C-T-1, Bicycle & Pedestrian Environment Enhancements, the proposed project would implement the City's 2016 *Bicycle Transportation Plan* and install a Class IV separated bikeway on Stevens Creek Boulevard between Mary Avenue and the northbound SR-85 on-ramp, and a signal control for the westbound right turn movement to improve bike and pedestrian safety, thus, promoting these alternative modes of transportation. The proposed new buildings would achieve the current Building Energy Efficiency Standards and would be constructed in conformance with CALGreen, which requires high-efficiency water fixtures for indoor plumbing and water efficient irrigation systems that would improve energy efficiency. The proposed buildings would comply with Title 24 solar requirements and would meet solar ready standards. While the requirements under Title 24 do not require installation of solar-energy systems, buildings are required to be built to accept the installation of such a system. CAP Measures C-E-5, Community-wide Solar Photovoltaic Development, also encourages voluntary community-wide solar photovoltaic development. Additionally, pursuant to CMC Chapter 16.58 (Green Building Ordinance), the proposed project would be required to build to LEED or an alternative reference standard (CAP Goal 1, Reduce Energy Use) and install Electric Vehicle Supply Equipment for the charging of electric vehicles (CAP Measure C-T-7, Community-Wide Alternative Fuel Vehicles). Consistent with CAP Measure C-W-1, SB-X7-7, the proposed project would comply with SB-X7-7, which requires California to achieve a 20 percent reduction in urban per capita water use by 2020. The proposed project would implement best management practices for water conservation to achieve the City's water conservation goals. Water conservation would indirectly contribute to reducing GHG emissions. If less water is used, fewer resources (namely energy) will be used to source, distribute, and treat the water. Since energy consumption leads to the generation of GHG emissions, using fewer resources would help to reduce GHG emissions overall. Furthermore, consistent with CAP Measure C-SW-3, Construction and Demolition Waste Diversion Program, the proposed project would comply with the City's Construction and Demolition Debris Diversion Ordinance, which requires applicable construction projects to divert 60 percent of construction waste. Prior to receiving a final building inspection, a construction recycling report would be submitted to show the tons recycled and disposed by material type. As an infill redevelopment priority housing development on a designated PDA and TPA the proposed project would be consistent with the overall intent of the CAP to support reductions in GHG emissions and the proposed project would not conflict any goals or measures to reduce GHG emissions in the CAP and impacts would be *less than significant*.~~ Consistency of the proposed project to the Cupertino CAP is described in Table 4.5-7. As shown in the table, the proposed project would be consistent with the overall intent of the CAP to support

reductions in GHG emissions. Therefore, the proposed project would not conflict any goals or measures to reduce GHG emissions in the CAP and impacts would be *less than significant*.

Table 4.5-7 City of Cupertino Climate Action Plan Consistency Analysis

Goal	Project Consistency
Community-Wide Measures	
Measure C-E-1 Energy Use Data and Analysis *Increase resident and building owner/tenant/operator knowledge about how, when, and where building energy is used.* *2035 GHG Reduction Potential: 850 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. This measure is not relevant because the proposed project receives energy through Silicon Valley Clean Energy (SVCE) and therefore utilizes renewable energy for the building. Additionally, the project includes solar PV cells and other energy efficiency design features, pursuant to the 2019 Building Energy Efficiency Standards and CALGreen. The proposed project would not conflict with implementation of this measure.
Measure C-E-2 Retrofit Financing ***Promote** existing and support development of new private financing options for home and commercial building retrofits and renewable energy development.* *2035 GHG Reduction Potential: 10,525 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The project proposes new buildings that would comply with the 2019 Building Energy Efficiency Standards and CALGreen, at minimum, in addition to being designed to achieve either a LEED Silver rating or a Green Point Rating (GPR) of 50 points pursuant to CMC Chapter 16.58, Section 16.58.220, Table 101.10, as stated on pages 3-26 and 3-27 of Chapter 3, Project Description. The proposed project would not conflict with implementation of this measure.
Measure C-E-3 Home & Commercial Building Retrofit Outreach ***Develop** aggressive outreach program to drive voluntary participation in energy- and water-efficiency retrofits.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project consists of construction of new buildings and is not a retrofit project. Additionally, the proposed project would comply with the latest building code and utilize energy and water efficient fixtures. The proposed project would not conflict with implementation of this measure.
Measure C-E-4 Energy Assurance Plan *Develop a long-term community-wide energy conservation plan that considers future opportunities to influence building energy efficiency through additional or enhanced building regulations.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project includes buildings that would comply with the 2019 Building Energy Efficiency Standards and CALGreen, at minimum, in addition to being designed to achieve either a LEED Silver rating or a Green Point Rating (GPR) of 50 points pursuant to CMC Chapter 16.58, Section 16.58.220, Table 101.10, as stated on pages 3-26 and 3-27 of Chapter 3, Project Description.
Measure C-E-5 Community-Wide Solar Photovoltaic Development *Encourage voluntary community-wide solar photovoltaic development through regulatory barrier reduction and public outreach campaigns.* *2035 GHG Reduction Potential: 4,400 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure. The project includes PV cells for on-site electricity production, pursuant to the 2019 Building Energy Efficiency Standards and CALGreen.

Table 4.5-7 City of Cupertino Climate Action Plan Consistency Analysis

Goal	Project Consistency
Measure C-E-6 Community-Wide Solar Hot Water Development *Encourage communitywide solar hot water development through regulatory barrier reduction and public outreach campaigns.* *2035 GHG Reduction Potential: 925 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure.
Measure C-E-7 Community Choice Energy Option ***Partner** with other Santa Clara County jurisdictions to evaluate the development of a regional CCE option, including identification of the geographic scope, potential costs to participating jurisdictions and residents, and potential liabilities.* *2035 GHG Reduction Potential: 56,875 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The City of Cupertino is a member of Silicon Valley Clean Energy (SVCE) which partners with PG&E to provide clean electricity. The proposed project would receive energy from SVCE. The proposed project would not conflict with implementation of this measure.
Measure C-T-1 Bicycle & Pedestrian Environment Enhancements ***Continue to** encourage multi-modal transportation, including walking and biking, through safety and comfort enhancements in the bicycle and pedestrian environment.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would implement the City's 2016 Bicycle Transportation Plan and install a Class IV separated bikeway on Stevens Creek Boulevard between Mary Avenue and the northbound SR-85 on-ramp, and a signal control for the westbound right turn movement to improve bike and pedestrian safety, therefore promoting these alternative modes of transportation.
Measure C-T-2 Bikeshare Program ***Explore feasibility of** developing local bikeshare program.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure. The proposed project includes 117 short and long-term bicycle parking for both visitors and residents consisting of five Class 1 facilities for retail uses, 18 Class 2 facilities for retail uses, 78 Class 1 facilities for residential uses, and 16 Class 2 facilities for residential uses. Bike facilities would be located adjacent to Buildings 1 and 2, in addition to within the proposed buildings.
Measure C-T-3 Transportation Demand Management *Provide informational resources to local businesses subject to SB 1339 transportation demand management program requirements and encourage additional voluntary participation in the program.* *2035 GHG Reduction Potential: 2,375 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with or obstruct the City's ability to implement this measure.

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Table 4.5-7 City of Cupertino Climate Action Plan Consistency Analysis

Goal	Project Consistency
Measure C-T-4 Transit Route Expansion *Explore options to develop local community shuttle or community-wide car sharing to fill gaps in existing transit network.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure.
Measure C-T-5 Transit Priority *Improve transit service reliability and speed.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would install a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp in coordination with the VTA and City of Cupertino Public Works Department. The proposed project would not conflict with implementation of this measure.
Measure C-T-6 Transit-Oriented Development *Continue to encourage development that takes advantage of its location near local transit options (e.g., major bus stops) through higher densities and intensities to increase ridership potential.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-9, the proposed project is an infill, high-density mixed-use project near transit stations. As an infill project on a currently developed site within a designated PDA and TPA, the proposed project would support efforts to reduce GHG emissions from VMT (CAP Goal 1, Reduce Energy Use). The proposed project would not conflict with implementation of this measure.
Measure C-T-7 Community-Wide Alternative Fuel Vehicles *Encourage community-wide use of alternative fuel vehicles through expansion of alternative vehicle refueling infrastructure.* *2035 GHG Reduction Potential: 10,225 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. Pursuant to the City of Cupertino Municipal Code (CMC) Chapter 16.58, the proposed project would include 10 percent of the total number of multi-family parking spaces as EV spaces. The townhomes and rowhomes will have EV capabilities to install charging stations. The proposed project would not conflict with implementation of this measure.
Measure C-W-1 SB-X7-7 *Implement water conservation policies contained within Cupertino's Urban Water Management Plan to achieve 20 percent per capita water reductions by 2020.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would comply with SB X7-7, which requires California to achieve a 20 percent reduction in urban per capita water use by 2020 and would implement best management practices for water conservation to achieve the City's water conservation goals. The project would not conflict with implementation of this measure.
Measure C-W-2 Recycled Water Irrigation Program *Explore opportunities to use recycled water for irrigation purposes to reduce potable water demands.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. City must build the infrastructure to provide recycled water for projects to use. The proposed project includes a variety of on-site stormwater management, region-specific plants and trees grouped by hydrozone, and outdoor water use design required by the Water Efficient Landscape Ordinance (WELO) (CMC Chapter 14.15). The proposed project would not conflict with implementation of this measure.
Measure C-SW-1 Zero Waste Goal	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-24, during construction, the project would create a construction

Table 4.5-7 City of Cupertino Climate Action Plan Consistency Analysis

Goal	Project Consistency
Maximize solid waste diversion communitywide through preparation of a zero-waste strategic plan. *Supporting Measure*	waste management plan to reduce construction waste and divert materials from landfill and promote recycling of construction waste. Post construction the project would include a recycling program for occupants. The proposed project would not conflict with implementation of this measure.
Measure C-SW-2 Food Scrap and Compostable Paper Diversion *Continue to promote the collection of food scraps and compostable paper through the City's organics collection program.* *2035 GHG Reduction Potential: 750 MT CO_2e/yr*	**Consistent.** The proposed project would comply with the City's Curbside Composting program that allows multi-family complexes to put food scraps, food-soiled paper, and plants in their green or brown yard waste cart. The materials would be collected by the City garbage waste hauler. The proposed project would not conflict with implementation of this measure.
Measure C-SW-3 Construction & Demolition Waste Diversion Program *Continue to enforce diversion requirements in City's Construction & Demolition Debris Diversion and Green Building Ordinances.* *2035 GHG Reduction Potential: 550 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-24, the proposed project would comply with the City's Construction and Demolition Debris Diversion Ordinance (CMC Chapter 16.72), which requires applicable construction projects to divert 65 percent of construction waste. Pursuant to CMC Section 16.72.050, Information Required Before Issuance of Permit, the project would create a construction waste management plan to reduce construction waste and divert materials from landfill and promote recycling of construction waste. Prior to receiving a final building inspection, a construction recycling report would be submitted to show the tons recycled and disposed by material type. The proposed project would not conflict with implementation of this measure.
Measure C-G-1 Urban Forest Program *Support development and maintenance of a healthy, vibrant urban forest through outreach, incentives, and strategic leadership.* *2035 GHG Reduction Potential: 725 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The proposed project would add approximately 400 trees on the site, as shown on sheet L.100 of the November 2018 Landscape Plan. As shown on sheet C3 of the February 2019 Preliminary Stormwater Control Plan, the current landscaping on the site is approximately 45,486 square feet, or 13.3 percent of the site. The new development will increase landscaped areas to approximately 87,846 square feet or 25.7 percent of the site. The new landscaping reduces storm water run-off, increases carbon dioxide plantings, and reduces the heat sink profile of the site. The proposed project would not conflict with implementation of this measure.

Source: City of Cupertino, 2015, Climate Action Plan, PlaceWorks.

CHAPTER 4.6, HAZARDS AND HAZARDOUS MATERIALS

The text in Section 4.6, Hazards and Hazardous Materials, on pages 4.6-7 of the Draft EIR is hereby amended as follows:

De Anza College is located directly south of Stevens Creek Boulevard, within 140 feet of the project site. In addition, one pre-school is located within 0.25-miles of the project site. As described under impact discussion HAZ-1, impacts related to potentially contaminated soils would be less than significant. Also see Chapter 4.1, Air Quality, impact discussions AQ-2 , which conclude that the potential for impacts to sensitive receptors due the release of fugitive dust during construction would be less than significant with implementation of Mitigation Measure AQ-2, and AQ-3, which concludes that the release of hazardous materials during construction would be less than significant without mitigation. Therefore, the proposed project would not emit hazardous emissions or handle hazardous materials, substances, or waste within 0.25 miles of an existing or proposed school, and impacts would be *less than significant*.

CHAPTER 4.8, TRANSPORTATION

The text in Section 4.8, Transportation, on pages 4.8-6 of the Draft EIR is hereby amended as follows:

The level-of-service standards for each study intersection are as follows:

- Stevens Creek Boulevard/Mary Avenue (#1). The City of Cupertino level of service standard for signalized intersections is LOS D. Because the Stevens Creek Boulevard/Mary Avenue intersection is signalized, the level-of-service standard is LOS D or better.
- Stevens Creek Boulevard/SR-85 Northbound Ramp Terminal (#2). The VTA CMP states a LOS E, except for facilities grandfathered in at LOS F, is acceptable for both the AM and PM peak hour at a study intersection. Because the Stevens Creek Boulevard/SR-85 Northbound Ramp Terminal (#2) intersection is not identified as an intersection operating at LOS F, a minimum of the level-of-service standard of LOS E is acceptable for the study intersection, which is consistent with Caltrans' standards. However, this is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.

The text in Table 4.8-3 in Section 4.8, Transportation on page 4.8-11 of the Draft EIR is hereby amended as follows:

Table 4.8-3 Existing without Project Intersection Level of Service

ID #	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Delay	LOS
1	Stevens Creek Boulevard/Mary Avenue	Cupertino	D	AM	31.5	C
				PM	34.9	C
2	Stevens Creek Boulevard/SR-85 NB Ramp Terminal	Caltrans	~~E~~D[c]	AM	30.0	C
				PM	24.7	C

Notes: NB = northbound.
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 3 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 1 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

The text in Table 4.8-6 in Section 4.8, Transportation on page 4.8-17 of the Draft EIR is hereby amended as follows:

Table 4.8-6 Existing plus Project Intersection Level of Service Results

					Existing without Project		Existing plus Project	
ID	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Delay	LOS	Delay	LOS
1	Stevens Creek Boulevard/ Mary Avenue	Cupertino	D	AM	31.5	C	32.6	C
				PM	34.9	C	34.8	C
2	Stevens Creek Boulevard/ SR-85 NB Ramp Terminal	Caltrans	~~E~~D[c]	AM	30.0	C	34.3	C
				PM	24.7	C	23.0	C

Notes: NB = northbound
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 4 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 5 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

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The text in Table 4.8-7 in Section 4.8, Transportation on page 4.8-18 of the Draft EIR is hereby amended as follows:

Table 4.8-7 Cumulative without Project Intersection Level of Service Results

ID	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Existing without Project		Cumulative without Project	
					Delay	LOS	Delay	LOS
1	Stevens Creek Boulevard/ Mary Avenue	Cupertino	D	AM	31.5	C	47.7	D
				PM	34.9	C	46.3	D
2	Stevens Creek Boulevard/ NB SR 85 On/Off Ramps	Caltrans	~~E~~D[c]	AM	30.0	C	46.1	D
				PM	24.7	C	20.3	C

Notes: NB = northbound
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 5 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 5 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

The text in Table 4.8-8 in Section 4.8, Transportation on page 4.8-18 of the Draft EIR is hereby amended as follows:

Table 4.8-8 Cumulative plus Project Intersection Level of Service Results

ID	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Cumulative without Project		Cumulative plus Project	
					Delay	LOS	Delay	LOS
1	Stevens Creek Boulevard/ Mary Avenue	Cupertino	D	AM	47.7	D	49.1	D
				PM	46.3	D	46.3	D
2	Stevens Creek Boulevard / NB SR 85 On/Off Ramps	Caltrans	~~E~~D[c]	AM	46.1	D	47.6	D
				PM	20.3	C	24.7	C

Notes: NB = northbound
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 6 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 5 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

The text in Table 4.8-9 in Section 4.8, Transportation on page 4.8-20 of the Draft EIR is hereby amended as follows:

Table 4.8-9 Existing plus Project Signalized Conditions for the Westbound Right-turn Movement Intersection Level of Service and Queueing Results

					Existing plus Project		
ID	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Delay	LOS[c]	Queue[d]
2	Stevens Creek Boulevard / SR-85 NB Ramp Terminal	Caltrans	~~E~~D[e]	AM	7.6	A	220 feet (9 cars)
				PM	8.0	A	243 feet (10 cars)

Notes: NB = northbound
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. Represents the level of service with the controlled light at the right-turn lane only.
d. Vehicle queues are the 95th percentile. The 95th percentile queue length value indicates that a queue of this length or less would occur on 95 percent of the signal cycles that include a pedestrian or bicycle call.
e. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 4 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 2 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

The text in Table 4.8-10 in Section 4.8, Transportation on page 4.8-20 of the Draft EIR is hereby amended as follows:

Table 4.8-10 Cumulative plus Project Signalized Conditions for the Westbound Right-turn Movement Intersection Level of Service and Queueing Results

					Existing plus Project			Cumulative plus Project		
ID	Intersection	Jurisdiction	LOS Threshold[a]	Peak Hour[b]	Delay	LOS[c]	Queue[d]	Delay	LOS[c]	Queue[d]
2	Stevens Creek Boulevard / SR-85 NB Ramp Terminal	Caltrans	~~E~~D[e]	AM	7.6	A	220 feet (9 cars)	8.2	A	246 feet (10 cars)
				PM	8.0	A	243 feet (10 cars)	11.1	B	284 feet (12 cars)

Notes: NB = northbound
a. LOS Threshold is the lowest acceptable LOS (the threshold between acceptable and unacceptable level of service).
b. AM = morning peak hour, PM = evening peak hour.
c. Represents the level of service with the controlled light at the right-turn lane only.
d. Vehicle queues are the 95th percentile. The 95th percentile queue length value indicates that a queue of this length or less would occur on 95 percent of the signal cycles that include a pedestrian or bicycle call.
e. This is a CMP intersection within the City of Cupertino. Cupertino applies its own standard of LOS D to CMP intersections.
Source: Kimley-Horn and Associates, Hexagon Transportation Consultants, 2018, 2019. (see Table 6 of the 2018 *Westport Cupertino – Transportation Analysis and* Table 4 of the 2019 *Westport Cupertino – SR 85 Interchange Analysis* provided in Appendix H of this Draft EIR).

The text in Section 4.8, Transportation, on pages 4.8-23 and 4.8-24 of the Draft EIR is hereby amended as follows:

Project-specific VMT was determined using CalEEMod and was calculated for Existing and Existing plus Project conditions. As previously stated, the existing commercial space (71,250 square feet), with an 85 percent occupancy rate produces an approximate annual VMT of 2,782,747 miles, or a daily VMT of 7,624 miles. The proposed project would produce an approximate annual VMT of ~~2,662,683~~2,663,868 miles, or a daily VMT of ~~7,295~~7,298 miles. This would be a reduction of approximately ~~120,064~~118,879 miles annually, or ~~329~~326 miles daily.

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The text in Section 4.8, Transportation, on pages 4.8-23 of the Draft EIR is hereby amended as follows:

As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 in General Plan buildout conditions. The proposed project would construct a 242 residential units, and 20,000 square feet of retail space, which is consistent with the land use evaluated in the General Plan EIR, and therefore, would not directly result in any additional new population growth or employment growth beyond what was analyzed in the General Plan EIR. As described in Chapter 3, Project Description, of the Draft EIR, in Section 3.4.3, Population and Employment Projections, the proposed project would generate 695 new residents and 70 new employees for a total of 765 people. The project would produce total annual VMT of 2,663,868. Therefore, the proposed project would have a per capita VMT impact of 3,482 vehicle miles per capita annually or 9.54 daily vehicle miles per day. As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 under General Plan buildout conditions. Therefore, the project's per capita VMT would be less than the City's per capita VMT for General Plan buildout. Accordingly, implementation of the proposed project would be consistent with and would have no effect on the VMT estimates presented in the General Plan EIR.

CHAPTER 4.9, UTILITIES AND SERVICE SYSTEMS

The text in the third paragraph in Section 4.9.2.1, Cupertino Sanitary District, on page 4.9-4 of the Draft EIR is hereby amended as follows:

The CSD wastewater system also flows through a portion of the City of Santa Clara's sewer system. The contractual agreement between CSD and the City of Santa Clara is 13.8 mgd during peak wet weather flows. The existing CSD peak wet weather flow into the Santa Clara system is modeled at ~~13.29~~13.14 mgd.[4]

Footnote:

[4] Mark Thomas & Co. Inc., Cupertino Sanitary District, ~~February 20~~December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*.

The text in Section 4.9.2.2, Existing On-Site Uses, on page 4.9-4 of the Draft EIR is hereby amended as follows:

The project site is currently occupied by an approximately 71,250 square-foot shopping center that is currently in operation at 85 percent occupancy (or 60,560 square feet). Based on the ~~May 2007 *City of Santa Clara Sewer Capacity Assessment* and~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ ADWF generation rate is 0.073 gpd per square foot of retail space. Therefore, the existing uses generate an ADWF of approximately ~~21,376~~4,421 gallons per day (gpd) or ~~0.0213~~ 0.004 ~~million gallons per day (~~mgd~~)~~. According to the CSD, the peak wet weather flow is calculated by multiplying the ADWF by a factor of 2.95. Therefore, the peak wet weather flow is 13,042 gpd or 0.013 mgd.[5]

Footnote:

[5] ~~71,250 sf retail x 0.3 gpd per square foot = 21,376 gpd or 0.0213 mgd~~ Mark Thomas & Co., Inc., Benjamin T. Porter, Cupertino Sanitary District Manager-Engineer, December 18, 2019, letter submitted to Gian Martire, Senior Planner, City of Cupertino, commenting on the November 2019 Draft EIR; 60,560 square

feet of retail x 0.073 gpd per square foot = 4,421 gpd or 0.004 mgd average daily flow. 4,421 gpd average daily flow x 2.95 = 13,042 gpd or 0.013 mgd peak daily flow.

The text in the first paragraph in impact discussion UTIL-1 starting on page 4.9-5 of the Draft EIR is hereby amended as follows:

Based on the ~~May 2007 *City of Santa Clara Sewer Capacity Assessment*~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ average dry weather flow (ADWF) generation rate for multi-family residential uses is 133 gallons per day (gpd) per unit, 55 gpd per person per townhome (or rowhouse), and 0.073 gpd per square foot of retail space. The proposed 242 residential units are comprised of 154 multi-family units and 88 townhomes. Based on an average household size of 2.87 persons,[6] the townhomes would generate 253 new residents. The proposed project also includes 20,000 square feet of retail space. Applying ~~this~~ these generation rates, the proposed ~~242 residential units and 20,000 square feet of retail space would generate up to 38,186 gpd or approximately 0.0382 mgpd of wastewater~~ project would generate approximately 35,833 gpd or 0.036 mgd of ADWF. Applying the CSD's peak wet weather flow generation rate (the ADWF multiplied by a factor of 2.95), the peak wet weather flow for the proposed project would be 105,707 gpd or 0.106 mgd.~~6~~[7]

As described in Section 4.9.2.2, Existing On-Site Uses, the operational shopping center currently generates ~~about 21,376 gpd or 0.0213 mgd~~ an ADWF of 4,421 gpd or 0.004 mgd and about 13,042 gpd or 0.013 mgd of peak wet weather flow. Therefore, the net increase for the proposed project ~~is 16,810 gpd or 0.0168 mgd~~ would be 31,412 gpd or 0.031 mgd ADWF and 92,665 gpd or 0.093 mgd peak wet weather flow.~~7~~[8]

Wastewater Treatment Capacity

The ADWF consists of average daily sewage flows and any groundwater that infiltrates sewer pipeline and manhole defects located below the ground surface. The SJ/SCWPCP currently has a total ADWF capacity of ~~450~~167 mgd.[9] Combined, the proposed project's net increase of ~~wastewater generation of 0.0168~~ 0.031 mgd ADWF and the current wastewater generated system-wide of ~~105~~ 110 mgd of ADWF, the proposed project would not exceed the SJ/SCWPCP's current total capacity of ~~450~~ 167 mgd for ADWF.

The CSD has a contractual treatment allocation of 7.85 mgd ~~Average Daily Dry Flow~~ ADWF with the SJ/SCWPCP. At the time of the General Plan EIR, the wastewater generation of 5.3 mgd was estimated by the CSD.~~8~~[10] The existing wastewater flow of 5.3 mgd plus the proposed project's ~~wastewater~~ ADWF of ~~0.0168~~ 0.031 mgd would not exceed the City's contractual allocation limit of 7.85 mgd. The proposed project is also within the amount of development (4,421 residential units and 1,343,679 commercial square feet) evaluated in the General Plan EIR;~~9~~[11] therefore, no impact would result.

Sewer System Capacity

The CSD wastewater system flows through a portion of the City of Santa Clara's sewer system. The contractual agreement between CSD and the City of Santa Clara allows 13.8 mgd during peak wet weather flows for this portion of the Santa Clara sewer system.[12] The existing CSD peak wet weather flow into the Santa Clara system is ~~13.29~~ 13.14 mgd.~~10~~[13] However, the estimated wastewater generation from the

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proposed project and from other potential projects, as established by the General Plan and other approved projects, is approximately ~~14.25~~ 14.61 mgd, which is the total capacity needed to serve the General Plan buildout.[~~11~~14] Therefore, the proposed project, and other approved and potential projects as established by the General Plan 2040 buildout, will require a reduction in sewer generation from the CSD system prior to flowing into the City of Santa Clara system, or additional capacity rights will need to be acquired from the City of Santa Clara.

~~CSD performed smoke testing[12] on a portion of the sewer system in 2018. The results of the smoke testing showed that certain portions of their system are being impacted by inflow from illegal connections to the system. These illegal connections include area drains, catch basins, and roof rainwater leaders from both public and private facilities within the cities of Cupertino and Saratoga jurisdictions. These illegal connections collect storm water and direct the flow to the sewer system. Calculating the flows from these illegal connections, using the Manning's flow equation[13] and the size of the areas that flow to these connections, there is an addition of approximately 0.4 mgd to the sanitary sewer peak wet weather flow. Disconnecting these illegal connections and redirecting these storm water flows to the public storm drain system would result in a reduction of the sewer peak wet weather from 14.25 mgd to 13.85 mgd. Further investigation of the CSD system is anticipated and disconnection of additional illicit connects is expected, which would provide further potential reduction to the peak wet weather flow.~~

~~However, until such corrections to the system can occur,~~ Therefore, the operation of the proposed project would exceed the 13.8 mgd contractual limit through the City of Santa Clara sewer system resulting in a potentially significant impact.

Footnotes:

[6] This analysis is based on the Association of Bay Area Governments (ABAG) 2019 projections of the average household size of 2.87 persons for Cupertino in 2025. This is the standard approach for population and housing analysis in Cupertino.

[~~6~~7] (~~242~~ 154 units x 133 gpd = ~~32,186~~20,482 gpd) + (88 townhomes x 55 gpd per person x 2.87 persons/household = 13,891 gpd) + (20,000 sf retail x 0.073 gpd per square foot = ~~6,000~~1,460 gpd) = ~~38,186~~35,833 gpd average dry weather flow; 35,833 gpd average dry weather flow x 2.95 = 105,707 gpd or 0.106 mgd of peak wet weather flow.

[~~7~~8] average dry weather flow: ~~38,186~~ 35,833 gpd proposed generation – ~~21,376~~4,421 gpd existing generation = ~~16,810~~ 31,412 gpd (or ~~0.0168~~ 0.031 mgd) net increase.
peak wet weather flow: 79,007 gpd proposed generation – 13,042 gpd existing generation = 65,965 gpd (0.066 mgd) net increase.

[9] The San Jose Santa Clara Water Pollution Control Plant Master Plan, November 2013, page 15; San Francisco Bay Regional Water Quality Board, September 10, 2014, Order No. R2-2014-0034 NPDES No. CA0037842; City of San Jose Environmental Services, https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility, accessed January 2, 2020.

[~~8~~10] City of Cupertino, General Plan (Community Vision 2015–2040), Appendix B: Housing Element Technical Report, 4.3 Environmental, Infrastructure & Public Service Constraints, page B-93.

[~~9~~11] City of Cupertino, certified General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, (December 2014) and approved General Plan Amendment, Housing Element Update, and Associated Rezoning EIR Final Addendum, State Clearinghouse Number 2014032007 (October 2015).

[12] Peak wet weather flow consists of the average dry weather flow or ADWF in addition to infiltration and inflow. Infiltration is rainfall that enters the sewer system through manhole defects. Inflow is rainfall that enters the sewer system through illegal connections, such as catch basins, downspouts, area drains and manhole covers. Peak wet weather flow is the highest measured hourly flow that occurs during wet weather.

~~10~~13 Mark Thomas & Co. Inc., ~~August 29, 2019~~ December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*.

~~11~~14 Mark Thomas & Co. Inc., ~~August 29, 2019~~ December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara.* ~~Sewage coefficients use to calculate the sewer generation rates for the various uses in the project and the General Plan buildout were taken from the San Jose- Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient table and from the City of Santa Clara Sanitary Sewer Capacity Assessment, May 2007, as well as CSD estimated flow rates based on measured water usages.~~

~~12 Many municipalities implement smoke testing programs to assess the condition of sanitary sewer system. Smoke testing is the process of injecting artificially produced smoke into a blocked off pipeline segment to see where the smoke emerges. If the line has defects, the smoke will find the break and try to escape through the break. Smoke testing is one of the best cost effective ways to locate defects in the main sewer line and service laterals that connects to a site.~~

~~13 The Mannings equation is an empirical equation that applies to uniform flow in open channels and is a function of the channel velocity, flow area and channel slope.~~

~~14 Mark Thomas and Associates, July 19, 2018, Email communication with Cupertino Public Works.~~

The text in Mitigation Measure UTIL-1 starting on page 4.9-6 of the Draft EIR is hereby amended as follows:

Mitigation Measure UTIL-1: No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

1. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or
2. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the ~~*San Jose-Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient* table in the May 2007, *City of Santa Clara Sanitary Sewer Capacity Assessment*,~~[14] ~~and *California Green Building Standards,*~~ CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara,* prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average

daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis.

Footnote:
~~[19] Mark Thomas and Associates, July 19, 2018, Email communication with Cupertino Public Works.~~

CHAPTER 5, ALTERNATIVES TO THE PROPOSED PROJECT

The text in Section 5.4.2, Alternatives Analysis, on page 5-4 of the Draft EIR is hereby amended as follows:

In addition to the No Project Alternative, this EIR discusses ~~two~~ three project alternatives and compares them to the proposed project, as discussed below. As previously stated, the alternatives were selected because of their potential to reduce the significant-but-mitigable impacts of the proposed project. The ~~three~~ four alternatives are:

- No Project Alternative
- No Retail Development Alternative
- Reduced Retail Development Alternative
- Increased Senior Housing Alternative

The first alternative is the CEQA-required "No Project" Alternative, and assumes that no changes to the existing shopping center would occur. The No Retail Development Alternative would construct only the residential components of the proposed project at the same density as the proposed project, but would not include the retail in Residential Retail Buildings 1 and 2. The Reduced Retail Development Alternative would construct the same residential elements as the proposed project, but would reduce the retail in Residential Retail Building 1 from 17,600 square feet to 7,600 square feet, which would reduce the overall retail on the project site by 50 percent. The Increased Senior Housing Alternative would re-design Residential-Retail Building 1 to include 140 senior housing units, 27 life guidance (memory care) units and associated facilities, would reduce the ground floor retail from 17,600 square feet to 5,640 square feet, would add 2,140 square feet of medical/office space, and would include amenities such as a fitness center, a bar, and a dining area.

The text in Section 5.4.3, Assumptions and Methodology, on page 5-5 of the Draft EIR is hereby amended as follows:

The alternatives analysis compares the impacts of the alternatives to the proposed project. The No Project Alternative assumes no change in the existing site and no new development. The overall extent of the development on the project site for the other ~~two~~ three alternatives is similar to the proposed project, but with all three providing less retail square footage and one increasing the number of senior units with assisted living and memory care accommodations. As described in Chapters 4.1, Air Quality, Chapter 4.2, Biological Resources, Chapter 4.3, Cultural and Tribal Cultural Resources, Chapter 4.4, Geology and Soils, and Chapter 4.7, Noise, mitigation measures would be required to reduce construction related impacts, and Chapter 4.9, Utilities and Service Systems, requires mitigation for operational impacts associated with wastewater generation and the capacity of the sanitary sewer system. This alternatives analysis assumes that all applicable regulations and all mitigation measures identified in this EIR for the proposed project

would be implemented for the No Retail Development Alternative, ~~and~~ the Reduced Retail Development Alternative, and the Increased Senior Housing Alternative.

The following analysis compares the potentially significant environmental impacts of the ~~three~~ four alternatives with the project-related impacts for each of the environmental topics analyzed in detail in Chapters 4.1 through 4.9 of this Draft EIR. The impacts of each alternative are classified as greater, reduced, or similar to the level of impacts associated with the proposed project. Table 5-1 summarizes the impacts of each of the alternatives compared to the proposed project.

The text in Table 5-1 in Section 5.4.3, Assumptions and Methodology, on page 5-5 of the Draft EIR is hereby amended as follows:

Table 5-1 Comparison of Impacts from Project Alternatives and the Proposed Project

Topic	Proposed Project	No Project Alternative	No Retail Development Alternative	Reduced Retail Development Alternative	Increased Senior Housing Alternative
Air Quality	LTS/M	>	>	=	≤
Biological Resources	LTS/M	<	=	=	=
Cultural and Tribal Cultural Resources	LTS/M	<	<	<	=
Geology and Soils	LTS/M	<	<	<	=
Greenhouse Gas Emissions	LTS	>	>	=	≥
Hazards and Hazardous Materials	LTS	<	=	=	=
Noise	LTS/M	>	>	=	≤
Transportation	LTS	>	>	=	≤
Utilities and Service Systems	LTS/M	<	<	<	≥

Notes:
LTS Less Than Significant
LTS/M Less Than Significant with Mitigation
< Reduced impact in comparison to the proposed project
= Similar impacts in comparison to the proposed project
> Greater impact in comparison to the proposed project

The text in Section 5.5.2.1, Air Quality, on page 5-7 of the Draft EIR is hereby amended as follows:

Under the No Project Alternative, pollutant emissions associated with vehicle trips would continue to occur. The proposed project would generate fewer daily trips before trip credits are applied (2,287 existing daily trips compared to 2,174 proposed daily trips) and with trip credits (2,209 existing daily trips compared to -275 proposed daily trips). Furthermore, the proposed residential mixed-use project would result in fewer vehicle miles traveled (VMT) (existing annual VMT of 2,782,747 compared to proposed annual VMT ~~2,662,683~~2,663,868). Accordingly, air quality impacts from vehicles would be less under the proposed project. Because vehicles are considered a major source of air pollutants, the proposed project would have fewer impacts than those under existing conditions. Therefore, overall air quality impacts of the No Project Alternative would be ***greater*** compared to the proposed project.

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The text in Section 5.5.2.9, Utilities and Service Systems, on page 5-9 of the Draft EIR is hereby amended as follows:

The utilities and service systems impacts of the proposed project are fully mitigable with implementation of Mitigation Measure UTIL-1. Based on the capacity of the sanitary sewer system, any new development may result in a determination by the wastewater treatment provider, that it does not have capacity to serve the project's projected demand in addition to the provider's existing commitment. Under the No Project Alternative, the site would continue to operate as is and no new construction would occur; therefore, there would not be an increase in wastewater generation on the project site (~~21,376~~4,421 gallons per day (gpd) for the existing uses) compared to a net increase of ~~16,810~~31,412 gpd (for the proposed project). Accordingly, overall impacts to utilities and service systems with regard to the capacity of the wastewater treatment system for the No Project Alternative would be ***reduced*** compared to the proposed project.

Section 5.8, Increased Senior Housing Alternative, is hereby added to Chapter 5, Alternatives to the Proposed Project, starting on page 5-17 of the Draft EIR as follows:

5.8 Increased Senior Housing Alternative

5.8.1 Description

Under the Increased Senior Housing Alternative, the 115 market-rate units in Residential-Retail Building 1 would be replaced with senior housing including 140 assisted living units and 27 life guidance (memory care) units. The first-floor retail space in Residential-Retail Building 1 would be reduced from 17,600 square feet in the proposed project to 5,640 square feet in the Increased Senior Housing Alternative, a reduction of 11,960 square feet. The remaining space on the first floor of Residential-Retail Building 1 would consist of 2,140 square feet of medical/office space and 23,470 square feet consisting of two lobbies and senior amenity areas, including a fitness center, dining area, and bar area, which would be open to the public. The life guidance units would be located on the second floor of Residential-Retail Building 1 and a dining/kitchen area, activity center and library, and terrace would be dedicated to the life guidance units on this floor. The assisted living units would be located on floors three through six. Level six would also include a terrace area for the assisted living residents. Under this alternative the common green space on the western portion of the project site would be reconfigured and could include a pool terrace on the ground floor. While the number of units and the general layout for Residential-Retail Building 2 (below market rate senior units), the Townhomes, and the Rowhouses would remain the same as under the proposed project, the overall building area of this alternative would be slightly less than the proposed project.

Same as the proposed project, the Increased Senior Housing Alternative would include a Class I Bike Path on the project site, public access easements on the northwest and southwest corners of the project site to accommodate the bridge over SR-85 connecting Mary Avenue to Alhambra Avenue, and off-site improvements including the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement northbound SR-85 on-ramp consistent with the 2016 *Bicycle Transportation Plan*, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp.

5.8.2 Impact Discussion

The potential environmental impacts associated with the Increased Senior Housing Alternative are described below and are compared to the proposed project.

5.8.1.1 Air Quality

The temporary construction-related air quality impacts of the proposed project are fully mitigable with implementation of Mitigation Measure AQ-2, and operational impacts would be less than significant. Under the Increased Senior Housing Alternative, the short-term emissions from construction would be similar to that of the proposed project due to a similar building footprint and excavation activities, and anticipated construction equipment mix and schedule. Therefore, construction-generated fugitive dust and other pollutant emissions associated with construction activities at the site would also be significant-but-mitigable. As described in Chapter 4.1, Air Quality, the primary method of determining consistency with the 2017 Clean Air Plan growth assumptions is consistency with the General Plan land use designations and zoning ordinance designations for the site. Like the proposed project, the Increased Senior Housing Alternative would not exceed regional employment, population, and housing planning projections that would have the potential to be inconsistent with the regional inventory compiled as part of the 2017 Clean Air Plan. Because the General Plan was adopted prior to the adoption of the 2017 Clean Air Plan, it can be assumed that the 2017 Clean Air Plan incorporates the growth forecast in the General Plan. The conditions of the projects site would not change under this alternative, and the air quality benefits associated with being in a Priority Development Area and Transit Priority Area would also apply to this alternative. Furthermore, as shown below in the transportation discussion, under the Increased Senior Housing Alternative, pollutant emissions associated with vehicle trips would be less than the proposed project, due to the 472 fewer daily trips and 853 fewer vehicle miles traveled under the Increased Senior Housing Alternative compared to the proposed project (see Table 5-5 and Table 5-6 respectively). Table 5-2 below shows that operational air quality emissions would not exceed the BAAQMD thresholds. Table 5-3 shows that the emission due to the Increased Senior Housing Alternative would be slightly less compared to the proposed project. Therefore, this alternative, like the proposed project, would not conflict with or obstruct the implementation of the BAAQMD's 2017 *Clean Air Plan* and would not expose sensitive receptors to substantial toxic air contaminants or CO hotspots associated with construction or operation.

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Table 5-2 Average Daily Project Operational Emissions Unmitigated (Increased Senior Housing)

	Pollutant (average pounds per day)[a, b]					
			Exhaust		Fugitive Dust	
Emissions Source	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO_X)	Coarse Particulate Matter (PM_{10})	Fine Particulate Matter ($PM_{2.5}$)	Coarse Particulate Matter (PM_{10})	Fine Particulate Matter ($PM_{2.5}$)
Annual Emissions (maximum tons per year)						
Area Source Emissions	2	<1	<1	<1	--	--
Energy Emissions	<1	<1	<1	<1	--	--
Mobile Emissions[a]	<1	2	<1	<1	2	<1
Total Alternative Unmitigated Emissions	2	2	<1	<1	1	<1
BAAQMD Threshold[a]	10	10	15	10	N/A	N/A
Is Threshold Exceeded?	No	No	No	No	N/A	N/A
Average Daily Emissions (pounds)						
Area Source Emissions	11	<1	<1	<1	--	--
Energy Emissions	<1	1	<1	<1	--	--
Mobile Emissions[a]	2	10	<1	<1	8	2
Total Project Unmitigated Emissions	13	11	<1	<1	8	2
BAAQMD Threshold[b]	54	54	82	54	N/A	N/A
Is Threshold Exceeded?	No	No	No	No	N/A	N/A

Notes:
a. Mobile emissions conservatively represent emissions associated with the full project (i.e., 2,174 daily vehicle trips), and do not take credit/trip reductions for the existing uses.
b. Bay Area Air Quality Management District, California Environmental Quality Act Air Quality Guidelines, 2017.
Source: Kimley-Horn and Associates, PlaceWorks. 2019, 2020.

Table 5-3 Average Daily Project Operational Unmitigated Emissions Comparison

	Pollutant (average pounds per day)[a, b]					
			Exhaust		Fugitive Dust	
Emissions Source	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO_X)	Coarse Particulate Matter (PM_{10})	Fine Particulate Matter ($PM_{2.5}$)	Coarse Particulate Matter (PM_{10})	Fine Particulate Matter ($PM_{2.5}$)
Annual Emissions (maximum tons per year)						
Total Proposed Project Emissions	3	2	<1	<1	2	<1
Total Alternative Project Emissions	2	2	<1	<1	1	<1
BAAQMD Threshold[a]	10	10	15	10	N/A	N/A
Is Threshold Exceeded?	No	No	No	No	N/A	N/A
Average Daily Emissions (pound)						
Total Proposed Project Emissions	16	13	<1	<1	9	2
Total Alternative Project Emissions	13	11	<1	<1	8	2
BAAQMD Threshold[a]	54	54	82	54	N/A	N/A
Is Threshold Exceeded?	No	No	No	No	N/A	N/A

Notes:
a. Mobile emissions conservatively represent emissions associated with the full project (i.e., 2,174 daily vehicle trips), and do not take credit/trip reductions for the existing uses.
b. Bay Area Air Quality Management District, California Environmental Quality Act Air Quality Guidelines, 2017.
Source: Kimley-Horn and Associates, PlaceWorks. 2019, 2020.

As shown, the air quality impacts of the Increased Senior Housing Alternative would be ***less*** than the proposed project and like the proposed project would be fully mitigable with implementation of Mitigation Measure AQ-2 and operational impacts would be less than significant.

5.8.1.2 Biological Resources

The biological resource impacts of the proposed project are fully mitigable with implementation of Mitigation Measures BIO-1 and BIO-2. The Increased Senior Housing Alternative would result in similar development on the project site as the proposed project; therefore, the relationship to natural resources on the project site as described in Chapter 4.2, Biological Resources, of this Draft EIR would be similar under both this alternative and the proposed project.

As described in Chapter 4.3, an Arborist Report was prepared for the proposed project and is included in Appendix D, Arborist Report & Tree Removal Plan, of the Draft EIR. Of the 83 trees surveyed, the Arborist Report identified 74 trees, including 14 protected trees, that would be directly impacted by development and would require removal. Under this alternative, the number of trees protected by the City's Tree Protection Ordinance that would be impacted would be the same as the number of trees affected by the proposed project.

The mitigation measures listed above, as well as compliance with the City's existing ordinances, including City's Tree Preservation Ordinance, would apply under this alternative. Therefore, the potential impacts to nesting birds and potential habitat for special-status birds that may be present on-site during construction related activities and removal of trees protected of the City's Tree Preservation Ordinance would be

similar. Impacts to biological resources from the Increased Senior Housing Alternative would be ***similar*** to the proposed project and would be fully mitigable with implementation of Mitigation Measures BIO-1 and BIO-2.

5.8.1.3 Cultural and Tribal Cultural Resources

The cultural resource impacts of the proposed project are fully mitigable with the implementation of Mitigation Measure CULT-1. Development under the Increased Senior Housing Alternative would have a similar building envelope as the proposed project and would result in development on an already disturbed site. The Increased Senior Housing Alternative would include a subterranean parking level, in which excavation would be required, similar to the proposed project. The same mitigation measures that apply to the proposed project would apply to this alternative, as would State laws and regulations to protect buried human remains and cultural and tribal cultural resources. Accordingly, the potential impacts of the Increased Senior Housing Alternative would be ***similar*** to the proposed project and would be fully mitigable with the implementation of Mitigation Measure CULT-1.

5.8.1.4 Geology and Soils

The impacts related to unknown unique paleontological resources of the proposed project would be fully mitigable with implementation of Mitigation Measure GEO-1. There are no known unique paleontological resources on the project site, and the geology and soils on the project site are common throughout the city and region and are not considered to be unique. Under the Increased Senior Housing Alternative, buildings would be constructed within the same development footprint as the proposed project, with the addition of a 4,500 square-foot pool terrace that could reconfigure the common open space on-site. Accordingly, the potential impacts of the Increased Senior Housing Alternative would be ***similar*** to the proposed project and would be fully mitigable with the implementation of Mitigation Measure GEO-1.

5.8.1.5 Greenhouse Gas Emissions

The impacts related to GHG emissions of the proposed project are less than significant and no mitigation measures are required. Under the Increased Senior Housing Alternative, the existing buildings would be demolished, and the new structures would have a similar building footprint. However, Residential-Retail Building 1 would include a different mixt of residential uses by adding 140 assisted living units and 27 life guidance (memory care) units, instead of the 115 market-rate units under the proposed project. The first-floor retail in Residential-Retail Building 1 would be reduced from 17,600 square feet under the proposed project to 5,640 square feet under the Increased Senior Housing Alternative. The remaining space on the first floor of Residential-Retail Building 1 would include 2,140 square feet of medical/office space and 23,470 square feet with two lobbies and amenity areas including, a fitness center, dining area, and bar area.

Under the Increased Senior Housing Alternative, the short-term emissions from construction would be similar to that of the proposed project due to a similar building footprint and excavation activities, and anticipated construction equipment mix and schedule. Therefore, construction-generated GHG emissions associated with construction activities at the site would also be less than significant and no mitigation measures would be required.

As shown in Table 5-4, the Increased Senior Housing Alternative would decrease operational GHG emissions associated with mobile sources, compared to the proposed project, due to a decrease in daily vehicle miles traveled. However, the proposed mix of uses in the Increased Senior Housing Alternative would slightly increase operational GHG emissions from building energy, waste, and water compared to the proposed project due to an increase in residents that are on-site most of the day and the 24-hour operation of the memory care facility. Neither the proposed project nor the Increased Senior Housing Alternative exceed the thresholds set by BAAQMD. Accordingly, the GHG impacts of the Increased Senior Housing Alternative would be less than significant and no mitigation measures are required. Because GHG emissions would be slightly increased (359 compared to 387 $MTCO_2e$ per year) impacts are ***greater*** compared to the proposed project although still less-than-significant.

Table 5-4 Operational Greenhouse Gas Emissions Comparison

Category	$MTCO_2e$/year [a]				
	Existing	Proposed Project	Net Change from Proposed Project and Existing Conditions	Alternative Project	Net Change from Senior Alternative and Existing Conditions
Area[b]	<1	8	8	15	15
Energy	232	648	416	804	572
On-Road Mobile Sources[c]	1,214	1,102	-112	951	-263
Waste[d]	19	33	14	42	23
Water/Wastewater	19	51	32	59	40
Total Annual Project GHG Emissions[e]	**1,484**	**1,843**	**359**	**1,871**	**387**
BAAQMD Bright-Line Threshold	**NA**	**NA**	**1,100 $MTCO_2e$/year**	**NA**	**1,100 $MTCO_2e$/year**
Exceeds BAAQMD Thresholds?	NA	NA	No	NA	No

Notes: NA: not applicable
a. Emissions were calculated using CalEEMod 2016.3.2. Notes: Emissions may not total to 100 percent due to rounding.
b. The area source emissions include compliance with BAAQMD Regulation 6, Rule 3 (Wood Burning Devices) and were applied in the mitigation tab of CalEEMod.
c. The mobile emissions modeled CalEEMod emissions are based on the proposed project total daily trip generation of 2,174 vehicles and the Increased Senior Housing Alternative total daily trip generation of 1,602. Credit for internal trip capture and proximity to transit was applied in the CalEEMod mitigation module (i.e., land use and site enhancement, increase density, and increase diversity). These measures were applied in accordance with the criteria within the California Air Pollution Control Officers Association (CAPCOA), *Quantifying Greenhouse Gas Mitigation Measures* (2010) guidance, and the CalEEMod User's Guide.
d. The waste source emissions include compliance with AB 939 requiring 50 percent diversion of the solid waste stream.
e. Emissions may not total to 100 percent due to rounding.
Source: Kimley-Horn and Associates, PlaceWorks, 2019, 2020.

5.8.1.6 Hazards and Hazardous Materials

The impacts related to hazards and hazardous materials from construction and operation of the proposed project are less than significant without mitigation. Like the proposed project, the Increased Senior Housing Alternative would not create a significant hazard to the public or environment through the routine transport, use, or disposal of hazardous materials, and would not emit hazardous emissions or use hazardous materials within 0.25 miles of a school.

Similar to the proposed project, the Increased Senior Housing Alternative would involve the use of small amounts of hazardous materials for cleaning and maintenance purposes, such as cleansers, degreasers, pesticides, and fertilizers. Under both the proposed project and the Increased Senior Housing Alternative, any businesses that transport, generate, use, and/or dispose of hazardous materials in Cupertino are subject to existing hazardous materials regulations, such as those implemented by Santa Clara County Department of Environmental Health (DEH) Hazardous Materials Compliance Division (HMCD), and hazardous materials permits from the Santa Clara Fire Department (SCCFD). However, unlike the proposed project, the Increased Senior Housing Alternative would include medical offices and a memory care center, which could include bio-medical waste. This hazardous material, like those under the proposed project, would be regulated by the Santa Clara County HMCD, which requires a hazardous materials business plan (HMBP) be created for businesses that may store, transport, or dispose of hazardous materials. As the Certified Unified Program Agency, Santa Clara County HMCD is required to regulate HMBPs and chemical inventory, hazardous waste and tiered permitting, underground storage tanks, and risk-management plans. The HMBP is required to contain basic information on the location, type, quantity, and health risks of hazardous materials stored, used, or disposed of on development sites. The HMBP also contains an emergency-response plan, which describes the procedures to mitigate hazardous release, procedures, and equipment to minimize potential damage of a hazardous materials release, and provisions for immediate notification of the Governor's Office of Emergency Services (Cal OES) and other emergency-response personnel, such as the SCCFD. Implementation of the emergency response plan facilitates rapid response in the event of an accidental spill or release, thereby reducing potential adverse impacts. Furthermore, Santa Clara County HMCD is required to conduct ongoing routine inspections to ensure compliance with existing laws and regulations; to identify safety hazards that could cause or contribute to an accidental spill or release; and to suggest preventative measures to minimize the risk of a spill or release of hazardous substances.

Although development under the Increased Housing Alternative could involve the transport, use and disposal of bio-medical waste, development under both this alternative and the proposed project would be required to comply with federal, State, and local laws regulating the transport, use, and disposal of hazardous materials. Therefore, impacts of the Increased Senior Housing Alternative related to hazards and hazardous materials would be similar compared to the proposed project and would be less than significant without mitigation.

5.8.1.7 Noise

The operational impacts related to noise from the proposed project are less than significant and the construction impacts are fully mitigable with implementation of Mitigation Measure NOISE-1. Under the Increased Senior Housing Alternative, the short-term increase in ambient noise levels from construction would be similar to that of the proposed project due to a similar building footprint and excavation activities, and anticipated construction equipment mix and schedule. Similarly, construction vibration impacts would be comparable under this alternative. Parking noise would be less when compared to the proposed project due to fewer proposed retail uses. The heating, ventilation, and air conditioning (HVAC) and mechanical equipment noise impacts would be comparable under this alternative. Under this alternative, a larger proportion of the future residents would be seniors, compared to the proposed project, and, therefore, the Increased Senior Housing Alternative would create fewer vehicular trips (see Table 5-5), reducing traffic-related noise generated by the project. Under this alternative, future residents

and surrounding residents would still be in walking distance of neighborhood-serving retail, and amenities such as the pool terrace, fitness center, and dining area and bar would provide residents with services on-site and would be open to the public. Therefore, noise impacts of the Increased Senior Housing Alternative would be ***less*** than the proposed project and would be less than significant during operation and construction impacts would be fully mitigable with implementation of Mitigation Measure NOISE-1.

5.8.1.8 Transportation

The transportation impacts of the proposed project are less than significant, and no mitigation measures are required. Similar to the proposed project, the Increased Senior Housing Alternative would not conflict with the Cupertino General Plan or Santa Clara Valley Transportation Authority. Additionally, as shown in Table 5-5, under the Increased Senior Housing Alternative the daily vehicle trips would decrease due to the replacement of non-senior units with assisted living and memory care units and the availability of on-site amenities such as a pool terrace, fitness center, and dining area.

Table 5-5 Daily Vehicle Trips Proposed Project and Alternative Comparison

	Daily	AM Peak Hour			PM Peak Hour		
	Trips	In	Out	Total	In	Out	Total
Existing Oaks Shopping Center[a]	**2,209**	**36**	**21**	**57**	**73**	**79**	**152**
Proposed Project[b]							
Total Project Trips Before Trip Reductions	2,174	35	73	108	104	82	186
Proposed Project After Trip Reductions	1,934	33	71	104	77	53	130
Net Change from Existing Conditions	**-275**	**-3**	**50**	**47**	**4**	**-26**	**-22**
Increased Proposed Alternative[c]							
Total Alternative Trips Before Reductions	1,602	93	42	51	137	70	67
Proposed Alternative After Trip Reductions	1,462	39	0	39	58	54	112
Net Change from Existing Conditions	**-747**	**3**	**-21**	**-18**	**-15**	**-45**	**-40**
Net Change between the Proposed Project and Proposed Alternative	***-472***	***6***	***-71***	***-65***	***-19***	***1***	***-18***

Notes:
a. The existing trips credited are a total of 85 percent (2,287 trips) of the maximum trips (2,690 trips) if the shopping center were fully occupied minus 34 percent (78 trips) of the total 230 PM peak hour trips that make up the by-pass credits which apply to the existing shopping center.
b. Trip generation based on daily trip generation rates in the Institute of Transportation Engineers (ITE) Trip Generation Manual 10th Edition, which applies Code 220 for low-rise dwelling units; Code 221 for mid-rise dwelling units; Code 252 for senior units; and, Code 820 for retail.
c. Trip generation based on daily trip generation rates in the Institute of Transportation Engineers (ITE) Trip Generation Manual 10th Edition, which applies Code 252 for senior units; and, Code 820 for retail; Code 254 for assisted living; Code 255 continuing care retirement community; and Code 720 for medical-dental office building.
Sources: Kimley-Horn and Associates, Hexagon Transportation Consultants, November 2018. (see Table 2 of the *Westport Cupertino – Transportation Analysis* in Appendix H of the Draft EIR). Kimley-Horn and Associates. March 2020. Westport Cupertino – Alternative Proposal: Trip Generation Comparison (see Table 1 Alternative Project, Original Project and Existing Conditions Trip Generation in Appendix C of this Response to Comments Document).

Because the AM and PM peak hour trips would be reduced under this alternative, the less-than-significant impacts to Stevens Creek Boulevard/Mary Avenue intersection #1 and Stevens Creek Boulevard/SR-85 Northbound Ramp Terminal intersection #2 would be further reduced.

Both the proposed project and the Increased Senior Housing Alternative are consistent with General Plan Policy M-8.2: Land Use, which requires the City to support development and transportation improvements that help reduce greenhouse gas emissions by reducing per capita Vehicle Miles Traveled (VMT), reducing impacts on the City's transportation network, and maintaining the desired levels of service for all modes of transportation. The project site is within a Santa Clara Valley Transportation Authority City Cores, Corridors & Station Areas Priority Development Area (PDA). PDAs are transit-oriented, infill development opportunity areas within existing communities. As described in the General Plan, page LU-7, PDAs are areas where new development will support the day-to-day needs of residents and workers in a pedestrian-friendly environment served by transit. The project site is also a qualifying Transit Priority Area or TPA, which is an area within one-half mile of a major transit stop. The overarching goal of developing a high-density, mixed use development within a PDA and a TPA, under both the proposed project and Increased Senior Housing Alternative, is to concentrate development in areas where there are existing services and infrastructure rather than locating new growth in outlying areas where substantial transportation investments would be necessary to maximize energy conservation and achieve the per capita passenger vehicle and vehicle miles traveled. As shown in Table 5-6, vehicle miles traveled would decrease under the Increased Senior Housing Alternative.

TABLE 5-6 VEHICLE MILES TRAVELED COMPARISON

	Total Annual VMT	Total Daily VMT
Existing Conditions	2,782,747	7,624
Proposed Project	2,663,868	7,298
Net Change from Existing Conditions to the Proposed Project	**118,879**	**326**
Increased Senior Housing Alternative	2,352,587	6,445
Net Change from Existing Conditions to the Proposed Alternative	**430,160**	**1,179**
Net Change between the Proposed Project and the Proposed Alternative	***-311,281***	***-853***

Sources: Kimley-Horn and Associates, Hexagon Transportation Consultants, PlaceWorks, 2019, 2020.

Furthermore, the Increased Senior Housing Alternative, similar to the proposed project, would install a Class I Bike Path on the project site, public access easements on the northwest and southwest corners of the project site to accommodate the bridge over SR-85 connecting Mary Avenue to Alhambra Avenue, and off-site improvements including the installation of a Class IV separated bikeway and a signal control to be activated by bicyclists and pedestrians for the westbound right-turn movement northbound SR-85 on ramp consistent with the 2016 *Bicycle Transportation Plan*, as well as a bus stop on the section of Stevens Creek Boulevard west of Mary Avenue and east of the SR-85 northbound ramp. Accordingly, transportation impacts under the Increased Senior Housing Alternative would be ***less*** than the project and impacts would be less than significant without mitigation measures.

5.8.1.9 Utilities and Service Systems

The impacts related to utilities and service systems of the proposed project are fully mitigable with implementation of Mitigation Measure UTIL-1. Based on the capacity of the sanitary sewer system, any new development may result in a determination by the wastewater treatment provider, that it does not have capacity to serve the project's projected demand in addition to the provider's existing commitment. Under the Increased Senior Housing Alternative, utility demand from new development on the project site would be similar to the proposed project with respect to the townhouses, rowhouses, and the Residential-Retail Building 2. As demonstrated in Table 5-7 below, the additional 140 assisted living units, 27 life guidance units, and alterations to the first floor plan of Residential-Retail Building 1 under the Increased Senior Housing Alternative would generate more wastewater than the 154 market rate units and 17,600 square feet of retail space under the proposed project.

Operation of the proposed project and the Increased Senior Housing Alternative would exceed the 13.8 mgd contractual limit through the City of Santa Clara sewer system resulting in a potentially significant impact. The same mitigation applied to the proposed project would apply to this alternative. Mitigation Measure UTIL-1 states that no building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The Mitigation Measure UTIL-1 requires that the project applicant demonstrates, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system. Therefore, wastewater generation under this alternative would be ***greater*** compared to the proposed project, but with implementation of Mitigation Measure UTIL-1 would remain less-than-significant.

TABLE 5-7 WASTEWATER GENERATION COMPARISON

	Gallons per Day	Million Gallons per Day
Oaks Shopping Center	4,421	0.004
Proposed Project	35,833	0.036
Net Change from Existing Conditions and Proposed Project	**31,412**	**0.032**
Increased Senior Housing Alternative	41,106	0.041
Net Change from Existing Conditions and Proposed Alternative	**36,685**	**0.037**
Net Change between the Proposed Project and the Proposed Alterative	***5,273***	***0.005***

Notes: gallons per day = gpd
a. Wastewater generation is based on the Increased Senior Housing Alternative including 1091 units (39 senior units and 140 assisted living), 253 residents in the townhomes and rowhouses, 8,040 square feet of retail space, 27 life guidance units, and 2,140 square feet of medical office. According to the CSD's December 2019 flow modeling, wastewater is calculated for multi-family units at 133 gpd per multifamily unit, townhomes and rowhouses at 55 gpd per person, retail as 0.073 gpd per square foot, and convalescent home as 63.2 gpd per unit. The CSD's December 2019 flow modeling did not account for medical uses. Wastewater was calculated for medical uses at 0.51 gpd per square foot of medical use consistent with the rates applied in the certified EIR for The Forum Senior Community Update (State Clearinghouse # 2017052037). Therefore, wastewater generation was calculated as follows: (179 x 133 = 23,807) + (253 x 55 = 13,915) + (8,040 x 0.073 = 587) + (27 x 63.2 = 1,706) + (2,140 x 0.51 = 1,091) = 41,106 gpd.
Source: Mark Thomas & Co. Inc., Cupertino Sanitary District, December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara;* PlaceWorks, 2020.

REVISIONS TO DRAFT EIR

5.8.3 Ability of the Increased Senior Housing Alternative to Accomplish the Project Objectives

Although development proposed under the Increased Senior Housing Alternative would result in accommodations for a greater number of assisted living and life guidance residents than the proposed project, the project site would be redeveloped in a similar manner to the proposed project. Similar to the proposed project, this alternative would: redevelop an existing retail and office complex with desirable amenities and housing; help the City meet the RHNA allocation for 2014-2022; enhance the vibrancy of Cupertino's Heart of the City as a key mixed-use corridor by providing a pedestrian-friendly community that includes housing, open space and greenery, and neighborhood retail; provide senior housing in close proximity to the Cupertino Senior Citizen Center; create a prominent gateway development that incorporates quality architectural design and materials, open space, and artwork to announce entry into Cupertino's Heart of the City; create a mixed-use development that places residential and commercial uses in close proximity to each other, and close to transit options; and help the City to achieve its affordable housing goals through the inclusion of senior housing units within a residential and mixed-use development project. The Increased Senior Housing Alternative would meet all of the proposed project objectives; however, it would not provide as much neighborhood serving retail on the project site as the proposed project.

Section 5.8, Environmentally Superior Alternative, on page 5-17 of the Draft EIR is hereby amended as follows:

5.~~8~~ 9 Environmentally Superior Alternative

In addition to the discussion and comparison of impacts of the proposed project and the alternatives, Section 15126.6 of the State CEQA Guidelines requires that an "environmentally superior" alternative, other than the no project alternative, to be identified. The environmentally superior alternative is the alternative that would result in the least environmental impacts.

As shown in Table 5-1, the Reduced Retail Development Alternative would not result in any impacts than are greater than the proposed project, and would reduce impacts related to cultural resources, geology and soils, and utilities and services systems compared to the proposed project. Impacts related to air quality, biological resources, GHG emissions, hazards and hazardous materials, noise, and transportation would be similar to the proposed project. Therefore, the Reduced Retail Development Alternative would be the environmentally superior alternative.

4. List of Commenters

Comments on the Draft EIR were received from the following agencies and service providers, and private individuals and organizations. Oral comments were also received at the Public Meeting to provide comments on the Draft EIR that was held at the Cupertino Senior Center meeting on Wednesday, December 11, 2019, from 6:30 to 8:30 p.m. Each comment letter and comment has been assigned a letter and a number as indicated below. The comments are organized and categorized by:

- A = Agencies and Service Providers
- B = Private Individuals and Organizations
- C = Comments Received at the Public Meeting

4.1 AGENCIES AND SERVICE PROVIDERS

A1 Zachary Chop, Associate Transportation Planner, Caltrans District 4, December 2, 2019
A2 Isabella Roman, Environmental Scientist, Department of Toxic Substances Control, December 18, 2019
A3 Benjamin T. Porter, District Manager-Engineer, Cupertino Sanitary District, December 18, 2019

4.2 PRIVATE INDIVIDUALS AND ORGANIZATIONS

B1 Joseph Hauser, November 25, 2019
B2 Kent Vincent, November 25, 2019
B3 Harris Au, December 5, 2019
B4 Lee Xu, December 11, 2019
B5 Aaron Messing, December 20, 2019
B6 Michelle Dunn, December 23, 2019

4.3 COMMENTS RECEIVED AT THE PUBLIC MEETING

C1 Summary of Comments Received at the Public Meeting

LIST OF COMMENTERS

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5. Comments and Responses

This chapter includes a reproduction of, and responses to, each significant environmental issue raised during the public review period. Comments are presented in their original format in Appendix A, Comment Letters, of this Response to Comments document, along with annotations that identify each comment number. Comment letters in this chapter follow the same order as listed in Chapter 4, List of Commenters, of this Response to Comments Document. The comments are organized and categorized by:

- A = Agencies and Service Providers
- B = Private Individuals and Organizations
- C = Comments Received at the Public Meeting

Responses to those individual comments are provided in this chapter alongside the text of each corresponding comment. Letters are identified by category and each comment is labeled with the comment reference number in the margin. Where the same comment has been made more than once, a response may direct the reader to another numbered comment and response. Where a response includes revisions to in the text of the Draft Environmental Impact Report (EIR), these revisions are explained and shown in Chapter 3, Revisions to the Draft EIR, of this Response to Comments Document. Responses to individual comments are presented in Table 5-1, below.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
Agencies and Service Providers		
A1 Zachary Chop, Associate Transportation Planner, Caltrans District 4, December 2, 2019		
A1-1	The Department of Transportation (Caltrans) thanks the City of Cupertino for the opportunity to provide input in the environmental review process. We have reviewed the Westport Mixed Use Project DEIR and we would like to provide additional comments below: In addition to the encroachment permit requirement, a Maintenance Agreement will also be required for landscaping installed in our ROW. Additionally, a tree within our ROW is marked for removal, this would require prior approval from the District Landscape Architect.	The comment serves as an opening remark and identifies additional approvals required by Caltrans. The project applicant would be required to comply with all applicable federal, State and local regulations, including a Maintenance Agreement and tree removal approvals in the Caltrans right-of-way (ROW) as necessary. The City will require the applicant to comply with all applicable regulations of Caltrans and other responsible agencies. The following addition to Chapter 3, Project Description, of the Draft EIR has been made in Chapter 3 of this Response to Comments document. This revision acknowledges the additional approvals required by Caltrans. The revision is as follows: Encroachment permits from the City and Caltrans would also be required as well as design review and approval for the proposed bus stop by the VTA. Additionally, Caltrans would require a Maintenance Agreement for any proposed landscaping installed in the Caltrans right of way (ROW) and any trees in the Caltrans ROW would require prior approval from the Caltrans District Landscape Architect. This revision does not affect any conclusions or significance determinations in the Draft EIR.
A2 Isabella Roman, Environmental Scientist, Department of Toxic Substances Control, December 18, 2019		
A2-1	I represent a responsible agency reviewing the Draft EIR for the Westport Mixed-Use Project. I see that two Phase 1 Environmental Site Assessments (ESAs) and a Limited Environmental Site Characterization (ESC) were prepared for the Site. Phase 1 ESAs don't typically present characterization data and the ESC compares soil data against hazardous waste criteria for the purposes of soil disposal. I would recommend collecting additional samples for the purposes of characterizing site media for	As stated on page 52 of the Initial Study that was prepared for the project and included in Appendix A of the Draft EIR, two Phase 1 Environmental Site Assessments (ESAs), dated March 14, 2007 and September 18, 2015, were prepared for the project site by EBI Consulting and PIERS Environmental Services, respectively. The Phase I ESAs that were prepared did not identify any Recognized Environmental Conditions (RECs) at the project site based on land use history, file review, database searches, and site inspections. The project site is not included on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	protection of construction workers and future residents. I would recommend for sampling activities to include soil vapor to eliminate any concerns regarding vapor intrusion.	The site historically was used for agricultural purposes with a residence prior to the development in the 1970s of the current commercial structures. A Limited Environmental Site Characterization (ESC) dated January 28, 2015 was prepared for the project site by Langan Treadwell Rollo to characterize soil, if soil was going to be exported from the site, and to assess for potential soil contamination. Soil samples were collected at approximate depths of 2.5, 5.0, 8.0, 10.0, 15.0, and 17.0 feet below ground surface. The soil samples were analyzed for some or all of the following: ▪ total petroleum hydrocarbons as gasoline (TPHg), diesel (TPHd), and motor oil (TPHmo) ▪ volatile organic compounds (VOCs) ▪ semi-volatile organic compounds (SVOCs) ▪ organochlorine pesticides (OCPs) ▪ polychlorinated biphenyls (PCBs) ▪ California assessment metals (CAM) (17 metals) ▪ leaking underground fuel tank (LUFT) (5 metals) No VOCs, SVOCs, PCBs, or OCPs were detected above laboratory reporting limits in any of the samples analyzed. TPHd was detected at or above the laboratory reporting limit (1 milligram per kilogram (mg/kg)) in two of the 12 samples analyzed at concentrations of 1.2 mg/kg and 4.4 mg/kg but below the United States Environmental Protection Agency's (USEPAs) Region 9 (Pacific Southwest) Regional Screening Levels or RSLs. TPHmo was detected at or above the laboratory reporting limit (5 mg/kg) in two of the 12 samples analyzed at concentrations of 8.2 mg/kg and 17 mg/kg, but below the USEPA Region 9 RSLs. TPHg was not detected above the laboratory reporting limit (1 mg/kg) in any of the 12 samples analyzed. Lead was detected at concentrations ranging from 3.9 mg/kg to 17 mg/kg, which are all below the California Department of Toxic Substances Control screening level of 80 mg/kg for residential land use. Arsenic concentrations ranged from 3.4 mg/kg to 8.1 mg/kg, which are within typical background concentrations. The ESC concluded that no contaminated or hazardous materials were encountered at the site. The Phase I ESA prepared in 2015 by PIERS Environmental Services also included a vapor encroachment screening (VES) which did not identify any sites with VOCs within the critical distance cited in the American Society for Testing and Materials (ASTM) VES guidance document. Vapor intrusion was determined to not be an issue for the site. Accordingly, no additional samples are required.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
A2-2	HAZ-2 refers to AQ-3 to discuss impacts to nearby schools. Only diesel particulate matter (DPM) is considered as an emission that would have the potential to impact nearby schools. Project construction would disrupt the soil and could potentially migrate to nearby schools. This should be acknowledged as well within the HAZ-2 discussion. I would recommend a dust control and air monitoring plans to be developed to protect construction workers and the nearby schools.	As stated in Response to Comment A2-1, the two Phase I ESAs and the Limited ESC prepared for the site did not identify any RECs and no chemicals of concern were found in soil at the site. Normal dust control best management practices required in Mitigation Measure AQ-2 (please see pages 4.1-18 and 4.1-19 in Chapter 4.1, Air Quality, of the Draft EIR) are adequate for the project site since no chemicals of concern or RECs were identified. With respect to the commenters request that impact discussion HAZ-3 acknowledge fugitive dust during construction, revisions to Chapter 4.6, Hazards and Hazardous Materials, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. These revisions acknowledge that Mitigation Measure AQ-2 would reduce adverse impacts to nearby schools from fugitive dust generated during the construction phase. The revisions are as follows: De Anza College is located directly south of Stevens Creek Boulevard, within 140 feet of the project site. In addition, one pre-school is located within 0.25-miles of the project site. As described under impact discussion HAZ-1, impacts related to potentially contaminated soils would be less than significant. Also see Chapter 4.1, Air Quality, impact discussion AQ-2 and AQ-3, which concludes that the potential for impacts to sensitive receptors due the release of fugitive dust during construction would be less than significant with implementation of Mitigation Measure AQ-2 and the release of hazardous materials during construction would be less than significant without mitigation, respectively. Therefore, the proposed project would not emit hazardous emissions or handle hazardous materials, substances, or waste within 0.25 miles of an existing or proposed school, and impacts would be *less than significant*. These revisions do not affect any conclusions or significance determinations in the Draft EIR. It is also acknowledged that Mitigation Measure AQ-2 would reduce impacts to on-site construction workers from fugitive dust generated during the construction

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		phase. However, impact discussion HAZ-3 is related to impacts to schools within 0.25 miles of the project site; therefore, no discussion of on-site construction workers is appropriate in this discussion.
A3 Benjamin T. Porter, District Manager-Engineer, Cupertino Sanitary District, December 18, 2019		
A3-1	The Cupertino Sanitary District has reviewed the Draft Environmental Impact Report (DEIR) for the Westport Mixed-Use Project. The following comments are provided for your review, incorporation of our comments, and to update the DEIR to produce the Final EIR.	The comment serves as an opening remark. No response is required. Note that the commenter uses both CuSD and CSD to identity the Cupertino Sanitary District.
A3-2	Mitigation Measure UTIL-1: The statement that reads "The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the San Jose-Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient table in the May 2007, City of Santa Clara Sanitary Sewer Capacity" is not accurate for estimating peak wet weather flow. These generation rates are used to calculate average flow to the treatment plant. Based on CSD model, peak wet weather flow for a 10-year storm event over average dry flow is 2.95 times the average.	Revisions to Chapter 4.9, Utilities and Service Systems, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. These revisions acknowledge the updated generation rates in the CSD's *Flow Modeling Analysis for Homestead Flume Outfall to City of Santa Clara* published December 6, 2019 after the release of the Draft EIR and provided as an attachment to the CSD comment letter dated December 18, 2019. The revisions to Mitigation Measure UTIL-1 are as follows: **Mitigation Measure UTIL-1:** No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods: 1) Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or 2) Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the ~~*San Jose-Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient* table in the May 2007, *City of Santa Clara Sanitary Sewer Capacity Assessment*,[19] and *California Green Building Standards*,~~ CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc. dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis. **Footnote:** ~~[19] Mark Thomas and Associates, July 19, 2018, Email communication with Cupertino Public Works.~~ These revisions do not affect any conclusions or significance determinations in the Draft EIR.
A3-3	It is also very unlikely that CSD will have an agreement to increase our 13.8 mgd permitted peak flow in the foreseeable future.	The comment is acknowledged.
A3-4	Mitigation Measure UTIL-2: Same response comments as UTIL-1.	Impact UTIL-2 (cumulative impacts) refers to Mitigation Measure UTIL-1. Please see Response to Comment A3-2.
A3-5	3.4.1.8 Utilities and Service Connections: Wastewater Please add to last sentence in first paragraph - which discharges through City of Santa Clara joint usage interceptor. Please recalculate the new flow using the most recent data available: single family at 175 gpd; multi-family units at 133 gpd; retail at 0.073 gsf, and townhomes at 55 gallon per person. Please note that the rates are average. To get the peak flow in a pipe system, please multiply average by 2.95 factor.	The Draft EIR relied on the most current information at the time of issuance of the Notice of Preparation (NOP) on July 11, 2019, which is normally the baseline for purposes of determining whether impacts are significant. The commenter provided the *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019 as an attachment to their comment letter dated December 18, 2019. This recent flow modeling analysis was published following the circulation of the NOP. The City acknowledges this recent flow modeling analysis and has revised the Draft EIR to be consistent with this recent flow modeling analysis as well as other comments submitted by the CSD. Please see Chapter 3 of this Response to Comments document for the complete revisions.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		Pursuant to this comment, revisions to Chapter 3, Project Description, and Chapter 4.9, Utilities and Service Systems, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. These revisions acknowledge the updated generation rates for average dry flow and the peak wet weather flow generation multiplier in the recent flow modeling analysis. The revisions are as follows: **Chapter 3, Project Description:** **Section 3.4.1.8 Utilities and Service Connections** **Wastewater** Based on the ~~2007 *City of Santa Clara Sewer Capacity Assessment*~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ average dry weather flow (ADWF) generation rate for multi-family residential uses is 133 gallons per day (gpd) per unit, 55 gpd per person per townhome (or rowhouse), and 0.073 gpd per square foot of retail space. The proposed 242 residential units are comprised of 154 multi-family units and 88 townhomes. Based on an average household size of 2.87 persons,[33] the townhomes would generate 253 new residents. The proposed project also includes 20,000 square feet of retail space. Applying ~~this~~ these generation rates, the proposed~~ 242 residential units and 20,000 square feet of retail space would generate up to 38,186 gpd or approximately 0.0382 mgpd of wastewater~~ project would generate approximately 35,833 gpd or 0.036 mgd of ADWF. The approximately 71,250 square-foot shopping center is currently 85 percent occupied (or 60,560 square feet). The shopping center currently, generates an ADWF of about ~~21,376~~4,421 gpd or ~~0.0213~~ 0.004 mgd. Therefore, the net increase in ADWF for the proposed project is ~~16,810~~31,412 gpd or ~~0.016~~ 0.031 mgd.[33] According to Benjamin T. Porter, Cupertino Sanitary District Manager-Engineer, in a letter to the City of Cupertino dated December 18, 2019, the peak wet weather flow is calculated by multiplying the average dry flow by a factor of 2.95. The peak wet weather flow for the proposed project is 105,707 gpd or 0.105 mgd. The operational shopping center currently generates about 13,042 gpd or 0.0013 mgd of peak wet weather flow. Therefore, the net

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response

increase in peak wet weather flow for the proposed project is 92,665 gpd or 0.093 mgd.

Footnotes:

[33] This analysis is based on the Association of Bay Area Governments (ABAG) 2019 projections of the average household size of 2.87 persons for Cupertino in 2025. This is the standard approach for population and housing analysis in Cupertino.

[34] ~~38,186~~ 35,833 gpd proposed generation – ~~21,376~~ 4,421 gpd existing generation = ~~16,810~~ 31,412 gpd (or ~~0.0168~~ 0.031 mgd) net increase.

Chapter 4.9, Utilities and Service Systems
Section 4.9.2.2 Existing On-Site Uses

The project site is currently occupied by an approximately 71,250 square-foot shopping center that is currently in operation at 85 percent occupancy (or 60,560 square feet). Based on the ~~May 2007 *City of Santa Clara Sewer Capacity Assessment* and~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ ADWF generation rate is 0.073 gpd per square foot of retail space. Therefore, the existing uses generate an ADWF of approximately ~~21,376~~4,421 gallons per day (gpd) or ~~0.0213~~ 0.004 ~~million gallons per day (~~mgd~~)~~. According to the CSD, the peak wet weather flow is calculated by multiplying the ADWF by a factor of 2.95. Therefore, the peak wet weather flow is 13,042 gpd or 0.013 mgd.[6]

Footnote:

[6] ~~71,250 sf retail x 0.3 gpd per square foot = 21,376 gpd or 0.0213 mgd~~ Mark Thomas & Co., Inc., Benjamin T. Porter, Cupertino Sanitary District Manager-Engineer, December 18, 2019, letter submitted to Gian Martire, Senior Planner, City of Cupertino, commenting on the November 2019 Draft EIR; 60,560 square feet of retail x 0.073 gpd per square foot = 4,421 gpd or 0.004 mgd average daily flow. 4,421 gpd average daily flow x 2.95 = 13,042 gpd or 0.013 mgd peak daily flow.

Impact Discussion UTIL-1

Based on the ~~May 2007 *City of Santa Clara Sewer Capacity Assessment*~~ CSD's *Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ average dry weather flow (ADWF) generation rate for multi-family residential uses is 133 gallons per day

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		(gpd) per unit, 55 gpd per person per townhome (or rowhouse), and 0.073 gpd per square foot of retail space. The proposed 242 residential units are comprised of 154 multi-family units and 88 townhomes. Based on an average household size of 2.87 persons,[7] the townhomes would generate 253 new residents. The proposed project also includes 20,000 square feet of retail space. Applying ~~this~~ these generation rates, the proposed ~~242 residential units and 20,000 square feet of retail space would generate up to 38,186 gpd or approximately 0.0382 mgpd of wastewater~~ project would generate approximately 35,833 gpd or 0.036 mgd of ADWF. Applying the CSD's peak wet weather flow generation rate (the ADWF multiplied by a factor of 2.95), the peak wet weather flow for the proposed project would be 105,707 gpd or 0.106 mgd.[8] As described in Section 4.9.2.2, Existing On-Site Uses, the operational shopping center currently generates ~~about 21,376 gpd or 0.0213 mgd~~ an ADWF of 4,421 gpd or 0.004 mgd and about 13,042 gpd or 0.013 mgd of peak wet weather flow. Therefore, the net increase for the proposed project ~~is 16,810 gpd or 0.0168 mgd~~ would be 31,412 gpd or 0.031 mgd ADWF and 92,665 gpd or 0.093 mgd peak wet weather flow.[9] **Footnotes:** [7] This analysis is based on the Association of Bay Area Governments (ABAG) 2019 projections of the average household size of 2.87 persons for Cupertino in 2025. This is the standard approach for population and housing analysis in Cupertino. [8] (~~242~~ 154 units x 133 gpd = ~~32,186~~20,482 gpd) + (88 townhomes x 55 gpd per person x 2.87 persons/household = 13,891 gpd) + (20,000 sf retail x 0.073 gpd per square foot = ~~6,000~~1,460 gpd) = ~~38,186~~35,833 gpd average dry weather flow; 35,833 gpd average dry weather flow x 2.95 = 105,707 gpd or 0.106 mgd of peak wet weather flow. [9] average dry weather flow: ~~186~~ 35,833 gpd proposed generation – ~~21,376~~4,421 gpd existing generation = ~~16,810~~ 31,412 gpd (or ~~0.0168~~ 0.031 mgd) net increase. peak wet weather flow: 79,007 gpd proposed generation – 13,042 gpd existing generation = 65,965 gpd (0.066 mgd) net increase. These revisions do not affect any conclusions or significance determinations in the Draft EIR.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
A3-6	4.9.2.1 and 4.9.2.2 Cupertino Sanitary District In the last paragraph, which states 13.29 mgd. Please see most recent flow report. Please update this using the attached report. Also, for the existing condition, please update using the attached flow report. Also, indicate whether the reference is to average or peak.	Please see Response to Comment A3-5 for revisions to the existing conditions that have been made to reflect the new generation rates provided by the commenter and clarify average flow from peak wet weather flow. Revisions to Chapter 4.9, Utilities and Service Systems, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. These revisions acknowledge the updated generation rates in the CSD's *Flow Modeling Analysis for Homestead Flume Outfall to City of Santa Clara* published December 6, 2019 (provided as an attachment to this comment letter). The revisions are as follows: **Section 4.9.2.1, Cupertino Sanitary District:** The CSD wastewater system also flows through a portion of the City of Santa Clara's sewer system. The contractual agreement between CSD and the City of Santa Clara is 13.8 mgd during peak wet weather flows. The existing CSD peak wet weather flow into the Santa Clara system is modeled at ~~13.29~~13.14 mgd.[4] **Footnote:** [4] Mark Thomas & Co. Inc., Cupertino Sanitary District. ~~February 20~~December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*. These revisions do not affect any conclusions or significance determinations in the Draft EIR.
A3-7	4.9.4 UTIL-1 Impact Discussion Please update flows based on the attached report. Also, please separate impact discussion at the wastewater treatment facility and joint capacity issue through the City of Santa Clara. For the wastewater treatment facility, CuSD has 7.85 mgd capacity, which cannot be exceeded regardless of what the total treatment plant capacity is. CuSD does not anticipate an issue with the treatment plant capacity of 7.85 mgd through the City of Cupertino General Plan built-out, but expects capacity issues through the City of Santa Clara. Also, please verify 450 mgd capacity at the treatment plant is correct.	Please see Response to Comment A3-5 for revisions to the existing conditions and the proposed project that have been made to reflect the new generation rates in the attached report provided by the commenter. Revisions to Chapter 4.9, Utilities and Service Systems, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. Sub-headings have been added to separate the discussion related to the wastewater treatment plant capacity and the sewer system capacity, and the discussion now states that the proposed project would cause no impact to the San José/Santa Clara Water Pollution Control Plant (SJ/SCWPCP).

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		The projected peak wet weather capacity stated in *The San Jose Santa Clara Water Pollution Control Plant Master Plan*, November 2013, is 450 mgd (see page 15). The average dry weather flow or ADWF capacity is 167 mgd pursuant to the most recent National Pollutant Discharge Elimination System (NPDES) permit for the SJ/SCWPCP (Order No. R2-2014-0034, NODES No. CA0037842). The revisions to impact discussion UTIL-1 are as follows: *Wastewater Treatment Capacity* The ADWF consists of average daily sewage flows and any groundwater that infiltrates sewer pipeline and manhole defects located below the ground surface. The SJ/SCWPCP currently has a total ADWF capacity of ~~450~~167 mgd.[9] Combined, the proposed project's net increase of ~~wastewater generation of 0.0168~~ 0.031 mgd ADWF and the current wastewater generated system-wide of ~~105~~ 110 mgd of ADWF, the proposed project would not exceed the SJ/SCWPCP's current total capacity of ~~450~~ 167 mgd for ADWF. The CSD has a contractual treatment allocation of 7.85 mgd ~~Average Daily Dry Flow~~ ADWF with the SJ/SCWPCP. At the time of the General Plan EIR, the wastewater generation of 5.3 mgd was estimated by the CSD.[~~8~~10] The existing wastewater flow of 5.3 mgd plus the proposed project's ~~wastewater~~ ADWF of ~~0.0168~~ 0.031 mgd would not exceed the City's contractual allocation limit of 7.85 mgd. The proposed project is also within the amount of development (4,421 residential units and 1,343,679 commercial square feet) evaluated in the General Plan EIR;[~~9~~11] therefore, no impact would result. Sewer System Capacity The CSD wastewater system flows through a portion of the City of Santa Clara's sewer system. The contractual agreement between CSD and the City of Santa Clara allows 13.8 mgd during peak wet weather flows for this portion of the Santa Clara sewer system.[13] The existing CSD peak wet weather flow into the

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		Santa Clara system is ~~13.29~~ 13.14 mgd.~~10~~13 However, the estimated wastewater generation from the proposed project and from other potential projects, as established by the General Plan and other approved projects, is approximately ~~14.25~~ 14.61 mgd, which is the total capacity needed to serve the General Plan buildout.~~11~~14 Therefore, the proposed project, and other approved and potential projects as established by the General Plan 2040 buildout, will require a reduction in sewer generation from the CSD system prior to flowing into the City of Santa Clara system, or additional capacity rights will need to be acquired from the City of Santa Clara. ~~CSD performed smoke testing12 on a portion of the sewer system in 2018. The results of the smoke testing showed that certain portions of their system are being impacted by inflow from illegal connections to the system. These illegal connections include area drains, catch basins, and roof rainwater leaders from both public and private facilities within the cities of Cupertino and Saratoga jurisdictions. These illegal connections collect storm water and direct the flow to the sewer system. Calculating the flows from these illegal connections, using the Manning's flow equation13 and the size of the areas that flow to these connections, there is an addition of approximately 0.4 mgd to the sanitary sewer peak wet weather flow. Disconnecting these illegal connections and redirecting these storm water flows to the public storm drain system would result in a reduction of the sewer peak wet weather from 14.25 mgd to 13.85 mgd. Further investigation of the CSD system is anticipated and disconnection of additional illicit connects is expected, which would provide further potential reduction to the peak wet weather flow.~~ ~~However, until such corrections to the system can occur,~~ Therefore, the operation of the proposed project would exceed the 13.8 mgd contractual limit through the City of Santa Clara sewer system resulting in a potentially significant impact. Footnotes:

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		[9] The San Jose Santa Clara Water Pollution Control Plant Master Plan, November 2013, page 15; San Francisco Bay Regional Water Quality Board, September 10, 2014, Order No. R2-2014-0034 NPDES No. CA0037842; City of San Jose Environmental Services, https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility, accessed January 2, 2020. ~~8~~10 City of Cupertino, General Plan (Community Vision 2015–2040), Appendix B: Housing Element Technical Report, 4.3 Environmental, Infrastructure & Public Service Constraints, page B-93. ~~9~~11 City of Cupertino, certified General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, (December 2014) and approved General Plan Amendment, Housing Element Update, and Associated Rezoning EIR Final Addendum, State Clearinghouse Number 2014032007 (October 2015). [12]Peak wet weather flow consists of the average dry weather flow or ADWF in addition to infiltration and inflow. Infiltration is rainfall that enters the sewer system through manhole defects. Inflow is rainfall that enters the sewer system through illegal connections, such as catch basins, downspouts, area drains and manhole covers. Peak wet weather flow is the highest measured hourly flow that occurs during wet weather. ~~10~~13 Mark Thomas & Co. Inc., ~~August 29, 2019~~ December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*. ~~11~~14 Mark Thomas & Co. Inc., ~~August 29, 2019~~ December 6, 2019, *Cupertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara.*~~Sewage coefficients use to calculate the sewer generation rates for the various uses in the project and the General Plan buildout were taken from the San Jose - Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient table and from the City of Santa Clara Sanitary Sewer Capacity Assessment, May 2007, as well as CSD estimated flow rates based on measured water usages.~~ Please see Response to Comment A3-2 for the revisions to Mitigation Measure UTIL-1. These revisions do not affect any conclusions or significance determinations in the Draft EIR.
A3-8	The statement that reduction of the peak wet weather flow from 14.25 mgd to 13.85 mgd by removal of illegal connections is incorrect. The District has not fully evaluated options to reduce I/I and does not expect it to be completed in the near future.	Revisions to Chapter 4.9, Utilities and Service Systems, of the Draft EIR have been made in Chapter 3 of this Response to Comments document. These revisions acknowledge the updated generation rates in the CSD's *Flow Modeling Analysis for Homestead Flume Outfall to City of Santa Clara* published December 6, 2019 (provided as an attachment to this letter). The discussion relating to illegal connections has been removed from the impact analysis. Please see Response to Comment A3-7.

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Comment #	Comment	Response
		These revisions do not affect any conclusions or significance determinations in the Draft EIR.
Attachment A3-1	A copy of the Cupertino Sanitary District's *Flow Modeling Analysis for Homestead Flume Outfall to City of Santa Clara* published December 6, 2019.	The attachment to the comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
Private Individuals and Organizations		
B1 Joseph Hauser, November 25, 2019		
B1-1	Please add this email to the public record for the Westport Project As I cannot attend the proposed Westport Cupertino Project Development meetings, I would like to present several comments.	The comment serves as an opening remark. No response is required.
B1-2	The project, being on Stevens Creek between Mary Ave and the entrance to 85/280 will negatively impact access to the main corridor toward the city center. This potentially impacts access to all the businesses along Stevens Creek Blvd.	The commenter expresses an opinion about the potential impacts of the proposed project on the roadways in the vicinity of the project site and asserts that there will be negative impacts related to access to the city center and to all business on Stevens Creek Boulevard. The commenter provides no evidence to support this assertion. Transportation impacts resulting from the proposed project are discussed in Chapter 4.8, Transportation, of the Draft EIR beginning on page 4.8.15. As discussed in Chapter 4.8, construction and operation of the proposed project would not result in any significant transportation impacts on Stevens Creek Boulevard.
B1-3	The area surrounding the proposed project is already a highly-impacted area for the following activities. a The main entrance to De Anza College b Cupertino Senior Citizens Center c The main entrance to Memorial Park where there are numerous city events each year d Entrance to two major highways (85 and 280) e Access to the city yard facility f Access to the city dog park g Access to over 300 residential homes h Access to a condo complex i Access to the Glenbrook Apartments	The commenter expresses an opinion about the existing conditions in the project vicinity. The commenter's observations are noted.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	j Bicycle path to the Mary Avenue Bridge	
B1-4	The state Density Bonus Law allows this project 3 concessions- not more! They also want to remove protected trees, consolidate all BMR housing into one building, not provide a mix of BMR unit sizes, not provide required amount of retail facing Stevens Creek, etc. This is WAY MORE than 3 concessions. In addition, the height concessions is 100% more than what is allowed. Where is the limit?	This comment expresses an opinion about the proposed project but does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The application of Density Bonus regulations is described on page 3-10 of Chapter 3, Project Description, of the Draft EIR. As described in the Project Description, Draft EIR page 3-28, the applicant is requesting density bonus waivers for height, slope setback, and dispersion of affordable units. The applicant has not requested any concessions. The City's regulations for protected trees are described on pages 4.2-3 and 4.2-4 in Chapter 4.2, Biological Resources, of the Draft EIR. As stated in impact discussion BIO-2 starting on page 4.2-11, the removal of protected trees is permitted by the City with approval of a tree removal permit. Implementation of Mitigation Measure BIO-2 would ensure compliance with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18).
B1-5	There is only one other exit area from the area being impacted. Those exits are on to Stelling Ave., and only has a traffic light on Greenleaf and Stelling. Greenleaf has a dangerously sharp S-curve right by Garden Gate Elementary School. The other exits onto Stelling require drivers to try to get onto Stelling when there is a break in the traffic. This is virtually impossible during rush hour. With the additional traffic to be generated by this project, many drivers will find an alternative route through the neighborhood and past Garden Gate School. During rush hour, many parents use Greenleaf to let their children disembark from their cars, or cross streets to the school. This is already dangerous and will only get worse.	The commenter expresses an opinion about the existing conditions in the project vicinity and asserts that the operation of the proposed project will create worse conditions on the roadways in the vicinity of the project site. The commenter provides no substantial evidence to support these assertions. The commenter does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project. As discussed in Chapter 3, Project Description, of the Draft EIR, on page 3-21 the proposed project would provide one access point from Stevens Creek Boulevard and three access points from Mary Avenue.

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Comment #	Comment	Response
		According to staff at Hexagon, the transportation consulting firm hired by the city, in response to this comment in February 2020, based on the project site location and existing travel patterns in the area, project-generated trips would exit the site on Mary Avenue and use Stevens Creek Boulevard to access Stelling Road. This is the most logical route. Site access to and from Stelling Road through the adjacent neighborhood to the north is highly unlikely due to the circuitous route, which would require traveling along six different residential streets with a speed limit of 25 miles per hour, traversing multiple intersections with stop signs, and driving past Garden Gate Elementary School on Greenleaf Drive. Furthermore, due to the presence of the elementary school, drivers are more likely to avoid Greenleaf Drive during the peak pick-up and drop-off periods of the school day, because it would cause them further delay. For these reasons, traveling through the neighborhood to the north to access Stelling Road does not offer a practical alternative route from the project site. Note that some future residents of the project may have children that attend Garden Gate Elementary School and, therefore, may travel between the project site and the neighborhood school. However, the number of such trips between the project site and the school would be negligible (likely not noticeable to neighborhood residents) and are not considered cut-through trips because the destination (the school) is located within the neighborhood.
B1-6	The proposed height limitation of this project is not in keeping with height limitations along highway 85 for at least a mile radius.	This comment expresses an opinion about height limits but does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.
B1-7	At times the number of cars in the turn lane from Stevens Creek Blvd onto Mary Ave., and the turn lane from Mary onto Stevens Creek Blvd already exceeds the amount of space allocated, thereby causing backups onto regular traffic lanes. This will only get worse.	The commenter expresses an opinion about the existing conditions and speculates about future conditions. The comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.

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Comment #	Comment	Response
		Transportation impacts resulting from the proposed project are discussed in Chapter 4.8, Transportation, of the Draft EIR beginning on page 4.8.15. As discussed in Chapter 4.8 construction and operation of the proposed project would not result in any significant impacts on Stevens Creek Boulevard. The project would have no effect on the operation of the eastbound left-turn pocket on Stevens Creek Boulevard [onto Mary Avenue], because the project would generate zero net new inbound vehicle trips during both the AM and PM peak commute periods of the day. During the AM peak hour, the southbound left-turn movement from Mary Avenue onto eastbound Stevens Creek Boulevard is currently operating at an acceptable level of service (LOS D) and would continue to do so with the addition of project-generated outbound traffic. The project would result in fewer PM peak hour outbound vehicle trips compared to the existing shopping center and, thus, vehicle queues would likely decrease for this movement with the project during the PM peak hour.
B1-8	There are no buildings in this area with heights larger than 2 stories. I hope the city will take these points into consideration. As a longtime resident of Cupertino, I have witnessed the area becoming a traffic nightmare, and city promises to residents' better quality of life being largely ignored so that developers can get their way. I am not against reasonable growth, but this project is massive, and does not fit into the area being allocated. It will not only impact the immediate area, but will impact the entire city. Recent events have indicated that residents are mostly fed up with the type of projects the city has approved. I hope this project will be an example of a new attitude by the city.	The commenter's opinion about two-story building heights in the project area is noted; however, as shown on Figure 3-2 (Aerial of the Project Site) the De Anza College campus is located across Stevens Creek Boulevard from the project site and has buildings that range in height from one to four stories. The commenter does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.
B2 Kent Vincent, November 25, 2019		
B2-1	Cupertino residents recently received notices for hearings on two development proposals each requiring General Plan Amendments: the De Anza Hotel and Westport Cupertino. I want to encourage the	This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the

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Comment #	Comment	Response
	Council to enforce the City's General Plan when ruling on these and all future development proposals. As you know, General Plans are not intended to be project specific but the blueprint for future development throughout the city. Unfortunately, developers have become accustomed to project-specific GPAs in Cupertino via the actions of prior Councils. Cupertino residents elected a Council majority to end this practice and actively enforce the General Plan. While I know you know this, I just want to give you respectful encouragement noting enforcement has the support of your constituents. I think it is also worth mentioning that freely given project specific GPAs and rezoning encourages property value inflation. Land cost is directly a function of utility and what is, or what is likely to be allowed for development on any given parcel. A Council that holds its ground against GPAs in theory should stabilize land prices so high rise, high density is less of a requirement for development profitability.	record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.
B3 Harris Au, December 5, 2019		
B3-1	The Westport proposal to build 242 residential units is way too many. It is obvious that the resulting traffic congestion will be unbearable. Even today the traffic is very heavy during the morning 7-9 am and 4-6 pm periods. Consider all the traffics from Steven's Creek Blvd, HWY 85 and De Anza college. Besides traffic congestion problems, other issues are in safety for both car and pedestrians, air and noise population, and building height. The maximum number of residential units in Westport is 50.	This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. Transportation impacts resulting from the proposed project are discussed in Chapter 4.8, Transportation, of the Draft EIR beginning on page 4.8.15. As discussed in Chapter 4.8 construction and operation of the proposed project would not result in any significant impacts for automobiles, transit, pedestrians, or bicyclists. Air quality impacts resulting from the proposed project are discussed in Chapter 4.1, Air Quality, of the Draft EIR beginning on page 4.1-14. As discussed in Chapter 4.1, construction and operation of the proposed project would not result in any significant air quality impacts with implementation of Mitigation Measure AQ-2.

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		Noise impacts resulting from the proposed project are discussed in Chapter 4.7, Noise, of the Draft EIR beginning on page 4.7-11. As discussed in Chapter 4.7, construction and operation of the proposed project would not result in any significant noise impacts with implementation of Mitigation Measure NOISE-1. As described on page 3-1 of Chapter 3, Project Description, of the Draft EIR, the project site is identified as a Priority Housing Element Site A3 in the City of Cupertino General Plan (Community Vision 2015-2040) to accommodate the Regional Housing Needs Allocation (RHNA) for the 2014 to 2022 planning period and meet Cupertino's fair-share housing obligation of 1,064 units. The Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project, certified in 2015, included an evaluation of the project site with a new mixed-use development including residential uses that could have up to 235 net residential units and maximum height of maximum height of 75 feet. The comment's statement regarding a maximum of 50 units on the site is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.
B4 Lee Xu, December 11, 2019		
B4-1	I am the owner of the house at 21164 Grenola Dr, Cupertino, CA 95014. Thank you for informing me of the Westport project. I think the project adds too many new residential units in this already crowded area. Furthermore, the tall building is not in harmony with the surroundings. I vote against the project.	This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The commenter's opinion regarding the density, height, and position against project approval is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.
B5 Aaron M. Messing, December 20, 2019		
B5-1	We are writing on behalf of Cupertino Residents for Responsible	The comment serves as an opening remark. No response is required.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	Development to provide comments on the November 2019 Draft Environmental Impact Report ("DEIR") prepared for the Westport Mixed-Use Project proposed by KT Urban. The Project involves demolishing a one-story shopping center and developing an 8.1-acre site for a mixed-use of residential and retail buildings, totaling 242 residential units and 20,000 square feet of retail space. The Project is located at 21267 Stevens Creek Boulevard, approximately 0.1-.03 miles from the De Anza Transit Center. According to the DEIR, the Project will require the following approvals from the City of Cupertino ("City"): (1) EIR Certification pursuant to the California Environmental Quality Act ("CEQA"); (2) Development Permit (3) Architectural and Site Approval Permit; (4) Use Permit; (5) Subdivision Map Permit; (6) Heart of the City Exception; (7) tree removal permit; and (8) Encroachment permits from the City and Caltrans.	
B5-2	As explained in these comments, the DEIR does not comply with the requirements of CEQA in several respects: First, the DEIR fails to properly analyze and mitigate impacts from air quality and their associated health risks. Specifically, the City failed to properly analyze construction and operational air emissions by underestimating and failing to support their emission projections. As a result, the City failed to disclose, analyze and mitigate a potentially significant health risk that is evident when the DEIR's errors are corrected.	The comment expresses an opinion regarding CEQA and the air quality analysis in the Draft EIR. The commenter asserts that the construction and operational air emissions were underestimated. However, this comment provides no specific information. Please see Responses to Comments B5-8, B5-13, B5-15 through B5-17, B5-20, B5-32 through B5-39, and B5-52.
B5-3	Second, the DEIR fails to properly disclose, analyze, and mitigate Greenhouse Gas ("GHG") emissions. The DEIR's analysis uses an inapplicable threshold of significance in violation of CEQA and relies on several erroneous and unsupported assumptions which underestimate the Project's actual GHG impacts.	The comment expresses an opinion regarding the GHG emissions analysis in the Draft EIR and asserts that the analysis applied an incorrect threshold. Please see Responses to Comments B5-8, B5-13, B5-15 through B5-17, B5-20, B5-32 through B5-44, and B5-52 below, which demonstrate that the commenter's assertion is incorrect.
B5-4	Third, the DEIR fails to properly disclose, analyze, and mitigate the Project's traffic impacts. The City improperly calculates VMT, at odds	The comment expresses an opinion regarding the transportation analysis in the Draft EIR and asserts that the analysis is incorrect. Please see Responses to

TABLE 5-1 RESPONSE TO COMMENTS

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	with the City's own general plan and California's technical guidance on VMT and fails to include traffic analysis from a major nearby construction project.	Comments B5-8, B5-24, B5-25, B5-53, and B5-54 below, which demonstrate that the commenter's assertion is incorrect.
B5-5	For each of these reasons, the City may not approve the Project until a revised environmental review document is prepared and re-circulated for public review and comment. These comments were prepared with the assistance of air quality and GHG experts from Soil Water Air Protection Enterprise ("SWAPE") Matt Hagemann, P.G, C.Hg. and Paul E. Rosenfeld, PhD[1], and traffic and civil engineer Dan Smith[2]. SWAPE and Mr. Smith's comments and curriculum vitae are attached hereto as Exhibits A and B respectively and are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments of the experts, in addition to our comments. Footnotes: [1] Exhibit A: A letter from Matt Hagemann and Paul Rosenfeld to Aaron Messing Re: Comments on the Westport Mixed-Use Project (SCH No. 2019070377), December 20, 2019 ("SWAPE comments"). [2] Exhibit B: A letter from Daniel Smith to Aaron Messing Re: Westport Mixed Use Project DEIR (SCH 2019070377), December 20, 2019 ("Smith comments").	As demonstrated in the remaining responses to this comment letter no recirculation of the Draft EIR is required as incorrectly asserted by the commenter. Under CEQA, recirculation of an EIR is only required when the lead agency adds "significant new information" to the EIR after the public comment period but prior to certification. (CEQA Guidelines Section 15088.5(a).) "Significant information" can include changes in the project or environmental setting, as well as additional data or other information, while "significant new information" requiring recirculation can include, for example, a disclosure showing any of the following (Public Resources Code Section 21092.1 and California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15088.5(a)): ▪ A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. ▪ A substantial increase in the severity of an environmental impact would result 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 would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it. ▪ The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043.) Recirculation is required only if changes to the draft EIR deprived the public of a meaningful opportunity to comment on a substantial adverse environmental effect of the project. (CEQA Guidelines Section 15088.5(a).) Recirculation is not required

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		where the new information merely clarifies, amplifies, or makes insignificant modifications to an adequate EIR. (CEQA Guidelines Section 15088.5(b).) Under CEQA, the decision as to whether an environmental effect should be considered significant is reserved to the discretion of the Lead Agency based on substantial evidence in the record as a whole. The analysis of the Draft EIR is based on scientific and factual data, which has been reviewed by the Lead Agency and reflects its independent judgment and conclusions. CEQA permits disagreements of opinion with respect to environmental issues addressed in an EIR. As Section 15151 of the CEQA Guidelines states, even "[d]isagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among experts." Responses to comments provided to Exhibit A and B of the comment letter are provided below in Responses to Comments B5-29 to B5-50 and B5-51 to B5-55, respectively. Because recirculation is not required where new information added to the EIR merely clarifies, amplifies, or makes insignificant modifications in an adequate EIR, and because no significant new information would result from any of the revisions to the portions of the Draft EIR as shown in Chapter 3, Revisions to the Draft EIR, of this Response to Comments Document, no recirculation is required.
B5-6	I. STATEMENT OF INTEREST Cupertino Residents for Responsible Development is an unincorporated association of individuals and labor unions that may be adversely affected by the potential environmental impacts of the Project. The association includes Silicon Valley MEPS and its members and those members' families and other individuals that live, recreate, work and raise their families in Santa Clara County, including in and around the City of Cupertino (collectively "Cupertino Residents"). Cupertino Residents supports the development of mixed-use projects where properly analyzed and carefully planned to minimize impacts on public health and the environment. Mixed-use projects should avoid impacts to air quality, public health, water resources and traffic, and should take all feasible steps to ensure unavoidable impacts are	This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Response to Comments document for their consideration in reviewing the project.

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	mitigated to the maximum extent feasible. Only by maintaining the highest standards can mixed-use development truly be sustainable. Individual members of Cupertino Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in Santa Clara County, including in and around the City of Cupertino. These members would be directly affected by the Project's environmental and health and safety impacts. Members of Cupertino Residents may also work on the Project itself. Accordingly, these individuals will be first in line to be exposed to any health and safety hazards created by the Project. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts. The organizational members of Cupertino Residents and their members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses to expand in the region, and by making it less desirable for businesses to locate and people to live there. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Finally, the organizational members of Cupertino Residents are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment[3]. It is in this spirit we offer these comments. Footnote:	

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	[3] Pub. Resources Code § 21081(a)(3); Citizens for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, 171.	
B5-7	II. THE DEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS ON SIGNIFICANT IMPACTS AND FAILS TO DISCLOSE, ANALYZE, AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).[4] The EIR is the very heart of CEQA.[5] "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[6] CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[7] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR "protects not only the environment but also informed self-government."[8] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[9] Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures.[10] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."[11] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable	This comment incorrectly asserts that the Draft EIR lacks substantial evidence to support the conclusions on significant impacts and fails to disclose, analyze, and mitigate potentially significant impacts as demonstrated in the remaining responses to this comment letter. Please see Responses to Comments B5-8 though B5-55 for detailed to responses to this comment letter and attached Exhibits A and B. This comment provides background on CEQA, CEQA Guidelines, and the judicial interpretation of CEQA. No response is necessary.

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	significant effects on the environment are "acceptable due to overriding concerns."[12] While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[13] As the courts have explained, "a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."[14] **Footnotes:** [4] See, e.g., PRC § 21100. [5] Dunn-Edwards v. BAAQMD (1992) 9 Cal.App.4th 644, 652. [6] Comtys. for a Better Env' v. Cal. Res. Agency (2002) 103 Cal. App.4th 98, 109 ("CBE v. CRA"). [7] 14 CCR § 15002(a)(1). [8] Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564. [9] Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs. (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810. [10] 14 CCR§ 15002(a)(2) and (3); see also Berkeley Jets, 91 Cal.App.4th at 1354; Citizens of Goleta Valley, 52 Cal.3d at 564. [11] 14 CCR §15002(a)(2). [12] PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B). [13] Berkeley Jets, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 391 409, fn. 12. [14] Berkeley Jets, 91 Cal.App.4th at 1355; San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 722; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal.App.4th 1109, 1117; County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 946.	
B5-8	A. The Project description does not provide any information on the types of retail the Project will include, which render the DEIR's analysis on Air Quality, GHGs, and VMT incomplete.	The commenter incorrectly asserts that the project description does not provide "any" information on the types of retail that would be provided at the project site if the proposed project were approved.

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	The DEIR states that the Project will contain "two mixed-use buildings" with a combined approximately 20,000 square feet of retail space on their ground levels.[15] Apart from this information, however, no further description or analysis of the future retail component of the Project is provided in the DEIR. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.[16] Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.[17] The courts have repeatedly held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient [CEQA document]."[18] "Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs."[19] CEQA Guidelines § 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[20] Without any discussion of the types of retail to be included in the Project, key elements that would comprise the Project's Air Quality, GHG, and Traffic impacts analysis are missing. For example, "[t]he existing shopping plaza, which contains many local serving uses like cheap restaurants, dentists, nail shops, and dance studios, attracts considerably more local trips than a shopping center that has specialty shops that people drive for longer distances to get to. These differences in retail may significantly increase the VMT and GHG impacts of the project, and without more information, the DEIR cannot make reliable conclusions as to those impacts."[21] While a Project is entitled to some flexibility with implementation of the Project beyond the project description, there is no practical reason why the City does not provide broad categories of retail to be	As described in Chapter 3, Project Description, of the Draft EIR on page 3-7, the project site is in the Oaks Gateway, which is a neighborhood center intended to provide shopping and gathering spaces for local residents. As stated in Chapter 3, Land Use and Planning, of the General Plan, (please see page LU-18) Neighborhood Commercial Centers serve adjacent neighborhoods and provide shopping and gathering places for residents. Retaining and enhancing neighborhood centers within and adjacent to neighborhoods throughout Cupertino supports the City's goals for walkability, sustainability and creating gathering places for people. On page 3-8 of the Draft EIR it states that within the Commercial/Residential General Plan land use designation, commercial use means retail sales, businesses, limited professional offices, and service establishments with direct contact with customers. While this applies to commercial activities ranging from neighborhood convenience stores to regionally oriented specialty stores, it is clearly stated in the Project Objectives (please see page 3-11 of the Draft EIR) that the proposed project would provide neighborhood retail; therefore, no regionally oriented specialty stores were assumed for the analysis presented in the Draft EIR. Chapter 4.1, Air Quality, of the Draft EIR, also clearly states the proposed project would include neighborhood-serving retail on page 4.1-15. However, the CalEEMod utilizes the same trip length and parameters for non-regional shopping centers as it does for regional shopping centers. Therefore, any differences between regional and non-regional retail land uses would not generate a different VMT or GHG modeling result because the same trip generation rate is used. Where specific generation rates are applied, i.e., employee generation, solid waste, wastewater, trip generation, etc., the impact analysis in the Draft EIR applied the standards for retail uses routinely used by the City and other responsible agencies including the Cupertino Sanitary District and Caltrans (please see pages 3-22, 3,24, and 3-27). As described in Chapter 3 of the Draft EIR (see page 3-9), the project site is with a Santa Clara Valley Transportation Authority City Cores, Corridors & Station Areas Priority Development Area (PDA). PDAs are transit-oriented, infill development

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	included in the Project, such that a significantly more accurate rendering of the Project's impacts could be made.[22] The City must include this information in a recirculated DEIR and make adjustments to its air quality, GHG, and traffic analyses accordingly. **Footnotes**: [15] DEIR, p. 1-1. [16] *See*, *e.g.*, *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376. [17] *See id.* [18] *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193. [19] *Id.* at 192-193. [20] 14 CCR § 15378. [21] Smith Comments, p. 1. [22] *See Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal. App. 5th 1 (finding that a project description was insufficient when there were no practical impediments to why the developer could not have provided an accurate, stable, and finite definition of what it intended to build.).	opportunity areas within existing communities. As described in the General Plan (see page LU-7), PDAs are areas where new development will support the day-to-day needs of residents and workers in a pedestrian-friendly environment served by transit. The project site is also a qualifying Transit Priority Area (TPA), which is an area within one-half mile of a major transit stop. As stated on page 3-9 of the Draft EIR, the overarching goal of developing a high-density, mixed use development within a PDA and a TPA is to concentrate development in areas where there are existing services and infrastructure rather than locating new growth in outlying areas where substantial transportation investments would be necessary to maximize energy conservation and achieve the per capita passenger vehicle, vehicle miles traveled (also referred to as "VMT"), and associated greenhouse gas (GHG) emissions reductions. As is common for a proposed project, the precise retail tenant, uses, or specific vendors are not known at this time and are not required in order for the analysis in the Draft EIR to be accurate. On the contrary, as explained below, the trip generation rates and VMT estimates for retail projects are based on the general category of retail uses proposed. See Response to Comment B5-9. Therefore, lack of more specific information in the Draft EIR identifying precise retail uses or tenants does not render the project description and subsequent analysis inadequate, as incorrectly stated by the commenter. The proposed project includes a total of 20,000 square feet of retail uses. As described on page 3-12 of the Draft EIR, Residential-Retail Building 1 would have 17,600 square feet of retail space located at the corner of Stevens Creek Boulevard and Mary Avenue, and Residential-Retail Building 2 would have 2,400 square feet of retail space on the ground level fronting Stevens Creek Boulevard. The size limits of the two retail areas would prohibit the type of retail that people drive for longer distances to get to as the commenter has asserted. The types of retail that attract longer trips are typically large regional chains such as IKEA, Costco, Target, etc., which can range from 100,00 square feet to 300,000 square feet or more. With respect to recirculation, please see Response to Comment B5-5.

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B5-9	B. The DEIR fails to identify, analyze, and mitigate the Project's air quality impacts and associated health risks Under CEQA, lead agencies must consider a project's impacts on air quality, including whether the project will "expose sensitive receptors to substantial pollutant concentrations."[23] The DEIR's air quality analysis relies on emissions calculated with the California Emission Estimator Model ("CalEEMod") 2016.3.2.The model uses site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type to calculate a project's construction and operational emissions. After reviewing the DEIR, SWAPE concluded that "several of the values inputted into the model were not consistent with information disclosed in the DEIR" and that the DEIR incorrectly evaluates diesel particulate matter emissions.[24] As a result, the DEIR completely fails to identify and mitigate against a potentially significant health risk impact resulting from Project emissions. The City must remedy this failure by recirculating a DEIR with the potentially significant impact disclosed, analyzed, and mitigated. Footnotes: [23] CEQA Guidelines, Appendix G, Section III: Air Quality. [24] SWAPE Comments, p. 2.	The comment expresses an opinion regarding the air quality analysis in the Draft EIR and asserts that the construction and operational air emissions were underestimated. Please see Responses to Comments B5-32 through B5-35 with respect to comments about the values that are applied to the CalEEMod air quality model. Also, please see Responses to Comments B5-15 through B5-17 and B5-37 through B5-39, with respect to the health risk impacts of diesel particulate matter (DPM) emissions. With respect to recirculation, please see Response to Comment B5-5.
B5-10	1. The DEIR underestimates air quality impacts In their review, SWAPE determined that at least three inputs from the DEIR's CalEEMod analysis were underestimated and did not reflect disclosed information about the Project from the DEIR. They also determined that certain mitigation measures outlined by the DEIR are unverified and therefore may underestimate the Project's construction and operational emissions. If adjusted, the revised CalEEMod conclusions result in the finding of a potentially significant health risk impact, explained in section II(B)(3).	Please see Responses to Comments B5-32 through B5-34 with respect to the inputs referred to by the commenter. Specifically, see Response to Comment B5-32, which explains that the commenter has misinterpreted the size of the underground parking structure, Response to Comment B5-33, which explains that the commenter has misinterpreted the weekday trips to be the same as weekend trips, and Response to Comment B5-34 with respect to the use of pass-by trips in the model. With respect to the statements regarding the commenter's assertion of unverified mitigation measures, please see Responses to Comments B5-35 and B5-36.

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B5-11	a) Multiple CalEEMod inputs contradict Project estimations from the DEIR SWAPE notes that while the Project proposes to construct a 148,040 square foot parking garage, the DEIR's CalEEMod inputs only include 92,800 square feet of enclosed parking structure, an underestimation of 55,240 square feet.[25] SWAPE also found that the DEIR's CalEEMod transportation assessment underestimates the weekend trip rate by 242 trips based on the DEIR's own estimation of projected daily trips for the Project.[26] Through both of these underestimations, the DEIR underestimates the Project's construction and operational emissions and leads to an inadequate analysis of health impacts. Additionally, SWAPE determined that the pass-by trips expected to occur throughout the Project's operation were double counted by the DEIR's analysis, and therefore, the Project's operational emissions were underestimated.[27] According to Appendix A of the CalEEMod User's Guide, the primary trips utilize the complete trip lengths associated with each trip type category.[28] Diverted trips are assumed to take a slightly different path than a primary trip and are assumed to be 25% of the primary trip lengths. Pass-by trips are assumed to be 0.1 miles in length and are a result of no diversion from the primary route.[29] Here, the DEIR counts the pass-by trips both in its land use analysis *and* in its transportation assessment.[30] And as a result, "the emissions associated with these trips are underestimated and as a result, the Project's mobile-source operational emissions are underestimated."[31] These underestimations are compounded by the DEIR's failure to include any information about the types of retail the Project will contain. As established above, different types of retail could have substantially different implications for the projections of daily trips or of trip purposes, both of which would have air quality impacts. As a result, the Project's air quality analysis is unreliable and cannot	Please see Responses to Comments B5-32, which explains that the commenter has misinterpreted the size of the underground parking structure, Response to Comment B5-33 , which explains that the commenter has misinterpreted the weekday trips to be the same as weekend trips, and Response to Comment B5-34 with respect to the use of pass-by trips in the model. With respect to the commenter's assertion that the types of retail have not been disclosed, please see Response to Comment B5-8.

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	constitute substantial evidence that no significant effect will occur from construction and operation of the Project. **Footnotes:** [25] SWAPE Comments, pp. 2-3. [26] SWAPE Comments, p. 4. [27] SWAPE Comments, p. 6. [28] "CalEEMod User's Guide, Appendix A: Calculation Details for CalEEMod." SCAQMD, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf?sfvrsn=2, p. 20 [29] "CalEEMod User's Guide, Appendix A: Calculation Details for CalEEMod." SCAQMD, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf?sfvrsn=2, p. 20 [30] SWAPE Comments, pp. 5-6. [31] SWAPE Comments, p. 6.	
B5-12	b) Multiple mitigation measures are unverified and may result in underestimated emissions Next, SWAPE identified at least two mitigation measures that are inadequately verified in the CalEEMod inputs, which may result in the DEIR underestimating the Project's air emissions. The Project's CalEEMod output files demonstrate that the model included a 6 percent reduction from "Clean Paved Roads" and a 12 percent moisture content for "Water Unpaved Roads" (Appendix C, pp. 40, 69, 94). The CalEEMod User's Guide requires that any non-default values inputted must be justified,[32] and the DEIR includes a justification: "Per BAAQMD basic control measures."[33] **Footnotes:** [32] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 7, 13. [33] DEIR, Appendix C, pp. 40, 69, 94.	Please see Responses to Comments B5-35 regarding the use of BAAQMD basic control measures during construction.
B5-13	The DEIR purports to implement BAAQMD Basic Construction Mitigation Measures through Mitigation Measure AQ-2, which requires the preparation of a Construction Management Plan. However, "none of these measures [required in Mitigation Measures	Please see Responses to Comments B5-35 regarding the use of BAAQMD basic control measures during construction.

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	AQ-2] discusses the 6 percent or 12 percent reductions included in the model, and as a result, these reduction percentages cannot be verified. Furthermore, none of these measures address the replacement of ground cover, and as a result, the inclusion of this measure is unsubstantiated."[34] As a result, SWAPE concludes "the model may underestimate the Project's construction emissions."[35] In addition, SWAPE identified two additional operational mitigation measures that were included in the DEIR's CalEEMod modeling, but no justifications or substantiations are provided for these measures.[36] SWAPE again concludes that "the implementation of these measures cannot be verified, and the model should not be relied upon to determine Project significance."[37] Footnotes: [34] SWAPE Comments, p. 7. [35] SWAPE Comments, p. 7. [36] SWAPE Comments, pp. 7-8. [37] SWAPE Comments, p. 8.	
B5-14	2. The Health Risk Assessments relied upon by the DEIR cannot constitute substantial evidence SWAPE's analysis indicates that the DEIR's construction and operational health risk assessments ("HRAs") are incomplete and must be revised in order to be relied upon by the City. Although the DEIR concludes that: As described above, worst-case construction risk levels based on screening level modeling (AERSCREEN) and conservative assumptions would be below the BAAQMD's thresholds"[38] We have already shown above that the CalEEMod model incorrectly underestimates construction emissions. Thus, the DEIR's construction	Please see Responses to Comments B5-32 through B5-35 with respect to the comments about the values that are applied to the CalEEMod air quality model. Also, please see Responses to Comments B5-15 through B5-17 and B5-37 through B5-39, with respect to the health risk impacts of diesel particulate matter (DPM) emissions.

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	HRA relies on a flawed analysis of air emissions, and the City must revise the air analysis before it can reliably compute the health risks associated with the Project's construction. **Footnote:** [38] DEIR, Appendix C, p. 26.	
B5-15	With respect to the Project's operational health risk analysis, the DEIR only analyzes the risk posed to future sensitive receptors on the Project site¸ not to risks posed to nearby, existing sensitive receptors as a result of the Project's operation.[39] This stands in contrast with the "recommendations set forth by the Office of Environmental Health and Hazard Assessment's (OEHHA) most recent Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, which was cited in the DEIR."[40] OEHHA recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR). Failing to prepare an operational HRA to nearby, existing sensitive receptors is inconsistent with this guidance and thus, the DEIR has failed to provide substantial evidence that no health risk is associated with the Project.[41] **Footnotes:** [39] SWAPE Comments, p. 9. [40] DEIR, Appendix C, p. 26; "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf. [41] See SWAPE Comments, p. 9.	The air quality technical analysis prepared by Kimley-Horn and Associates and included as Appendix C of the Draft EIR contains a discussion of operational health risks of potential impacts of the environment to receptors on the project site. This analysis was prepared in accordance with the 2015 OEHHA guidance. However, while this analysis is part of the technical study that was prepared to inform the project approval process, Chapter 4.1, Air Quality, of the Draft EIR does not include an analysis of or draw any CEQA impact conclusions with respect to impacts on future users of the project site. This is appropriate consistent with the Supreme Court decision regarding the assessment of the environment's impacts on proposed projects (*California Building Industry Association (CBIA) v. Bay Area Air Quality Management District (BAAQMD)* (2015), 62 Cal. 4th 369, which holds that it is generally no longer the purview of the CEQA process to evaluate the impact of existing environmental conditions on any given project. The commenter incorrectly asserts that the proposed mixed-use project would be a generator of toxic air contaminants that would cause a potential health risk to nearby sensitive receptors during operation. As discussed under Impact AQ-3 of the Draft EIR, the proposed project involves the future development of mixed-use project that would include neighborhood-serving retail and residential uses. It would not include stationary sources that emit TACs and would not generate a significant amount of heavy-duty truck trips (a source of DPM). Therefore, the project would not generate a significant increased cancer risk for nearby, existing off-site sensitive receptors and an HRA evaluating TAC emissions generated by the project is not warranted.
B5-16	SWAPE's also found that the DEIR failed "to sum [the excess cancer risk calculated for each age group in order] to evaluate the total cancer risk over the course of the Project's lifetime, including both construction and operation."[42] SWAPE concludes that "[t]his is	The commenter's suggestion that the Draft EIR failed to sum the excess cancer risk for each age group is incorrect. The construction risks calculations were analyzed using the California Office of Health Hazard Assessment (OEHHA) 2015 *Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments*.

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	incorrect and thus, an updated analysis should quantify the Project's construction and operational health risks and then sum them to compare to the BAAQMD threshold of 10 in one million."[43] Without correction, the DEIR fails to comply with OEHHA guidance and its analysis fails to constitute substantial evidence. Footnotes: [42] SWAPE Comments, p. 10. [43] SWAPE Comments, p. 10.	Because construction would only last a short period of time (approximately 2 years), the analysis conservatively used breathing rates and age sensitivity factors associated with the most sensitive age groups (i.e., third trimester pregnancy and ages 0 to 2 years).[1] As stated in Response to Comment B5-15, the numeric operational health risk assessment evaluating impacts to future onsite receptors was included in the air quality technical study for informational purposes, but was not part of the CEQA impact analysis in Chapter 4.1, Air Quality, of the Draft EIR. However, the operational risk calculations were conducted using CARB's Health Risk Assessment Standalone Tool (RAST). RAST uses conservative assumptions and methodologies based on OEHHA Guidance, which include the use of age sensitivity factors and 95th percentile breathing rates recommended by the BAAQMD. RAST provides the total excess cancer risk for each age group. The analysis is conservative and fully complies with the OEHHA methodology and BAAQMD recommendations.
B5-17	3. A screening-level HRA correcting for the errors in the DEIR's CalEEMod inputs indicates a potentially significant health risk impact In contrast to the DEIR's HRAs, SWAPE prepared a screening level HRA using corrected inputs for diesel particulate matter and assumptions "[c]onsistent with recommendations set forth by the 2015 OEHHA guidance."[44] With this data, shown below, SWAPE projects that over the course of Project construction and operation, the excess cancer risks posed to adults, children, infants, and during the third trimester of pregnancy "are approximately 4.9, 32, 100, and 4.6 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately 140 in one million, thus resulting in a potentially	This comment summarizes the findings of a screening level analysis prepared by the commenter's consultant. The consultant's analysis submitted by the commenter does not accurately represent the project and does not accurately implement the OEHHA and BAAQMD methodology. Please see Responses to Comments B5-32 through B5-35 with respect to the commenter's concerns about the values that are applied to the CalEEMod air quality model. The commenter-provided risk projections are shown to surpass BAAQMD significance thresholds, prompting the commenter to conclude that the proposed project would result in significant and unavoidable impacts. However, the commenter's risk levels and conclusions are based on overstated emissions. On page 11 of the commenter's screening-level HRA, the diesel-particulate matter (DPM) exhaust emission rate from the operational phase of the project is based on the exhaust PM_{10} annual emission rate from CalEEMod annual model runs. However, the exhaust PM_{10} emissions from CalEEMod do not directly correlate to DPM from operational emission sources. For instance, over 52

[1] Office of Environmental Health Hazard Assessment (OEHHA). 2015, February. Air Toxics Hot Spots Program Risk Assessment Guidelines. Guidance Manual for Preparation of Health Risk Assessments. http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf.

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	significant health risk impact not previously addressed or identified by the DEIR."[45]	percent of operation-generated exhaust PM_{10} would be from natural gas combustion associated with building energy use and area sources. Natural gas combustion would not generate DPM, because diesel fuel is not part of the combustion process. In addition, the predominant mobile emission source associated with proposed land uses would be gasoline-fueled passenger cars, and not diesel-fueled trucks. For these reasons, the exhaust PM_{10} emissions from the operational CalEEMod annual output cannot be directly correlated to DPM for the purposes of an HRA.
	The Maximally Exposed Individual at a Residential Receptor Activity | Duration (years) | Concentration (ug/m3) | Breathing Rate (L/kg-day) | ASF | Cancer Risk Construction | 0.25 | 0.3953 | 361 | 10 | 4.6E-06 *3rd Trimester Duration* | *0.25* | | | *3rd Trimester Exposure* | *4.6E-06* Construction | 1.75 | 0.3953 | 1090 | 10 | 9.7E-05 Operation | 0.25 | 0.1217 | 1090 | 10 | 4.2E-06 *Infant Exposure Duration* | *2.00* | | | *Infant Exposure* | *1.0E-04* Operation | 14.00 | 0.1217 | 572 | 3 | 3.2E-05 *Child Exposure Duration* | *14.00* | | | *Child Exposure* | *3.2E-05* Operation | 14.00 | 0.1217 | 261 | 1 | 4.9E-06 *Adult Exposure Duration* | *14.00* | | | *Adult Exposure* | *4.9E-06* **Lifetime Exposure Duration** | **30.00** | | | **Lifetime Exposure** | **1.4E-04**	The project would not include any substantial sources of TAC emissions and corresponding individual cancer risk following completion of construction. From an operational standpoint, the proposed project would generally not involve the use of heavy-duty diesel trucks with the exception of occasional delivery or garbage trucks. There are no other on-site operational uses that would generate TAC emissions. The project is not considered to be a substantial source of DPM warranting an operational HRA.
	The City must include this potentially significant impact in its analysis of air quality impacts in a recirculated EIR. Without it, the DEIR violates CEQA's mandate that the City disclose and mitigate the Project's potentially significant impacts.	Additionally, it should be noted that the construction risk in the Draft EIR assumes an outdoor exposure for the entire length of construction and does not account for any reductions from the time spent indoors where air quality tends to be better. Thus, the analysis in the Draft EIR is conservative.
	Footnotes: [44] SWAPE Comments, p. 10. [45] SWAPE Comments, p. 13.	With respect to recirculation, please see Response to Comment B5-5.
B5-18	C. The DEIR fails to disclose, analyze, and mitigate the Project's Greenhouse Gas impacts The DEIR's greenhouse gas ("GHG") analysis states that the proposed Project would result in a significant impact if it would (1) generate greenhouse gas emissions, either directly or indirectly, that may have a significant effect on the environment or (2) conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.[46]	Please see Responses to Comments B5-42 regarding consistency with the Cupertino Climate Action Plan, and B5-43 with respect to the BAAQMD bright-line screening threshold. In addition, please see Responses to Comments B5-32 through B5-35 with respect to the commenters concerns about the values that are applied to the CalEEMod air quality model.

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	We reviewed the GHG analysis with the assistance of SWAPE. As described below, our review found that the DEIR's GHG analysis violates the law and is not supported by substantial evidence. The DEIR's conclusions are not supported for three main reasons. First, the DEIR fails to use a threshold which is applicable to the Project's built-out year, in violation of CEQA. Second, even for the threshold the DEIR did use, its GHG analyses rely on several incorrect assumptions that result in a substantial underestimation of Project-related GHGs, as described below. Third, the DEIR fails to demonstrate consistency with the Cupertino CAP. **Footnote:** [46] DEIR, p. 4.5-15.	
B5-19	1. The GHG analysis relies on an inapplicable threshold in violation of CEQA Under the CEQA Guidelines, which have been recently updated, a lead agency must analyze a project's impacts on GHG emissions.[47] The Guidelines allow for several approaches to this analysis, both qualitative and quantitative. The Guidelines explicitly mandate, however, that the "analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes."[48] The DEIR analysis relies on the tiered approach developed by the Bay Area Air Quality Management District ("BAAQMD") for assessing the impacts of land use development projects. If a project is within the jurisdiction of an agency that has a "qualified" GHG reduction strategy, the project can assess consistency of its GHG emissions impacts with the reduction strategy. BAAQMD has adopted screening criteria and significance criteria for development projects that would be applicable for the proposed project. If a project exceeds the BAAQMD Guidelines' GHG screening-level sizes, the proposed project	Please see Response to Comment B5-42 regarding consistency with the Cupertino Climate Action Plan, and Response to Comment B5-43 with respect to the BAAQMD bright-line screening threshold.

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	would be required to conduct a GHG emissions analysis using the BAAQMD significance criteria of 1,100 million metric tons of carbon dioxide equivalent per year per year (MTCO2e per year). Here, the DEIR analyzed the Project's annual emissions and found they were below the "bright-line" threshold. BAAQMD's significance threshold, however, is not applicable to the Project, and relying on it violates CEQA. BAAQMD's thresholds, included in the district's 2017 CEQA Guidelines, were developed to comply with the state reduction target as it is embodied in AB 32,[49] which mandates that statewide greenhouse gas emissions be reduced to 1990 levels by the target year 2020.[50] In 2016, the state passed SB 32,[51] which codified a new statewide 2030 GHG emissions reduction target of 40% below 1990 levels. Following the new legislation, the California Air Resources Board ("CARB") adopted in December 2017 a new scoping plan to outline the strategy needed to achieve SB 32 GHG targets. These are the binding "state regulatory scheme" that the CEQA Guidelines require agencies to account for. The BAAQMD Guidelines do not account for or include any numeric threshold for compliance with SB 32 or the scoping plan and are therefore not applicable to projects that will be built and operated beyond the AB 32 target year.[52] Because the Project's first fully operational year would be 2023, and it would continue to operate many years beyond that, the City must analyze the Project for its compatibility with the state's mandated goals for, at the very least, the year 2030.[53] BAAQMD itself advises lead agencies not to rely on its numeric significance thresholds and instead advises they make significance determinations based on the most recent state greenhouse gas reduction targets. For example, in recent comment letters to lead agencies, BAAQMD stated as follows:	

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	The Air District encourages the City to make a significance determination for greenhouse gas impacts based on the most recent State greenhouse gas targets and CEQA guidance. The Air District's 2010 CEQA guidelines are based on the State's 2020 greenhouse gas targets. These targets have been superseded by the State's 2030 and 2050 climate stabilization goals and by the most recent draft of the AB 32 Scoping Plan written by the California Air Resources Board.[54] The GHG impact analysis should include an evaluation of the Plan's consistency with the California Air Resources Board 2017 Scoping Plan and State and Air District climate stabilization goals for 2030 and 2050. Please be advised that the Air District is in the process of updating the CEQA guidelines/thresholds and current thresholds for GHGs should not be used for this plan.[55] BAAQMD is in the process of updating its current CEQA Guidelines and thresholds of significance.[56] The Draft EIR must be revised to analyze the Project's compatibility with the reduction targets set in SB 32, which go beyond those set in AB 32. As it is now, the DEIR's analysis violates both CEQA and the Supreme Court rulings on GHG analysis and cannot constitute substantial evidence. **Footnotes:** [47] 14 CCR §15064.4. [48] 14 CCR §15064.4(b) [49] See, California Environmental Quality Act Air Quality Guidelines, Bay Area Air Quality Management District, May 2017, at p. D-27. [50] California Air Resources Board, Assembly Bill 32 Overview; available at: https://www.arb.ca.gov/cc/ab32/ab32.htm, accessed April 3, 2019. [51] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id =201520160SB32 [52] See also Cleveland National Forest Foundation v. San Diego Assn. of Governments (2017) 3 Cal.5th 497. [53] SWAPE Comments, p. 21. [54] Greg Nudd, BAAQMD, Letter to Joshua McMurray, Oakley, CA, Oakley Logistics Center Project, March 21, 2019; available at: http://www.baaqmd.gov/~/media/files/planning-and-	

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	research/ceqaletters/2019/2019_03_21_city_of_oakley_oakley_logistics_center_nop-pdf.pdf?la=en, accessed April 12, 2019. [55] Greg Nudd, BAAQMD, Letter to Alicia Parker, City of Oakland, RE: Downtown Oakland Specific Plan - Notice of Preparation of a Draft Environmental Impact Report, February 15, 2019; available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqaletters/2019/downtown_oakland_specific_plan_eir_notice_of_preparation_021519-pdf.pdf?la=en [56] BAAQMD, CEQA Guidelines Update Underway; available at: http://www.baaqmd.gov/plans-andclimate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines, accessed April 9, 2019.	
B5-20	2. The DEIR significantly underestimates GHG emissions from the Project a) The DEIR does not support its conclusion that the Project will result in a net change of 359 MTCO2e/Year The DEIR claims "that the proposed project would generate 1,843 MTCO2e per year."[57] However, because, the project site is currently developed with approximately 71,250 square-feet of shopping center, which generates 1,484 MTCO2e per year, the proposed project's emissions would represent a net increase in GHG emissions of 359 MTCO2e per year."[58] It therefore concludes that the Project "would not result in an increase in GHG emissions that exceed the BAAQMD's bright-line screening threshold of 1,100 MTCO2e per year."[59] However, this net increase assumes, without support in the record, that the current emissions at the Project site will disappear after the Project is completed. This is contrary to common sense and the CEQA requirement that the "lead agency…make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project."[60] Under this mandate, the City must provide substantial evidence to support its conclusion that the Project's existing emissions sources will be extinguished by the new project and not simply displaced.[61] The City has not done so here.	The commenter's opinion is incorrect that it is improper to identify the project's net emissions increase. State CEQA Guidelines Section 15125 provides the following guidance for establishing the baseline: An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The project is an infill mixed-use project on a currently developed but underutilized site with buildings that were constructed between 1973 and 1976. The project proposes new energy efficient buildings that would comply with the latest building codes, resulting in an efficient use of the site. The Draft EIR does not assume that the existing emissions sources would be extinguished from the site. In reality, the existing sources (i.e., businesses) would either relocate to other vacant buildings in the City or region or close down completely. The businesses that do relocate to other existing buildings would not increase the emissions that have already been accounted for and included in the baseline, but would simply move them to a new location. In the event that businesses currently occupying the site relocate and require construction of new development, that new development would require discretionary approval and CEQA analysis. As noted above, CEQA requires the analysis of a project by comparing it to existing conditions. It is the changes in environmental conditions between existing conditions and project conditions that represent the environmental impacts

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	Footnotes: [57] DEIR, p. 4.5-17. [58] DEIR, p. 4.5-17. [59] DEIR, p. 4.5-17. [60] CEQA Guidelines, § 15064.4, subd. (a) [61] See Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal. App. 4th 859 (holding that an environmental baseline is to be construed broadly to ensure the fullest protection to the environment and cannot be narrowly defined by the project site if evidence indicates the Project's environmental damage will occur beyond the boundaries of the Project site.).	of the proposed project. Therefore, it is inconsistent with the intent of CEQA and not reasonable to assert that it is improper to evaluate the net emissions for the project site.
B5-21	b) The DEIR's GHG analysis relies upon an incorrect and unsubstantiated air model, unsubstantiated assumptions, and unsubstantiated mitigation measures that underestimate GHGs associated with the Project Similar to the conclusion reached in section II(b)(1) of these comments, the DEIR's analysis of GHGs relies on underestimated inputs, unsubstantiated assumptions about the Project's retail components, and unsupported mitigation measures that significantly underestimate the GHG emissions associated with the Project. The City must correct for these underestimations in a recirculated DEIR.	With respect to the commenter's opinion regarding model inputs, please see Response to Comment B5-32, which explains the commenter has misinterpreted the size of the underground parking structure, Response to Comment B5-33, which explains the commenter has misinterpreted the weekday trips to be the same as weekend trips, and Response to Comment B5-34 with respect to the use of pass-by trips in the model. With respect to the commenter's assertion that the types of retail have not been disclosed, please see Response to Comment B5-8. There are no mitigation measures for the reduction of GHG emissions, because as discussed in Section 4.5.3.1, Impact Analysis, of the Draft EIR, Impacts GHG-1 and GHG-2, in addition to Impact GHG-3, were determined to be less than significant. However, with respect to mobile-related reduction measures accounted for in the modeling, please see Responses to Comment B5-36. With respect to recirculation, please see Response to Comment B5-5.
B5-22	3. The Cupertino CAP Measures are Not Properly Incorporated in The Project CEQA states that for a DEIR to rely on a CAP in its analysis, it must identify which requirements apply to the Project and make those requirements binding and enforceable to the Project by listing them as mitigation measures, if they are not already binding and enforceable in the City's CAP:	Please see Response to Comment B5-42.

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	An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project.[62] Here, the DEIR fails to demonstrate consistency with the City's CAP as required by CEQA. Although it mentions certain steps taken in coordination with the CAP's community-wide measures, it fails to incorporate any project-level measures from the CAP or include any of the CAP's measures as binding mitigation in the DEIR.[63] SWAPE also indicates that even for the inapplicable communitywide measures relied upon by the DEIR, it also fails to demonstrate consistency with those community-wide measures.[64] Without more, the DEIR has not provided substantial evidence of consistency with the City's CAP. Footnotes: [62] 14 CCR § 15183.5. [63] SWAPE Comments, p. 15. [64] SWAPE Comments, p. 15.	
B5-23	D. The DEIR fails to disclose, analyze, and mitigate the Project's Traffic Impacts CEQA requires the City to analyze the Project's direct, indirect and cumulative impacts from traffic generated by the Project. We reviewed the DEIR and the Transportation Analysis (TA) with the assistance of Dan Smith, a Civil and Traffic Engineer. Mr. Smith's review found that the City's analysis of transportation impacts is inadequate for several reasons: The TA produces an inaccurate analysis of VMT impacts; and the TA makes no accounting of traffic impacts evident from Cupertino's Vallco Project and EIR; and the DEIR does not disclose many CalEEMod parameters that may have an impact on model outcomes.	Please see Responses to Comments B5-52 regarding CalEEMod parameters and their relationship to the transportation analysis, B5-53 for a response regarding the Vallco Project, and B5-24, B5-25, and B5-54 for a detailed response regarding the VMT analysis presented in the Draft EIR.

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B5-24	1. The DEIR's VMT analysis does not accurately analyze VMT impacts The DEIR purports to comply with Section 15064.3(b)(1) in its conclusion that VMT impacts from the Project would be less than significant.[65] However, the DEIR's analysis appears to contain several deficiencies that call into question the underlying analysis. First, the DEIR appears to combine both the residential and commercial land uses in its VMT analysis, despite the CEQA Technical Advisory for VMT advising that "[c]ombining land uses for VMT analysis is not recommended…[because c]ombining land uses for a VMT analysis could streamline certain mixes of uses in a manner disconnected from policy objectives or environmental outcomes. Instead, OPR recommends analyzing each use separately, or simply focusing analysis on the dominant use, and comparing each result to the appropriate threshold."[66] The DEIR fails to do this or justify its decision not to follow the technical advisory, and as a result, the DEIR's VMT analysis is unreliable. Footnotes: [65] DEIR, p. 4.8-23. [66] Technical Advisory on Evaluating Transportation Impacts in CEQA, p. 6 (Dec. 2018).	The commenter incorrectly asserts the VMT calculations combined the land uses. As shown in Appendix E, Greenhouse Gas Emissions, of the Draft EIR, the VMT was calculated by land uses in the table below for a total annual VMT of 2,663,868. LAND USE / ANNUAL VMT Apartments Low Rise: 887,991 Apartments Mid Rise: 918,713 Retirement Community: 178,725 Strip Mall: 678,439 TOTAL: 2,663,868 The following addition to Chapter 4.8, Transportation, of the Draft EIR has been made in Chapter 3 of this Response to Comments document. This revision acknowledges the VMT consistent with the GHG Appendix. The revision is as follows: Chapter 4.8, Transportation Project-specific VMT was determined using CalEEMod and was calculated for Existing and Existing plus Project conditions. As previously stated, the existing commercial space (71,250 square feet), with an 85 percent occupancy rate produces an approximate annual VMT of 2,782,747 miles, or a daily VMT of 7,624 miles. The proposed project would produce an approximate annual VMT of ~~2,662,683~~2,663,868 miles, or a daily VMT of ~~7,295~~7,298 miles. This would be a reduction of approximately ~~120,064~~118,879 miles annually, or ~~329~~326 miles daily. This revision does not affect any conclusions or significance determinations provided in the Draft EIR.
B5-25	Next, the DEIR's VMT conclusion includes an analysis of the approximate annual or daily VMT of the Project and the existing site. However, this too goes against the guidance from the Technical Advisory, which states: When assessing climate impacts of some types of land use projects, use of an efficiency metric (e.g., per capita, per employee) may	Please see Response to Comment B5-24 with respect to the portion of the comment regarding analysis of the projected VMT by land use (i.e., residential, retail, or on the dominant use). As shown in Response to Comment B5-24, VMT was calculated by land use.

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	provide a better measure of impact than an absolute numeric threshold. Thus, the Technical Advisory explicitly recommends an assessment of VMT impacts in per capita over absolute numeric impacts for climate related transportation improvements, which is the ultimate goal in the Cupertino General Plan's push for VMT.[67] What's more, in its analysis, the DEIR cites the Cupertino General Plan EIR, which calculated its VMT projections in per capita, not annual or daily. The City must correct its VMT analysis to include a separate analysis of the projected VMT from residential and retail or on the dominant use. The City must also modify its analysis to reflect a per capita comparison, in line with the Technical Advisory, and to be able to better compare to the City's VMT goals, not the existing land use. Footnote: [67] Cupertino General Plan M-23	The following addition to Chapter 4.8, Transportation, of the Draft EIR has been made in Chapter 3 of this Response to Comments document. This revision adds the VMT per capita for the proposed project. The revision is as follows: Chapter 4.8, Transportation As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 under General Plan buildout conditions. The proposed project would construct a 242 residential units, and 20,000 square feet of retail space, which is consistent with the land use evaluated in the General Plan EIR, and therefore, would not directly result in any additional new population growth or employment growth beyond what was analyzed in the General Plan EIR. As described in Chapter 3, Project Description, of the Draft EIR, in Section 3.4.3, Population and Employment Projections, the proposed project would generate 695 new residents and 70 new employees for a total of 765 people. The project would produce total annual VMT of 2,663,868. Therefore, the proposed project would have a per capita VMT impact of 3,482 vehicle miles per capita annually or 9.54 daily vehicle miles per day. As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 under General Plan buildout conditions. Therefore, the project's per capita VMT would be less than the City's per capita VMT for General Plan buildout. Accordingly, implementation of the proposed project would be consistent with and would have no effect on the VMT estimates presented in the General Plan EIR. Please also see Response to Comments B5-53 for additional discussion of VMT. This revision does not affect any conclusions or significance determinations provided in the Draft EIR. The project is consistent with General Plan Policy M-8.2: Land Use, which requires the City to support development and transportation improvements that help reduce greenhouse gas emissions by reducing per capita Vehicle Miles Traveled (VMT), reducing impacts on the City's transportation network and maintaining the desired levels of service for all modes of transportation. As described in Chapter 3 of the Draft EIR (see page 3-9), the project site is within a Santa Clara Valley Transportation

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		Authority City Cores, Corridors & Station Areas Priority Development Area (PDA). PDAs are transit-oriented, infill development opportunity areas within existing communities. As described in the General Plan (see page LU-7), PDAs are areas where new development will support the day-to-day needs of residents and workers in a pedestrian-friendly environment served by transit. The project site is also a qualifying Transit Priority Area or TPA, which is an area within one-half mile of a major transit stop. As stated on page 3-9 of the Draft EIR, the overarching goal of developing a high-density, mixed use development within a PDA and a TPA is to concentrate development in areas where there are existing services and infrastructure rather than locating new growth in outlying areas where substantial transportation investments would be necessary to maximize energy conservation and achieve the per capita passenger vehicle, vehicle miles traveled, and associated greenhouse gas (GHG) emissions reduction.
B5-26	2. The DEIR ignores development from the Vallco Project Mr. Smith indicates that a large project in Cupertino near the Project site ("Vallco Project") was not included in the DEIR's traffic impacts analysis. Although he notes that some of the Vallco Project's approvals have been repealed, the certifying FEIR for the Vallco Project has not been repealed and there remains the potential that some form of the prior project will be implemented. Specifically, one of the alternatives would "involve 23,417 net new trips daily, including 307 in the AM peak and 2,398 in the PM peak hour that were not present when the counts supporting the Westport DEIR analysis were conducted."[68] Without analyzing the additional impact from the Vallco Project, the Project's traffic analysis is fundamentally incomplete and cannot constitute substantial evidence supporting a conclusion of less than a significant impact. **Footnote:** [68] Smith Comments, p. 2.	Please see Response to Comment B5-53 regarding the Vallco project and the transportation evaluation in the Draft EIR.
B5-27	3. The DEIR does not include the underlying CalEEMod inputs that would allow for review of the DEIR's VMT analysis	The CalEEMod outputs are included in the Appendix E, Greenhouse Gas Emissions, of the Draft EIR. The trip length or purpose is included in Appendix E as well. The annual, winter, and summer general output files generated through CalEEMod

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	Although the DEIR indicates that VMT "were calculated using California Emissions Estimator Model (CalEEMod)," the DEIR does not contain many relevant CalEEMod inputs for review to determine the validity of the DEIR's VMT conclusions, including trip length or trip purpose.[69] As Mr. Smith notes, "it is important for the public to understand whether data from local traffic models has been employed or the outcome is just the product of default values. The must clarify whether local values have been substituted for default values and if not, why not."[70] Without this information, the DEIR cannot support their conclusion of no significant impact with substantial evidence. Footnotes: [69] Smith Comments, p. 2. [70] Smith Comments, p. 2.	include vehicle trips and VMT information under Section 4.0 Operational Detail – Mobile.
B5-28	III. CONCLUSION The DEIR is inadequate as an environmental document because the City fails to properly disclose, analyze and mitigate the Project's significant impacts on air quality, public health, GHGs and transportation. The City cannot approve the Project until it prepares and re-circulates a revised DEIR that resolves these issues and complies with CEQA's requirements.	This comment, which serves as closing remark, incorrectly states that the Draft EIR is inadequate as demonstrated in the responses to this comment letter. No response is required. With respect to recirculation, please see Response to Comment B5-5.
B5-29	Exhibit A - SWAPE Dear Mr. Messing, We have reviewed the November 2019 Draft Environmental Impact Report ("DEIR") for the Westport Mixed-Use Project ("Project") located in the City of Cupertino ("City"). The Project proposes to construct 18 buildings, including three rowhouse buildings, 13 townhouse buildings, and two mixed-use buildings, with 242 residential units and 20,000 square feet of retail space on the 8.1-acre Project site.	The comment serves as an opening remark. No response is required.
B5-30	Our review concludes that the DEIR fails to adequately evaluate the Project's Air Quality, Health Risk, and Greenhouse Gas impacts. As a	The comment expresses an opinion regarding the air quality, health risk assessment, and GHG emissions analysis in the Draft EIR and asserts that the construction and

TABLE 5-1 RESPONSE TO COMMENTS

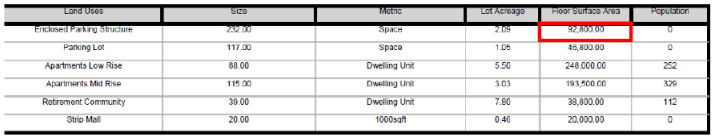
Comment #	Comment	Response
	result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An updated EIR should be prepared to adequately assess and mitigate the potential air quality and health risk impacts that the project may have on the surrounding environment.	operational air emissions are underestimated and inadequately addressed. Please see Responses to Comments B5-31 and B5-32.
B5-31	Air Quality Unsubstantiated Input Parameters Used to Estimate Project Emissions The DEIR's air quality analysis relies on emissions calculated with CalEEMod.2016.3.2.[1] CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project specific values, but the California Environmental Quality Act (CEQA) requires that such changes be justified by substantial evidence.[2] Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air pollutant emissions and make known which default values were changed as well as provide justification for the values selected.[3] Review of the Project's air modeling, provided as Appendix C to the DEIR, demonstrates that the DEIR underestimates emissions associated with Project activities. As previously stated, the DEIR's air quality analysis relies on air pollutant emissions calculated using CalEEMod. When reviewing the Project's CalEEMod output files, provided in the Air Quality and Greenhouse Gas Impact Analysis, we found that several of the values inputted into the model were not consistent with information disclosed in the DEIR. As a result, the Project's construction and operational emissions are underestimated.	Please see Response to Comment B5-32, which explains the commenter has misinterpreted the size of the underground parking structure, see Response to Comment B5-33, which explains the commenter has misinterpreted the weekday trips to be the same as weekend trips, and see Response to Comment B5-34 with respect to the use of pass-by trips in the model.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	An updated EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality. **Footnotes:** [1] CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4. [2] CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 1, 9. [3] CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, fn 1, p. 11, 12 – 13. A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.	
B5-32	Use of an Underestimated Land Use Size Review of the Project's CalEEMod output files demonstrates that the size of the proposed parking garage was underestimated within the model, and as a result, emissions may be underestimated by the model. According to the DEIR the Project proposes to construct a 148,040 square foot parking garage (see excerpt below) (p. 3-12, Table 3-1). TABLE 3-1 PROPOSED DEVELOPMENT BY LAND USE Square Footage Building Type | Buildings | Units | Residential | Garage | Retail | Common Open Space Rowhouses | 3 | 19 | 34,245 | 10,840 | | 155 square feet per unit Townhomes | 13 | 69 | 139,850 | 39,450 | | Residential-Retail Building 1 | 1 | 115 | 193,500 | 97,750 | 17,600 | Residential-Retail Building 2 | 1 | 39 | 38,800 | n/a | 2,400 | **Total** | **18** | **242** | **406,395** | **148,040** | **20,000** | **37,601** Note: Square footages are rounded up and include residential and parking. Source: C2K Architecture Inc. (project applicant), November 2018.	The commenter has incorrectly interpreted the size of the parking garage shown in Table 3-1, Proposed Development by Land Use, in Chapter 3, Project Description, of the Draft EIR, on page 3-12. As shown in Table 3-1, which is reproduced by the commenter in their comment, the proposed enclosed parking structure would be 97,750 square feet and not the sum of the total parking garages on the project site (148,040 square feet), which also includes private garages for the proposed rowhouses (10,840 square feet) and townhomes (39,450 square feet). The air quality modeling was prepared and reviewed concurrently with the City's ongoing project review process prior to the completion of the conceptual site plans that were used for the project description, which is a standard practice. Accordingly, the size for each project component in Table 3-1 is not precise. It is common practice and acceptable for projects to have minor changes throughout the review and approval process, which can often take a few years. While the modeling prepared for the Draft EIR analyzed 232 parking garage spaces for the enclosed parking garage with elevator, it accounted for 92,800 square feet instead of the 97,750 square feet. This difference is less than 5,000 square feet, however, which is nominal. Furthermore, the rowhouses and townhomes, shown as "apartments low rise" in the model, include the private parking structures and are overestimated by 23,615 square feet (224,385 square feet compared to 248,000 square feet), which

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	As you can see in the above excerpt, the Project proposes 148,040 square feet of garage. However, review of the CalEEMod output files demonstrates that the model only included 92,800 square feet of enclosed parking structure (see excerpt below) (Appendix C, pp. 39, 68, 93).	more than accounts for the 5,000 square-foot change in the parking garage square footage. Overall, the modeling prepared for the project included 593,100 square feet of building area (including parking garage) while the project description only includes 554,435 square feet of building space (including double counting of parking). Accordingly, the model conservatively overestimates the proposed project that is the subject of this EIR and no revisions are required.
		
	As you can see in the excerpt above, the model underestimated the parking garage by 55,240 square feet. As previously stated, the land use type and size features are used throughout CalEEMod to determine default variable and emission factors that go into the model's calculations, such as determining the wall space to be painted (i.e., VOC emissions from architectural coatings) and volume that is heated or cooled (i.e., energy impacts).[4] By underestimating the size of the proposed parking garage, the model underestimates the Project's construction and operational emissions and should not be relied upon to determine Project significance.	
	Footnote: [4] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 18.	
B5-33	Underestimated Sunday trip Rates Review of the Project's CalEEMod output files demonstrates that the Sunday trip rates for the proposed Project are underestimated. As a result, the Project's mobile-source operational emissions are underestimated.	The transportation analysis did not include Saturday or Sunday trips, only showing a weekday daily trip in the Project Trip Generation table. The commenter has misinterpreted Table 2 in the *Westport Cupertino – Transportation Analysis*, dated November 27, 2018 and included in Appendix H of the Draft EIR. The title of the column the commenter is referring to is titled "Weekday," and does not include weekend trips. Weekend trips are less than weekday trips. No revisions are required.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	According to the Transportation Assessment (TA), provided as Appendix H to the DEIR, the Project would generate approximately 1,934 total daily trips (see excerpt below) (Appendix H, p. 4, Table 2).	The CalEEMod User's Guide states: "Since CalEEMod has different trip rates for different days of the week, the daily maximum will be determined based on the highest total of either weekday, Saturday, or Sunday trip emissions." Therefore, for Operational Mobile emissions the daily maximum that is used in the EIR analysis is the weekday daily trip emissions. However, for annual emissions an average is taken. As shown in Table 4.8-5, Project Trip Generation Estimates, in Chapter 4.8 Transportation, of the Draft EIR on page 4.8-16, the proposed project would generate 2,174 average daily weekday trips before trip reductions and credits and 1,934 average daily weekday trips after trip reductions and credits. The analysis in the Draft EIR conservatively modeled project trips without internal capture (2,170 daily trips) rather than the total net project trips of 1,934 daily trips.[2] This is a difference of 236 daily trips. Overall, the Draft EIR modeled 2,170 weekday trips (260 weekdays per year), 2,284 Saturday trips (52 Saturdays per year), and 1,693 Sunday trips (52 Saturdays per year). This results in an average of 2,112 daily trips, which still exceeds the 1,934 daily trips identified in the traffic study. Further, although the assumptions in the analysis are appropriate, the project's air quality and GHG emissions are far below BAAQMD thresholds and modifying the Sunday trip generation rate would not change the magnitude or severity of the project impacts and would not trigger the need for new mitigation measures. For example, the project's highest operational criteria pollutants are 70 percent or more below the BAAQMD threshold (refer to Draft EIR Table 4.1-8). In addition, as described in Response to Comment B5-43, below, GHG emissions would result in a net reduction of 57 $MTCO_2e$ annually.

[2] Internal trips are trips associated with a mixed-use project that both begin and end within the development.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response

Table 2 - Project Trip Generation

Land Uses	ITE Land Use Code	Project Size		WEEKDAY Daily Trips	AM PEAK HOUR Total Peak Hour	IN	/	OUT	PM PEAK HOUR Total Peak Hour	IN	/	OUT
Multifamily Housing (Low Rise)	220	-	Dwelling Unit(s)	7.32	0.46	23%	/	77%	0.56	63%	/	37%
Multifamily Housing (Mid-Rise)	221	-	Dwelling Unit(s)	5.44	0.36	26%	/	74%	0.44	61%	/	39%
Senior Adult Housing-Attached	252	-	Dwelling Unit(s)	3.70	0.20	35%	/	65%	0.26	55%	/	45%
Shopping Center	820	-	1,000 Sq Ft GLA	37.75	0.94	62%	/	38%	3.81	48%	/	52%
Existing Conditions												
Shopping Center (100% Occupancy)	820	71.254	1,000 Sq Ft GLA	2690	67	42	/	25	271	130	/	141
Shopping Center (85% Occupancy)[1]	820	60.566	1,000 Sq Ft GLA	2287	57	36	/	21	230	110	/	120
Pass-By Trips for Shopping Center (PM = 34%)[2,4]				(78)	0	0	/	0	(78)	(37)	/	(41)
TOAL EXISTING TRIP CREDIT				2209	57	36	/	21	152	73	/	79
Proposed Conditions												
Multifamily Housing (Low-Rise)	220	88	Dwelling Unit(s)	646	40	9	/	31	49	31	/	18
Multifamily Housing (Mid-Rise)	221	115	Dwelling Unit(s)	626	41	11	/	30	51	31	/	20
Senior Adult Housing-Attached	252	39	Dwelling Unit(s)	146	8	3	/	5	10	6	/	4
Shopping Center	820	20.000	1,000 Sq Ft GLA	756	19	12	/	7	76	36	/	40
Gross Trips Generated before Internal Capture				2,174	108	35	/	73	186	104	/	82
Internal Capture Trips												
Multifamily Housing (Low-Rise)	220	88	Dwelling Unit(s)	(44)	(1)	0	/	(1)	(6)	(4)	/	(2)
Multifamily Housing (Mid-Rise)	221	115	Dwelling Unit(s)	(42)	0	0	/	0	(7)	(5)	/	(2)
Senior Adult Housing-Attached	252	39	Dwelling Unit(s)	(10)	0	0	/	0	(1)	(1)	/	0
Shopping Center	820	20.000	1,000 Sq Ft GLA	(90)	(1)	(1)	/	0	(14)	(4)	/	(10)
Internal Capture Reduction				(186)	(2)	(1)	/	(1)	(28)	(14)	/	(14)
Trip Reductions due to Internal Capture[5]				9%	2%	3%	/	1%	15%	13%	/	17%
Additional Project Trip Reductions												
VTA Major Bus Stop (Daily, AM, PM = 2%) [3]				(28)	(2)	(1)	/	(1)	(2)	(1)	/	(1)
Pass-By Trips for Shopping Center (PM = 34%)[2,4]				(26)	0	0		0	(26)	(12)	/	(14)
Project Trips				1,934	104	33	/	71	130	77	/	53
Existing Trip Credit				(2209)	(57)	(36)	/	(21)	(152)	(73)	/	(79)
Total Project Trips				1934	104	33	/	71	130	77	/	53
Net New Project Trips				(275)	47	(3)	/	50	(22)	4	/	(26)

Notes:
1. Assume current retail is 85% occupied
2. Per VTA Transportation Impact Analysis guidelines, a 2% vehicle trip reduction for housing trips can be applied for a nearby major bus stop
3. Pass-By trip reduction applied to shopping center PM peak hour trips and based on average rates from Appendix E ITE Trip Generation Handbook 3rd Edition
4. Daily pass-by trips only represent PM peak hour pass-by trips because no daily pass-by trip is resented in the ITE Trip Generation Handbook.
5. Trips reductions due to internal capture was calculated using NCHRP 684 methodology
6. Trip generation land uses based on average rates from ITE Trip Generation 10th Edition

As you can see in the above excerpt, the TA estimated approximately 1,934 daily trips for the Project. However, review of the Project's CalEEMod output files demonstrates that the model calculated a value of 1,692.71 total daily trips for Sunday (see excerpt below) (Appendix C, pp. 58, 87, 112).

Land Use	Average Daily Trip Rate Weekday	Saturday	Sunday	Unmitigated Annual VMT	Mitigated Annual VMT
Apartments Low Rise	644.16	630.68	534.16	1,446,817	887,991
Apartments Mid Rise	625.60	734.85	673.90	1,496,873	918,713
Enclosed Parking Structure	0.00	0.00	0.00		
Parking Lot	0.00	0.00	0.00		
Retirement Community	145.47	79.17	76.05	291,199	178,725
Strip Mall	755.00	840.80	408.60	1,105,392	678,439
Total	2,170.23	2,284.90	1,692.71	4,340,280	2,663,868

As you can see in the above excerpt, the number of total daily trips calculated by the model for Sunday was underestimated by approximately 242 trips and is thus inconsistent with the information

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	provided in the TA. As a result, the model may underestimate the Project's operational emissions and should not be relied upon to determine Project significance.	
B5-34	Use of Incorrect Trip Purpose Percentages Review of the Project's CalEEMod output files demonstrate that the model double counts the number of pass-by trips expected to occur throughout Project operation. As a result, the model underestimates the Project's operational emissions. CalEEMod separates the operational trip purposes into three categories: primary, diverted, and pass-by trips. According to Appendix A of the CalEEMod User's Guide, the primary trips utilize the complete trip lengths associated with each trip type category. Diverted trips are assumed to take a slightly different path than a primary trip and are assumed to be 25% of the primary trip lengths. Pass-by trips are assumed to be 0.1 miles in length and are a result of no diversion from the primary route.[5] Review of the Project's CalEEMod output files demonstrates that the trip purpose percentage was divided amongst primary, diverted, and pass-by trip types for the Project's shopping center land use (see excerpt below) (Appendix C, pp. 58, 59, 87, 112). Miles / Trip % / Trip Purpose % Land Use — H-W or C-W — H-S or C-C — H-O or C-NW — H-W or C — H-S or C-C — H-O or C-NW — Primary — Diverted — Pass-by Apartments Low Rise — 10.80 — 4.80 — 5.70 — 31.00 — 15.00 — 54.00 — 86 — 11 — 3 Apartments Mid Rise — 10.80 — 4.80 — 5.70 — 31.00 — 15.00 — 54.00 — 86 — 11 — 3 Enclosed Parking Structure — 9.50 — 7.30 — 7.30 — 0.00 — 0.00 — 0.00 — 0 — 0 — 0 Parking Lot — 9.50 — 7.30 — 7.30 — 0.00 — 0.00 — 0.00 — 0 — 0 — 0 Retirement Community — 10.80 — 4.80 — 5.70 — 31.00 — 15.00 — 54.00 — 86 — 11 — 3 Strip Mall — 9.50 — 7.30 — 7.30 — 16.60 — 64.40 — 19.00 — 45 — 40 — 15 As you can see in the above excerpt, pass-by trips account for 15% of the strip mall land use's trips. However, as demonstrated in the DEIR's Transportation Assessment (TA), pass-by trips for this land use were already accounted for in the Project Trip Generation calculations (see excerpt below) (Appendix H, p. 4, Table 2).	As discussed in Chapter 4.1, Air Quality, of the Draft EIR, (see pages 4.1-17 and 4.1-20), the mobile emissions conservatively represent emissions associated with the full project (i.e., 2,174 daily vehicle trips), and do not take credit/trip reductions for the existing uses (i.e., internal capture, proximity to transit priority area, and pass-by trips) which are described in Chapter 4.8, Transportation, in Section 4.8.2.6, Trip Reductions and Credits. As shown in Table 4.8-5 (Project Trip Generation Estimates), the total project-related daily trips without trip reductions and credits would be 2,174 daily trips compared to the total net project trips of 1,934 daily trips when trip reductions and credits are applied. Therefore, the Draft EIR does not double-count pass-by trips expected to occur during the project's operation. As explained in Response to Comment B5-33, above, the vehicle trips modeled for the Draft EIR are more conservative than what is anticipated for the project in the transportation analysis prepared for the proposed project.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response

Table 2 - Project Trip Generation

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Senior Adult Housing-Attached	252	-	Dwelling Unit(s)	3.70	0.20	35%	/	65%	0.26	55%	/	45%
Shopping Center	820	-	1,000 Sq Ft GLA	37.75	0.94	62%	/	38%	3.81	48%	/	52%
Existing Conditions												
Shopping Center (100% Occupancy)	820	71.254	1,000 Sq Ft GLA	2690	67	42	/	25	271	130	/	141
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Multifamily Housing (Mid-Rise)	221	115	Dwelling Unit(s)	(42)	0	0	/	0	(7)	(5)	/	(2)
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Shopping Center	820	20.000	1,000 Sq Ft GLA	(90)	(1)	(1)	/	0	(14)	(4)	/	(10)
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Net New Project Trips				(275)	47	(3)	/	50	(22)	4	/	(26)

Notes:
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2. Per VTA Transportation Impact Analysis guidelines, a 2% vehicle trip reduction for housing trips can be applied for a nearby major bus stop
3. Pass-By trip reduction applied to shopping center PM peak hour trips and based on average rates from Appendix E ITE Trip Generation Handbook 3rd Edition
4. Daily pass-by trips only represent PM peak hour pass-by trips because no daily pass-by trip is resented in the ITE Trip Generation Handbook.
5. Trips reductions due to internal capture was calculated using NCHRP 684 methodology
6. Trip generation land uses based on average rates from ITE Trip Generation 10th Edition

Therefore, the CalEEMod model should not have included pass-by trips in the trip purpose percentages for the shopping center land use. By spreading the trip purpose percentages amongst the three categories, the model is accounting for pass-by trips that have already been accounted for in the DEIR's TA. Because the proposed Project's CalEEMod model incorrectly allocates the shopping center land use's trips to the various categories of trip purposes, the emissions associated with these trips are underestimated and as a result, the Project's mobile-source operational emissions are underestimated. An updated CalEEMod model must be prepared in order to accurately estimate the Project's operational emissions.

Footnote:

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	[5] "CalEEMod User's Guide, Appendix A: Calculation Details for CalEEMod." SCAQMD, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf?sfvrsn=2, p. 20	
B5-35	Unsubstantiated Application of Construction Mitigation Measures Review of the CalEEMod output files demonstrates that the model included several unsubstantiated construction mitigation measures. As a result, the model may underestimate the Project's construction related emissions. The Project's CalEEMod output files demonstrate that the model included a 6 percent reduction from "Clean Paved Roads" and a 12 percent moisture content for "Water Unpaved Roads" (see excerpt below) (Appendix C, pp. 40, 69, 94). Table Name / Column Name / Default Value / New Value tblConstDustMitigation / CleanPavedRoadPercentReduction / 0 / 6 tblConstDustMitigation / WaterUnpavedRoadMoistureContent / 0 / 12 As you can see in the above excerpt, the mode included 6 percent reduction in construction dust based on "Clean Paved Roads" and a 12 percent moisture content based on "Water Unpaved Roads." Furthermore, the model included the "Replace Ground Cover" mitigation measure (see excerpt below) (Appendix C, pp. 45, 74, 99). **3.1 Mitigation Measures Construction** Replace Ground Cover Water Exposed Area Water Unpaved Roads Reduce Vehicle Speed on Unpaved Roads Clean Paved Roads As you can see in the excerpt above, the "Replace Ground Cover" mitigation measure was included in the model. As previously stated, the CalEEMod User's Guide requires that any non-default values inputted must be justified.[6] According to the "User Entered Comments & NonDefault Data" table, the justification provided for these changes is: "Per BAAQMD basic control measures" (Appendix C,	The mitigation measures included in CalEEMod are required by BAAQMD's standard dust control measures and the reduction credits used in the modeling are supported by the Western Regional Air Partnership (WRAP) Fugitive Dust Handbook (available at : https://www.wrapair.org/forums/dejf/fdh/content/FDHandbook_Rev_06.pdf) According to the WRAP Fugitive Dust Handbook, sweeping paved roads includes a 9 to 26 percent efficiency depending on the frequency while applying water to unpaved roads is between 55 percent efficient as control for fugitive dust. These mitigation measures are standard BAAQMD Regulation 6, Rule 6: Prohibition of Trackout; SCAQMD Rule 403 and Rule 1158. As explained below, Mitigation Measure AQ-2 has been revised to expressly include replacement of ground cover. The 5 percent efficiency in reducing fugitive dust is also supported by the WRAP Fugitive Dust Handbook and is the recommended efficiency to assume per the South Coast Air Quality Management District's Mitigation Measures and Control Efficiencies guidance for fugitive dust controls (See Table XI-A at http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/fugitive-dust). Overall, as discussed under Impact AQ-2 of the Draft EIR (page 4.1-17), BAAQMD does not have established numeric significance thresholds for fugitive dust. Instead, pursuant to the BAAQMD CEQA Guidelines, BAAQMD recommends implementation of Basic Construction Mitigation Measures, which would control for and reduce construction-related fugitive dust impacts to a less-than-significant level. Thus, while project construction-related fugitive dust emissions without the reduction measures for fugitive dust may be slightly higher than the fugitive dust emissions shown in Table 4.1-7 of the Draft EIR, implementation of Mitigation Measure AQ-2 to control for project construction-related fugitive dust is consistent with the BAAQMD CEQA Guidelines and would reduce the impact to a less-than-significant level.

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	pp. 40, 69, 94). According to Mitigation Measure AQ-2 in the DEIR, the Project would prepare a Construction Management Plan (CMP) including the BAAQMD Basic Construction Mitigation Measures (p. 2-8, Table 2-2). However, none of these measures discusses the 6 percent or 12 percent reductions included in the model, and as a result, these reduction percentages cannot be verified. Furthermore, none of these measures address the replacement of ground cover, and as a result, the inclusion of this measure is unsubstantiated. Through the inclusion of unverified construction mitigation measures, the CalEEMod model may underestimate the Project's construction emissions and should not be relied upon to determine Project significance. Footnote: [6] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 7, 13.	The following text revision to Chapter 4.1, Air Quality, of the Draft EIR has been made in Chapter 3 of this Response to Comments document. This revision acknowledges that additional best management practices for the replacement of groundcover is an additional construction mitigation measure recommended for projects. The revision is as follows: Mitigation Measure AQ-2: BAAQMD Basic Construction Measures. Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are: ▪ All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. ▪ All haul trucks transporting soil, sand, or other loose material off-site shall be covered. ▪ All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. ▪ All vehicle speeds on unpaved roads shall be limited to 15 mph. ▪ All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. ▪ Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure ▪ Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. ▪ All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be

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		checked by a certified mechanic and determined to be running in proper condition prior to operation. ▪ Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations. ▪ Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. ▪ All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. This revision does not affect any conclusions or significance determinations provided in the Draft EIR.
B5-36	Unsubstantiated Application of Mobile Mitigation Measures Review of the CalEEMod output files demonstrates that the model included several unsubstantiated mobile mitigation measures. As a result, the model may underestimate the Project's mobile-related operational emissions. The Project's CalEEMod output files demonstrates that the model included several mobile-related operational mitigation measures, including "Increase Density" and "Increase Diversity" (see excerpt below) (Appendix C, pp. 58, 86, 111). **4.1 Mitigation Measures Mobile** Increase Density Increase Diversity Improve Destination Accessibility Improve Pedestrian Network	The project is a mixed-use high-density development located in an urban area. Therefore, the density and diversity measures were included in CalEEMod. The mitigated output from CalEEMod show reductions from existing regulatory requirements and project design features that are termed "mitigation" within the model; however, the modeling components associated with locational measures and compliance with existing regulations are not considered mitigation under CEQA, but rather are treated as project design features. The project would incorporate design features and would obtain benefits from its location that would reduce project vehicle miles traveled compared to default values. The measures incorporated into the CalEEMod modeling and mitigation component include: ▪ LUT-1 Increase Density: The measure encourages projects with increased densities to reduce GHG emissions associated with traffic. The project includes 25.2 dwelling units per acre. ▪ LUT-3 Increase Diversity of Land Uses: The measure requires a mix of uses on the project site in an integrated development project that encourages walking. The project includes multi-family residential, retail, and senior housing.

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	As you can see in the excerpt above, the "Increase Density" and "Increase Diversity" mitigation measures were included in the model. As previously stated, the CalEEMod User's Guide requires that any non-default values inputted must be justified.[7] However, review of the "User Entered Comments & Non-Default Data" table demonstrates that no justification is provided for these measures. Furthermore, the DEIR fails to substantiate these mitigation measures. As a result, the implementation of these measures cannot be verified, and the model should not be relied upon to determine Project significance. **Footnote:** [7] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 7, 13.	▪ **LUT-4 Improve Destination Accessibility**: The measure is based on distance to downtown or major job centers. The project is within one mile from an existing job center (CARB designated business district) in downtown Cupertino. ▪ **SDT-1 Improve Pedestrian Access**: This measure provides pedestrian access linking the project to other areas to encourage walking. The measure requires both on-site and off-site pedestrian infrastructure. The proposed project incorporates sidewalk and open areas designed to promote a pedestrian- and bicycle-friendly environment. The reductions attributable to these measures in CalEEMod are derived from methodologies compiled in the California Air Pollution Control Officers Associated (CAPCOA) report Quantifying GHG Measures.[3] Each measure was assessed to determine its consistency with CAPCOA criteria for the use of the measure.
B5-37	Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated The DEIR conducts a construction health risk assessment (HRA) and determines that the construction related health risk posed to the maximally exposed individual receptor (MEIR) would be approximately 2.23 in one million (Appendix C, p. 26). Specifically, regarding the Project's construction health risk, the DEIR states: "The highest calculated carcinogenic risk from project construction is 2.23 per million based on an annual PM10 concentration of 0.012 µg/m3" (Appendix C, p. 26). The DEIR goes on to conclude: "As described above, worst-case construction risk levels based on screening-level modeling (AERSCREEN) and conservative assumptions would be below the BAAQMD's thresholds" (Appendix C, p. 26).	Please see Response to Comment B5-32 with respect to the values that are applied to the CalEEMod air quality model construction analysis. The construction HRA correctly and conservatively analyzed DPM-related health risks to off-site sensitive receptors using OEHHA and BAAQMD guidance. Please see Response to Comment B5-15 with respect to potential risk impacts of the project to off-site receptors and Response to Comment B5-16 with respect to methodology utilized for the health risk assessment.

[3] California Air Pollution Control Officers Associated. 2010, August. Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures. http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.

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However, this analysis is incorrect. As discussed above, the construction HRA relies on a flawed CalEEMod model that incorrectly underestimates construction emissions. Thus, the health risk associated with the Project's construction may also be underestimated.

Regarding the Project's operational health risk, the DEIR states, "The highest calculated carcinogenic risk as a result of the project is 9.82 per million for 70-year exposure" (Appendix C, p. 27)

However, this analysis calculated the risk posed to future sensitive receptors on the Project site as a result of the Project's close proximity to SR-85 (see excerpt below) (Appendix C, p. 28, Table 8).

Table 8: Operational Health Risk

Emissions Sources	$PM_{2.5}$ ($\mu g/m^3$)	Cancer Risk (per million	Chronic Hazard	Acute Hazard
Mobile Sources				
SR-85	0.07	9.82	0.008	0.003
Stevens Creek Boulevard	0.02	5.21	0.003	0.001
Stationary Sources				
Cupertino Union 76 (gas dispensing facility)	0	0.23	0.04	0
De Anza Community College (generator)	0.02	0.59	0.06	0
De Anza Community College (gas dispensing facility)	0	0.46	0.04	0
BAAQMD Threshold	*0.3*	*10*	*1.0*	*1.0*
Threshold Exceeded?	**No**	**No**	**No**	**No**
Cumulative Health Risk Values	0.11	16.31	0.151	0.004
BAAQMD Cumulative Threshold	*0.8*	*100*	*10*	*10*
Threshold Exceeded?	**No**	**No**	**No**	**No**

Thus, the DEIR failed to conduct an HRA quantifying the risk posed to nearby, existing sensitive receptors as a result of the Project's operation. By failing to prepare an operational HRA to nearby, existing sensitive receptors, the DEIR is inconsistent with recommendations set forth by the Office of Environmental Health and Hazard Assessment's (OEHHA) most recent Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, which was cited in the DEIR (Appendix C, p. 26).[8] This guidance document describes the types of projects that warrant the

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	preparation of a health risk assessment.[9] Once construction of the Project is complete, the Project will operate for a long period of time. During operation, the Project will generate vehicle trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).[10] Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have also been evaluated by the DEIR, as a 30-year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA. These recommendations reflect the most recent health risk policy, and as such, an updated assessment of health risks posed to nearby sensitive receptors from Project operation should be included in a revised CEQA evaluation for the Project. Finally, the DEIR fails to sum the cancer risk calculated for each age group. According to OEHHA guidance, "the excess cancer risk is calculated separately for each age grouping and then summed to yield cancer risk at the receptor location."[11] However, review of the construction HRA conducted in the DEIR demonstrates that, while each age bin was calculated, the DEIR failed to sum them to evaluate the total cancer risk over the course of the Project's lifetime, including both construction and operation. This is incorrect and thus, an updated analysis should quantify the Project's construction and operational health risks and then sum them to compare to the BAAQMD threshold of 10 in one million.[12] **Footnotes:** [8] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf	

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	[9] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf [10] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 8-6, 8-15. [11] "Guidance Manual for preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 8-4 [12] "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en	
B5-38	Screening-Level Assessment Indicates Significant Impact In an effort to demonstrate the potential health risk posed by Project construction and operation to nearby sensitive receptors, we prepared a simple screening-level HRA. The results of our assessment, as described below, provide substantial evidence that the Project's construction and operational DPM emissions may result in a potentially significant health risk impact that was not previously identified. In order to conduct our screening level risk assessment, we relied upon AERSCREEN, which is a screening level air quality dispersion model. [13] The model replaced SCREEN3, and AERSCREEN is included in the OEHHA[14] and the California Air Pollution Control Officers Associated (CAPCOA) [15] guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.	As stated in Response to Comment B5-17, the screening-level HRA submitted by the commenter incorrectly estimates project operation-related DPM emissions based on the exhaust PM_{10} annual emission rate from the CalEEMod annual output file prepared for the Draft EIR. The approach taken by the commenter is incorrect because the predominant emission sources associated with the proposed land uses would be natural gas combustion associated with building energy use and gasoline-fueled passenger cars, not diesel-fueled trucks. For these reasons, the exhaust PM_{10} emissions from the operational CalEEMod annual output cannot be directly correlated to DPM for the purposes of an HRA. Therefore, due to the incorrect approach taken by the commenter, the basis of commenter's assertion that operation of the proposed project could result in a potentially significant health risk impact is also incorrect, not applicable, and not relevant.

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	We prepared a preliminary HRA of the Project's construction and operational health-related impact to sensitive receptors using the annual PM10 exhaust estimates from the SWAPE annual CalEEMod output files. According to the Air Quality Assessment, the closest residential receptor is located approximately 90 feet, or 27 meters, north of the Project site (p. 4.1-10, Table 4.1-5). Consistent with recommendations set forth by the 2015 OEHHA guidance cited in the DEIR, we assumed that residential exposure begins during the third trimester stage of life. The SWAPE construction CalEEMod output files indicate that construction activities will generate approximately 464 pounds of DPM over the approximately 730-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation: $$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{463.8\ lbs}{730\ days} \times \frac{453.6\ grams}{lbs} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} = \mathbf{0.003336\ g}$$ Using this equation, we estimated a construction emission rate of 0.003336 grams per second (g/s). Subtracting the 730-day construction duration from the total residential duration of 30 years, we assumed that after Project construction, the MEIR would be exposed to the Project's operational DPM for an additional 28 years. SWAPE's updated operational CalEEMod emissions indicate that operational activities will generate approximately 71 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation: $$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{71.4\ lbs}{365\ days} \times \frac{453.6\ grams}{lbs} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} = \mathbf{0.001027\ g}$$	

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	Using this equation, we estimated an operational emission rate of 0.00012 g/s. Construction and operational activity was simulated as an 8.1 -acre rectangular area source in AERSCREEN with dimensions of 264 meters by 124 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution. **Footnotes:** [13] "AERSCREEN Released as the EPA Recommended Screening Model," USEPA, April 11, 2011, available at: http://www.epa.gov/ttn/scram/guidance/clarification /20110411_AERSCREEN_Release_Memo.pdf [14] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf [15] "Health Risk Assessments for Proposed Land Use Projects," CAPCOA, July 2009, available at: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf	
B5-39	The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.[16] As previously stated, there are residential receptors located approximately 25 meters from the Project boundary. However, the maximally exposed receptor, according to AERSCREEN, is located 125 meters from the Project site. The single-hour concentration estimated by AERSCREEN for Project construction is approximately 3.953 µg/m3 DPM at approximately 125 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.3953 µg/m3 for Project construction at the maximally exposed sensitive receptor. For Project operation, the single-hour concentration estimated by AERSCREEN is 1.217 µg/m3 DPM at approximately 125 meters	Please see Response to Comment B5-17 with respect to an operational HRA analysis for existing off-site sensitive receptors. As explained in Response to Comment B5-17, the screening-level HRA submitted by the commenter incorrectly estimates project operation-related DPM emissions based on the exhaust PM_{10} annual emission rate from the CalEEMod annual output for the proposed project. This approach is incorrect because the predominant emission sources associated with the proposed land uses would be gasoline-fueled passenger cars, not diesel-fueled trucks, and natural gas combustion associated with building energy use. For these reasons, the exhaust PM_{10} emissions from the operational CalEEMod annual output cannot be directly correlated to DPM for the purposes of an HRA. Therefore, due to this incorrect approach taken by the commenter, the basis of commenter's assertion that operation of the proposed project could result in a potentially significant health risk impact is also incorrect, not applicable, and not relevant.

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	downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.1217 µg/m3 for Project operation at the maximally exposed sensitive receptor. Consistent with the most recent OEHHA guidance, as cited by the DEIR, we used Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution (Appendix C, p. 26).[17] According to the most updated guidance, quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) and should be multiplied by a factor of three during the child stage of life (2 to 16 years). Furthermore, in accordance with the OEHHA guidance, we used the 95th percentile breathing rates for infants.[18] We used a cancer potency factor of 1.1 (mg/kg-day)-1 and an averaging time of 25,550 days. OEHHA recommends that a 30-year exposure duration be used as the basis for estimating cancer risk at the MEIR.[19] Also consistent with OEHHA guidance, exposure to the MEIR was assumed to begin in the third trimester to provide the most conservative estimate of air quality hazards. Finally, according to SCAQMD guidance, we used a Fraction of Time At Home (FAH) Value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for adult receptors.[20] The results of our calculations are shown below.	There are no other on-site operational uses that would generate substantial DPM emissions. The project is not considered to be a substantial source of diesel particulate matter warranting an operational HRA.

The Maximally Exposed Individual at a Residential Receptor

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	0.25	0.3953	361	10	4.6E-06
3rd Trimester Duration	***0.25***			***3rd Trimester Exposure***	***4.6E-06***
Construction	1.75	0.3953	1090	10	9.7E-05
Operation	0.25	0.1217	1090	10	4.2E-06
Infant Exposure Duration	***2.00***			***Infant Exposure***	***1.0E-04***
Operation	14.00	0.1217	572	3	3.2E-05
Child Exposure Duration	***14.00***			***Child Exposure***	***3.2E-05***
Operation	14.00	0.1217	261	1	4.9E-06
Adult Exposure Duration	***14.00***			***Adult Exposure***	***4.9E-06***
Lifetime Exposure Duration	**30.00**			**Lifetime Exposure**	**1.4E-04**

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	As indicated in the table above, the excess cancer risk posed to adults, children, infants, and during the third trimester of pregnancy at the closest receptor, located approximately 25 meters away, over the course of Project construction and operation, are approximately 4.9, 32, 100, and 4.6 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately 140 in one million, thus resulting in a potentially significant health risk impact not previously addressed or identified by the DEIR. An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection. [21] The purpose of the screening-level construction HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up to-date, applicable guidance are used. Therefore, since our screening-level construction HRA indicates a potentially significant impact, the City should prepare an EIR with a revised HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors. Thus, the City should prepare an updated, quantified air pollution model as well as an updated, quantified refined health risk assessment which adequately and accurately evaluates health risk impacts associated with both Project construction and operation. **Footnotes:** [16] "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 4-36.	

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	[17] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf. [18] "Air Toxics NSR Program Health Risk Assessment Guidelines." BAAQMD, December 2016, available at: http://www.baaqmd.gov/~/media/files/planning-and-research/permitmodeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en, p. 3. "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf [19]"Risk Assessment Guidelines Guidance Manual for preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-6. [20] "Air Toxics NSR Program Health Risk Assessment Guidelines." BAAQMD, December 2016, available at: http://www.baaqmd.gov/~/media/files/planning-and-research/permitmodeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en, p. 4-5.21 [21] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 1-5	
B5-40	Greenhouse Gas Failure to Adequately Evaluate Greenhouse Gas Impacts The DEIR concludes that the Project's GHG impact would be less than significant based on the BAAQMD bright-line threshold of 1,100 MT CO2e/year, stating: "The proposed project would not result in an increase in GHG emissions that exceed the BAAQMD's bright-line screening threshold of 1,100 MTCO2e per year" (4.5-17). Furthermore, the DEIR relies upon the Project's consistency with CARB's 2017 Scoping Plan, MTC/ABAG's Plan Bay Area 2040, and the Cupertino CAP (p. 4.5-17, 4.5-18, 4.5-19). However, this analysis and subsequent less than significant impact conclusion is incorrect for several reasons: (1) CARB's 2017 Scoping Plan and MTC/ABAG's Plan Bay Area 2040 cannot be relied upon to determine Project significance; (2) The DEIR fails to demonstrate consistency with the Cupertino CAP;	This comment serves as an introduction to the comments that follow. Please see Responses to Comments B5-41 through B5-44.

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Comment #	Comment	Response
	(3) The DEIR relies upon an outdated and inapplicable threshold; and (4) The DEIR's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;	
B5-41	(1) CARB's 2017 Scoping Plan and MTC/ABAG's Plan Bay Area 2040 are not Climate Action Plans (CAPs) The DEIR determines that the Project demonstrates consistency with CARB's 2017 Scoping Plan and MTC/ABAG's Plan Bay Area 2040. However, this does not qualify as Climate Action Plan (CAP). CEQA Guidelines § 15064.4(b)(3) allows a lead agency to consider "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., section 15183.5(b))" (Emph. added). When adopting this language, the California Natural Resources Agency ("Resources Agency") explained in its 2018 Final Statement of Reasons for Regulatory Action ("2018 Statement of Reason")[22] that it explicitly added referenced to section 15183.5(b) because it was "needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project's [GHG] emissions …[and] consistent with the Agency's Final Statement of Reasons for the addition of section 15064.4, which states that 'proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.'" 2018 Final Statement of Reason, p. 19 (emph. added); see also 2009 Final Statement of Reasons for Regulatory Action, p. 27.[23] When read in conjunction, CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans (also commonly referred to as a Climate Action Plan ["CAP"]) should include the following features:	The commenter incorrectly asserts the purposes of the analyses of project consistency with the CARB Scoping Plan and MTC/ABAG Plan Bay Area 2040 are to serve as climate action plans (CAP) for the City. These two plans are meant not to serve as climate action plans, but are the statewide and regional plans to reduce GHG emissions in the state. The CARB Scoping Plan is the overall statewide plan to reduce GHG emissions arising from the requirements of Assembly Bill 32 and Senate Bill 32. The MTC/ABAG Plan Bay Area 2040 is required under Senate Bill 375 and serves as the ABAG region's transportation plan/sustainable communities strategy. Accordingly, these two plans are relevant to the discussion of Impact GHG-2 in the Draft EIR, which concerns whether the project "would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs." (See CEQA Guidelines Appendix G, Section VIII.b).) The Draft EIR discusses the consistency of the project with the City of Cupertino CAP discussed in Impact GHG-2. Furthermore, as stated in Response to Comment B5-42, this discussion has been revised to include this analysis in matrix format in Table 4.5-7, City of Cupertino Climate Action Plan Consistency Analysis, as shown in Chapter 3 in this Response to Comments Document. This revision does not affect any conclusions or significance determinations provided in the Draft EIR. The EIR describes the CEQA Guidelines Section 15138.5 streamlining provisions for qualified GHG reduction plans on pages 4.5-12 and 4.5-13, but it does not rely on these streamlining provisions.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	(1) Inventory: Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction); (2) Establish GHG Reduction Goal: Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable; (3) Analyze Project Types: Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area; (4) Craft Performance Based Mitigation Measures: Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level; (5) Monitoring: Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels; The above-listed CAP features provide the necessary substantial evidence demonstrating a project's incremental contribution is not cumulative considerable, as required under CEQA Guidelines § 15064.4(b)(3).[24] Here, however, the DEIR fails to demonstrate that the CARB's 2017 Scoping Plan and MTC/ABAG's Plan Bay Area 2040 include the above-listed requirements to be considered a qualified CAPs for the City. As such, the DEIR leaves an analytical gap showing that compliance with said plans can be used for a project-level significance determination. Thus, the DEIR's GHG analysis regarding the CARB's 2017 Scoping Plan and MTC/ABAG's Plan Bay Area 2040 should not be relied upon to determine Project significance. **Footnotes:** [22] Resources Agency (Nov. 2018) Final Statement of Reasons For Regulatory Action: Amendments To The State CEQA Guidelines, http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf.	

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	[23] Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action, p. 27 ("Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact."), http://resources.ca.gov/ceqa/ docs/Final_Statement_of_Reasons.pdf. [24] See Mission Bay Alliance v. Office of Community Investment & Infrastructure (2016) 6 Cal.App.5th 160, 200-201 (Upheld qualitative GHG analysis when based on city's adopted its greenhouse gas strategy that contained "multiple elements" of CEQA Guidelines § 15183.5(b), "quantification of [city's] baseline levels of [GHG] emissions and planned reductions[,]" approved by the regional air district, and "[a]t the heart" of the city's greenhouse gas strategy was "specific regulations" and measures to be implemented on a "project-by-project basis … designed to achieve the specified citywide emission level.").	
B5-42	(2) The DEIR Fails to Demonstrate Consistency with the Cupertino CAP As discussed above, the DEIR relies upon the Project's consistency with the Cupertino CAP to determine that the Project's GHG impact would be less than significant. Specifically, the DEIR states, "As an infill redevelopment priority housing development on a designated PDA and TPA the proposed project would be consistent with the overall intent of the CAP to support reductions in GHG emissions and the proposed project would not conflict any goals or measures to reduce GHG emissions in the CAP and impacts would be less than significant" (emphasis added) (p. 4.5-19). However, while the DEIR describes how the Project would be consistent with the "overall intent" of the Cupertino CAP by not conflicting with several community-wide measures, the DEIR fails to address consistency with all community-wide measures listed in the CAP (p. 4.5-19). In addition, the CAP fails to provide specific, project-level measures. Specifically, the DEIR lists several measures from the Cupertino CAP to demonstrate compliance, however, review of the Cupertino CAP reveals that these measures are "community-wide reduction measures."[25] Thus, the DEIR incorrectly relies on "community-wide" measures, rather than specific project-level measures, to determine compliance with the CAP.	The City of Cupertino CAP does not currently include specific project-level measures with which individual projects need to comply. Rather, the CAP includes community wide strategies for the City to implement to reduce GHG emissions in addition to measures that apply to municipal operations. Thus, the project consistency to the CAP as discussed under Impact GHG-2 of the Draft EIR included a discussion comparing project design features to these community-wide measures. In addition, as recommended by the commenter, the discussion pertaining to consistency of the project to the City's CAP has been revised to include the consistency analysis that evaluates consistency of the project to all of the CAP's community-wide measures in a matrix format (Table 4.5-7). As shown in Chapter 3 of this Response to Comments Document, Chapter 4.5, Greenhouse Gas Emissions, has been revised to include Table 4.5-7, City of Cupertino Climate Action Plan Consistency Analysis. This revision does not affect any conclusions or significance determinations provided in the Draft EIR. Please see Response to Comment B5-41.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	Notwithstanding the DEIR's reliance on inapplicable "community-wide" measures, the DEIR fails to demonstrate consistency with all of the CAP's "community-wide" measures (see table below). *[The commenter provides a DEIR consistency analysis of the community-wide measures in the Cupertino CAP. Please see Comment Letter B5, pages 36 to 40.]* As you can see in the table above, the DEIR fails to provide sufficient information and analysis, or reconcile Project inconsistencies with various measures under the Cupertino CAP. As a result, we cannot verify that the Project would be fully consistent with the Cupertino CAP, and Project's GHG analysis should be relied upon to determine Project significance. **Footnote:** [25] " Climate Action Plan." City of Cupertino, January 2015, available at: https://www.cupertino.org/home/showdocument?id=9605, p. 68.	
B5-43	(3) The DEIR Relies Upon an Outdated and Inapplicable Threshold In an effort to evaluate Project emissions, the DEIR includes a quantification of the Project's estimated emissions and compares them to the BAAQMD's bright-line screening threshold of 1,100 metric tons of CO_2 equivalents per year (MT CO_2e/year). Based on this evaluation, the DEIR concludes that Project's net GHG emissions would be approximately 359 MT CO2e, which would not exceed the BAAQMD's brightline screening threshold. The DEIR thus concludes that "project related GHG emissions would be less than significant" (p. 4.5-17) (see excerpt below) (p. 4.5-17, Table 4.5-6).	The BAAQMD project-level operational threshold of significance for GHG emissions is whether the project would generate 1,100 $MTCO_2e$ per year during operations. This bright-line numeric threshold is used as a *de minimus* threshold to determine if the proposed project has the potential to result in a substantial increase in GHG impacts. Projects that do not exceed the *de minimus* threshold do not have a significant impacts. This threshold is consistent with the thresholds used by other air districts in California to assess GHG impacts. The following air districts have similar *de minimus* thresholds. ▪ The South Coast Air Quality Management District (SCAQMD) has a threshold of 3,000 $MTCO_2e$ for projects. ▪ The Sacramento Metro Air Quality Management District (SMAQMD) has a threshold of 1,100 $MTCO_2e$. ▪ The San Luis Obispo Air Pollution Control District (SLOCAPCD) uses 1,150 $MTCO_2e$.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response

TABLE 4.5-6 PROPOSED PROJECT GREENHOUSE GAS EMISSIONS

Category	$MTCO_2e$[a]		
	Existing	Project	Net Change
Area[b]	<1	8	8
Energy	232	648	416
On-Road Mobile Sources[c]	1,214	1,102	-112
Waste[d]	19	33	14
Water/Wastewater	19	51	32
Total[e]	1,484	1,843	359
BAAQMD Bright-Line Threshold	NA	NA	1,100 $MTCO_2e$/year
Exceeds BAAQMD Thresholds?	NA	NA	No

As the above excerpt demonstrates, the DEIR compared the Project's quantified GHG emissions to the BAAQMD's bright-line screening threshold of 1,100 MT CO2e/year. However, the DEIR's use of this threshold is incorrect, as the threshold was developed for the air district's planned reductions for 2020, and thus, only applies to projects that will be operational by 2020.[26] According to the DEIR, "[c]onstruction of the proposed project would occur in two phases over a 16-month period and is anticipated to be completed by the year 2023" (p. 3-27). As such, the BAAQMD's bright-line screening threshold for 2020 would not apply to the proposed Project, which is not anticipated to become operational until 2023.

Footnote:
[26] "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p.D-20.

In impact discussion GHG-2, the EIR evaluates the consistency of the project with plans adopted for the purpose of reducing GHG emissions separate from the quantitative analysis. As indicated in the comment and described in the Draft EIR, statewide goals for GHG reductions beyond 2020 were codified into state law with the passage of SB 32. Although the Cupertino CAP was drafted before SB 32, the CAP addresses emissions beyond 2020 as informed by the post-2020 GHG reduction targets of Executive Order S-3-05. To demonstrate consistency with the state's long-range target, this CAP includes targets for 2050, as well as interim year 2035 targets to serve as a midpoint check-in between 2020 and 2050. Based on the state's 2050 target and the fact that the CAP uses a 2010 baseline year, Cupertino has defined its longer-term targets as 49 percent below baseline levels by 2035 and 83 percent below baseline levels by 2050. Therefore, project compliance with the CAP adequately establishes project compliance not only with statewide GHG reduction goals for the year 2020 associated with AB 32, but also with statewide GHG reduction goals for the years beyond 2020. The project includes a number of sustainable design features such as 10 percent of multi-family parking spaces would be EV spaces, PV cells for on-site electricity production, insulated doors and windows, and roof and balcony overhangs to provide shading that are consistent with the overall goals in the City's CAP.

Furthermore, the Draft EIR conservatively evaluated project GHG emissions by not taking credit for the fact that the project would use electricity from a Community Choice Aggregator (CCA). Silicon Valley Clean Energy CCA (SVCE) is the primary provider for the City of Cupertino working in partnership with PG&E. SCVE purchases clean electricity directly from the source while PG&E delivers the electricity over existing power lines, continues to maintain the lines, and provides billing and customer service. SCVE can provide lower generation charges while providing a cleaner energy source. Approximately 50 percent of the energy source is from renewable energy sources such as wind and solar power, while 50 percent is non-polluting hydroelectric. Between clean energy and various sustainable design features included in the project, energy use would be zero. Implementation of the project would result in a net reduction of GHG emissions from existing conditions of

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		57 $MTCO_2e$ annually due to use of carbon neutral electricity sources. In addition, the analysis presented in the Draft EIR conservatively compares the project to a baseline of only 85 percent occupancy of the existing site, even though the retail component of the project could be occupied at any time; and has been fully occupied in the past. If 100 percent occupancy of site was considered in the CEQA analysis, as permitted under CEQA, the project would result in further reductions in GHG emissions compared to existing conditions.
B5-44	(4) The DEIR's GHG Analysis Relies Upon an Incorrect and Unsubstantiated Air Model In addition to the DEIR's inability to rely on various plans and policies to demonstrate less than significant GHG impacts, the DEIR utilizes an incorrect CalEEMod to analysis the Project's GHG impact. As discussed above, the DEIR's CalEEMod model relies upon incorrect input parameters to estimate the Project's criteria air pollutant and GHG emissions, resulting in an underestimation of Project emissions. Therefore, we find the DEIR's quantitative GHG analysis to be incorrect and unreliable. An updated EIR should be prepared, using correct, project-specific modeling to adequately assess and mitigate the Project's GHG impact.	Please see Response to Comment B5-32, which explains the commenter has misinterpreted the size of the underground parking structure, Response to Comment B5-33, which explains the commenter has misinterpreted the weekday trips to be the same as weekend trips, and Response to Comment B5-34 with respect to the use of pass-by trips in the model.
B5-45	SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.	This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR, nor does the comment raise a new environmental issue.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
B5-46	Resume of Matthew F Hagemann	The attachment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
B5-47	Resume of Paul Rosenfeld	The attachment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
B5-48	Aerscreen 16216 Data for Westport Construction	The attachment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
B5-49	Aerscreen 16216 Data for Westport Operation	The attachment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
B5-50	CalEEMod inputs and results dated 12/16/19	The attachment is acknowledged for the record and will be forwarded to the decision-making bodies as part of this Final EIR for their consideration in reviewing the project.
B5-51	**Exhibit B – Smith Engineering & Management** Dear Mr. Messing: Per your request, I reviewed the Draft Environmental Impact Report (the "DEIR") for the Westport Mixed Use Project, located in Cupertino (the "City"). My review is specific to the Transportation and Circulation matters. My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 50 years professional consulting engineering practice in the traffic and parking field. I have both prepared and reviewed the transportation and circulation sections of CEQA environmental review documents. My professional resume is attached hereto. My technical comments follow.	The comment serves as an opening remark. No response is required.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
B5-52	The DEIR Project Description is Incomplete The DEIR's project description does not include any discussion of the types of retail that would be included in the Project. The existing shopping plaza, which contains many local serving uses like cheap restaurants, dentists, nail shops, and dance studios, attracts considerably more local trips than a shopping center that has specialty shops that people drive for longer distances to get to. These differences in retail may significantly increase the VMT and GHG impacts of the project and without more information, the DEIR cannot make reliable conclusions as to those impacts. Please confirm what elements of local data and what default data were used in the VMT analysis.	Please see Response to Comment B5-8 regarding the project description and types of retail anticipated at the project site. As stated in that response, the project would provide neighborhood serving retail and not regional oriented specialty stores. CalEEMod utilizes the same trip length and parameters for non-regional shopping centers as it does for regional shopping centers. Therefore, any differences between regional and non-regional retail land uses would not generate a different VMT or GHG result since the same trip generation rate is used. Regardless, the project is proposing new local retail uses to replace existing local retail uses. As a result, there will be less local retail space with the same trip lengths generating less total VMT at the site compared to the existing shopping center.
B5-53	The DEIR Makes No Evident Assumption of Development on the Vallco Site. At the time of issuance of the Notice Of Preparation (NOP) for the Westport EIR (July 11, 2019), the Cupertino City Council had repealed the Vallco General Plan Amendment, the Specific Plan and the development agreement that had previously been adopted by the Council in September, 2018. Resolution No. 18-104 certifying the Final EIR on the Vallco site has not been subsequently repealed. While the repeal actions make certain that the Specific Plan in its proposed form will not move forward, this does not mean Vallco will remain in its substantially vacant current condition, a condition that prevailed at the time the traffic counts the Westport Project DEIR were taken. It does, however, make more likely that an alternative studied in the Vallco EIR, the Occupied / Retenanted Mall, would become the long term use. That option, would, according to the Vallco DEIR, involve 23,417 net new trips daily, including 307 in the AM peak and 2,398 in the PM peak hour that were not present when the counts supporting the Westport DEIR analysis were conducted. These are a sufficient number of trips generated close to the Westport site to alter the findings of the Westport traffic analysis. It is not clear that the	The commenter incorrectly asserts that the Draft EIR did not assume potential future development on the Vallco project site. As shown on Table 4-1, Reasonably Foreseeable Development Projects in Cupertino, in Chapter 4, Environmental Evaluation, of the Draft EIR, the proposed Westport Mixed-Use project when combined with the other reasonably foreseeable projects in Cupertino, including the Vallco project proposed at the time the Notice of Preparation was released for the proposed Westport Mixed Use project (July 11, 2019), would not exceed the maximum buildout potential evaluated in the General Plan EIR. As described in Chapter 4 of the Draft EIR, the General Plan EIR evaluated the cumulative effects of the General Plan Amendments, Housing Element Update, and Associated Rezoning using the summary of projections approach provided for in CEQA Guidelines Section 15130(b)(1)(B). The General Plan EIR took into account growth from the General Plan within the Cupertino city boundary and Sphere of Influence (SOI), in combination with projected growth in the rest of Santa Clara County and the surrounding region, as forecast by ABAG. At the time the Draft EIR was prepared the *Westport Cupertino – Transportation Analysis*, dated November 27, 2018 included in Appendix H of the Draft EIR, the City determined that the Cupertino General Plan EIR had the most accurate volumes for the cumulative 2040 scenario. The future potential growth at the North Vallco Special Area was included in the cumulative 2040 scenario in the General Plan EIR.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	Westport analysis has accounted for any revitalized use of the Vallco site.	Since the certification of the General Plan EIR in October 2015, the City has considered new future development potential at the Vallco project site. While, as shown in Table 4-1, this development at the Vallco site is consistent with the maximum buildout potential in the General Plan EIR for citywide cumulative discussions (e.g., population and housing, water supply, etc.), the General Plan EIR analyzed cumulative impacts citywide at a program level, but did not evaluate localized cumulative impacts, such as traffic, traffic related noise, and utilities infrastructure, in the vicinity of the Westport Mixed-Use Project site. Accordingly, the cumulative impacts to which the proposed Westport Mixed-Use Project would contribute are analyzed in this EIR. The City and staff at Hexagon Transportation Consultants, the transportation expert hired by the City to evaluate the transportation impacts of the proposed project, determined that due to the distance between the proposed Westport Mixed-Use Project site and the Vallco site, however, which is approximately 2 miles to the east of the project site, no localized cumulative impacts related to utilities (infrastructure), traffic, or traffic related noise would occur. With respect to traffic volumes, because the total of reasonably foreseeable projects shown in Table 4-1 (described above) combined with the proposed project (Westport Mixed Use Project) would not exceed the growth evaluated in the General Plan EIR, the city-wide, regional, and global impacts were appropriately accounted for in the Draft EIR for the proposed Westport Mixed-Use Project. As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 under General Plan buildout conditions. The proposed project would construct 242 residential units and 20,000 square feet of retail space, which is consistent with the land use evaluated in the General Plan EIR, and therefore, would not directly result in any additional new population growth or employment growth beyond what was analyzed in the General Plan EIR. As described in Chapter 3, Project Description, of the Draft EIR, in Section 3.4.3, Population and Employment Projections, the proposed project would add 695 new residents and 70 new employees for a total of 765 people, generating a total of 2,663,868 vehicle miles annually. Therefore, the proposed project would have a VMT impact of 3,482 vehicle

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		miles per capita annually or 9.54 daily vehicle miles per day. As discussed in the General Plan EIR, the VMT per capita is projected to increase from 10.5 to 10.9 under General Plan buildout conditions. Therefore, the project is below the City's VMT per capita values. Accordingly, the proposed Westport Mixed-Use project would be consistent with and would have no effect on the VMT analysis presented in the General Plan EIR. As described in Chapter 4, Section 15130 of the CEQA Guidelines requires an EIR to discuss cumulative impacts of a project when the project's incremental effect is "cumulatively considerable." As defined in Section 15065(a)(3) of the CEQA Guidelines, cumulatively considerable means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. When the combined cumulative impact caused by the project's incremental effect and the effects of other projects is not significant (i.e., not cumulatively considerable), the EIR must briefly indicate why the cumulative impact is not significant. In this case, because the proposed Westport Mixed-Use project is substantially smaller than the potential future development on the Vallco site, it is the incremental effect of the potential future development on the Vallco site that could be cumulatively considerable, although it is not in this case, and not the other way around. For example, the total *Cumulative with Proposed Project* AM volumes from the Vallco study at the Stevens Creek/SR 85 NB Ramps intersection minus the total *Background* AM volumes is 589 trips. This is the total number of AM peak hour trips at the intersection generated by all the pending projects in the area that were considered in the Vallco traffic impact assessment, including the Westport Mixed-Use Project and Vallco trips. The Westport Mixed-Use Project would add 48 new AM peak hour vehicle trips to the intersection. Based on 589 total AM peak hour trips, the Westport Mixed-Use Project accounts for only 8.15 percent of all the pending project AM peak hour trips added to the intersection. It should also be noted that if the other cumulative scenarios that were evaluated in the Vallco traffic analysis, including *Cumulative with General Plan Buildout with Max Residential Alternative* and the *Cumulative with Retail and Residential Alternative* are considered, the percentage of AM peak hour trips at the intersection attributable to the Westport Mixed-Use Project would be even less.

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TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		Also, please see Response to Comment B5-25.
B5-54	The Summary Reporting of the VMT Analysis Raises Questions The DEIR discloses that the Project's vehicle miles traveled generation (VMT) was analyzed using the CAEEMOD, an air pollutant prediction model, and that the Project would reduce VMT generated by development at the site by 120,000 miles annually or 327 per day, as compared to a continuation of the existing use of the site. This seems logical in that the small reduction in the net daily trips generated at the site would be expected to reduce VMT by a small number of miles per day. However, neither the Transportation section of the DEIR nor its Appendix H Transportation Analysis presents the CAEEMOD run sheets for inspection. All that is presented is a summarization of the model outcomes with respect to VMT. Since CAEEMOD is known to have generalized default values for trip generation and average trip length for various land uses for which superior current and local values for trip generation and average trip length can be substituted, it is important for the public to understand whether data from local traffic models has been employed or the outcome is just the product of default values. The must clarify whether local values have been substituted for default values and if not, why not. We do note that there are CAEEMOD run sheets located in Appendix C and that the weekday trip generation in them appears to be consistent with the trip generation analysis contained in the transportation section. However, other aspects like trip length or trip purpose may be default values.	The CalEEMod outputs are included in Appendix E, Greenhouse Gas Emissions, of the Draft EIR.
B5-55	Conclusion This completes my current comments on the Westport Mixed Use Project DEIR. For the reasons stated above, the DEIR is inadequate and must be revised and recirculated in draft status.	The comment serves as a closing remark. No response is required. With respect to recirculation, please see Response to Comment B5-5.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
B6 Michelle Dunn, December 23, 2019		
B6-1	Overall the Initial Study (IS) and Environmental Impact Report (EIR) for the Westport Mixed-Use Project is well written from a CEQA standpoint. I mostly have non-CEQA questions and comments for the City as a whole and some more project-related information seeking comments/questions.	The comment serves as an opening remark. No response is required.
B6-2	Schools Cupertino is a residential city with pockets of office spaces. CUSD is one of the largest school districts in Northern California. Even though we are in a highly affluent area, the high enrollment coupled with the low-incoming enrollment due primarily to the high-cost of living and home prices is causing financial difficulties and skewed enrollment at schools for CUSD (some school enrollment is super high, others it's dwindling due to low incoming enrollment). Will this project help the CUSD problem or make it worse? Even though the developer pays developer fees to CUSD, there is a cap on the amount of fees CUSD can acquire due to SB 50. It doesn't look like the City of Cupertino has any significant goals or policies in the General Plan to encourage more collaboration with CUSD or FUHSD when it comes to development.	The commenter expresses an opinion about the schools in the Cupertino Unified School District and the Cupertino General Plan. The commenter's observations are noted.
B6-3	Parking The only definitive mention of parking is for bicycle parking (117 bicycle parking spaces). A single-level underground parking lot is mentioned along with density bonuses and such which are factored into the total parking spaces. There is no mention of the total number of parking spaces proposed. There is no discussion on Parking. Although not a CEQA-specific issue per se, this is a concern. Will there be enough spaces for the 242 residential units? There are 88 units (19 rowhouses and 69 townhomes) that will have their own garage. This brings the number of units using the underground parking to 154 residential units. Will there be enough parking provided for the proposed residential units on-site? How many parking spaces are proposed?	As described on pages 30 and 31 of Appendix A, Initial Study, of the Draft EIR, CEQA Section 21099(d)(1) states "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area shall not be considered significant impacts on the environment." The proposed project would be located on an infill site, would be a mixed-use residential project, and would be located in a transit priority area. Accordingly, the Draft EIR did not consider parking in determining if the proposed project has the potential to result in significant environmental effects. The proposed project would be required to provide parking pursuant to the Cupertino Municipal Code.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
B6-4	Traffic and Pedestrians along Mary Avenue There is an existing blind curve on Mary Avenue where there is an existing pedestrian crosswalk with a signal. With this project, traffic will increase and only exacerbate safety issues for those crossing Mary Ave. Will this signalized pedestrian crossing be maintained or improved?	The commenter expresses an opinion about the existing conditions in the project vicinity and asserts that the operation of the proposed project will create worse conditions on the pedestrian crossing on Mary Avenue in the vicinity of the project site. The commenter provides no substantial evidence to support their assertion. No changes to the existing pedestrian crosswalk on Mary Avenue, which includes flashing beacons, are proposed as part of the project. As discussed in Chapter 4.8, Transportation, of the Draft EIR, the proposed project is expected to increase the number of pedestrians using the existing sidewalks and crosswalks by approximately 20 percent. Impact discussion TRANS-1, Pedestrian Facilities (page 4.8-21) concludes that the proposed project would not impede any existing pedestrian facilities. In addition, as discussed in Chapter 4.8, the proposed project would generate overall less traffic than the existing conditions. Sight distance requirements vary depending on the roadway speeds. For Mary Avenue, which has a posted speed limit of 35 mph, the Caltrans stopping sight distance is 300 feet (based on a design speed of 40 mph). Thus, a driver on Mary Avenue must be able to see a pedestrian crossing at the marked crosswalk at least 300 feet away to have adequate time to stop. Currently, over 300 feet of stopping sight distance is provided along southbound Mary Avenue at the horizontal curve. Although there are trees located along the site frontage on Mary Avenue at the curve, the trees have a high canopy and do not limit sight distance. Thus, adequate sight distance currently exists and would continue to exist along Mary Avenue at the horizontal curve and crosswalk.
B6-5	Traffic along Stevens Creek Boulevard Currently, during morning hours (especially during the hours to take school-aged children to school between 7:45 a.m. and 9:00 a.m.), there is a backup along westbound Stevens Creek Boulevard. There is an existing exit lane to the freeway-onramp which becomes congested when vehicles try to turn right onto Stevens Creek Boulevard through lanes (the first and second lanes). What traffic calming measures will be implemented to help ease this existing congestion? Development of this project would increase traffic along this roadway. Is there space along Mary Avenue to have two right turn lanes onto Stevens Creek	The commenter expresses an opinion about existing conditions and asserts that traffic will increase on Mary Avenue, but there is no evidence to support this assertion. Transportation impacts resulting from the proposed project are discussed in Chapter 4.8, Transportation, of the Draft EIR beginning on page 4.8.15. As discussed in Chapter 4.8 construction and operation of the proposed project would not result in any significant transportation queuing impacts on Stevens Creek Boulevard or the SR-85 on- and off-ramps. As discussed in Chapter 4.8, the proposed project would

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	Boulevard? One right turn lane for through traffic and one right turn lane for freeway-onramp only traffic that could be utilized specifically during the morning hours?	generate overall less traffic than the existing conditions. Therefore, no traffic calming features are required to mitigate an impact. Providing two southbound right-turn lanes on Mary Avenue is not feasible because adequate right-of-way does not exist. It would also introduce a weaving situation along Stevens Creek Boulevard, creating a potential operational issue that does not currently exist.
Private Individuals and Organizations		
C1 Summary of Comments Received at the Public Meeting, Wednesday, December 11, 2019 at the Cupertino Senior Center		
C1-1	Existing Conditions Participants asked if the EIR evaluates the change on-site as the Oaks Shopping Plaza being at full occupancy or as it is now.	As described in Chapter 3, Project Description, of the Draft EIR, in Section 3.2.4.1, on page 3-5, the existing shopping center is approximately 71,250 square feet and is about 85 percent occupied (or 60,560 square feet). The Draft EIR evaluates impacts consistent with the guidance in CEQA Guidelines Section 15125(a), which states that the information available at the time of the NOP will normally constitute the physical baseline conditions for purposes of determining whether there will be a significant impact.
C1-2	Traffic Commenters expressed concerns about the following: ▪ Parking on Mary Avenue during events at Memorial Park Events and questioned if the EIR evaluated the impacts to parallel parking and buses on Mary Avenue. ▪ How traffic patterns are measured? ▪ Will new trips effect the traffic pattern? ▪ Will the left turn from Stevens Creek Blvd onto Mary Avenue be impacted? ▪ Will the project cause more traffic to back up on Stevens Creek Boulevard? ▪ Were trips pattens evaluated using the route via Mary Avenue to Garden Gate Elementary? ▪ How were cumulative impacts measured?	▪ The proposed project does not include any changes to Mary Avenue and existing parking would remain the same. ▪ The analysis in Chapter 4.8, Transportation, of the Draft EIR is based on the *Westport Cupertino – Transportation Analysis*, dated November 27, 2018, and the *Westport Cupertino – Stevens Creek Boulevard & SR 85 On Ramp Signalization Analysis*, dated September 18, 2019, prepared by Kimley-Horn and Associates. Complete copies of these reports are provided in Appendix H, Transportation Assessment, of this Draft EIR. As described in Chapter 4.8, the traffic from future residents is expected to use the same primary roadways as under existing conditions. Traffic patterns were evaluated at the Stevens Creek Boulevard/Mary Avenue intersection #1 and Stevens Creek Boulevard and State Route 85 (SR-85) North Bound Ramp Terminal intersection #2. ▪ As described in Chapter 4.8, the proposed project would generate fewer trips than the existing development on the site and, therefore, would not have an adverse effect on existing traffic patterns.

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
	▪ Will a traffic light be installed a the proposed driveway on Stevens Creek Boulevard? ▪ What is the width of the proposed driveway on Stevens Creek Boulevard? ▪ Will the proposed retail be for local residents and if so, will that reduce traffic to and from the site?	▪ The project would have no effect on the operation of the eastbound left-turn pocket on Stevens Creek Boulevard [onto Mary Avenue], because the project would generate zero net new inbound vehicle trips during both the AM and PM peak commute periods of the day. Please see Response to Comment B1-7. ▪ Site access through the adjacent neighborhood to the north via Mary Avenue is highly unlikely due to the circuitous route, which would require traveling along six different residential streets with a speed limit of 25 miles per hour, traversing multiple intersections with stop signs, and driving past Garden Gate Elementary School on Greenleaf Drive. Please see Response to Comment B1-5. ▪ As described in Chapter 4 of the Draft EIR, the General Plan EIR evaluated the cumulative effects of the General Plan Amendments, Housing Element Update, and Associated Rezoning, including development of the project site, using the summary of projections approach provided for in CEQA Guidelines Section 15130(b)(1)(B). Please see Response to Comment B5-53. ▪ There is no traffic light planned at the proposed driveway on Stevens Creek Boulevard as part of the proposed project. ▪ The proposed driveways on the project site will meet the required standards set for the Cupertino Municipal Code, including driveway width. The minimum width for two-way driveways is 24 feet in Cupertino. ▪ As described in the Project Objectives (please see page 3-11 of the Draft EIR) that the proposed project would include neighborhood retail; therefore, no regionally oriented specialty stores were assumed for the analysis presented in the Draft EIR. Please see Response to Comments B5-8.
C1-3	Air Quality and Greenhouse Gas Emissions Commenters expressed concerns about the following: ▪ Do the air quality impacts consider the on-site trees and their removal? ▪ Do the GHG emission impacts consider trips at different times of the day? ▪ Are the GHG emission standards adopted out of date?	The air quality impacts of the proposed project, which are less than significant during operation and less than significant with implementation of Mitigation Measure AQ-1 during construction, are not related to on-site trees or their removal. This is not to imply that trees do not have a relationship to air quality. Trees can provide shade that may reduce the need for air conditioning which in turn can reduce fossil fuel consumption thus improving air quality. Trees can also absorb small particulate matter from the air, which can improve air quality. However, as described in Chapter 4.1 (see page 4.1-1), the analysis in the Draft EIR is based on the methodology recommended by the Bay Area Air Quality Management District

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		(BAAQMD) for project-level review. The analysis focuses on air pollution from regional emissions and localized pollutant concentrations from buildout of the proposed project. In Chapter 4.1, "emissions" refers to the actual quantity of pollutant material measured in pounds per day or tons per year, and "concentrations" refers to the amount of pollutant material per volumetric unit of air. Concentrations are measured in parts per million (ppm), parts per billion (ppb), or micrograms per cubic meter ($\mu g/m^3$). As discussed in Chapter 4.1, Air Quality, of the Draft EIR, the impact discussion in Chapter 4.1 (see pages 4.1-14 through 4.1-22) is based on this cumulative setting because all development within the San Francisco Bay Area Air Basin contributes to regional emissions of criteria pollutants (listed below), and basin-wide projections of emissions is the best tool for determining the cumulative effect. BAAQMD has identified thresholds of significance for criteria pollutant emissions and criteria air pollutant precursors, including reactive organic gases (ROG), oxides of nitrogen (NO_x), coarse inhalable particulate matter (PM_{10}), and fine inhalable particulate matter ($PM_{2.5}$). Development projects below these significant thresholds (shown in Table 4.1-6) are not expected to generate sufficient criteria pollutant emissions to violate any air quality standard or contribute substantially to an existing or projected air quality violation. In addition to the fact that the measure of the ability of the on-site trees to effect air quality is not part of the methodology for analyzing air quality impacts, the proposed project would replace all of the trees on the project site and would also plant additional trees; therefore, there would be an increase in the number of trees on the project site. The Arborist Report (included in Appendix D of the Draft EIR) that was prepared for the project site included an evaluation of 83 trees on the project site. The proposed project would involve the removal of the existing landscaping and trees on site, with the exception of four oak trees which will be relocated on the project site and would plant approximately 400 additional trees. Therefore, any benefits that may occur from the trees on the project site would continue to occur under the proposed project. Please see Response to Comment C1-4 with respect to the removal and planting of trees. GHG emissions generated by the project cumulatively contribute to world-wide CO_2 concentrations and climate change impacts. As a result, while emissions are local, regardless of the times of the day the impacts are global in nature. GHG impacts are

COMMENTS AND RESPONSES

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		global, and there are no localized impacts to sensitive receptors surrounding the project from project-related GHG emissions regardless of the time of day. Therefore, there are no ambient air quality standards for GHGs. With respect to the GHG emissions threshold, please see Response to Comment B5-43.
C1-4	Biological Resources Commenters expressed concerns about the following: ▪ How many trees would remain on-site? ▪ How many trees would be planted for the project? ▪ Will new trees be counted as mature trees or young trees? ▪ Will the project comply with the City policy to protect trees?	As discussed in Chapter 3, Project Description, of the Draft EIR on page 3-19 in Section 3.4.1.4. Landscaping, and page 3-27 in Section 3.4.2, Construction and Demolition the proposed project would include landscaping throughout the interior and the perimeter of the project site. See Figure 3-10. The Arborist Report (included in Appendix D of the Draft EIR) that was prepared for the project site included an evaluation of 83 trees on the project site. The proposed project would involve the removal of the existing landscaping and trees on site, with the exception of four oak trees which will be relocated on the project site and would plant approximately 400 additional trees. The City's regulations for protected trees are described on pages 4.2-3 and 4.2-4 in Chapter 4.2, Biological Resources, of the Draft EIR. As stated in impact discussion BIO-2 starting on page 4.2-11, the removal of protected trees is permitted by the City following approval of a tree removal permit. Implementation of Mitigation Measure BIO-2 would ensure compliance with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18).
C1-5	Hazards and Hazardous Materials ▪ Do the existing buildings have asbestos in them, and how will that be addressed? ▪ Will the proposed Residential-Retail Building buildings create a wind tunnel effect and is this analyzed in the DEIR.	As discussed in the Initial Study prepared for the proposed project and included in Appendix A of the Draft EIR, two Phase 1 Environmental Site Assessments (ESAs), dated March 14, 2007 and September 18, 2015, were prepared for the project site by EBI Consulting and PIERS Environmental Services, respectively.4 The Phase 1 ESA dated March 14, 2007 recommended the continued implementation of the existing asbestos Operation and Maintenance Plan due to suspected asbestos containing materials (ACM) in the floors, walls, and ceiling of the buildings. A proposed project's wind impacts are directly related to its height, orientation, design, location, and surrounding development context. The wind tunnel effect is

[4] PIERS Environmental Services, 2015. Phase 1 Environmental Site Assessment, 21255-21275 Stevens Creek Boulevard, Cupertino, CA, dated September 18, 2015. EBI Consulting, 2007, Phase 1 Environmental Site Assessment, The Oaks Shopping Center, Cupertino, California, dated March 14, 2007.

TABLE 5-1 RESPONSE TO COMMENTS

Comment #	Comment	Response
		caused by multiple tall buildings with narrow areas between the buildings creating low-pressure which causes the wind to move faster. An area with few tall buildings (over 85 feet), such as the project site, has little potential to cause substantial changes to ground-level wind conditions. If any wind tunnel effect were to occur, this would be an effect of the project on the project and would have no off-site effects.
C1-6	Aesthetics Will the project block natural light and is this addressed in the EIR?	As discussed on pages 31 and 32 of the Initial Study prepared for the proposed project and included in Appendix A of the Draft EIR, in compliance with SB 743 no significant aesthetic impacts, including the effects of light and glare, and parking impacts shall not be considered significant effects on the environment and therefore are not discussed in the Initial Study or EIR. Please see Response to Comment B6-3.
C1-7	There is a typo on page 3-12, 1st sentence of the 2nd paragraph under section 3.4.1.1. The sentence states that something will be five stories when it should say “fifty-five.”	The text on page 3-12 is correct. The proposed Residential-Retail Building 2 would be five stories tall (55 feet at the roofline).

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6. *Mitigation Monitoring and Reporting Program*

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared for The Westport Mixed-Use Project. The purpose of the MMRP is to ensure that the mitigation measures identified in the EIR for the proposed project are implemented. The MMRP includes the following information:

- The full text of the mitigation measures;
- The party responsible for implementing the mitigation measures;
- The timing for implementation of the mitigation measure;
- The agency responsible for monitoring the implementation; and
- The monitoring action and frequency.

The City of Cupertino must adopt this MMRP, or an equally effective program, if it approves the proposed project with the mitigation measures that were adopted or made conditions of project approval.

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
AIR QUALITY					
Mitigation Measure AQ-2: Prior to any grading activities, the applicant shall prepare a Construction Management Plan to be reviewed and approved by the Director of Public Works/City Engineer. The Construction Management Plan shall include the Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures listed below to minimize construction-related emissions. The project applicant shall require the construction contractor to implement the approved Construction Management Plan. The BAAQMD Basic Construction Mitigation Measures are: ▪ All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. ▪ All haul trucks transporting soil, sand, or other loose material off-site shall be covered. ▪ All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. ▪ All vehicle speeds on unpaved roads shall be limited to 15 mph. ▪ All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. ▪ Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. ▪ All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. ▪ Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This	Project Applicant/ Construction Contractor	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Review Construction Plans and Specifications/ Conduct Site Inspections	During Scheduled Construction Site Inspections

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations. ▪ Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. ▪ All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.					
Mitigation Measure AQ-4: Implement Mitigation Measure AQ-2.	Project Applicant/ Construction Contractor	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Review Construction Plans and Specifications/ Conduct Site Inspections	During Scheduled Construction Site Inspections
BIOLOGICAL RESOURCES					
Mitigation Measure BIO-1: Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Fish and Game Code. The construction contractor shall indicate the following on all construction plans, if construction activities and any required tree removal occur during the breeding season (February 1 and August 31). Preconstruction surveys shall: ▪ Be conducted by a qualified biologist prior to tree removal or grading, demolition, or construction activities. Note that preconstruction surveys are not required for tree removal or construction, grading, or demolition activities outside the nesting period. ▪ Be conducted no more than 14 days prior to the start of tree removal or construction. ▪ Be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. ▪ Document locations of active nests containing viable eggs or young birds.	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	Qualifying Biologist	Preconstruction Survey	Once for Survey; Ongoing if nesting birds identified and until they have left the nest

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
Protective measures for active nests containing viable eggs or young birds shall be implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include: ▪ Establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. ▪ Monitoring active nests within an exclusion zone on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. ▪ An increase in the radius of an exclusion zone by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. ▪ The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.					
Mitigation Measure BIO-2: The proposed project shall comply with the City of Cupertino's Protected Trees Ordinance (Cupertino Municipal Code Section 14.18). A tree removal permit shall be obtained for the removal of any "protected tree," and replacement plantings shall be provided as approved by the City. If permitted, an appropriate in-lieu tree replacement fee may be paid to the City of Cupertino's Tree Fund as compensation for "protected trees" removed by the proposed project, where sufficient land area is not available on-site for adequate replacement and when approved by the City. In addition, a Tree Protection and Replacement Program (Program) shall be developed by a Certified Arborist prior to project approval	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Plan Review and Approval	Once During the Preconstruction Phase and Ongoing During Construction

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
and implemented during project construction to provide for adequate protection and replacement of "protected trees," as defined by the City's Municipal Code. The Program shall include the following provisions: ▪ Adequate measures shall be defined to protect all trees to be preserved. These measures should include the establishment of a tree protection zone (TPZ) around each tree to be preserved, in which no disturbance is permitted. For design purposes, the TPZ shall be located at the dripline of the tree or 10 feet, whichever is greater. If necessary, the TPZ for construction-tolerant species (i.e., coast live oaks) may be reduced to 7 feet. ▪ Temporary construction fencing shall be installed at the perimeter of TPZs prior to demolition, grubbing, or grading. Fences shall be 6-foot chain link or equivalent, as approved by the City of Cupertino. Fences shall remain until all construction is completed. Fences shall not be relocated or removed without permission from the consulting arborist. ▪ No grading, excavation, or storage of materials shall be permitted within TPZs. Construction trailers, traffic, and storage areas shall remain outside fenced areas at all times. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within he TPZ. ▪ Underground services including utilities, sub-drains, water or sewer shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury. Irrigation systems must be designed so that no trenching will occur within the TPZ. ▪ Construction activities associated with structures and underground features to be removed within the TPZ shall use the smallest equipment and operate from outside the TPZ. The consulting arborist shall be on-site during all operations within the TPZ to monitor demolition activity. ▪ All grading, improvement plans, and construction plans shall clearly indicate trees proposed to be removed, altered, or					

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
otherwise affected by development construction. The tree information on grading and development plans should indicate the number, size, species, assigned tree number, and location of the dripline of all trees that are to be retained/preserved. All plans shall also include tree preservation guidelines prepared by the consulting arborist. ▪ The demolition contractor shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. Prior to beginning work, the contractor(s) working in the vicinity of trees to be preserved shall be required to meet with the consulting arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures. ▪ All contractors shall conduct operations in a manner that will prevent damage to trees to be preserved. Any grading, construction, demolition or other work that is expected to encounter tree roots shall be monitored by the consulting arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied. ▪ Any plan changes affecting trees shall be reviewed by the consulting arborist with regard to tree impacts. These include, but are not limited to, site improvement plans, utility and drainage plans, grading plans, landscape and irrigation plans, and demolition plans. ▪ Trees to be preserved may require pruning to provide construction clearance. All pruning shall be completed by a State of California Licensed Tree Contractor (C61/D49). All pruning shall be done by Certified Arborist or Certified Tree Worker in accordance with the 2002 Best Management Practices for Pruning published by the International Society of Arboriculture, and adhere to the most recent editions of the American National Standard for Tree Care Operations (Section Z133.1) and Pruning (Section A300). ▪ Any root pruning required for construction purposes shall receive					

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
the prior approval of and be supervised by the consulting arborist. ▪ Any demolition or excavation, such as grading, pad preparation, excavation, and trenching, within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the consulting arborist. Any root pruning required for construction purposes shall receive prior approval of, and by supervised by, the consulting arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw. ▪ Tree(s) to be removed that have branches extending into the canopy of tree(s) to remain must be removed by a qualified arborist and not by construction contractors. The qualified arborist shall remove the tree in a manner that causes no damage to the tree(s) and understory to remain. Tree stumps shall be ground 12 inches below ground surface. ▪ All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Game Code Sections 3503 through 3513 to not disturb nesting birds. To the extent feasible, tree pruning, and removal shall be scheduled outside of the breeding season. Breeding bird surveys shall be conducted prior to tree work. Qualified biologists shall be involved in establishing work buffers for active nests. (see Mitigation Measure BIO-1) ▪ The vertical and horizontal locations of all the trees identified for preservation shall be established and plotted on all plans. These plans shall be forwards to the consulting arborist for review and comment. ▪ Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement to protect the soil surrounding the tree roots. ▪ Any liming within 50 feet of any tree shall be prohibited, as lime is toxic to tree roots. Any herbicides placed under paving materials shall be safe for use under trees and labeled for that use. ▪ Brush from pruning and trees removal operations shall be chipped and spread beneath the trees within the TPZ. Mulch shall					

MITIGATION MONITORING AND REPORTING PROGRAM

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
be between 2 inches and 4 inches in depth and kept at a minimum of 3 feet from the base of the trees. ▪ All recommendations for tree preservation made by the applicant's consulting arborist shall be followed.					
Mitigation Measure BIO-3: Implement Mitigation Measures BIO-1 and BIO-2.	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	Qualifying Biologist/City of Cupertino Public Works Department	Preconstruction Survey/ Plan Review and Approval	Once for Survey; Ongoing if nesting birds identified and until they have left the nest/ Once during the preconstruction phase and ongoing during construction
CULTURAL RESOURCES					
Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities: ▪ All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out. ▪ The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows: ▪ If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5. ▪ If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource	Project Applicant/ Construction Contractor	During Construction	Consulting Archeologist and City of Cupertino Public Works Department	Plan Review and Approval	As needed if resources are unearthed

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented. ▪ All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.					
Mitigation Measure CULT-3: Implement Mitigation Measure CULT-1.	Project Applicant/ Construction Contractor	During Construction	Consulting Archeologist and City of Cupertino Public Works Department	Plan Review and Approval	As needed if resources are unearthed
GEOLOGY AND SOILS					
Mitigation Measure GEO-1: The construction contractor shall incorporate the following in all grading, demolition, and construction plans: ▪ In the event that fossils or fossil-bearing deposits are discovered during grading, demolition, or building, excavations within 50 feet of the find shall be temporarily halted or diverted. ▪ The contractor shall notify the City of Cupertino Building Department and a City-approved qualified paleontologist to examine the discovery. ▪ The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. ▪ The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. ▪ If the project applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating	Project Applicant/ Construction Contractor	During Construction	Consulting Paleontologist and City of Cupertino Public Works Department	Plan Review and Approval	As needed if resources are unearthed

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TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
the effect of the proposed project based on the qualities that make the resource important. The excavation plan shall be submitted to the City for review and approval prior to implementation.					
Noise					
Mitigation Measure NOISE-1: Prior to Grading Permit issuance or the start of demolition activities, the project applicant shall demonstrate, to the satisfaction of the City of Cupertino Public Works Director and/or Community Development Director, that the proposed project complies with the following: ▪ Pursuant to Cupertino Municipal Code (CMC) Section 10.48.053 the construction activities shall be limited to daytime hours as defined in CMC Section 10.48.010 (i.e., daytime hours are from 7:00 a.m. to 8:00 p.m. on weekdays). ▪ At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site shall be notified of the planned construction activities. The notification shall include a brief description of the proposed project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. ▪ At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City. ▪ During the entire active construction period, equipment and trucks used for project construction will utilize the best available	Project Applicant/ Construction Contractor	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Public Works Department	Plan Review and Approval/Site Inspections	Once for Plan Review/ During Scheduled Constructions Site Inspections

TABLE 6-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Party Responsible for Implementation	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency
noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible. ▪ During the entire active construction period, stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible. ▪ Haul routes shall be selected to avoid the greatest amount of sensitive use areas. ▪ Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes. ▪ During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.					
Utilities and Service Systems					
Mitigation Measure UTIL-1: No building permits shall be issued by the City for the proposed Westport Mixed-Use Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods: 1. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or	Project Applicant	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities	City of Cupertino Sanitary District	Plan Review and Approval	Prior to Issuance of Building Permits Authorizing Grading or Other Construction Activities

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2. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD. The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc., dated December 6, 2019, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis. If the prior agreement between CSD and the City of Santa Clara that currently limits the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system were to be updated to increase the permitted peak wet weather flow sufficiently to accommodate, this would also change the impacts of the project to less than significant. If this were to occur prior to the City's approval of building permits, then Mitigation Measure UTIL-1 would no longer be required to be implemented.					

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