

## Introduction

This chapter provides master responses to comments that were raised repeatedly. Responses are thus presented in a single location and in a comprehensive manner that clarifies and elaborates on the analysis in the Draft EIR. The master responses herein are as follows.

- Master Response 1: Jobs/Housing Balance
- Master Response 2: Transportation Demand Management
- Master Response 3: Multimodal Improvement Deficiency Plan
- Master Response 4: Burrowing Owls
- Master Response 5: Alternatives

## Master Response 1: Jobs/Housing Balance

### General Plan Consistency

Certain commenters have raised the question of whether the City may deem the Project to be consistent with the General Plan overall (a prerequisite to Project approval) despite the fact that the Project's inconsistency with the City's General Plan policies regarding jobs/housing balance constitutes a significant impact under CEQA. As demonstrated below, the Project may indeed be deemed to be consistent with the General Plan overall for the purposes of Project approval, even if it is deemed to be inconsistent with one or more specific General Plan policies for the purposes of evaluation under CEQA.

The ultimate finding of General Plan consistency for the purpose of project approval does not require that a project be entirely consistent with each individual General Plan policy. Courts have made clear that "policies in a general plan reflect a range of competing interests, [and] the [city] must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes."<sup>1</sup> A proposed project, therefore, can have an overarching consistency with a general plan even though the project may not promote every single applicable goal and policy within that general plan. In the present case, Table 3.1-7 of the Draft EIR identifies over 150 General Plan goals and policies that are (1) applicable to the Project and (2) adopted for the purpose of avoiding or mitigating an environmental effect. This table also describes environmental effects and potential incompatibilities. Although the table shows a few isolated inconsistencies with identified General Plan goals and policies, the Project is shown to be consistent with the majority of the applicable General Plan goals and policies. In addition, the General Plan contains many other goals and policies that were not reflected in the Draft EIR, all of which come into play in the ultimate determination of whether the Project is consistent with the General Plan when viewed as a whole. In particular, the City Council could find the Project to be consistent with all seven of the "Major Strategies" that the General Plan

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<sup>1</sup> *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.

identifies as the “foundation for civic priorities and a framework for decisions that shape the future growth and development of the City of Santa Clara.”<sup>2</sup> The seven Major Strategies are as follows:

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

In addition, the Project may be found to be consistent with several other specific goals and policies that are set forth in the General Plan but not included in Table 3.1-7 of the Draft EIR. Some of these goals and policies include the following:

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

The City Council therefore could conclude that, on balance, the Project furthers the General Plan's purposes and is consistent with the General Plan.

It should be noted that the nature of the jobs/housing policies, and the current status of jobs/housing balance efforts within the City, are such that the individual Project's conflict with those policies does not constitute a fundamental inconsistency with the General Plan. It cannot be expected that any single project would maintain the overall jobs/housing balance for the entire City. Thus, focusing on the manner in which the Project, in isolation, would affect the jobs/housing balance may provide a short-

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<sup>2</sup> General Plan, page 4-1.

sighted and incomplete picture as to whether the General Plan’s goals and policies with respect to this issue are being advanced. Instead, the jobs/housing balance issue is a broader issue that may be examined more properly in the context of overall development within the City. The City is committed to providing housing for its workers. City staff have identified nine separate projects that are at the “pending” or “conceptual” stage that would likely propose more housing units than contemplated under the General Plan as follows:

<b>Address</b>	<b># Units Contemplated Under General Plan</b>	<b># Units Currently Proposed/Anticipated</b>	<b>Surplus Units (Over General Plan Expectation)</b>
575 Benton St.	205	385	180
2550 El Camino Real	86	315	229
2780 El Camino Real	144	158	14
3201 Scott Blvd.	0	1,800	1,800
2236 El Camino Real	178	238	60
3501 El Camino Real	530	700	170
1375 El Camino Real	143	266	123
Lawrence Station Area	0	3,000	3,000
Tasman East	0	4,000	4,000
<b>Total</b>	<b>1,286</b>	<b>10,862</b>	<b>9,576</b>

Although many of these projects are subject to their own CEQA review and to discretionary approvals by the City and other agencies, if all of the proposed projects were ultimately approved and constructed, they would provide an additional 9,576 units within the City that were not contemplated by the General Plan. Just as none of these projects would be viewed in isolation when analyzing the City’s jobs/housing balance, the current Project should similarly not be viewed in isolation, as development of the Project, in concert with one or more of these additional projects identified above, could result in a substantially lower jobs/housing ratio within the City overall than currently pertains.

Regarding comments suggesting that a higher number of residential units be developed on the Project site, it should be noted that it is likely the Project, when constructed, would provide substantially more residential units than assumed in the jobs/housing balance analysis in the Draft EIR. Specifically, the Draft EIR evaluates Project Variant B (with 200 units) when analyzing jobs/housing ratios in order to be conservative in its determinations. However, if Project Variant A (with 1,360 units) were approved, the jobs/housing ratio would be lower than that calculated for the purposes of the analysis in the Draft EIR (i.e., 2.97 instead of 3.03 at full build-out of the Project in 2035). In addition, the Draft EIR includes an “Increased Housing” Project alternative that includes 1,680 housing units (i.e., 1,480 units more than the Project variant analyzed in the Draft EIR’s jobs/housing discussion). If the “Increased Housing” alternative were approved, the jobs/housing ratio would be still lower (i.e., 2.96) than if Project Variant B were implemented. Thus, the jobs/housing scenario analyzed in the Draft EIR represents a “worst case” scenario that likely will not be reached.

## Mitigation Measure LU-1.1

Regarding the concerns about the validity of Mitigation Measure LU-1.1, the Draft EIR acknowledges on page 3.1-15, *Land Use and Planning*, that this mitigation measure relies on an iterative General Plan process ultimately requiring approval from the City Council and that it cannot be stated with certainty whether and when the mitigation measure can be implemented. The Draft EIR goes on to acknowledge

that adding new housing to the City's General Plan would only potentially reduce some of the impacts within the more immediate Project vicinity, but would not fully mitigate the Project's effect on induced growth in the region and beyond. Ultimately, because of this uncertainty, the land use conflicts associated with the jobs/housing balance are considered significant and unavoidable. The suggestion that Santa Clara provide assistance to other jurisdictions is not necessary for two reasons: 1) as discussed on page 4-4 of Chapter 4, *Other CEQA Considerations*, CEQA does not require mitigation for the effects of a particular project on growth in other areas, and 2) the specific effects on other jurisdictions are too speculative in nature to tie to a specific dollar amount.

In response to comments on Mitigation Measure LU-1.1, the text has been revised to include a performance standard. The text on page 3.1-15 has been revised as follows:

LU-1.1: Increase Residential Density in the City's General Plan. During the next General Plan Update cycle, the City shall explore permitting higher residential densities in the City as well as allowing residential land uses in existing non-residential areas. Where feasible, the City shall target strategic areas of the City, specifically those closest to major employment and transit hubs, for new residential land uses and/or increased residential density. In order to maintain projected 2035 jobs/housing ratios, the City shall explore permitting up to 11,000 units.

This mitigation measure is adequate (with the proposed text changes) because it provides a standard by which its effectiveness can be gauged and identifies the method that would be used to mitigate the jobs/housing imbalance. Thus, the mitigation is not improperly deferred and would be effective if implemented.

## Jobs/Housing Ratio Calculations

The jobs/housing ratio calculations presented in the Draft EIR assume that, like Parcels 1 through 4, development on Parcel 5 was not considered in the General Plan. In fact, Parcel 5 is currently designated as Regional Commercial in the current General Plan and office uses are permitted under existing conditions. Thus, the jobs that could be generated from development on Parcel 5 are already considered in the existing jobs/housing ratio for the City. The analysis in the Draft EIR is, thus, conservative in that it counts the *additional* Project-generated jobs on Parcel 5 when calculating the future jobs/housing ratio. As a result, the Project would not actually exacerbate the ratio as much as the Draft EIR indicates in the analysis.

The following edits have been made to the text on page 3.1-3 in Section 3.1, *Land Use and Planning*.

**General Plan—Development Potential.** The General Plan includes job and housing growth projections as outlined in Table 3.1-1. The jobs/housing ratio in 2008 (existing conditions at the time the General Plan was prepared) was 2.42, meaning there were 2.42 jobs in the City for every residential unit. As shown below, due to employment growth outpacing that of residential development, the jobs/housing ratio is anticipated to worsen between 2008 and 2035 (full build-out of the General Plan). By 2035, the General Plan projects that there will be one residential unit in the City for every 2.567 jobs.

**Table 3.1-1. Comparison of Number of Jobs to Housing in the City**

	2008	2015	2035
Jobs	106,680	123,555	<del>154,830</del> <u>154,300</u>
Housing	44,166	<del>44,166</del> <u>47,123</u>	<del>60,350</del> <u>60,345</u>
Jobs/Housing Ratio	2.42	<del>2.80</del> <u>2.62</u>	<del>2.57</del> <u>2.56</u>

*Source:* City of Santa Clara. 2010. *City of Santa Clara 2010–2035 General Plan*. Adopted November 16, 2010. Last amended December 9, 2014. Available: <http://santaclaraca.gov/index.aspx?page=1263>. Accessed: June 10, 2015.

In response to the comments requesting that the number of residential units needed to maintain the projected 2035 jobs/housing ratio be built, the following text has been added to page 3.1-11 in Section 3.1, *Land Use and Planning*.

### Phases 1, 2, and 3

**General Plan.** As shown in Table 3.1-3, employment growth associated with implementation of Phases 1, 2, and 3 would increase the jobs/housing ratio from the levels projected in the General Plan (from ~~2.6280~~ to ~~2.833-02~~ in 2015, from ~~2.567~~ to ~~2.723~~ in 2035, compared with a ratio of 2.42 in 2008). This represents an increase in the jobs/housing ratio of 13 percent between 2008 (without Project) and 2035 and an increase of 6 percent over 2035 projections without the Project. In order to maintain the projected jobs/housing ratio under the 2035 with Project condition (for Phases 1, 2, and 3), an additional 3,700 units beyond those contemplated under the General Plan would need to be constructed within the City.

**Table 3.1-3. Jobs and Housing in the City of through 2035 with Phases 1, 2, and 3**

	2008	2015 <sup>a</sup>	2035
Jobs	106,680	133,910	<del>165,185</del> <u>164,655</u>
Housing	<del>44,120</del> <u>44,166</u>	<del>44,366</del> <u>47,323</u>	<del>60,550</del> <u>60,545</u>
Jobs/Housing Ratio with Project	NA	<del>3.02</del> <u>2.83</u>	<del>2.73</del> <u>2.72</u>
Jobs/Housing Ratio without Project	2.42	<del>2.80</del> <u>2.62</u>	<del>2.57</del> <u>2.56</u>

*Source:* City of Santa Clara. 2010. *City of Santa Clara 2010–2035 General Plan*. Adopted November 16, 2010. Last amended December 9, 2014. Available: <http://santaclaraca.gov/index.aspx?page=1263>. Accessed: June 10, 2015. ICF 2015.

<sup>a</sup> Phases 1, 2, and 3 would not be complete until 2021; however, since 2015 is the closest year for which data is available, the growth associated with Phases 1, 2, and 3 is included.

Footnote 14 on page 3.1-11 has been revised as follows:

<sup>14</sup> The City has identified several areas that are currently not designated for residential uses that could be developed for residential uses in the future, in which event approximately ~~9,5766,640~~ additional residential units could be developed that were not programmed in the General Plan or considered in the General Plan EIR. If the City were to revise the General Plan to facilitate development of these units, the jobs/housing balance with Phases 1, 2, and 3 would improve to ~~2.833-02~~ 2.3563 in 2015 (compared to ~~2.833-02~~ without the additional units) and ~~2.723~~ 2.3546 in 2035 (compared to ~~2.723~~ without the additional units).

Because these additional units are not envisioned in the current General Plan, they are not part of the impact analysis in this EIR.

In response to the comments requesting that the number of residential units needed to maintain the projected 2035 jobs/housing ratio be built, the following text has been added to page 3.1-12 in Section 3.1, *Land Use and Planning*.

### Full Build-out

**General Plan.** Table 3.1-5 illustrates the jobs/housing ratio upon full build-out of the Project, which is anticipated to result in a total of 28,720 new jobs. Upon build-out of the Project, the jobs/housing ratio would increase from 2.567 (without Project) to 3.023 (with Project) in 2035, compared with 2.42 in 2008. This represents an increase in the jobs/housing ratio of 256 percent between 2008 (without Project) and 2035 (with Project). In order to maintain the projected jobs/housing ratio under the 2035 with Project condition (for full build-out), an additional 11,000 units beyond those contemplated under the General Plan would need to be constructed within the City.

**Table 3.1-5. Jobs and Housing in the City through 2035 with Full Build-out**

	2008	2015 <sup>a</sup>	2035
Jobs	106,680	133,910	<del>183,550</del> <u>183,020</u>
Housing	<del>44,120</del> <u>44,166</u>	<del>44,366</del> <u>47,323</u>	<del>60,550</del> <u>60,545</u>
Jobs/Housing Ratio with Project	NA	<del>3.02</del> <u>2.83</u>	<del>3.03</del> <u>3.02</u>
Jobs/Housing Ratio without Project	2.42	<del>2.80</del> <u>2.62</u>	<del>2.57</del> <u>2.56</u>

Source: City of Santa Clara. 2010. *City of Santa Clara 2010–2035 General Plan*. Adopted November 16, 2010. Last amended December 9, 2014. Available:

<http://santaclaraca.gov/index.aspx?page=1263>. Accessed: June 10, 2015. ICF 2015.

<sup>a</sup> 2015 numbers include Phases 1, 2, and 3, as shown in Table 3.1-3.

Footnote 15 on page 3.1-13 has been revised as follows:

<sup>15</sup> As discussed above, the additional ~~9,576,640~~ housing units not currently programmed in the General Plan would maintain, and slightly improve, the jobs/housing balance taking into account only Project Phases 1, 2, and 3 (through 2021). If these additional units were realized, cumulative full build-out including the Project would have a better jobs/housing balance than with the current General Plan and with current ABAG projections, ~~but the jobs/housing balance would be slightly worse than 2008 conditions.~~ The conclusions in this analysis do not assume that these unplanned units would be constructed.

One commenter suggested that the housing demand resulting from the Project would total approximately 25,000 residential units. Section 3.12, *Population and Housing*, presents an analysis of proposed housing demand resulting from the Project at full build-out based on existing trends and data. Page 3.12-9 specifies that the County's workers per household ratio is 1.39. Using this ratio, the Project would result in a total demand of approximately 17,813 housing units to support the maximum projected employment from the Project.

## Growth Inducement

Regarding suggestions to include impacts resulting from the jobs/housing imbalance, refer to page 4-4 of Chapter 4, *Other CEQA Considerations*. As discussed therein, although CEQA requires disclosure of growth inducement effects, an EIR is not required to anticipate and mitigate the effects of a particular project on growth in other areas. Growth inducement has the potential to result in an adverse impact if the growth is not consistent with or accommodated by the land use plans and growth management plans and policies for the area affected. Because the general plan of a community defines the location, type, and intensity of growth, it is the primary means of regulating development and growth in that community. Nevertheless, the EIR discloses on page 4-6 that, because of the lack of adequate housing throughout the Bay Area, residential demand could occur as far away as Monterey or San Joaquin counties. Regardless of where it is located, future housing development will result in environmental impacts. Secondary environmental impacts in the potentially affected areas would depend on the location of the new development as well as the intensity of the development. CEQA does not require that a detailed analysis be conducted for these secondary impacts, but, due to the magnitude of the housing demand created by the Project, the Draft EIR broadly considers the types of cumulative impacts that could result from the combination of the Project with other foreseeable projects in the vicinity or region. Table 4-1 on page 4-7 of the Draft EIR identifies the types of impacts that could result from induced residential development in urban, suburban, and rural residential development

These cumulative impacts are likely to occur even without the Project. The “urban decay” analysis in Chapter 4, *Other CEQA Considerations*, on pages 4-8 through 4-17 of the Draft EIR concludes that cumulative demand for retail space, office space, and entertainment venues is sufficiently strong in the region that it can absorb the increased supply generated by the Project without resulting in significant increased vacancies of existing retail, office, and entertainment complexes. This analysis supports a conclusion that, if the Project were not developed, similar amounts of job-generating retail, office, and entertainment uses would be developed elsewhere in the region to meet market demand.

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

# Master Response 2: Transportation Demand Management

## Overview

Mitigation Measure TRA-1.1 requires the Project Developer to prepare and implement a Transportation Demand Management (TDM) Plan to reduce vehicle trips generated by the Project and therefore minimize roadway system impacts (i.e., impacts on intersections and freeway segments) and greenhouse gas emissions. The Draft EIR text includes the vehicle trip reduction targets and associated vehicle trip thresholds, potential TDM measures and strategies, an overview of the monitoring and reporting process, and remedial actions. The TDM measures, strategies, and monitoring/reporting processes would be finalized in the TDM Plan. The Plan would be approved by the City of Santa Clara Director of Planning and Inspection.

The Draft EIR comments on this issue can be summarized into the following topics:

- Trip generation assumptions.
- The TDM reduction targets: percentages, trip targets for each phase, trip targets for each gateway, reduction targets for retail employees, role of Electric Vehicles (EVs), mode split targets, and prioritization of transit, bicyclists, and pedestrians over motor vehicles.
- Additional TDM measures and strategies: parking management (and residential parking permit programs [RPPPs]), paid parking, free or discounted transit passes (on a continual basis), and congestion-based pricing to increase transit use.
- Requests for more information on the Transportation Management Agency (TMA).
- The monitoring party.
- Exemptions and financial penalties for not meeting reduction targets.

Responses to each of these topics are discussed in the following sections.

## Trip Generation Assumptions

The vehicle trip generation estimates for the office uses were based on rates developed from surveys of Silicon Valley high-tech office developments (companies like Intuit, Apple, Facebook, and VM Ware) in suburban settings, not near a rail station, with an average employee density of 3.7 employees per 1,000 square feet. These office developments have higher employee densities than national averages, have longer peak AM and PM peak periods due to local traffic congestion and local work schedules, and include TDM measures resulting in lower single-occupant vehicle (SOV) mode shares than national averages. As a result of all of these factors, the peak hour trip rates are lower than the Institute of Transportation Engineers (national) rates by 5 percent in the AM peak hour and 7 to 8 percent in the PM peak hour. An additional 5 percent reduction for transit use was applied to all of the uses at Parcel 2 and portions of Parcels 4 and 5 (those in Phases 1, 2, and 3) because these parcels are within walking distance of the Great America LRT and ACE/Amtrak stations and other bus services. In addition, because City Place is a mixed-use development, a portion of the trips would occur between complementary land uses and either remain within the site or access the site by non-automobile modes (approximately 15 percent and 24 percent of the trips generated by Parcels 4 and 5 in the in the AM and PM peak hours,

respectively). These reductions were estimated using MXD<sup>3</sup> and are based on the latest research in the trip making characteristics of mixed-use development. Therefore, the vehicle trip generation estimates used in the Draft EIR already include reductions compared to the more typical suburban, single-use developments commonly used as the basis for cited trip reduction goals and targets.

## TDM Reduction Targets

Several of the comments stated that the trip reduction targets should be higher and referred to goals in the North Bayshore Precise Plan of Mountain View as an example. In response, both the City and the Developer asked their expert transportation consultants to re-review the EIR assumptions, proposed mitigation measures, and local precedents to determine if an increase in trip reduction targets would be feasible. This review resulted in the conclusion that an increase in the trip reduction targets in Mitigation Measure TRA-1.1 would not be feasible because the current trip reduction targets are aggressive and reasonably achievable and would result in trip generation rates that are below those for typical development projects. For the reasons outlined below, increasing the trip reduction targets would not be expected to be successful and therefore is not feasible.

**Percentages.** As discussed above, the vehicle trip estimates used in the Draft EIR include reductions from ITE standards in assumed trips compared to standard office development projects. The additional trip reduction targets are 10 percent peak hour and 4 percent daily for office trips and 4 percent peak hour and 2 percent daily for residential trips. These reductions are in addition to the TDM reductions inherent in Silicon Valley office trip generation rates, the VTA-compliant transit trip reduction, and reductions due to internalized trips for the mixed-use portions of the Project. These goals were selected as they would cause a measureable improvement in roadway operations *and* would be achievable.

Several commenters stated that the trip reduction goals of the North Bayshore Precise Plan in Mountain View should be adopted for City Place Santa Clara. These goals include a morning peak period inbound vehicle trip cap and a 45 percent SOV/10 percent HOV mode share target with an average employee density of 4 employees per 1,000 square feet for new development. To achieve this goal, office tenants of all sizes in North Bayshore need to implement very aggressive TDM Plans and achieve reductions *not yet achieved* on prior office projects in the area. In addition, the City Place targets apply to daily, morning, and evening peak hours, while the North Bayshore target applies only to the inbound morning peak period.

It is also important to note key differences between the Project and North Bayshore. North Bayshore is dominated by a large technology campus (Google) and the headquarters of three high technology firms with an employee demographic particularly well-suited to respond to TDM measures. The office tenants at City Place are expected to be a much more diverse—a mix of multi-tenant professional offices and some large high technology campuses. It is easier to implement TDM programs for a single large technology company than it is for multiple professional offices. If North Bayshore is ultimately able to

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<sup>3</sup> Because Parcels 4 and 5 contain a mix of land uses, it is appropriate to apply the Fehr & Peers' MXD+ tool, which is a procedure to estimate the amount of traffic generated by mixed-use developments (MXDs) created as part of a US Environmental Protection Agency project that incorporates research from the Federal Highway Administration. MXD addresses concerns with typical trip generation rates, such as those published in the ITE *Trip Generation Manual and Handbook*, which are based on single-use sites and have been shown to overestimate peak traffic generation for (MXDs) by an average of 35 percent. Unlike the ITE method, MXD takes into account development density, scale, design, accessibility, transit proximity, demographics, and mix of uses, all of which affect site traffic generation.

achieve its higher targets for the morning peak period, it will likely be a result of factors that are not present at the Project.

**Trip Targets for Each Phase.** The Project will be built-out over time in response to market conditions; there is no set phasing beyond the initial development of the City Center, comprising Phases 1, 2, and 3; and the actual land uses and their sizes for those phases may change. Therefore, trip targets cannot reasonably be preset for each phase. However, new trip thresholds, incorporating the reduction targets, would be calculated based on the actual development land use mix and sizes as part of the annual monitoring process as described on page 3.3-86 of the Draft EIR.

**Trip Targets for Each Gateway.** Trip targets on a gateway basis are most successful when there are limited routes into a project site. There are numerous gateways into the area surrounding the Project site, and Project traffic can use multiple routes to travel to and from destinations within it. Trip targets could be set for each gateway based on the gateway's traffic capacity. However, with the multiple routes that traffic could use, it would be very difficult to determine when gateway thresholds are violated without an extensive monitoring process. In addition, traffic generated by the retail uses will vary based on the season and this would make selecting trip thresholds difficult and unwieldy.

**Reduction Targets for Retail Employees.** The TDM Plan requires that the retail uses incorporate best management practices (BMPs) to reduce vehicle trips generated by retail employees. A trip reduction target for retail employees was not set for practical reasons: 1) traffic impacts are identified during the AM and PM peak hours and retail employees often travel outside of these hours, and 2) retail employee parking is not typically in a separate area, making monitoring difficult.

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

**Mode Split Targets.** Vehicle trip reductions can be achieved by increasing the percentage of trips made by non-SOVs (e.g., transit, walking, bicycling, and ridesharing). This can be accomplished by setting mode split targets in addition to or in lieu of vehicle trip targets. They can be set by mode or grouped together into SOV and non-SOV mode shares. If they are done in lieu of vehicle trip targets, there is no guarantee that the required vehicle trip reduction would be achieved. This can occur if the employee density is higher than that anticipated in the Draft EIR. Furthermore, it is difficult to monitor mode split targets as they rely on self-reporting surveys (which can provide incomplete or skewed data) or very extensive travel surveys and data collection. The TDM Plan mitigation measure does include mode share employee surveys to help inform the employers and TMA of the effectiveness of various mode split and TDM measures.

**Prioritization of Transit, Bicyclists, and Pedestrians over Motor Vehicles.** The Project includes accommodations for all modes, and the TDM Plan will encourage greater use of transit, ridesharing, biking, and walking modes. Motor vehicles constitute the primary travel mode in the City of Santa Clara, Santa Clara County, and the greater Bay Area and are expected to continue to be the primary travel mode during the time frame of the Project. Therefore, the Project site plan contains site access roadways, internal roadways, and parking facilities with motor vehicles as the primary mode. However, modifications can be made as mode shares shift over time.

## Additional TDM Measures and Strategies

The Draft EIR contains a list of potential TDM measures and strategies that could be included in the Project's TDM Plan. Several of the identified additional measures and strategies raised in comment letters are now proposed to be included in the TDM measure, as discussed below.

**Parking Management.** Parking management incorporates a variety of measures, including paid parking and unbundling parking, to restrict the parking supply either physically, operationally, or financially as a means to reduce vehicle trips. It can be paired with a RPPP to ensure that Project patrons seeking parking do not park in nearby neighborhoods. Parking management strategies will be added to the list of potential TDM measures in the environmental document. The text in the Draft EIR has been updated on pages 3.3-88 to 3.3-89 of the Draft EIR as follows:

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

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

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

- Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc.
- Multi-passenger demand responsive ride services for local employees that are competitive with drive alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services
- Yet-to-be developed new services, programs, strategies and emerging technologies
- Congestion cordon (boundary) pricing scheme<sup>13</sup>
- Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.<sup>14</sup>

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

- Bicycle infrastructure improvements
- Bicycle parking room or lockers
- Bicycle riders guide
- On-site bicycle repair facilities
- Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses
- Rideshare matching services
- On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations
- Bus stops located near buildings
- Pedestrian-oriented site design
- Congestion cordon (boundary) pricing scheme<sup>15</sup>
- Parking management strategies such as paid parking and unbundled parking to restrict the parking supply.<sup>16</sup>

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

- Bicycle infrastructure improvements
- Bicycle rider encouragement program

- Bicycle parking, showers and lockers
- Bicycle riders guide
- On-site bicycle repair facilities
- Pre-tax commuter incentives
- Expanded carpool matching
- Rideshare matching services
- On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations
- Bus stop locations near building entrances
- Pedestrian-oriented site design
- Congestion cordon (boundary) pricing scheme<sup>17</sup>

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

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

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

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

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

**Free or Discounted Transit Passes.** The list of potential TDM measures in the Draft EIR includes subsidized transit passes, which would be the same as free or discounted transit passes. One of the commenters stated that they should be provided on a continual basis. Although not stated specifically in the list, subsidized transit passes is one of the most effective TDM measures and a benefit that many Silicon Valley employees are offered. Therefore, it is likely that they would be provided on a continual basis if selected. Furthermore, the annual monitoring of the effectiveness of the TDM, with adjustments to the TDM Plan if it is not meeting targets, ensures that effective measures are very likely to be maintained in the long run.

**Congestion-Based Pricing to Increase Transit Use.** Congestion pricing could be an effective way to obtain transit funding and discourage vehicle trips. A congestion pricing scheme would set a cordon (boundary) around the Project site and charge a toll to all entering vehicles. The pricing could be fixed or dynamic to respond to real-time congestion levels. This strategy is most effective with limited access points and a high quality transit system to accommodate travel by a non-automobile mode.

## Transportation Management Association

The Project contains office space that will accommodate multiple employers. Many of the TDM measures can be applied, and can be most effective, across company boundaries. Therefore, the TDM Plan includes a TMA to oversee those joint measures. The details of the TMA will be described in the TDM Plan. It can use the TMAs in the Cities of Mountain View and San Mateo as models. Individual employers would be TMA members and would still be key TDM measure providers for the Project to meet the TDM vehicle trip reduction targets.

## The Monitoring Party

It has been recommended that the monitoring party be specified as the City or a third party. The monitoring process and monitoring party will be detailed in the TDM Plan. The City of Santa Clara Director of Planning and Inspection shall approve all aspects of the Plan, including the monitoring party.

## Exemptions and Financial Penalties

The City of Santa Clara has decided that the TDM Plan and TDM reduction targets will be accomplished through collaboration among the Project Developer, future employers, and the TMA without the use of financial penalties. There is no reason to believe that financial penalties against the Project Developer would in any way cause drivers to alter their modes of transportation, so there is no link between the goals of the TDM Plan and financial penalties. The annual monitoring and continual efforts to adjust the TDM Plan as needed to accomplish the goals of the TDM Plan are expected to bear fruit far more than financial penalties. The City of Santa Clara Director of Planning and Inspection would have authority to approve the TDM Plan in circumstances when the monitoring process shows that the trip reduction targets are not being met. The Director of Planning and Inspection would do so based upon his or her reasonable and professional judgment, and this would be allowable as the trip reductions are stated as *goals* rather than as *requirements*.

## Master Response 3: Multimodal Improvement Deficiency Plan

### Background

The Santa Clara Valley Transportation Authority (VTA) oversees the Santa Clara County Congestion Management Program (CMP). Cities are required to prepare a deficiency plan, now commonly referred to as a Multimodal Improvement Plan (MIP), if they make a land use decision that is projected to cause a CMP facility to operate at an unacceptable level based on the CMP standards and there are no feasible mitigation measures to bring the CMP facility to an acceptable level. The purpose of a MIP is to improve system-wide traffic flow and air quality by identifying improvements to other modes in lieu of making physical traffic capacity enhancements. According to the VTA's Requirements for Deficiency Plans (2010), MIPs "allow local jurisdictions to adopt innovative and comprehensive transportation strategies for improving system wide LOS rather than adhering to strict traffic level of service standards that may contradict other community goals." Given the extent of the impacts on CMP facilities within and outside the City of Santa Clara, the VTA and adjacent jurisdictions are recommending an extensive MIP that would contain a list of off-setting transit, bicycle, and pedestrian improvements in addition to those included as part of the Project and in the Transportation Demand Management (TDM) Plan. The City of

Santa Clara would risk losing new gas sales tax revenues from Proposition 111 if the CMP facilities within its jurisdiction exceed the CMP LOS threshold and it does not have a timely-adopted MIP.

## Multimodal Improvement Plan Overview

The VTA requirements present the following three deficiency plan options:<sup>4</sup>

1. **Mini Deficiency Plan:** A mini deficiency plan is prepared to address a single CMP intersection or roadway facility, typically in conjunction with a Transportation Impact Analysis (TIA) Report for a single development project.
2. **Specific Area Deficiency Plan:** A specific area deficiency plan is prepared to address a CMP System roadway segment or intersection within a specific area such as a downtown area or special district.
3. **Areawide Deficiency Plan:** An areawide deficiency plan is prepared to address all the CMP System roadways or intersections included in an identified area such as an entire city or an area that covers multiple jurisdictions and/or cities.

Any type of deficiency plan/multimodal improvement plan would describe all possible off-setting transportation improvements and the process for monitoring and implementing them. The plan would demonstrate how the off-setting improvements are expected to improve the system-wide level of service and improve air quality.

Any type of MIP would include the following:

1. The cause of the deficiency.
2. A list of the improvements necessary for the deficient intersections and freeway segments to maintain LOS E operations, the estimated costs for those improvements, and an explanation of why they cannot be implemented.
3. A description of the deficiency plan action list – a list of feasible and applicable off-setting transportation improvements, programs, and actions (and cost estimates), how they will be implemented, and an explanation of how they would contribute to improving CMP LOS.
4. The monitoring process to ensure implementation of the action plan items.

The City of Santa Clara will work closely with the VTA to ensure MIP scope is consistent with CMP study area and facility type deficiency plan/MIP requirements.

## Relationship to TDM Plan

The Project Developer is required to prepare a TDM Plan as a mitigation measure identified in the EIR (Mitigation Measure TRA-1.1). The TDM Plan will be focused on on-site pedestrian, bicycle, and transit infrastructure and support facilities, Project-specific transit operational improvements (such as shuttle bus service between the Project site and the Santa Clara Caltrain station), as well as strategies that can be implemented by employers and residents to reduce vehicle trips.

In contrast, a MIP would include improvements to off-site pedestrian, bicycle, and transit infrastructure and support facilities.

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<sup>4</sup> Santa Clara Valley Transportation Authority Congestion Management Program, Deficiency Plan Requirements, September 2010.

## Response

The Project would have a significant impact on 24 CMP intersections. One additional intersection (int. 58) is not impacted, but requires improvements to accommodate the mitigation needed at an adjacent impacted CMP intersection (int. 57). Of these 24 intersections, 13 have identified measures to fully mitigate Project impacts, one intersection is located in the City of Sunnyvale and has no feasible mitigation, and 10 intersections have identified measures that only partially mitigate Project impacts (two of these intersections, 8 and 66, are the responsibility of the City of Santa Clara; intersections 21, 22, 24, 25, 71, 75 and 77 are under the jurisdiction of Santa Clara County; and intersection 34 is under the jurisdiction of the City of San José). Intersections 24, 25, and 34 are included in the North San José Deficiency Plan, so they do not need to be included in a separate MIP.

The Project would result in a considerable contribution to significant cumulative impacts on 30 CMP intersections. One additional intersection (int. 58) would not be impacted, but would require improvements to accommodate the mitigation needed at an adjacent impacted CMP intersection (int. 57). Of these 30 intersections, 16 have identified measures to fully mitigate cumulative impacts, one intersection is located in the City of Sunnyvale and has no feasible mitigation identified, and 13 intersections have identified measures that only partially mitigate impacts. Three of these intersections (8, 66, and 102) are the responsibility of the City of Santa Clara and the other 10 are outside the jurisdiction of the City of Santa Clara (22, 24, 25, 77, 121, and 124 are the responsibility of Santa Clara County and 29, 30, 31, and 34 are the responsibility of the City of San José). Intersections 24, 25, 29, 30, 31, and 34 are included in the North San José Deficiency Plan, so they do not need to be included in a separate MIP.

Additionally, the Project would have a significant impact on 206 mixed-flow freeway segments and 51 HOV freeway segments (total of 257 impact segments) in Santa Clara County. Some physical improvements are identified in *VTP 2040: The Long-Range Transportation Plan for Santa Clara County*; however, they will not improve operations to LOS E or better.

Therefore, if the Project is approved, a MIP would be needed to address two CMP intersections that have significant project impacts with either no feasible or only partial mitigation measures within the City of Santa Clara and three CMP intersections that have significant cumulative impacts with either no feasible or only partial mitigation measures (within the City of Santa Clara). The VTA is considering the level to which freeway impacts need to be addressed in MIPs. As the member agency, the City of Santa Clara is responsible for preparing the MIP. The funding for the MIP could be shared among City Place Santa Clara and other currently proposed development projects in the City that are found to have significant and unavoidable impacts on CMP facilities.

The MIP could include improvements such as enhanced rail and transit service and regional bicycle facilities. The City could use one of the following methods to determine the Project's fair share of those improvements:

- **Option 1 – Develop a Multimodal Impact Fee:** This first option involves creating an impact fee based on the cost of the improvements in the MIP. As in North San José, the fee could be tied to the number of vehicle trips generated by all of the development and future growth evaluated in the plan and presented on a per vehicle trip basis. The Project's fair share would be based on the number of vehicle trips generated by each phase of development as it came on line.

- **Option 2 – Construct Multimodal Improvements near the Project Site:** This option involves constructing a list of off-setting transit and active mode improvements near the Project site that would be deemed the Project’s responsibility. This option would need VTA approval.

The MIP has been added as a mitigation measure in the Draft EIR, and the timing of its preparation and approval will be described in the Mitigation Monitoring and Reporting Program (MMRP). The mitigation measure is described below and has been added before Impact TRA-2 on page 3.3-112 of the Draft EIR.

TRA-1.3 Prepare and Implement a Multimodal Improvement Plan. The Project Developer shall fund the preparation of (including CEQA review for) a Multimodal Improvement Plan (MIP) addressing at least the Congestion Management Program (CMP) intersections within the City of Santa Clara that are forecasted to operate at Level of Service F with the Project, either on a project level or cumulative basis. The City shall reimburse the Project Developer for any cost of preparation of the MIP that exceeds the Project Developer’s fair share of such cost. Such MIP shall be prepared in accordance with the guidelines and regulations of the Valley Transportation Authority (VTA) and shall be adopted by the City Council for submission to the VTA for consideration and approval no later than one year after approval of the Project. Once the MIP is adopted by the VTA, it shall be implemented in accordance with its terms and commensurate with the phasing of the development that its measures are intended to offset.

## Master Response 4: Burrowing Owls

Certain commenters have raised concerns regarding various issues related to burrowing owls, including the consistency of the Project with actions taken by the City Council in 2000 (the 2000 Directive), the methodology used in the Draft EIR to identify burrowing owl impacts and mitigation measures, and the interrelation of the Project and the strategies set forth in the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (SCV HCP). Each of these issues is addressed separately below.

### 2000 Directive

Certain commenters have alleged that the Project is inconsistent with a “policy” that was “adopted” by the City Council in 2000, which the commenters state requires that 24.0 acres of the Project site be designated as burrowing owl habitat. In fact, the City of Santa Clara did not definitively mandate in 2000 that 24.0 acres of the Project site be designated as burrowing owl habitat. Rather, the City Council directed the City Manager to “seek the development and maintenance of 44.5 acres of burrowing owl habitat *in some combination* on the following three sites: the closed Lafayette landfill adjacent to the PAL/BMX Track, two of the four slopes of the relocated golf holes and at the San José/Santa Clara Water Pollution Control Plant” (emphasis added). If the City Council had intended definitively to require the provision of this land, it would have expressly done so, most obviously by eliminating the term “seek” and by simply stating: “Develop and maintain 44.5 acres...” The fact that there is no *absolute requirement* implicit in the directive makes sense for a number of reasons:

- What the City was mandated to do and did was provide 58.5 acres of land as mitigation for loss of burrowing owl habitat related to the prior Bayshore North Redevelopment Plan project. Any further action to designate an additional 44.5 acres of land was purely voluntary. This was also confirmed on page 2 of the April 28, 2000, Final Report from the Council Appointed Burrowing Owl Habitat Committee, which stated: “These 44.5 acres are a *voluntary commitment by the City*,

*not a legal requirement*" (emphasis added). Refer to Appendix 3.1 of this Final EIR for additional information.

- The City was not in a definitive position to finalize the designation of habitat on any of the three identified sites; the first two sites were subject to additional discussions with stakeholders, and the City did (and does) not 100 percent control the San José/Santa Clara Water Pollution Control Plant (the WPCP).
- The City (which is the entity primarily responsible for interpreting its past directives and actions) has advised that the directive was not intended to be mandatory.<sup>5</sup>

However, even assuming that the 2000 Directive to "seek" development and maintenance of 44.5 acres of burrowing owl habitat was in fact mandatory, the Project does not conflict with that directive. As stated in the staff reports and minutes pertaining to the 2000 Directive, the 44.5 acres were contemplated to consist of *some combination* of three sites – not necessarily on all three sites or any particular one of the sites. In other words, the City Manager could still elect to seek the development and maintenance of all 44.5 acres on just the WPCP site.<sup>6</sup>

The WPCP site is subject to a Plant Master Plan (prepared in 2013) which, among other things, designated a 180-acre "burrowing owl area" on WPCP property as a "conservation feature"; however, a conservation easement was only placed upon *three acres* of that designated habitat, with the understanding that any further impacts from the other Master Plan components not yet studied at a project level may be mitigated *either* by payment of a "burrowing owl fee" *or* by contributing land to the HCP "Reserve System."<sup>7</sup> This means that 177 acres of the 180-acre "conservation feature" have explicitly been recognized as constituting an appropriate location for later conservation easements for the purpose of mitigating impacts on burrowing owl habitat. There is nothing to prevent that acreage from being used for conservation easements to mitigate impacts of off-site projects if, at the time in question, it has not already been subjected to one or more additional conservation easements to mitigate impacts of future WPCP development elements (or those of any other off-site project). The 44.5 acres of land contemplated in the 2000 Directive therefore could be yet designated within that area. In addition, there may well be other areas on the WPCP site that could provide suitable habitat for burrowing owls pursuant to further conservation actions.

It should be emphasized that while "up to" 255.4 acres of burrowing owl habitat within the WPCP site could be adversely impacted by future development elements within the Plant Master Plan, there is no certainty at this point regarding the actual scope of the impact (the amount of affected acreage could be

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<sup>5</sup> Telephone conversation between Ron Garratt, former Assistant City Manager, and Alexander Abbe, Assistant City Attorney, September 30, 2014.

<sup>6</sup> The materials submitted by the commenters indicate that there were certain concerns about designating the Lafayette Landfill and the BMX site as burrowing owl habitat. Among other things, a "Preliminary Site Analysis" noted: there was a concern about habitat sustainability; the topography may require completely artificial habitat creation; the site was not currently considered burrowing owl habitat; and "constant perturbation by bikes may make it unattractive to owls" (WPCP Draft EIR, page 61 of 292). An earlier analysis also noted that the linear shape of the area would not be as beneficial as a square-shaped refuge, and that the potential ramifications of chronic exposure of burrowing owls to landfill surface soils and ambient gases were unknown (WPCP Draft EIR, page 681 of 292).

<sup>7</sup> The EIR for the Master Plan acknowledged that the WPCP project would have impacts on up to 255.4 acres of burrowing owl habitat, of which 254.5 acres would be located within the boundaries of the HCP. However, the EIR determined that only the 0.9 acre of impacted habitat that lay outside the HCP boundaries needed to be mitigated due to WPCP impacts studied at a project level of detail. (First Amendment to WPCP Draft EIR, pages 5-214 to 5-216.)

much lower). In addition, the City of San José has the option to pay burrowing owl fees in lieu of contributing land to the HCP “Reserve System” as mitigation for any such future impacts. Finally, the City of San José has indicated in the past that it would be willing to work with the City of Santa Clara on the further designation of burrowing owl habitat.<sup>8</sup> In light of all of these considerations, if at some point the City undertook to designate 44.5 acres of burrowing owl habitat pursuant to the 2000 Directive (or any other City Council direction), the WPCP site would seem to be an appropriate and suitable location for the entire acreage.

In summary, the 2000 Directive was not mandatory, but even if it had been, implementation of the Project would not definitively conflict with the Directive, as the City could fulfill the Directive by seeking to designate 44.5 acres of land at the WPCP site as burrowing owl habitat.

## Methodology Used to Determine Impacts and Mitigation Measures

Commenters have also expressed concerns about the methodology used in the Draft EIR to determine whether the Project would impact burrowing owl and to formulate mitigation measures for identified impacts. As discussed in more detail below, the impacts and mitigation measures have been developed in accordance with the California Department of Fish and Wildlife’s (CDFW) protocols, set forth in a 2012 Department Staff Report.

Pursuant to the CDFW 2012 protocol, the Project site and all areas within 250 feet of the Project site were examined for evidence of burrowing owls. No evidence was found to indicate that burrowing owls recently had been present on the Project site at the time of the survey.

The 2012 CDFW Staff Report states:

At a minimum, if burrowing owls have been documented to occupy burrows (see Definitions, Appendix B) at the project site in recent years, the current scientific literature supports the conclusion that the site should be considered occupied and mitigation should be required by the CEQA lead agency to address project-specific significant and cumulative impacts.

The 2012 CDFW Staff Report instructs consultants to deem a site to be occupied “if at least one burrowing owl has been observed occupying a burrow within the last three years.” This is not the case based on the surveys performed for the Project.<sup>9</sup> An “owl sign” was identified near a perch site in surveys over the past few years, but, as noted in the Draft EIR for the Project, that sign was determined to be quite old, and thus was not determined to be evidence of an “occupied site” within the past 3 years.

The 2012 CDFW Staff Report provides the following guidance for evaluating impacts and mitigation for burrowing owls:

**Significance of Impacts.** The [required] impact assessment evaluates the potential loss of nesting burrows, satellite burrows, foraging habitat, dispersal and migration habitat, wintering habitat, and habitat linkages, including habitat supporting prey and host burrowers and other essential habitat attributes. This assessment determines if impacts to the species will result in significant impacts to the species locally, regionally and range-wide per CEQA Guidelines §15382 and Appendix G. The significance of the impact to habitat depends on the extent of habitat disturbed and length of time the habitat is unavailable (for example: minor – several days,

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<sup>8</sup> WPCP Draft EIR, page 168 of 292.

<sup>9</sup> 1) 2012 CDFW Staff report, Appendix B, page 25; 2) Rich 1984; 3) Appendix B, p. 25.

medium – several weeks to months, high - breeding season affecting juvenile survival, or over winter affecting adult survival).

**Cumulative effects.** The cumulative effects assessment evaluates two consequences: 1) the project's proportional share of reasonably foreseeable impacts on burrowing owls and habitat caused by the project or in combination with other projects and local influences having impacts on burrowing owls and habitat, and 2) the effects on the regional owl population resulting from the project's impacts to burrowing owls and habitat.

These guidelines were followed in the Draft EIR. No burrowing owls have been observed occupying<sup>10</sup> a burrow on the Project site within the last 3 years; as such, the Project would not cause the loss of nesting burrows, satellite burrows, or wintering habitat. Furthermore, the nearest occupied site to the Project site is located 0.4 mile away. Therefore, under the definitions in Appendix B to the 2012 CDFW Staff Report, the Project site does not include any foraging habitat.<sup>11</sup> The Project site may have suitable habitat for dispersal and future nesting, but it is not possible to determine whether dispersal will or will not actually occur (and if so, when). Indeed, the Draft EIR does recognize that there is some possibility that owls could disperse to the Project site in the future. This is designated as a significant impact, and mitigation measures are identified to ameliorate significant impacts in the event that burrowing owls do occupy the Project site before construction occurs. See Impact BIO-2 on pages 3.8-15 through 3.8-16 of the Draft EIR. Finally, there is no evidence that the Project site serves as a link between other potential burrowing owl habitat areas, especially in light of the fact that there is no evidence that burrowing owls have been present on it for any length of time in the recent past.

Certain commenters have suggested that the Draft EIR does not include “best practices” for identified impacts on burrowing owls. The Draft EIR complies with the 2012 CDFW Staff Report’s list of “best practice” methods to be used in “site-specific avoidance or mitigation measures,” where burrows are actually found to be present.<sup>12</sup> The City has chosen to rely upon the CDFW’s recommendations as to methodology, because the CDFW is the expert agency on burrowing owls throughout the state. By contrast, although the SCV HCP does regulate the mitigation of impacts on burrowing owls on lands that are close to the Project site, it has no direct regulatory authority over the Project site, nor is the City a partner agency in it. Therefore, the Draft EIR includes all relevant “best practices” listed in the 2012 CDFW Staff Report as mitigation measures for the Project, to the extent that they are applicable to the future detection of burrows on the Project site (no burrows are currently present). These methods are listed below, together with a discussion of the applicability of each to the Project:

1. **Avoidance of Burrows.** This is not applicable as no burrows are currently found on-site.
2. **Pre-Construction Surveys.** The Draft EIR includes Mitigation Measure BIO-1.1, which requires nest surveys for migratory birds (including burrowing owls) in the event that Project-related activities commence during the migratory bird nesting season (February 1–August 31). Surveys are also required during the non-nesting season (September 1–January 31) for overwintering owls. Draft EIR Mitigation Measure BIO-2.1 also requires the Project Developer to allow access to the Project site or off-site areas for biologists who participate in the annual burrowing owl

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<sup>10</sup> Although the HCP uses a definition of “occupied habitat” that includes any suitable habitat within 0.5 mile of a recorded nesting burrowing owl occurrence within the past 3 years, the City of Santa Clara is not subject to the HCP. The City has identified the definition of “occupied habitat” and associated methodology set forth in the 2012 CDFW Staff Report as the applicable standards of significance for the purposes of the Project EIR.

<sup>11</sup> As specified in Appendix A to the 2012 CDFW Staff Report, “[f]oraging occurs primarily within 600 m [0.373 miles] of [burrowing owl] nests” (Appendix A, page 21).

<sup>12</sup> 2012 CDFW Staff Report, pages 8-11.

nest survey coordinated by the Santa Clara Valley HCP/NCCP each year, until the Project site or off-site area is completely built out. Therefore, the Project is already subject to the “best practice” pre-construction surveys recommended in the 2012 CDFW Staff Report.

3. **Ongoing Site Surveillance during Project Activities.** Draft EIR Mitigation Measure BIO-1.1 also requires multiple nest surveys if construction is phased or when construction work stops for more than 2 weeks at a portion of the site where suitable nesting habitat remains. It also requires surveys to be conducted each year where construction is ongoing for multiple years. Therefore, the Project is already subject to the “best practices” recommended in the 2012 CDFW Staff Report to detect the possible presence of burrowing owls on or near the site in the future.
4. **Minimization of Habitat Disturbance/Creation of Buffers.** Draft EIR Mitigation Measure BIO-1.1 requires the establishment of a no-disturbance buffer zone around any nest found on the Project site during the required nest surveys. This buffer zone is explicitly required to adhere to the recommendations in the 2012 CDFW Staff Report. Therefore, the Project is already explicitly subject to the “best practices” recommended in the CDFW Staff Report with respect to no-activity buffers.
5. **Burrow Exclusion and Closure.** This is not applicable as no burrows are currently found on-site; if they are found on-site, they would be subject to the “no-activity” buffers discussed above.
6. **Translocation.** Similar to burrow exclusion and closure, translocation (i.e., active relocation off-site over 100 meters away) is not applicable as no burrows are currently found on-site; if burrows are found on-site in the future, they would be subject to the “no-activity” buffers discussed above.

The Draft EIR also is consistent with the 2012 CDFW Staff Report’s list of “best practice” methods to be used in addressing burrowing owl habitat loss and degradation.<sup>13</sup> As discussed above, the site does not currently meet CDFW definitions for nesting habitat or foraging habitat, so the “best practices” that the 2012 CDFW Staff Report suggests with respect to the loss of these types of habitat are inapplicable. The site potentially could be considered to be “dispersal habitat,” meaning that burrowing owls might travel from existing off-site nests to nest on the site at some unspecified time in the future. However, the mitigation measures in the Draft EIR take the reasonable approach of requiring mitigation for any scenario in which burrowing owls actually begin nesting on the Project site prior to development (Mitigation Measures BIO-1.1 and BIO-2.1). The Draft EIR also includes a mitigation measure (BIO-2.2) requiring the replacement of burrowing owl habitat at a 1:1 ratio in the event that such habitat is actually identified in the future upon developable portions of the Project site (or off-site areas that remain undeveloped as phases of the Project are constructed). Therefore, any potential that the habitat may host actual burrowing owls already has been fully addressed in compliance with the 2012 CDFW Staff Report.

Some commenters state that the Project may have site-specific and/or regionally significant impacts that may warrant additional mitigation; however, based on the lack of evidence of burrowing owl use of the Project site and the failure of the Project site to meet the definition of nesting or foraging habitat, the mitigation measures set forth in the Draft EIR adequately mitigate any such site-specific or regionally significant impacts.

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<sup>13</sup> See 2012 CDFW Staff Report, pages 11–14.

## Adequacy of Mitigation Measures

Some commenters assert that the burrowing owl mitigation measures in the Draft EIR are inadequate to reduce the impacts to a less-than-significant level because they do not meet what is considered best practice/science and do not provide a habitat replacement mechanism. The Draft EIR utilizes the most up-to-date scientific data on burrowing owls, which was developed for and included in the SCVHCP. The discussion of the conservation efforts in 1999 is meant to give context regarding the history of conservation in the Project area.

The language in the Draft EIR mitigation measures minimizes potential impacts on nesting and wintering burrowing owls on the Project site during construction and is consistent with the requirements of the Plan.<sup>14</sup> The existing language in the Draft EIR on page 3.8-16 states burrowing owl surveys will be conducted between March and August each year and would require implementing multiple surveys conducted throughout the western burrowing owl breeding season, in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation referenced in footnote 12 on page 3.8-11. Mitigation Measure BIO-2.1 in the Draft EIR has been updated to clarify the intent of this measure. The text now states:

*BIO-2.1: Detection of Burrowing Owls.* The Project Developer shall allow access to the Project site or off-site areas for biologists who participate in the annual burrowing owl nest survey coordinated by the Santa Clara Valley HCP/NCCP. Burrowing owl surveys are conducted between March and August of each year. As many as four surveys may be conducted each year, in accordance with the Staff Report on Burrowing Owl Mitigation<sup>24</sup> to determine whether burrowing owls are nesting and whether nests are successful. Access to the site for burrowing owl surveys shall be granted until the Project site or off-site area is completely built out. The Project Developer shall not, however, be required to postpone planned development activities to provide such access, except to the extent such postponement is necessary to meet regulatory requirements.

<sup>24</sup> CDFW 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency.

The protocol set forth in 2012 CDFW Staff Report on Burrowing Owl Mitigation was used to determine the current status of burrowing owl on the Project site in the Draft EIR (page 3.8-11). Use of this protocol is also consistent with Condition 15 of the HCP. Additionally, under Mitigation Measure BIO-1.1, the Draft EIR states that if Project-related activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds (page 3.8-14). This survey would include burrowing owl habitat within the Project site and would be conducted in accordance with Mitigation Measure BIO-2.1.

## Effect on Habitat Conservation Plan Strategy

Certain commenters have stated that the City Place site provides habitat that is an important part of the regional SCV HCP strategy to promote recovery of the local burrowing owl population in northern Santa

<sup>14</sup> In addition to the surveys required specifically for burrowing owls, the Draft EIR includes a completely separate mitigation measure requiring pre-construction surveys for all types of raptors, including burrowing owls (Draft EIR, mitigation measure BIO-1.1).

Clara and San José.<sup>15</sup> Even if it were the case that the Project would impede the “recovery” of the burrowing owl species (a supposition with no evidence to support it), impeding the “recovery” of a species does not constitute an impact under CEQA. CEQA measures impacts with respect to baseline conditions. So long as the Project would not cause baseline conditions (i.e., the current numbers of burrowing owls or the current amount of “occupied habitat,” as defined in the 2012 CDFW Staff Report) to *deteriorate*, which has been ensured by the mitigation measures already included in the Draft EIR for the Project, the Project cannot be deemed to have an impact on burrowing owls.

## Master Response 5: Alternatives

The following master response addresses the comments related to concerns about the range of alternatives presented in the Draft EIR. Commenters stated that the range of alternatives was not adequate and suggested additional alternatives that could be considered in the analysis. In addition, commenters questioned the alternatives that were considered but rejected.

The discussion below provides a summary of each alternative presented in the Draft EIR and addresses comments received regarding the alternatives in the Draft EIR.

### Range of Alternatives Analyzed in the Draft EIR

As explained on page 5-1 of the Draft EIR, the CEQA (Public Resources Code [PRC], Section 21000 et seq.) and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) require that an EIR “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives” (State CEQA Guidelines Section 15126.6(a)). If mitigation measures or a project alternative would substantially lessen the significant environmental effects of a proposed project, a lead agency should not approve the proposed project unless it determines that specific technological, economic, social, or other considerations make the mitigation measures and the project alternative infeasible (PRC Section 21002, State CEQA Guidelines Section 15091(a)(3)). The EIR must also identify alternatives that were considered by a lead agency but rejected as infeasible during the scoping process. It should briefly explain the reasons underlying the lead agency’s determination (State CEQA Guidelines Section 15126.6(c)).

Per the requirements of CEQA, the City of Santa Clara developed a list of potential alternatives to the Project that would reduce the identified significant and unavoidable impacts while also meeting the majority of Project objectives. As discussed throughout the Draft EIR, the Project would result in significant and unavoidable impacts associated with land use, transportation, air quality, greenhouse gases (GHGs), noise, biological resources, and utilities. Therefore, Chapter 5 of the Draft EIR, *Alternatives*, analyzes the following reasonable alternatives to the Project:

- **No Project Alternatives.** The No Project Alternative is provided in the Draft EIR to compare the impacts of the Project with what would be reasonably expected to occur in the foreseeable future if the Project were not approved and development continued to occur in accordance with

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<sup>15</sup> It is noted that the burrowing owl population already seems to have increased in certain areas over the past few years. For example, the City of San Jose stated in September 2015 that the adult owl population at the WPCP had increased by 54 percent compared to the previous year (San Jose Environmental Services Department News Release dated September 10, 2015). See Appendix 3.2 of this Final EIR.

existing plans and consistent with available infrastructure and community services (State CEQA Guidelines Section 15126.6(e)(2)).

- **No Project Alternative 1.** Parcels 1–4 are currently occupied by the Santa Clara Golf & Tennis Club, Fire Station 10, a Bicycle-Motocross (BMX) track, the Ameresco Methane Plant, the Retention Basin, and a City vehicle washing station. The on-site features and buildings associated with the existing uses on Parcels 1–4 would remain. In addition, the existing surface parking lot at Parcel 5 would continue to operate as under existing conditions. The three existing off-site office buildings in Tasman East also would remain and would not be demolished to accommodate the Lick Mill Boulevard extension proposed under the Project.
- **No Project Alternative 2.** No Project Alternative 2 is based on what would be reasonably expected to occur in the foreseeable future if the Project were not approved and development continued to occur in accordance with the City’s General Plan and consistent with available infrastructure and community services. No construction or demolition would occur on Parcels 1–4 or off-site. Although Parcel 5 is currently vacant and used for surface parking, Parcel 5 is designated for Regional Commercial land uses for Phase I (2010–2015), Phase II (2015–2025), and Phase III (2025–2035) of development under the City’s General Plan. City Council review and approval would be required to rezone Parcel 5, with the appropriate zoning classifications that would be consistent with the General Plan designation. After rezoning and a General Plan amendment for increased floor area ratio (FAR), Parcel 5 could be developed with approximately 825,000 gross square feet (gsf) of Regional Commercial uses that would serve both City residents and the surrounding region.
- **Reduced Intensity Alternative.** The Reduced Intensity Alternative would include a 30 percent reduction in the amount of floor area compared with the Project. This reduction would involve substantially reducing the amount of floor area for office uses at all parcels, except for the City Center Zone. The Reduced Intensity Alternative would result in approximately 3.02 million gsf of office area, compared with 5.72 million gsf under the Project (Scheme A). All other land uses would have the same amount of area as proposed under Scheme A.
- **Increased Housing Alternative.** Under the Increased Housing Alternative, the 320,000 gsf of office space planned under the Project (Scheme A) for the Parcel 4 portion of the City Center would be replaced with 320,000 gsf of residential space. This alternative would result in 320 additional residential units, for a total of approximately 1,680 residential units at the Project site. The Increased Housing Alternative would include the same number of retail, hotel, and entertainment uses as the Project (Scheme A).

It is important to note that the alternatives, as presented, are examples of potentially feasible alternatives that would reduce the impacts of the Project, attempt to meet the majority of objectives, and promote a functional site plan. As stated in Section 15126.6(a) of the State CEQA Guidelines, “an EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.” Therefore, the alternatives included in the Draft EIR represent a range of reasonable alternatives to the Project but are not meant to limit the City Council and the Planning Commission in determining the best option for the Project.

The Draft EIR is intended to serve as an informational document. It provides the City Council, the Planning Commission, and the general public with enough information to make knowledgeable

decisions regarding the environmental impacts of the Project as well as information regarding its potential alternatives. The decision to approve portions of the proposed alternatives to mitigate or avoid significant environmental impacts, while rejecting alternatives that are deemed to be infeasible, is made at the discretion of the City Council. As such, the final Project could be the Project as proposed in the Draft EIR, an alternative to the Project, or a combination of the Project and its alternatives.

Although alternatives are required to be presented and analyzed in the Draft EIR, CEQA does not require the same level of review for alternatives as a proposed project. As stated in State CEQA Guidelines Section 15126.6(d), an “EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” As such, Chapter 5, *Alternatives*, of the Draft EIR provides a description of the four alternatives, as listed above, and compares the significant impacts of the alternatives to the significant environmental impacts of the Project, as proposed. In addition, during the certification process for the EIR, City Council must determine if the Draft EIR presents an adequate range of alternatives.

## Alternatives Considered but Rejected

State CEQA Guidelines Section 15126.6(f)(2) states that a Draft EIR must consider off-site alternatives if such alternatives are deemed to be feasible by a lead agency. As stated in State CEQA Guidelines, Section 15126.6(f)(1), factors that may be considered when a lead agency is assessing the feasibility of an alternative include:

...site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent).

As described on pages 5-12 through 5-15 of the Draft EIR, the following alternatives were considered but rejected: Alternative Site Locations and Alternative Development Scenarios. After further consideration, four Alternative Development Scenarios were rejected as viable alternatives: greater reductions in intensity, further increased housing, relocation of housing outside of the Airport Land Use Commission (ALUC) Noise Contour Area, and removal of all waste in the former Santa Clara All-Purpose Landfill (Landfill) (a “clean closure” alternative). Specifically, a Clean Closure Alternative was considered (but rejected) in the Draft EIR in response to a comment submitted during the Notice of Preparation (NOP) comment period, as summarized on page ES-4 of the Draft EIR (*Executive Summary*). The NOP commenter requested consideration of an alternative that removes all waste in the former Landfill. The commenter did not specify which parcel the waste should be removed from; therefore, the alternative considered in the EIR was full waste removal from all Landfill parcels. As explained on page 5-15 of the Draft EIR, it is estimated that the costs associated with waste removal at the entire Landfill, and associated transportation, off-site disposal, and site restoration, would be approximately \$738.5 million. The cost estimate was based on an estimate of the total tonnage of refuse, plus a determination of how many truckloads would be required, along with disposal costs, using an estimated allocation of hazardous waste versus nonhazardous waste. However, cost was only one of the factors cited to support the conclusion that the Clean Closure Alternative would be infeasible. It was estimated that cleanup and removal of all waste at the former Landfill would last at least 20 months. During that time, there would be substantial odors, noise, and emissions of dust and methane gas that would be difficult to mitigate. This would affect sensitive receptors in the vicinity of the Project site. In addition, the Clean Closure Alternative would result in significantly more truck trips during construction for removal of the waste.

Therefore, because this alternative would result in greater construction traffic-related air emissions, GHG emissions, noise, and traffic, it was determined that this alternative would be infeasible.

Although the Draft EIR considered an alternative that would remediate the entire Project site, cleanup of Parcel 4 only would also not be feasible. Parcel 4 is a little less than 40 percent of the acreage of the Landfill, although the refuse layer is a little shallower than it is on the other parcels. The Parcel 4 costs are likely to be about 30 percent of the total \$738.5 million estimate, or more than \$200 million, which would still render a Clean Closure Alternative infeasible. In addition, removing waste from Parcel 4 only would still result in significant construction traffic-related air emissions, GHG emissions, noise, and traffic, just to a lesser extent than clean closure of the entire Landfill. Therefore, the Draft EIR has not been revised to include an alternative that analyzes the clean closure of Parcel 4 only.

## Suggested Additional Alternatives Not Analyzed in the Draft EIR

As stated above, commenters proposed the inclusion of additional alternatives that were not analyzed in the Draft EIR. The discussion below summarizes the suggestions and explains why these alternatives were considered but rejected.

As stated above, the EIR must consider a range of feasible alternatives that will inform decision-making, but not every conceivable alternative needs to be analyzed. Therefore, although some of the suggested alternatives could in fact be feasible, they will not be added to the Draft EIR analysis. Per Section 15126.6(f) of the State CEQA Guidelines, the range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives that are necessary to permit a reasoned choice. Of those alternatives, the EIR need examine only the ones that a lead agency (in this case, the City) determines could feasibly attain most of the basic objectives of a project. Because the alternatives proposed by the commenters would not attain the objectives of the Project, these have not been carried over for further review.

**Reduced Housing/No Housing Alternative.** Commenters suggested that an alternative with reduced housing or no housing should have been analyzed in the Draft EIR because of concerns about placing housing on top of a landfill. No significant and unavoidable impacts associated with the construction of housing on top of a landfill were identified in the Draft EIR. Mitigation Measures HAZ-4.1 through HAZ-4.6, as presented on pages 3.11-31 through 3.11-33 of the Draft EIR, would reduce impacts on residents to less than significant. Therefore, an alternative with reduced or no housing would not serve to avoid any significant environmental impacts. Under CEQA, an alternative to placing housing on top of a landfill is not required.

As noted by commenters, the Reduced Intensity Alternative would reduce development density at the Project site but not with respect to housing. The Reduced Intensity Alternative, as described on pages 5-7 and 5-8 of the Draft EIR, was developed to lessen impacts associated with transportation/traffic, air quality, GHG emissions, and noise. Primarily office users would be responsible for generating these impacts; therefore, decreasing the amount of office space would reduce the impacts. However, Scheme B, which could be carried forward as the Project, was developed as a Project scenario in which no housing would be constructed on top of the Landfill. Housing would be developed only at Parcel 5, which is not located on top of the Landfill. Scheme B is analyzed throughout the Draft EIR. Therefore, no alternatives pertaining to analyzing a reduction in housing at Parcel 4 are required because such a reduction is already considered as part of Scheme B.

A reduced housing alternative, beyond what is proposed under Scheme B, or a no housing alternative would not meet the basic Project objectives. As explained on page 2-6 of the Project description, a key

Project objective is to promote a transit-oriented infill development by placing job-creating commercial buildings, residential units, and retail in proximity to each other and existing transit centers. A reduced or no housing alternative would not meet this Project objective.

**Reduced Retail Alternative.** A commenter suggested that an alternative with reduced retail should be analyzed. As explained above, the alternatives were developed to reduce the significant and unavoidable impacts associated with transportation, air quality, GHG emissions, and noise. Because office uses are the main driver behind these impacts, office development was decreased in the analysis of the alternatives. The Project would also result in significant and unavoidable impacts on land use, biological resources, and utilities. Reducing only the amount of retail would not lessen the impacts associated with these topics. Therefore, because a Reduced Retail Alternative would not serve to eliminate or substantially lessen any environmental impacts, an analysis of this alternative is not required under CEQA. In addition, a Reduced Retail Alternative would not meet the Project objectives summarized on page 2-6 of the Draft EIR. Objectives related to retail include enhancing entertainment, dining, and shopping opportunities for residents and workers; providing additional visitor-serving facilities, such as restaurants and shops; creating a significant new tax base for the City; and establishing a new and vibrant mixed-use City neighborhood. Reducing retail uses, beyond what is proposed under Scheme A (which includes fewer retail and entertainment uses than Scheme B) would not be viable for the Project because it would not result in a site with a focal point for a pedestrian-friendly “live, work, and play” environment. A Reduced Retail Alternative would not meet the basic Project objectives.

**Nature-Oriented Alternative.** A commenter suggested that an alternative should be considered that leaves the majority of the land in natural habitats, with restoration and/or the development of new parkland where possible. The Project site is not located on land that is part of a natural habitat. As explained on page 2-3 of the Draft EIR, the majority of the Project site was formerly the Landfill, a 210-acre site with a waste footprint of approximately 183 acres. The Landfill received final landfill closure certification in September 1994. Therefore, Parcels 1–4 are located on top of soil embankments that were constructed around landfill waste units and refuse. The Project site is currently occupied by the Santa Clara Golf & Tennis Club, a restaurant and banquet facility, Santa Clara Fire Station 10, a BMX track, the Ameresco Methane Plant, a City vehicle washing station, two City-owned parking lots, and the Eastside Storm Retention Basin. As described on page 3.8-6 of the Draft EIR, in Section 3.8, *Biological Resources*, the biological communities on the Project site consist of annual grassland, ruderal developed/turf areas, vegetated depressions, pond/creek drainages, and expansive pavement. The existing communities at the Project site reflect the highly disturbed and developed nature of the Project site. Although habitats and species are present at the Project site, the Landfill is a human-made feature and could not be feasibly and cost-effectively restored to a natural state.

As summarized above, No Project Alternatives 1 and 2 include what would be reasonably expected to occur in the foreseeable future if the Project were not approved and development continued to occur in accordance with existing plans and consistent with available infrastructure and community services. Therefore, No Project Alternative 1 analyzes no development at the Project site, while No Project Alternative 2 analyzes only development at Parcel 5, which is currently a City-owned surface parking lot. Under both No Project Alternatives, Parcels 1–4 would continue to operate as the Santa Clara Golf & Tennis Club, a restaurant and banquet facility, Fire Station 10, a BMX track, the Ameresco Methane Plant, a City vehicle washing station, and the Eastside Storm Retention Basin. The portions of the Project site that could provide natural habitats would be maintained, and the Santa Clara Golf & Tennis Club would continue to operate as a public facility for the City. Therefore, No Project Alternatives 1 and 2 include options for the closest nature-oriented Project site that is feasible. However, as analyzed on pages 5-10 and 5-11 of the Draft EIR, No Project Alternatives 1 and 2 would not meet the primary objectives of

converting the existing uses at the former Landfill to more productive uses or modernizing the existing Landfill protection systems. Because none, or only very few, of the proposed buildings would be constructed, the alternatives would not achieve economies of scale and would not be able to meet the Project's basic objective of creating a vibrant, mixed-use "live, work, and play" environment. The Project objective of providing commercial, residential, and entertainment uses for local and regional residents and promoting transit-oriented infill development would not be met. Additionally, the primary objectives of providing additional visitor-serving facilities, augmenting hotel availability, and providing additional opportunities for major employers would not be met. This alternative would not provide development that would respond to changing market demands and, therefore, would not meet the Project objective of ensuring that development remains economically feasible throughout a multi-year process. Because no or limited development would occur, No Project Alternatives 1 and 2, which could also be considered a Nature-Oriented Alternative, would not meet the basic Project objectives.

**Phases 1 and 2 Only Alternative.** A commenter requested analysis of the development of Phases 1 and 2 only, with the rest of the Project site developed into usable parks and open space. As shown in Table 2-11 on page 2-31 of the Draft EIR, Phase 1 would include the development of Parcel 5 (approximately 825,000 gsf) and a portion of Parcel 4 (approximately 2.41 million gsf). In total, this would result in approximately 3.24 million gsf of office, retail, hotel, and residential uses. This alternative is similar to No Project Alternative 2, as described on pages 5-5 and 5-6 of the Draft EIR. Under No Project Alternative 2, Parcels 1–4 would remain as is because the existing conditions are projected to continue under all phases of the City's General Plan. Parcels 1–4 are currently occupied by the Santa Clara Golf & Tennis Club, a restaurant and banquet facility, Fire Station 10, a BMX track, the Ameresco Methane Plant, the Eastside Storm Retention Basin, and a City vehicle washing station. The on-site features and buildings associated with the existing uses on Parcels 1–4 would remain. Parcel 5 could be developed with regional commercial uses that serve both City residents and the surrounding region. As with the Project and a previously proposed project at Parcel 5, it is assumed that No Project Alternative 2 at Parcel 5 could be developed with up to 825,000 gsf of commercial uses.

Compared with No Project Alternative 2, an alternative that analyzes Phases 1 and 2 only would add approximately 2.41 million gsf of development on Parcel 4 and would include residential uses. However, similar to No Project Alternative 2, this alternative would not meet the basic Project objectives, as discussed above. In particular, developing only part of Parcel 4 would not allow for the creation of the City Center Zone, which is meant to provide a focal point for a "live, work, and play" environment. The City Center Zone is proposed in Phases 2 and 3 of development and would not be completed if only Phases 1 and 2 are developed. An alternative with Phases 1 and 2 only would not reduce any of the significant and unavoidable impacts identified for the Project that are not already reduced by the other alternatives considered in Chapter 5. Therefore, because a range of reasonable alternatives is already analyzed in Chapter 5, as required by State CEQA Guidelines Section 15126.6(a), this alternative has not been added to the Draft EIR.

## Preferred Alternatives

Commenters expressed support for certain alternatives, particularly the Reduced Intensity Alternative. The environmentally superior alternative is discussed on page 5-99 of the Draft EIR. As explained, Section 21002 of the State CEQA Guidelines requires lead agencies to adopt feasible mitigation measures or feasible environmentally superior alternatives in order to substantially lessen or avoid otherwise significant adverse environmental effects, unless specific social or other conditions make such mitigation measures or alternatives infeasible. CEQA also requires that an environmentally superior

alternative be identified among the alternatives analyzed. In general, the environmentally superior alternative is the project that avoids or substantially lessens some or all of the significant and unavoidable impacts of a proposed project (State CEQA Guidelines Section 15126.6).

Under the Reduced Intensity Alternative, overall gross square footage for development (6.5 million gsf) would be reduced compared with the Project (both Schemes A and B) and the Increased Housing Alternative (both of which would include 9.2 million gsf). The smaller development area under the Reduced Intensity Alternative would reduce the construction effort and construction period as well as overall impacts on traffic, air quality, GHG emissions, and noise; operational demands for public services and utilities would also be reduced. Although the gross square footage would be smaller, construction-period disturbance impacts associated with erosion, water quality, and aesthetics would most likely be similar to those of the Increased Housing Alternative and the Project. The Reduced Intensity Alternative would result in fewer daily trips (94,240) compared with the Increased Housing Alternative (120,690) and the Project (140,730) and thus lower overall operational traffic, air quality, GHG, and traffic noise impacts than the Increased Housing Alternative and the Project.

There are no resource areas for which the Reduced Intensity Alternative would have greater impacts than the Increased Housing Alternative or the Project. Thus, because this alternative would have fewer construction and operational impacts than the other action alternatives, the Reduced Intensity Alternative is the environmentally superior alternative.

As explained above, the decision regarding whether to approve portions of the proposed alternatives to mitigate or avoid significant environmental impacts, while rejecting alternatives that are deemed to be infeasible, is at the discretion of City Council. As such, the final Project could be the Project as proposed in the Draft EIR, an alternative to the Project, or a combination of the Project and its alternatives. Regardless, although the Increased Housing Alternative is the environmentally superior alternative, it is currently not proposed as the Project to be carried forward during the approval process.

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