MEMORANDUM

DATE February 20, 2020

TO Gian Martire, Senior Planner, City of Cupertino

FROM Terri McCracken, Associate Principal, PlaceWorks
Jacqueline Protsman, Project Planner, PlaceWorks

SUBJECT Cupertino De Anza Hotel Project Initial Study and Mitigated Negative Declaration Responses to Comments Memo for City Council

INTRODUCTION

The City of Cupertino distributed a Notice of Intent to adopt a Mitigated Negative Declaration for the De Anza Hotel Project on Friday, June 28, 2019. This started a 30-day public comment period for agencies and the public to submit comments on the Public Review Draft Initial Study and Mitigated Negative Declaration (IS/MND) dated July 2, 2019. The comment period ended on Monday, July 29, 2019. No comments were received during the 30-day public comment period.

On December 2, 2019, during the noticing period for the December 10, 2019 Planning Commission meeting, four late comment letters and emails were received by the City. These comments were responded to in a Response to Comments Memo dated December 4, 2019. The Response to Comments Memo was submitted to the Planning Commission at its December 10, 2019 meeting as Attachment 11 to the Staff Report.

Following the public noticing of City Council meeting scheduled for Tuesday, January 21, 2020, two late comment letters were received by the City. The first was received on Monday, January 20, 2020 and the second was received on Tuesday, January 21, 2020. Although CEQA and the CEQA Guidelines do not require a Lead Agency to prepare written responses to comments received on an IS/MND, as with the late comments submitted in December 2019, the City has prepared the following written responses to the additional late comments with the intent of conducting a comprehensive evaluation of the proposed project.

Responses to the additional late comment letters are provided in Table 1, which is attached to this Responses to Comments Memo. The table is organized by comment letter number, name of commenter, date of comment letter, each comment, and a response to each comment raising environmental issues. The comment letters received by the City are also attached to this Memorandum in their original format.

The comments and responses, and text revisions discussed in this Responses to Comments Memo do not require any “substantial revisions” to the IS/MND as defined in the California Environmental Quality Act (CEQA) Guidelines Section 15073.5. No new, avoidable significant impacts have been identified, and no mitigation measures or project revisions are required to reduce the environmental effects of the proposed project to a less-than-significant level. In addition revisions to the text of the

IS/MND merely clarify, amplify, or make insignificant modifictions to the IS/MND. Accordingly, no recirculation of the Public Review Draft IS/MND is required. This Responses to Comments Memo together with the Public Review Draft IS/MND constitutes the Final Draft IS/MND for the proposed project.

Attachments:
A: Late Comment Letter #1: Michael R. Lozeau, Lozeau Drury LLP (January 20, 2020)
B: Late Comment Letter #2: Michael Goolsby, Better Neighborhoods, Inc. (January 21, 2020)
C: Affidavit of Mailing for the Notice of Intent for the IS/MND, De Anza Hotel

RESPONSES TO LATE COMMENTS

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
1.	**Michael R. Lozeau, Lozeau Drury LLP**
Comment 1-1	I am writing on behalf of the Laborers International Union of North America, Local Union No. 270 ("LIUNA") and its members regarding the Initial Study and Mitigated Negative Declaration (collectively the "MND") prepared for the De Anza Hotel Project ("Project") (GPA-2018-01, DP-2018-01, ASA-2018-02, DA-2018-01, U-2018-02, EA-2018-03) for Applicant Sherly Kwok of De Anza Properties ("Applicant"), including all actions related or referring to the proposed demolition of the existing commercial building and development of a hotel. The Project site is located at 10931 North De Anza Boulevard in the City of Cupertino, California. APN: 326-10-061.
Response 1-1	The comment is noted.
Comment 1-2	On August 1, 2019, our office submitted a CEQA and Land Use Notice Request on behalf of LIUNA to Mr. Gian Paolo Martire, Mr. Benjamin Fu, and Ms. Grace Schmidt requesting that the City of Cupertino ("City") send us notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivisions on the Project. See Exhibit D. We did not receive notice of the Planning Commission meeting held on December 10, 2019 at which the Planning Commission considered recommending the Mitigated Negative Declaration ("MND") to City Council for adoption. These comments would have been submitted at that meeting and we would have attended the meeting if we had received notice as requested.
Response 1-2	The City adhered to all required noticing procedures required for the CEQA process pursuant to State CEQA Guidelines Section 21092(b)(3), which states: "The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures: (A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas. (B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located. (C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll." The Notice of Intent to adopt a IS/MND for the De Anza Hotel project was sent by certified mail on July 3, 2019 to the address stated below, which is the last known name and address that the City had on file, based on the latest equalized assessment roll, for Lozeau Drury, LLP. As shown in Attachment C, the

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	Affidavit of Mailing for the Notice of Intent for the De Anza Hotel project, of this Response to Comments Memo, the notice was sent to the commenter at the following address: Lozeau Drury, LLP Attn: Theresa Rettinghouse 1939 Harrison St #150 Oakland, Ca. 94612 Noticing for the Planning Commission on Tuesday, December 10, 2019 and the City Council meeting on Tuesday, January 21, 2020 was conducted in accordance with the City's standard noticing procedures. The procedures for noticing public meetings are not governed by CEQA; therefore, no further response is required.
Comment 1-3	After reviewing the Project and MND, it is evident that the MND is inadequate and fails as an informational document because there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. Therefore, CEQA requires that the City of Cupertino prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq. This comment has been prepared with the assistance of Certified Industrial Hygienist Francis Offerman, PE, CIH, environmental consulting firm SWAPE, and noise expert Derek Watry. Mr. Offermann's comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference and entirety. SWAPE's comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety. Mr. Watry's comment and curriculum vitae are attached as Exhibit C hereto and are incorporated herein by reference in their entirety.
Response 1-3	Responses to this comment are provided in the responses to comments that follow. The following responses explain why the comments do not provide substantial evidence supporting a fair argument that the proposed project may have a significant effect on the environment. In some instances the responses to comments that follow include insignificant modifications, amplifications, and clarifications to the Public Review Draft IS/MND, which are shown as the ~~strike-through~~ text for deleted items and <u>double underline</u> for added items, and demonstrate that the MND is the appropriate CEQA document for the proposed project, and that the preparation of an EIR is not required pursuant to CEQA and the CEQA Guidelines (see CEQA Guidelines Section 15073.5(d)).
Comment 1-4	I. PROJECT BACKGROUND Applicant proposes to demolish the existing commercial building on the Project site and construct a seven-story hotel with up to 156 rooms, a rooftop terrace, lounge, bar, ground-floor conference facilities, a restaurant, and four levels of below-grade parking.
Response 1-4	The comment is noted.

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Comment 1-5	II. STANDING Members of LIUNA Local 270 live, work, and/or recreate in the vicinity of the Project Site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. LIUNA Local 270 members live and work in areas that will be affected by traffic, noise, air pollution, wildlife impacts and greenhouse gas ("GHG") emissions generated by the Project. Therefore, LIUNA Local 270 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent possible.
Response 1-5	The comment is noted.
Comment 1-6	III. LEGAL STANDARDS As the California Supreme Court has held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68,75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 04–505). "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code ("PRC") § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc.*, 13 Cal.3d at 83. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*). The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield (*2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." *Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392. The EIR process "protects not only the environment but also informed selfgovernment." *Pocket Protectors*, 124 Cal.App.4th at 927. An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. PRC, §§ 21100, 21064. Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to

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prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, “may” means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke*, Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with *a preference for resolving doubts in favor of environmental review*.” *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” CEQA Guidelines § 15063(d)(2). The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

> …must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

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	See Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124–25 ("*Save Our Peninsula*").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. *Id*. at 121–23.
Response 1-6	The commenter's description of CEQA, the CEQA Guidelines, and case law is noted.
Comment 1-7	III. DISCUSSION **A. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.** Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (Jan. 16, 2020) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose future hotel employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. *See* attached CV. Mr. Offermann explains that many composite wood products used in modern hotel construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Ex. A, pp. 2-3. Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that the employees of the Project are expected to experience significant work-day exposures. *Id*. p. 4. This exposure of employees would result in "significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in offices, warehouses, residences and hotels." *Id*. Assuming they work eight hour days, five days per week, an employee would be exposed to a cancer risk of approximately 16.4 per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. *Id*. This is more than the Bay Area Air Quality Management District (BAAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. *Id*. Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project's location near roadways with moderate to high traffic (i.e. I-280, Homestead Road, Sunnyvale-Saratoga Road) and the high levels of $PM_{2.5}$ already present in the ambient air. Ex. A, p. 10. No analysis has been conducted of the significant cumulative health impacts that will result to employees working at the Project. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id*. Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. *Id*., pp. 11-12.

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	The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. See Cty. Sanitation Dist. No. 2 v. Cty. of Kern, (2005) 127 Cal.App.4th 1544, 1597–98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts"). In addition to assessing the Project's potential health impacts to workers, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. Id., pp. 4-9. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review. The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA*"). At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBIA*, 62 Cal.4th at 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id*. at 801 ("CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present"). In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on ***a project's users or residents*** that arise ***from the project's effects*** on the environment." *Id*. at 800 (emphasis added). The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Employees will be users of the hotel. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a "project's users and residents" must be addressed in the CEQA process. The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings,* either directly or indirectly.'" *CBIA*, 62 Cal.4th at 800 (emphasis in original). Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." *Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d). It goes without saying that the hundreds of future employees of the project are human beings and the health and safety of those workers is as important to CEQA's safeguards as nearby residents currently living near the project site. Because Mr. Offermann's expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.
Response 1-7	In addition to CEQA, the BAAQMD's CEQA Guidelines require an evaluation of project-generated impacts on the environment. Based on discussion between staff at PlaceWorks and BAAQMD, hotels are not considered sensitive uses because guests are onsite for short periods of time, which are much shorter than 30-years or 70-years used to calculate health risks. For the same reason, BAAQMD also does not consider hotel employees to be sensitive receptors.

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	The commenter speculates about the types of indoor building materials that would be used during hotel construction. There is no substantial evidence that the project will involve use of materials that contain formaldehyde in levels that pose a risk to human health. As described on page 3-11 and 3-12, the proposed project would comply with CALGreen, which requires that all composite wood products used on the interior of a building "shall meet the requirements for formaldehyde as specified in California Air Resources Board Air Toxics Control Measure for Composite Wood (17 California Code of Regulations Section 93120 et seq.)." Cupertino Municipal Code (CMC) Chapter 16.58, Green Building Standards Code Adopted, includes the CALGreen requirements with local amendments for projects in the city, including measures affecting indoor air quality. As described on page 3-11, CALGreen, established planning and design standards for reducing internal air contaminants. As stated in the CEQA Guidelines Section 15126.4, compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards. In summary, without substantial evidence that building materials that will be used in project construction will emit formaldehyde gas in levels that will exceed the State's emission limits, the commenter's assertion that future project employees or guests could be at risk for carcinogens constitutes speculation, not substantial evidence. Additionally, the appellant speculates that the proposed project could have an effect on the future users and guests at the hotel, which is not considered to be an impact under CEQA and need not be analyzed in the IS/MND.
Comment 1-8	**B. The IS/MND Fails to Adequately Mitigate the Potential Adverse Impacts of the Project on Wildlife by Window Collisions.** The IS/MND states that the Project "would alter the physical characteristics of the site; however, this change is not expected to contribute to a substantial increase in the risk of collisions to local and migratory birds." IS/MND, p. 4-22. We had wildlife expert, Dr. Shawn Smallwood, review the analysis of bird collision impacts and mitigation measures. Dr. Smallwood concurs with the implementation of the identified mitigation measures but believes they must include a post-construction fatality monitoring component in order to ensure their effectiveness. In order to inform of whether and to what degree fatality reduction measures or compensation measures might be needed to mitigate bird collisions with windows, Dr. Smallwood recommends adding a requirement that the Project conduct weekly fatality searches and a qualified biologist integrate carcass detection trials into the fatality searches to estimate a carcass detection rate. Dr. Smallwood's recommended fatality monitoring strategy will inform whether or not the mitigation measures identified in the MND actually address any potential significant bird collision impacts.
Response 1-8	As shown in Section III, Biological Resources, on pages on pages 4-22 through 4-24 of the IS/MND, impacts from bird collision were found to be less than significant and no mitigation measures are required. As discussed in the IS/MND, avian injury and mortality resulting from collisions with buildings, towers and other man-made structures is a common occurrence in city and suburban settings. The frequency of bird collisions in a particular area is dependent on numerous factors, including: characteristics of building height, fenestration (the arrangement of windows and doors on the sides of a building) and exterior treatments of windows and their relationship to other buildings and vegetation in the area; local and migratory avian populations, their movement patterns, and proximity of water, food and other attractants, time of year; prevailing winds; weather conditions; and other variables.

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	As discussed on page 4-22 and 4-23 of the IS/MND, the proposed hotel would alter the physical characteristics of the site; however, this change is not expected to contribute to a substantial increase in the risk of collisions to local and migratory birds because: the surrounding area is already intensively developed with structures ranging in height from approximately 18 feet to 45 feet with similar bulk and surface treatment; the proposed building materials would have a light reflectance value of more than 15 percent, and the proposed lighting is low-level illumination with no up-lighting on the building exterior; and the railings located on the second-floor balconies and roof top lounge would also incorporate UV coating, frosting, and fritting to make them visible to birds and reduce bird collisions. Because the site vicinity is already intensively developed with urban use and the site is currently developed with an occupied structure, most birds, as under existing conditions, would likely acclimate to the presence of the new building once completed. The location of the project site, the building design features and selected materials, were determined to adequately address the remote potential for special-status bird species dispersing through the site vicinity to collide with the new structure and be injured or killed. These measures would serve to minimize the potential for bird strikes through the use of bird-friendly design guidelines in the treatment of windows and other aspects of the proposed hotel building, and would ensure any potential impact would be less than significant for special-status birds and more common bird species. Because the site is not in a location considered a high risk for collision, and because bird safe design guidelines are included in the design of the project that would minimize any potential collision incidents, no further monitoring is required to reduce a potential impact. However, the measure identified by the commenter regarding post-construction bird monitoring will be forwarded to the decision-makers for consideration as a condition of approval.
Comment 1-9	**C. The IS/MND Failed to Adequately Analyze the Project's Construction Emission Impacts.** SWAPE reviewed the IS/MND and construction emission analysis and found that the IS/MND incorrectly analyzed these emissions. The BAAQMD provides significance thresholds to evaluate air pollution emissions in the form of pounds per day. In order to compare the Project's air pollutant emissions to these thresholds, the IS/MND stated that "[a]verage daily emissions are based on the annual construction emissions divided by the total number of active construction days." IS/MND, p. 4-11. However, SWAPE states that the IS/MND's conversion of annual emissions measured in tons per year to pounds per year and then divided by the number of construction workdays is incorrect. Ex. B, p. 2. California Emissions Estimator Model ("CalEEMod") provides three types of output files – winter, summer, and annual. Winter and summer output files provide emissions estimates in pounds per day while the annual output files measure emissions in tons per year. *Id*. CEQA requires the most conservative analysis, and the use of converted annual CalEEMod output files may underestimate emissions. SWAPE therefore concludes that the IS/MND's conversion from the annual tons per year to pounds per day was unsubstantiated and incorrect, and the IS/MND should have provided and utilized emissions from the winter or summer CalEEMod output files in order to compare to the BAAQMD thresholds. *Id*.
Response 1-9	BAAQMD's thresholds of significance are based on average daily emissions. The results in CalEEMod for summer and winter provide maximum daily (peak) emissions rather than average daily emission rates. Consequently, in order to accurately compare project emissions to the BAAQMD average daily emissions thresholds, the annual emissions results are used. Annual emissions in the model are the emissions for the entire 365-day period and are a summation of summer days using daily summer emission rates, and winter days, using winter emissions rates. The annual emissions are reported in tons per year (tons/year) rather than pounds per day (lbs/day). The Appendix materials clearly shows how annual pounds per day are converted to average daily

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	emissions in lbs/day for the number of construction days in the 365-day period in order not to underreport emissions. Therefore, the commenter is not correct that winter and summer rates that are used in the analysis omit any emissions. The results presented in the IS/MND are substantiated and correct. In any event, it is not correct that CEQA requires that impacts be determined based on the most conservative analysis. CEQA documents are required to be based on substantial evidence, which "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (CEQA Section 21080(e)(1)).
Comment 1-10	**D. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Failed to Adequately Analyze the Project's Air Quality Impacts.** The IS/MND for the Project relies on emissions calculated from CalEEMod.2016.3.2. This model relies on recommended default values, or on site-specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the IS/MND, resulting in an underestimation of the Project's emissions. *Id*. The particular errors identified by SWAPE are discussed below. These errors should be corrected in a subsequent CEQA document prior to approval of the Project.
Response 1-10	The commenter incorrectly asserts that values input into the model were inconsistent with information provided in the IS/MND. Responses to this assertion are provided in the responses to comments that follow. Please see Responses to Comments 1-11 through 1-20 below.
Comment 1-11	1. The IS/MND relies on the use of an underestimated land use size. Review of the CalEEMod output files demonstrates that the floor surface area values of the proposed parking lot and hotel land uses were underestimated within the model, and as a result, may underestimate the Project's emissions. *Id*. According to the IS/MND, the Project proposes to construct an 18,000 square-foot driveway and surface parking lot and a 129,000 square-foot hotel building. IS/MND, p. 3-25. However, the CalEEMod output files reveals that only 860 square feet of the parking lot and only 122,256 square feet of the hotel were included in the model. IS/MND Revised App. A, pp 93, 135. By underestimating the floor surface areas of the proposed parking lot and hotel land uses, the model underestimates the Project's construction and operational emissions and should not be relied upon to determine Project significance.
Response 1-11	As with any active project undergoing an approval process, multiple sets of site plans are submitted that respond to City comments throughout the environmental review process. This response explains that, even with revisions to the precise square footage, the air quality analysis in the IS/MND is conservative. Emissions associated with the proposed project could increase by up to one-third over what is currently proposed before a significant construction or operational impact would occur under the BAAQMD significance criteria for construction activities. Emissions associated with the proposed project could increase by up to 11 times over what is currently proposed before a significant operational impact would occur under the BAAQMD significance criteria for criteria air pollutant emissions.

Construction

During the construction phase, off-road equipment is the source of construction emissions. The other main source of particulate matter emissions is from fugitive dust emissions, which are discussed below. CalEEMod's construction equipment mix is based on the acreage that would be disturbed by the project (1.29 acres), which is fully captured in the model. CalEEMod also utilizes the building square footage to generate default worker and vendor trips and architectural coating emissions. As identified in Appendix A, the model run assumed up to 132,614 square feet of new buildings, which is 1,898 square feet more building square footage than the current site plan dated April 19, 2019 (130,716 square feet). Therefore, changes to precise building numbers have not changed the outcome of the model for construction equipment emissions.

As stated on page 4-10 of the IS/MND, BAAQMD considers all impacts related to fugitive dust emissions from construction to be less than significant with implementation of BAAQMD's best management practices, which are required in Mitigation Measure AQ-1. Therefore, the size of the project would have no bearing on this impact conclusion.

With respect to construction exhaust, as stated above, CalEEMod generates equipment defaults based on the acreage disturbed (for this project, off-road equipment on 1.29 acres) and CalEEMod generates emissions due to painting and worker/vendor trips (on-road) based on the estimated square footage of the project. As demonstrated in Table 4-2, Construction-Related Criteria Air Pollutant Emissions Estimates, on page 4-12 of the IS/MND, the proposed project is substantially below the BAAQMD criteria air pollutant thresholds. For example, the proposed project would generate average daily emissions of 5 pounds per day of volatile organic compounds (VOCs) and 17 pounds per day of nitrogen oxide (NO_x), and the BAAQMD threshold is 54 pounds per day for each of these pollutants; the proposed project would generate less than 1 pound per day of exhaust from particulate matter (PM_{10}) and ($PM_{2.5}$) and the BAAQMD thresholds are 82 and 54 pounds per day, respectively. Accordingly, as previously stated, the proposed project is substantially below the BAAQMD criteria air pollutant thresholds. As shown in Table 4-5, Construction Risk Summary – Mitigated, of the IS/MND, with implementation of Mitigation Measure AQ-2, the cancer risk from the project's localized construction emissions would be less than the BAAQMD's significance thresholds for residential-based receptors. The proposed project would generate 5.10 in a million cancer risk level and the BAAQMD threshold is 10 in a million cancer risk level. Therefore, the changes in the proposed building estimates would not change the less-than-significant conclusion.

Operational Phase

With respect to operational impacts, with 156 hotel rooms the proposed project would not be considered by the BAAQMD to be a substantial emitter of criteria air pollutants because it would not exceed the level of population or housing projected in City or regional planning efforts through 2040, and it would not have the potential to substantially affect housing, employment, and population projections within the region. No changes or revisions to the precise building and pavement estimates would affect this conclusion.

As shown in Table 4-3, Operational Criteria Air Pollutant Emissions Estimates, the net increase in operational emissions generated by the proposed project would not exceed the BAAQMD daily or annual thresholds. For example, the proposed project would generate net new average daily emissions of 1 pound per day of reactive organic gasses (ROG) and 1 pound per day of nitrogen oxide (NO_x), and the BAAQMD threshold is 10 pounds per day for each of these

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pollutants; the proposed project would generate 1 pound per day of exhaust from particulate matter (PM_{10}) and less than one pound per day of $PM_{2.5}$ and the BAAQMD thresholds are 15 and 10 pounds per day, respectively.

Transportation emissions are the largest source of emissions associated with the proposed project, resulting in 65 percent of the greenhouse gas (GHG) emissions and 53 percent of the NOx emissions associated with the project. Vehicle trips are based on number of hotel rooms (156 rooms), which is consistent with the current project description. Therefore, implementation of the proposed project would continue to result in the generation of 84 AM (morning) peak hour trips and 99 PM (evening) peak hour trips on a weekday[1] and would not increase traffic volumes at affected intersections by more than 44,000 vehicles per hour or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited. Therefore, impacts associated with CO hotspots would continue to be less than significant even with the changes to the site plan shown on the April 19, 2019 plans. Odors associated with the proposed hotel would not change with these modifications to the site plans and therefore no impact conclusions would change.

For building energy use and area sources, the CalEEMod runs are based on a total of 132,614 square feet of hotel use (122,256 square foot hotel + 10,358 square foot restaurant inside the hotel) and a 95,923 square-foot parking garage, which is higher than the hotel square footage identified in the project description (129,000-square-foot hotel) of the IS/MND and the most recent site plans dated April 19, 2019, which show a 130,716-square-foot hotel and 95,205 square foot parking garage; therefore, the analysis is conservative. During operation, the surface parking lot does not generate emissions; however, CalEEMod assumes long-term operational energy use associated with the parking structure.

As a result, the IS/MND provides a conservative estimate of the project's construction and operational emissions. Minor corrections to the building square footages identified in the most recent April 19, 2020 site plan would result in nominally less emissions compared to what was evaluated in the IS/MND, which are already substantially below the BAAQMD construction and operational emissions significance thresholds.

The second sentence in the first paragraph under subheading "Construction" on page 3-25 of Chapter 3, Project Description, has been revised as follows:

> According to the most recent site plans submitted for the project dated April 19, 2019, the ~~P~~project construction would result in a ~~approximately 129,000~~130,716-square-foot hotel building, ~~88,000~~95,205-square-foot subterranean garage, and ~~18,000~~19,163-square-foot driveway and surface parking.

Therefore, this revision does not affect any conclusions or significance determinations provided in the Public Draft IS/MND.

[1] Transportation Impact Analysis, Hexagon Transportation Consultants, Inc. May 16, 2019, Table 5, Project Trip Generation Estimates.

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Comment 1-12	2. The IS/MND relies on unsubstantiated changes to intensity factors. Review of the CalEEMod output files demonstrates that the model's CO_2 intensity factor was artificially reduced from 641.35 to 10.84, the CH_4 intensity factor was reduced from 0.029 to 0, and the N_2O intensity factor was reduced from 0.006 to 0. IS/MND Revised App. A, pp. 96, 138, Ex. B, p. 3. According to the "User Entered Comments & Non-Default Data" table, the justification provided for this change is that "Carbon Intensity factors adjusted for Silicon Valley Clean Energy Power." IS/MND Revised App. A, pp. 94, 136. Furthermore, the IS states that Silicon Valley Clean Energy will supply electricity to the Project site. IS/MND, p. 4-30. However, neither the IS/MND nor its associated appendices provide a citation or further justification for the updated carbon intensity factors. Ex. B, p. 4. Without any evidence supporting this, reliance on these reductions violates CEQA.
Response 1-12	The commenter incorrectly asserts that reliance on the applied carbon intensity factors is a violation of CEQA. As identified in Revised Appendix A, the carbon intensity associated with the proposed project is based on the power content of the Silicon Valley Clean Energy (SVCE). In 2017 the City of Cupertino entered into a clean purchase power agreement with SVCE, effectively switching from PG&E to the SVCE for the City's electricity needs in order to purchase carbon free electricity at lower rates. The default electricity option for Cupertino is 50 percent from renewable energy sources and 50 percent from non-polluting hydroelectric sources. Although all electricity in Cupertino is supplied from renewable or hydroelectric sources that do not produce GHG emissions (i.e., zero pounds per megawatthour (lbs/MwH) in carbon intensity), the carbon intensity of SVCE is conservatively based on the power content of SVCE's power sources, as identified in their 2018 Power Content Label. Data from EPA's eGRID database is used to provide a weighted average of metric tons of carbon dioxide-equivalent per kilowatthour ($MTCO_2e/kWh$) by power plant type (solar, natural gas, etc.), which is then used to provide a conservative estimate of the carbon intensity of SVCE's energy. This methodology is described in Revised Appendix A. The nitrous oxide (N_2O) and methane (CH_4) carbon intensity were zeroed out because they are already applied in the conversion of N_2O to carbon dioxide equivalent (CO_2e) (<0.0001 lb N_2O/MwH) and CH_4 to CO_2e (0.000033 lbs CH_4/Mwh).
Comment 1-13	3. The IS/MND fails to include the total amount of material export. Review of the CalEEMod output files demonstrates that the IS/MND's model failed to include the total amount of material export expected to occur during Project construction. *Id*. According to the IS/MND, "[t]he proposed Project would require up to 72,000 cubic yards of cut." IS/MND, p. 3-25. However, review of the CalEEMod output files demonstrates that only 71,054 cubic yards of material export were included in the model. IS/MND Revised App. A, pp. 95, 137, Ex. B, p. 4. The underestimation of 946 cubic yards of material export presents an issue, as the inclusion of the entire amount of material export within the model is necessary to calculate the emissions produced from material movement, including truck loading and unloading, and additional hauling truck trips. Ex. B, p. 4. As a result of the IS/MND failing to include the total amount of material export, emissions generated during Project construction may be underestimated.
Response 1-13	The air quality modeling is based on the amount of soil haul that was anticipated to be needed for the proposed project, which is 71,054 cubic yards. The project description used a rounded number. Consequently, the modeling included in the Revised Appendix A accurately portrays emissions from soil haul and emissions are not underestimated. Furthermore, as shown in Table 4-2, *Construction Related Criteria Air Pollutant Emissions Estimates*, and Table 4-5, *Construction Risk Summary – Mitigated*, construction emissions are substantially below the regional thresholds and risk thresholds, respectively.

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	The third sentence in the third paragraph under subheading "Demolition and Site Preparation" on page 3-25 of Chapter 3, Project Description has been revised as follows: The proposed project would require ~~up to~~ ~~72,000~~ 71,054 cubic yards of cut. This revision does not affect any conclusions or significance determinations provided in the Public Draft IS/MND.
Comment 1-14	4. The IS/MND relies on unsubstantiated changes to pieces of construction equipment. Review of the CalEEMod output files demonstrates that the number of several pieces of construction equipment were reduced to zero. IS/MND Revised App. A, pp. 95, 138, Ex. B, p. 4. According to the "User Entered Comments & Non-Default Data" table, the justification provided for these changes is: "No grading soil haul equipment." IS/MND Revised App. A, pp. 94, 136. However, this change is not mentioned or justified in the IS/MND and associated appendices. Without any evidence supporting this, reliance on these reductions violates CEQA.
Response 1-14	The CalEEMod construction model runs included in Revised Appendix A shows that the grading phase was separated into two subphases that have the same start and end dates: 'grading' and 'grading soil haul'. Emissions from the off-road construction equipment are included in the grading subphase. Emissions from haul trips are included in the grading soil haul subphase. Therefore, no changes to the modeling a necessary because grading haul equipment was included in the modeling.
Comment 1-15	5. The IS/MND relies on unsubstantiated changes to fleet fix. The CalEEMod output files demonstrate that several fleet mix percentage values were manually altered. IS/MND Revised App. A, pp. 95, 137, Ex. B, p. 5. The explanation provided in the file is: "Refer to CalEEMod inputs fleet mix." IS/MND Revised App. A, p. 94. But neither the IS/MND nor the associated appendices mention or justify these changes. Ex. B, p. 5. Without any evidence supporting this, reliance on the model violates CEQA.
Response 1-15	The commenter incorrectly asserts that the data used for the fleet mix is a violation of CEQA. The fleet mix in CalEEMod is based on the default fleet in EMFAC 2017 software. However, the fleet mix in EMFAC is based on vehicle miles traveled and not based on trips. In general, truck trip length is much longer than passenger vehicle trip length. As a result, the default EMFAC fleet mix in CalEEMod has a disproportionately high number of trucks allocated to a land use development project. As shown in Appendix A, if the default fleet mix was used, the model would have assumed that the project generated 97 heavy-duty vehicle trips and 176 medium-duty vehicle trips (273 trips) on a daily basis, which is clearly not accurate for a hotel project. In order to provide a more accurate fleet mix for hotel projects, PlaceWorks conducted a survey of applicants of hotel projects in order to estimate the number of vendor deliveries that would occur on a daily basis (e.g., linen service, food service, garbage/recycling service, etc.). The modeling was adjusted based on the results of the survey, which show that the vast majority of trips to a hotel are from passenger vehicle used by hotel employees and guests. This information is included in Revised Appendix A and substantiates the changes to the model defaults.

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Comment 1-16	6. The IS/MND relies on unsubstantiated changes to wastewater treatment system percentages. Review of the CalEEMod output files demonstrates that the wastewater treatment system percentages were manually altered. IS/MND Revised App. A, pp. 96, 138, 139, Ex. B, p. 6. The explanation provided is "Refer to CalEEMod inputs." IS/MND Revised App. A, pp. 94, 136. However, the IS/MND fails to justify this statement or mention the changes. According to the CalEEMod User's Guide, each type of wastewater treatment system is associated with different GHG emission factors. Therefore, artificially altering the wastewater treatment system percentages may result in an underestimation of the Project's GHG emissions. Ex. B, p. 6. Without any evidence supporting these changes, reliance on the model violates CEQA.
Response 1-16	The standard model inputs were revised to more accurately describe Cupertino's wastewater treatment system. Cupertino is served by a tertiary treated wastewater system. Revised Appendix A, of the IS/MND, shows that model was modified to include 100 percent aerobic treatment rather than the state mix, which includes septic tanks and lagoons.
Comment 1-17	7. The IS/MND relies on an incorrect indoor water use rate. Review of the CalEEMod output files demonstrates that the indoor water use rate, used to estimate the Project's GHG emissions associated with the supply and treatment of water, was incorrectly changed from the CalEEMod default value without sufficient justification. *Id*. According to the IS/MND, "[t]he estimated water demand is 156 hotel rooms x 390 square foot per room x 0.50 gpd/sf for a total of 30,420 gpd." IS/MND, p. 4-93. Converted, this correlates with an indoor water use rate of 11,103,300 gallons per year (gpy). Ex. B, p. 6. However, only 82,125 gpy were inputted into the model for the hotel land use. IS/MND Revised App. A, p. 138, Ex. B, p. 6. The explanation provided is "Refer to CalEEMod inputs." IS/MND Revised App. A, p. 136. This fails to substantiate the changes or justify a different indoor water use rate than was specified in the IS/MND. Ex. B, p. 7. Thus, the CalEEMod is incorrect and underestimates the hotel land use's indoor water use rate. Further, while the IS/MND provides data on the hotel land use's indoor water use rate, it fails to provide an indoor water use rate for the Project's other proposed land uses. *Id*. As a result, the model may underestimate the Project's water-related operational emissions.
Response 1-17	The commenter incorrectly asserts that the IS/MND relies on incorrect indoor water use rates. Revised Appendix A provides details on the water and wastewater rates, which are based on the rates identified in Section XVII (b) and (c), which are 0.50 gallons per day per square foot (gpd/sf) of (total) water use and 100 gallons per day (gpd) of wastewater use (indoor) per room. The CalEEMod model also includes additional water use associated with the restaurant within the hotel. The changes to the default water and wastewater rates for the hotel are substantially higher (66 percent higher) than the CalEEMod defaults, which assume 28,168 gallons per year per room (approximately 77 gallons per day per room total). Consequently, the IS/MND provides a conservative estimate of water and wastewater generation for the proposed project and associated emissions.
Comment 1-18	8. The IS/MND relies on an unsubstantiated change to solid waste generation rates. Review of the CalEEMod output files demonstrates that the Project's solid waste generation rates were manually changed without adequate justification. IS/MND Revised App. A, p. 138, Ex. B, p. 7. The explanation provided is "Refer to CalEEMod inputs." IS/MND Revised App. A, p. 136. However, the IS/MND fails to justify or mention these changes, and can therefore not be relied upon to determine Project significance.

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Response 1-18	The commenter incorrectly asserts that the IS/MND relies on incorrect solid waste generation rates. Revised Appendix A provides details on the solid waste generation rate based on the rates for employees identified in Section XVII, Utilities and Service Systems, criterion (d), which is the more conservative of the two rates included in Section XVII, Utilities and Service Systems, criterion (d). As a result, the CalEEMod run assumes 210.52 tons per year of solid waste generated by the proposed project while the IS/MND identifies that the proposed project would generate 182.5 tons per year (0.5 tons per day) based on the CalRecycle disposal rate for hotels. Consequently, the GHG section provides a conservative estimate of emissions from solid waste disposal for the proposed project.
Comment 1-19	9. The IS/MND relies on an unsubstantiated application of a construction mitigation measure. Review of the CalEEMod output files reveals that the model includes a 9% reduction of particulate matter emissions as a result of the "Clean Paved Roads" mitigation measure. IS/MND Revised App. A, pp. 94, 134, Ex. B, p. 8. While the IS/MND mentions sweeping paved roads, it does not justify or mention the 9% reduction. IS/MND, p. 4-11. As a result, the model may underestimate the Project's construction emissions and the mitigation cannot be relied upon.
Response 1-19	The Bay Area Air Quality Management District's (BAAQMD) basic construction mitigation measures are required for all projects to reduce construction-related fugitive dust emissions to less-than-significant levels. One of the mandatory basic construction mitigation measures is removing visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day during construction. The South Coast Air Quality Management District (South Coast AQMD) commissioned the CalEEMod program. The South Coast AQMD provides documentation for emissions control efficiencies associated with the control measures for fugitive dust, which can be found here: http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/fugitive-dust. As identified in the fugitive dust measures for paved roads, use of street sweepers only once per month have a PM_{10} control efficiency of 9 percent. As a result, modeling assumes a conservative control efficiency for daily street sweeping during construction with implementation of BAAQMD's basic construction mitigation measures.
Comment 1-20	10. The IS/MND relies on an unsubstantiated application of water-related operational mitigation measures. Review of the CalEEMod output files demonstrates that the Project's emissions were modeled with several unsubstantiated water-related mitigation measures. IS/MND Revised App. A, p. 129, Ex. B, p. 9. The Project's operational emissions were modeled including the following water-related mitigation measures: "Install Low Flow Bathroom Faucet," "Install Low Flow Kitchen Faucet," "Install Low Flow Toilet," and "Install Low Flow Shower." IS/MND Revised App. A, p. 129. However, the "User Entered Comments & Non-Default Data" table fails to mention or provide a justification for the inclusion of these mitigation measures and the IS/MND fails to address these mitigation measures. As a result, the model cannot be relied upon to determine Project significance.
Response 1-20	The commenter incorrectly asserts that regulatory water conservation features cannot be relied upon for use in the model. The CalEEMod program is based on water demand in the Pacific Institute's 2003 *Waste Not, Want Not: The Potential for Urban Water Conservation in California*. Because the water demand rates in CalEEMod were established prior to the adoption of the California Green Building Standards Code (2010) and the State's Water Efficiency Landscape Ordinance (WELO) (2010), CalEEMod is not currently programmed to include increases in water efficiency associated with new plumbing fixtures and

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	landscaping under these newly adopted regulations. In accordance with the South Coast AQMD's guidance (as the agency that created the model), to account for the reductions in water efficiency with the mandatory requirements of CALGreen and WELO, these water fixture measures are checked to accurate reflect today's building requirements.
Comment 1-21	**E. The IS/MND Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions.** SWAPE's review of the IS/MND and construction health risk assessment ("HRA") found that the IS/MND relies on an unsubstantiated air model that underestimates the Project's emissions and completely failed to conduct a quantified HRA for Project operation. Ex. B, pp. 9- 10. SWAPE concluded that the use of the construction related mitigation measures and the failure to evaluate the operational health risk posed to nearby receptors to the Project is inappropriate for several reasons. First, the construction HRA relies on an unsubstantiated air model that underestimates the Project's emissions as discussed above. As a result, the IS/MND's conclusion that, after mitigation, the construction-related health risk to the maximally exposed individual receptor would be approximately 5.1 in one million cannot be relied upon to determine the Project's significance.
Response 1-21	Please see Responses to Comments 1-11 through 1-20 above; the project's emissions are accurately reflected in the modeling included in the IS/MND. Therefore, the IS/MND's conclusion that, after mitigation, the construction-related risk is below 10 in one million cancer risk is correct.
Comment 1-22	Second, simply stating that the Project "would not result in creation of land uses that would generate substantial concentrations of TACs" does not justify the omission of an operational HRA. By failing to prepare an operational HRA, the IS/MND is inconsistent with recommendations set forth by the Office of Environmental Health and Hazard Assessment's (OEHHA) most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015. "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf. The OEHHA guidance document describes the types of projects that warrant the preparation of a health risk assessment. *Id*. Once construction of the Project is complete, the Project will operate for a long period of time. During operation, the Project will generate vehicle trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR). *Id*. at 8-6, 8-15. Although the IS/MND did not provide the expected lifetime of the Project, SWAPE reasonably assumes that the Project will operate for at least 30 years, if not more. Therefore, SWAPE states that health risks from Project operation should have also been evaluated in the IS/MND, as a 30-year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA. Ex. B, p. 10.
Response 1-22	BAAQMD's CEQA Guidelines provide screening criteria to determine when an operational health risk assessment is warranted. Pursuant to the BAAQMD CEQA Guidelines, the project is not an industrial/manufacturing project (permitted sources) or a project that generates a substantial number of diesel trucks, such as a large distribution center or retail center. As described in Section II, Air Quality, criterion (c), examples of projects which generate substantial toxic air contaminant (TAC) emissions from vehicle trips are distribution centers with more than 100 trucks per day or 40 trucks with transport refrigeration units (TRUs) per day (based on CARB's *2005 Air Quality and Land Use Handbook*). As documented in Response to Comment 1-15, the

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	overwhelming majority of vehicles generated by the project are passenger vehicle trips, and emissions from these sources are not the primary cause of health risk in the Bay Area. Consequently, hotel projects were screened out under BAAQMD's CEQA Guidelines from the need to prepare an operational health risk assessment because TACs from hotel operations are nominal and would not result in impacts to nearby sensitive receptors.
Comment 1-23	Third, SWAPE found that the IS/MND failed to sum the cancer risk calculated for each age group. *Id*. According to OEHHA guidance, "the excess cancer risk is calculated separately for each age grouping and then summed to yield cancer risk at the receptor location." "Guidance Manual for preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 8-4. However, review of the construction HRA conducted in the IS/MND failed to sum each age bin to evaluate the total cancer risk over the course of the Project's lifetime. Ex. B, p. 10. This is incorrect and an updated analysis should quantify the Project's construction and operational health risks and then sum them to compare to the BAAQMD threshold of 10 in one million. *Id*., pp. 10-11, "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, *available at:* http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.
Response 1-23	Please see Response to Comment 1-22, above, explaining that, pursuant to the BAAQMD's CEQA Guidelines, there are no unacceptable operational health risks related the proposed hotel project that need to be analyzed further. The health risk analysis in the IS/MND for the construction phase of the project considers the appropriate exposure duration and age group methodologies as recommended by BAAQMD's CEQA Guidelines and the Office of Environmental Health Hazard Assessment's *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* adopted in March 2015.
Comment 1-24	**F. There is Substantial Evidence that the Project May have a Significant Health Risk Impact.** Correcting the above errors, SWAPE prepared a screening-level HRA to evaluate potential impacts from the construction and operation of the Project. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. Ex. B, pp. 11-14. SWAPE used a sensitive receptor distance of 50 meters (the distance to the closest residential receptor) and analyzed impacts to individuals at different stages of life based on OEHHA guidance. *Id*., pp. 11-13. SWAPE calculates that the Project's construction and operation may pose cancer risks to adults, children, and infants of approximately 21, 140, and 150 in one million, well above the BAAQMD significance threshold of 10 in one million. *Id*., p. 14. The excess cancer risk over the course of a residential lifetime calculated by SWAPE is 310 in one million, resulting in a potentially significant health risk impact not previously addressed or identified by the IS/MND. *Id*. These screening level calculations demonstrate that the Project's construction and operational diesel particulate matter emissions may result in a potentially significant health risk impact. SWAPE's screening-level HRA analysis and results can be found in Exhibit B, pp. 11-14.
Response 1-24	The screening-level operational HRA prepared by the commenter's scientists (Exhibit B of this Comment Letter) incorrectly correlates exhaust PM_{10} (coarse particulate matter) emissions generated by project operational emission sources with diesel particulate matter (DPM) emissions. The commenter's scientists screening-level HRA calculates DPM emissions for diesel-fueled trucks associated with the hotel project. On page 12 of the SWAPE HRA, the diesel-particulate matter (DPM) exhaust emission rate from the operational phase of the project is based on the exhaust PM_{10} annual emission rate from CalEEMod annual model runs. However, the exhaust PM_{10} emissions from CalEEMod do not directly correlate to DPM from operational emission sources.

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	For instance, over 65 percent of operation-generated exhaust PM_{10} would be from natural gas combustion associated with building energy use. Natural gas combustion would not generate diesel particulate matter, because diesel fuel is not part of the combustion process. In addition, the predominant mobile emission source associated with proposed hotel and restaurant land uses would be gasoline-fueled passenger cars, and not diesel-fueled trucks. For these reasons, the exhaust PM_{10} emissions from the operational CalEEMod annual output cannot be directly correlated to DPM for the purposes of an HRA. The health risk analysis provided in the IS/MND utilized a refined air dispersion modeling approach (using AERMOD), whereas a screening-level HRA was prepared by the commenter's scientists. BAAQMD's *Recommended Methods for Screening and Modeling Local Risks and Hazards* (May 2012) recommends a more refined modeling analysis for projects which may exceed applicable thresholds using a screening analysis. Refined models such as AERMOD require more site-specific information and yield greater characterization of the project and more representative results. Therefore, the HRA performed by PlaceWorks' registered engineer, Steve Bush, and presented in Appendix B of the IS/MND is accurate.
Comment 1-25	**G. The IS/MND Failed to Adequately Analyze Greenhouse Gas Impacts.** The IS/MND concludes that the Project's GHG emissions would exceed the BAAQMD's bright line threshold, and subsequently proposes mitigation to find that the GHG emissions impact would be less than significant. IS.MND, p. 4-39. The IS/MND also evaluates the Project's consistency with the CARB Scoping Plan, the Plan Bay Area 2040, and Cupertino's Climate Action Plan ("CAP") to determine that the Project would have a less than significant impact. *Id*., p. 4-40. However, SWAPE concludes that this analysis and subsequent less than significant impact conclusion is incorrect for several reasons. First, the CARB Scoping Plan and the Plan Bay Area cannot be relied upon to determine project significance because they do not qualify as CAPs. Ex. B, p. 15. When CEQA Guidelines sections 15064.4(b)(3) and 15183.5(b)(1) are read in conjunction, they make clear that qualified GHG reduction plans, also known as CAPs, should require the following features: 1) inventory; 2) establish GHG reduction goals; 3) analyze project types; 4) craft performance based mitigation measures; and 5) monitoring. *Id*., pp. 15-16. These CAP features provide the necessary substantial evidence demonstrating a project's incremental contribution is not cumulatively considerable as required by CEQA Guidelines section 15064.4(b)(3). As SWAPE points out, the IS/MND fails to demonstrate that the plans and policies include these 5 listed requirements to be considered a qualified CAP for the City, leaving an analytical gap showing that compliance with said plans can be used for a project-level significance determination. *Id*. At 16. Second, the Project fails to demonstrate consistency with the Cupertino CAP. SWAPE notes that the CAP fails to provide specific, project-level measures, and instead provides "community-wide" measures with quantified GHG reduction potentials. *Id*. Regardless of this, the IS/MND fails to demonstrate consistency with all of the CAP's "community-wide" measures and associated GHG reduction potentials. *See*, *id*., pp. 16-20.
Response 1-25	The commenter incorrectly asserts the City's Climate Action Plan (CAP) was used for a project-level significance determination of whether the projects greenhouse gas emissions would be cumulatively considerable. Consistency with the City of Cupertino CAP was not used a s CEQA significance threshold, however. Therefore, there is no "gap" in the analysis. As described below, the IS/MND quantified GHG emissions and concluded that significant impacts would occur under Section VII, Greenhouse Gas Emissions, criterion (a), which concerns whether the project would generate significant greenhouse gas emissions, and concluded that the impact would be less than significant because required mitigation to offset emissions generated by the projectwould be

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implemented. As further described below, the IS/MND also analyzed whether the project would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing for reducing GHG emissions under Section VII, Greenhouse Gas Emissions, criterion (b), and determined that it would be consistent with the applicable State and local plans, which include the City's CAP.

The analysis under Section VII, Greenhouse Gas Emissions, criterion (a) analyzes whether the project would generate a substantial increase in emissions; and did not assume that any of the GHG reduction plans listed in Section VII, Greenhouse Gas Emissions, criterion (b) were qualified plans that would fully mitigate GHG impacts of the project. As a result, mitigation was proposed to reduce GHG emissions impacts of the project under criterion (a) in order to achieve the GHG threshold identified under criterion (a). The impact analysis under criterion (b) is separate from the quantitative analysis provided under criterion (a), and provides a qualitative assessment of consistency with GHG reduction plans applicable to the project. The IS/MND describes the CEQA Guidelines Section 15138.5 streamlining on pages 4-41 through 4-43, but it does not rely on the streamlining provisions. The CAP does not include specific project-level measures with which individual projects need to comply. Rather, the CAP includes community wide strategies for the City to implement to reduce GHG emissions in addition to measures that apply to municipal operations. In addition, while many of the CAP's citywide measures apply to residential projects, many of the measures do not apply to the proposed project which is a hotel. Thus, the project consistency with the CAP, as discussed in the IS/MND on pages 4-42 and 4-43, included a list of citywide the CAP measures that would be applicable to the proposed hotel. The list approach in the IS/MND has been revised to include this analysis in a matrix format.

The bulleted list and the second paragraph on pages 4-42 and 4-43 of Section VII, Greenhouse Gas Emissions, have been revised as follows:

In addition, a specific project proposal is considered consistent with the Cupertino CAP if it does not conflict with the required GHG reduction measures contained in the adopted CAP. The adopted GHG reduction measures applicable to the proposed project include the following:

- ~~Measure C-E-1 Energy Use Data and Analysis: Increase resident and building owner/tenant/operator knowledge about how, when, and where building energy is used.~~
- ~~Measure C-W-1 SB X7-7: Implement water conservation policies contained within Cupertino's Urban Water Management Plan to achieve 20 percent per capita water reduction by 2020.~~
- ~~Measure C-SW-1 Zero Waste Goal: Maximize solid waste diversion community-wide through preparation of a zero-waste strategic plan.~~
- ~~Measure C-SW-3 Construction & Demolition Waste Diversion Program: Continue to enforce diversion requirements in City's Construction & Demolition Debris Diversion and Green Building Ordinances~~.

~~As described in Chapter 3, Project Description, energy conservation measures would be used as part of interior lighting for the new building, such as employing automatic sensors to turn off lights when guests are not present in guest rooms and various glazing treatments on exterior facades. The project incorporates water conservation features for on-site irrigation. The irrigation water on the site would be dual-sourced recycled water and~~

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~~potable water as available from the LASD. Any lawn areas would use 100 percent recycled water. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which requires water conservation and requires new buildings to reduce water consumption by 20 percent. The project would also comply with CMC Chapter 16.72, Recycling and Diversion of Construction and Demolition Waste, and the City's Zero Waste Policy. Additionally, the proposed project would include a photovoltaic system that would offset GHG emissions from electricity generated by the project.~~

See the revised matrix in the "Revisions to the Initial Study and Mitigated Negative Declaration" section at the end of this responses to comments memo.

This revision does not affect any conclusions or significance determinations provided in the Public Draft IS/MND. As shown above, the City's CAP measures, including the measures discussed by the commenter in Exhibit B (i.e., comments from SWAPE) to the commenter's letter, as well as those listed in the IS/MND, are not directly applicable to the project because the City is responsible party for implementing all of the measures citywide, not project applicants. Consequently, the Cupertino CAP consistency analysis provided in the IS/MND adequately described the project's consistency with the measures that would apply to non-residential projects when implemented by the City. As demonstrated in the IS/MND and underscored above, the proposed project would not conflict with or hinder the City's ability to achieve its GHG reduction targets.

Comment 1-26

H. There is Substantial Evidence that the Project May have a Significant Greenhouse Gas Impact.

The IS/MND's GHG analysis is also flawed because it relies on an incorrect CalEEMod model (discussed above), and cannot assume that the implementation of one mitigation measure would reduce the Project's GHG emissions to a less than significant level without quantifying impacts. SWAPE ran an updated GHG analysis using the updated CalEEMod output files and comparing the total Project's GHG emissions, including construction emissions and operational emissions, to the BAAQMD bright-line threshold of 1,100 MT CO_2e/year and found that the Project's GHG emissions exceed the threshold.

SWAPE Greenhouse Gas Emissions	
Project Phase	**Proposed Project (MT CO_2e/year)**
Annual Emissions	**2,282.69**
Service Population	78
Service Population Efficiency	**29.3**
Threshold	2.6
Exceed?	***Yes***

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	When accurately modeled, SWAPE determined that the Project's GHG emissions would be approximately 2,283 MT CO2e/year. Ex. B, pp. 21-22. Since this exceeds the BAAQMD's 1,100 MT CO2e/year threshold, a Tier 4 analysis is warranted. *Id*., p. 22. SWAPE divided the Project's GHG emissions by the service population value of 78 people to find that the Project would emit approximately 29.3 MT CO2e/SP/year, which exceeds the BAAQMD 2030 substantial progress threshold of 2.6 MT CO2e/SP/year. *Id*. When accurately analyzed, the Project's total GHG emissions exceeds the "Substantial Progress" efficiency threshold for 2030, thus resulting in a significant impact not previously assessed or identified in the IS/MND. *Id*. SWAPE concludes that due to these significant impacts and the failure of the IS/MND to analyze all potential GHG emission impacts, an updated GHG analysis should be prepared in a Project-specific EIR and additional mitigation measures should be incorporated into the Project. *Id*.

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	**Proposed Project (MT CO_2e/year)**
Construction (amortized over 30 years)	34.85
Area	0.01
Energy	974.49
Mobile	1,183.11
Waste	47.71
Water	42.52
Total	**2,282.69**
Threshold	1,100
Exceed?	***Yes***

Response 1-26	Please see Responses to Comments 1-11 through 1-20 above; the project's emissions are accurately reflected in the modeling included in the IS/MND. Furthermore, the efficiency-based metric cited by the commenter was not used in the GHG emissions analysis because there is no substantial evidence to connect the state's GHG emissions inventory to the project inventory. As a result, BAAQMD's threshold of 1,100 $MTCO_2e$ identified in the BAAQMD CEQA Guidelines is used as a *de minimus* threshold by the City. This is consistent with other Air Districts throughout California, such as South Coast AQMD (3,000 $MTCO_2e$); Sacramento Metropolitan AQMD (1,100 $MTCO_2e$); San Luis Obispo APCD (1,150 $MTCO_2e$); and the 900 $MTCO_2e$ identified by the California Air Pollution Control Officer's Association (CAPCOA) in their 2008 Guidance, *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*.
Comment 1-27	I. The IS/MND Fails to Adequately Evaluate and Mitigate the Project's Noise Impacts. The comment of noise expert Derek Watry is attached as Exhibit D. Mr. Watry has identified several issues with the IS/MND for the Project. His concerns are summarized below.
Response 1-27	The commenter incorrectly asserts that IS/MND fails to adequately evaluate and mitigate the noise impacts of the proposed project. Responses to this assertion are provided in the responses to comments that follow. Please see Responses to Comments 1-28 through 1-30 below.
Comment 1-28	1. The MND fails to adequately evaluate construction noise levels. Mr. Watry reviewed the proposed Project and relevant documents regarding the Project's noise impacts, and concludes that the IS/MND improperly analyzed construction noise levels. Mr. Watry concludes that analyzed properly, construction noise levels during the five stages of the Project construction would create a significant noise impact. Ex. D, p. 2.

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The Cupertino Municipal Code ("CMC") section 10.48.053 sets the quantitative requirements for construction noise as: ". . . construction activities [may] not exceed 80 dBA at the nearest affected property or individual equipment items do not exceed 87 dBA at 25 feet. Only one of these two criteria must be met." The IS/MND uses the first of these two options and presents estimates of construction noise at the two nearest property lines shared with noise-sensitive receptors. However, as Mr. Watry points out, "the [IS/MND] treats the 80 dBA limit as a limit for the average noise level." Ex. D, p.1. There is no indication in CMC section 10.48.053 that the code intended this limit to be for the average noise level limit, and "it is more likely that the 80 dBA limit is intended to be a maximum for noise levels from the construction activities." *Id*.

Mr. Watry also noted that the IS/MND uses the Federal Highway Administration Roadway Construction Noise Model to determine the data output for the Project's noise levels. However, the Federal Highway Administration Roadway Construction Noise Model shows the maximum noise levels for construction phases at a distance of 200 feet while the construction equipment used at the Project site will be closer than 200 feet to the Cupertino Hotel property line. *Id*., p. 2. Mr. Watry used the attenuation with distance factor used in the IS/MND and the closest approach point to the Cupertino Hotel property line to calculate the maximum noise levels of the Project's construction phases, shown below:

TABLE I Maximum Construction Noise Levels

Construction Phase	Lmax	Distance to 80 dBA Lmax
Demolition	93 dBA	150 ft
Site Preparation	88 dBA	89 ft
Grading	93 dBA	150 ft
Building Construction	87 dBA	80 ft
Paving	87 dBA	80 ft

Id. The table also shows the distance of the loudest piece of equipment in each phase will need to be from the property to produce a maximum noise level of 80 dBA. As Mr. Watry notes, "[f]or the demolition and grading phases, the distance is nearly half the width of the project site indicating that the 80 dBA limit will be exceeded half of the time during these phases."

Mr. Watry concludes that the City's misinterpretation of the CMC led to an inadequate noise impact analysis, and when properly analyzed the Project's noise levels during five stages of construction will create a significant noise impact. An EIR must therefore be prepared.

Response 1-28	The commenter's interpretation of the CMC is based on assumptions of what is and what isn't "likely." Under CEQA, the decision as to whether an environmental effect should be considered significant is reserved to the discretion of the Lead Agency based on substantial evidence in the record as a whole. The analysis in the IS/MND is based on scientific and factual data, which has been reviewed by the Lead Agency and reflects its independent judgment and conclusions. Historically, the use of the Leq noise level metric for environmental review in the City of Cupertino has been prevalent, and the

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	certified The Forum Senior Community Update EIR (State Clearinghouse No. 2017052037) and the approved Village Hotel IS/MND (State Clearinghouse No. 2018112025) used 80 dBA Leq as a threshold to analyze temporary construction noise impacts. Furthermore, use of 80 dBA Leq is consistent with guidance from the Federal Transit Administration (FTA), which recommends a daytime construction noise limit of 80 dBA Leq(8 hr) for residential uses (Federal Transit Administration, 2018. *Transit Noise and Vibration Impact Assessment Manual*. Section 7, *Noise and Vibration During Construction*). This is the Leq noise level over an eight-hour period, which is comparable to a typical construction workday. It should be noted that the FTA recommends a higher limit of 85 dBA Leq(8 hr) for commercial uses (such as the Cupertino Hotel to the south). The noise analysis in the IS/MND is also conservative in that, while construction noise is analyzed at the Cupertino Hotel property line to the south, there is over 50 feet of parking lot beyond the property line before reaching the hotel itself. The only active outdoor use area at the Cupertino Hotel is the courtyard/pool in the center of that site, which would be substantially shielded by the Cupertino Hotel building. As the commenter notes, calculating the average noise level based on the center of the project site is "reasonable because the equipment will, in the long-term, move all around the site and will, on average, be in the center." Exactly as the commenter notes, and as explained in the IS/MND noise analysis on Page 4-59, "noise levels from project-related construction activities were calculated from the simultaneous use of all applicable construction equipment at spatially averaged distances (i.e., from the acoustical center of the general construction site) to the property line of the nearest receptors. Although construction may occur across the entire phase area, the area around the center of construction activities best represents the potential average construction-related noise levels at the various sensitive receptors." This would be true of the loudest phases such as site preparation, grading, and demolition (including demolition of existing pavement) in that equipment would continually be moving around the project site. It should be noted that the noise analysis in the IS/MND was conservative in that, "project-related construction activities were calculated from the simultaneous use of *all* applicable construction equipment" [italics added for emphasis]. In reality, certain pieces of equipment during a given phase may operate during a portion of the workday and then remain off while other equipment does work.
Comment 1-29	<u>2. The MND fails to adequately mitigate the operational noise impacts.</u> The IS/MND concludes that the Project's operational noise impacts would be potentially significant but Mitigation Measure NOISE-2 would make that impact less than significant. IS/MND, p. 4-63. However, Mitigation Measure NOISE-2 does not provide a substantive analysis that feasible mitigation is possible. Ex. D, p. 3. Instead, it simply states that a qualified acoustician will, at some point in the future, determine specific measures to reduce noise levels. CEQA prohibits deferring the formulation of mitigation measures to post-approval studies. CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." *Sundstrom* at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible"). A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford*

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	(1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps "insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935. Mr. Watry points out that the IS/MND attempts to minimize operational noise levels from the generator including a Level II sound enclosure, but still found that the noise levels exceed the adopted criteria. Ex. D, p. 3. Mr. Watry concludes that this "provides more impetus for additional analysis to demonstrate that feasible mitigation is possible or to determine that the impact is significant." *Id*.
Response 1-29	An emergency back-up generator is no longer proposed as part of the project. Following the second paragraph under subsection "Project-Related Operational Noise, Stationary Noise," the text has been revised as follow: ~~In addition, an emergency backup generator is proposed on the roof inside an enclosure. It is anticipated that the generator would be power rated at 275 kilowatt (kW) and would only be used during an emergency power outage or for routine testing (up to 50 hours per year per BAAQMD regulations). A typical 275 kW generator with a weatherproof enclosure would produce noise levels of approximately 84 dBA at a distance of 23 feet. With a Level II sound attenuation enclosure, a typical 275 kW generator would produce noise levels of approximately 75 dBA at a distance of 23 feet. The proposed six-foot metal rooftop panel, shown in Figure 3-8, would provide additional shielding, as might the roof itself depending upon the final design. However, to provide a conservative assessment of operational noise impacts, these project features were not factored into the estimated noise level at nearby receptors since the height of the exhaust/enclosure is unknown at this time. At the nearest non-residential receptor (commercial uses to the west), noise levels would be reduced to approximately 76 dBA with a weatherproof enclosure and 67 dBA with a Level II sound enclosure. In both cases, this would potentially exceed the CMC daytime noise limit of 65 dBA. The commercial uses to the west would not be any more sensitive during nighttime hours than daytime hours. At the nearest residential receptors (Aviare Apartments 150 feet to the east), noise levels would be reduced to approximately 65 dBA with a weatherproof enclosure and 56 dBA with a Level II sound enclosure. In both cases, this would potentially exceed the CMC nighttime noise limit of 50 dBA for residential receptors. Therefore, this impact would be potentially significant. With implementation of Mitigation Measure NOISE-2, project-related operational noise impacts would be *less than significant*.~~ ~~**Impact NOISE-2:** The proposed project could result in the generation of a substantial permanent increase in ambient noise levels in the vicinity of the project during the operation phase that would be in excess of standards established in the local general plan or noise ordinance, or in other applicable local, State, or federal standards.~~ ~~**Mitigation Measure NOISE-2:** Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the Cupertino Municipal Code noise limits of 60 dBA and 50 dBA at residential uses during daytime and nighttime, respectively, and 65 dBA and 55 dBA at non-residential sensitive uses (i.e., the Cupertino Hotel) during daytime and nighttime, respectively. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level requirements. Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's noise level requirements. Noise reduction measures could include, but are not limited to:~~

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	~~Selection of equipment that emits low noise levels;~~ ~~Installation of noise dampening techniques, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors;~~ ~~Locating equipment in less noise-sensitive areas, where feasible.~~ This revision does not affect any conclusions or significance determinations provided in the Public Draft IS/MND.
Comment 1-30	3. The IS/MND fails to adequately evaluate traffic noise levels. For the traffic noise analysis, the IS/MND uses a relative, "audible" threshold of significance and "only 'audible' changes in noise levels at sensitive receptor locations (i.e., 3 dBA or more) are considered potentially significant." IS/MND, p. 4-58. Mr. Watry states that "[t]he fundamental problem with using a relative threshold of significance, e.g., a change of 3 dBA or greater, is that, over time, there will effectively be no limit." Ex. D, p. 3. In order to keep noise levels from increasing continually without limit over time, Mr. Watry concludes that absolute criteria should be used as well. *Id*., p. 4. For this project, an appropriate source for absolute criteria is the *Cupertino General Plan – Community Vision 2015-2040*. Chapter 7, Health and Safety Element, contains Land Use Compatibility for Community Noise Environments, cast in terms of either the Day-Night Equivalent Level (Ldn) or the Community Noise Equivalent Level (CNEL), both 24-hour weighted average noise levels. [General Plan, Figure HS-8]. For various types of land uses, Figure HS-8 indicates if a particular noise exposure is "normally acceptable", "conditionally acceptable", "normally unacceptable", or "clearly unacceptable". A very reasonable, absolute threshold of significance would be if the noise level changed from one classification to another, regardless of the amount of the increase. *Id*. Mr. Watry's absolute criteria analysis would necessarily be based on measurements of the existing noise environment around the Project site, which the IS/MND did not do in its noise analysis.
Response 1-30	The commenter incorrectly asserts that, in addition to the relative traffic noise increase threshold of 3 dBA, the Land Use Compatibility for Community Noise Environments standards from the Cupertino General Plan should be used and that, if the noise level changed from one classification to another, an absolute threshold should be used, i.e., from conditionally acceptable to normally unacceptable. As explained in the Chapter 7, Health and Safety (HS) Element of the General Plan on page HS-22, "noise compatibility may be achieved by avoiding the location of conflicting land uses adjacent to one another." The proposed project is a hotel proposed adjacent to another hotel, however, which are compatible land uses. As discussed in the IS/MND noise analysis on page 4.-63 (details were included in Appendix C), the permanent noise level increase due to the proposed project was estimated to be 0.1 dBA on study roadway segments. This increase is negligible in an outdoor environment in terms of community noise exposure.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
Comment 1-31	IV. CONCLUSION For the foregoing reasons, the MND for the Project should be withdrawn, an EIR should De Anza Hotel Project be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.
Response 1-31	The comment is noted. Responses to this assertion are provided in the Responses to Comment 1-7 through 1-30. The responses summarize the main points of disagreement among the commenter and the experts hired by the commenter. In some instances the responses to comments include insignificant modifications, amplifications, and clarifications to the Public Review Draft IS/MND, which are shown in the Draft IS/MND, and demonstrate that the MND is the appropriate CEQA document for the proposed project, and that the preparation of an EIR is not required pursuant to CEQA and the CEQA Guidelines (see CEQA Guidelines Section 15073.5(d)).
Comment 1-32	Exhibit A: This is a memo from Francis J. Offermann at Indoor Environmental Engineering regarding Indoor Air Quality analysis of the De Anza Hotel.
Response 1-32	Please see Response to Comment 1-7 above.
Comment 1-33	Exhibit B: This is a memo from Matt Hagemann and Paul E. Rosenfeld at SWAPE regarding the Air Quality, Health Risks, and Greenhouse Gas Emissions analysis of the De Anza Hotel project.
Response 1-33	Please see Responses to Comments 1-9 to 1-26 above.
Comment 1-34	Exhibit C: This is a memo from Wilson Ihrig at Acoustics, Noise & Vibration regarding the Noise analysis of the De Anza Hotel project.
Response 1-34	Please see Responses to Comments 1-27 to 1-30 above.
Comment 1-35	Exhibit D: This is a letter, dated August 1, 2019 to the City of Cupertino regarding CEQA and Land Use Notice Request for the Project known as De Anza Hotel
Response 1-35	Please see Response to Comment 1-2 above.
2.	**Michael Goolsby, Better Neighborhoods, Inc.**
Comment 2-1	This letter is submitted by Better Neighborhoods as a request that the City Council deny approval of the Project and remand consideration of the Project to the Planning Commission for further study and analysis to comply with the requirements of CEQA.

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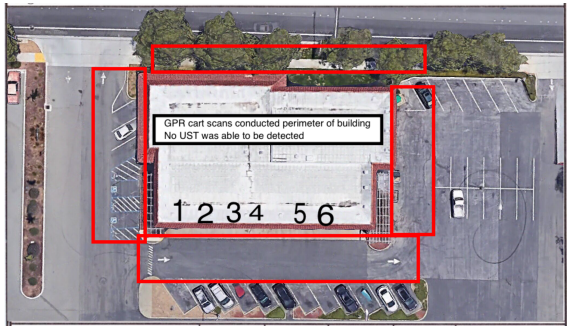
	Better Neighborhoods is an organization established to help people have a voice in local development decisions as prominent as that of planners and developers. Our aim is to encourage smart growth consistent with the needs of the community while protecting the natural environment and places of historic and aesthetic significance, supporting California's need for affordable housing and balancing the desire for growth with the need for features that make cities livable.
Response 2-1	The comment is noted.
Comment 2-2	The proposed Project is a seven-story, 156-room hotel with rooftop bar and lounge and related parking and other facilities, called the De Anza Hotel Project (the "Project"). The Planning Commission considered and approved the Project. In doing so they reviewed and approved the Initial Study/Mitigated Negative Declaration (the "MND"). Better Neighborhoods submitted a comment letter regarding several aspects of the MND. The staff submitted to the Planning Commission a reply memorandum prepared by Placeworks, dated December 5, 2019. The Placeworks memorandum (the "Response Memo") purports to address all of the comments raised by Better Neighborhoods. However, most of the comments by Placeworks in the memorandum are either dismissive of the comments we have made, or are evasive or incorrect responses, none of which address the fundamental CEQA issues raised by Better Neighborhoods.
Response 2-2	The commenter's opinion is noted.
Comment 2-3	We write this letter to the City Council in the hopes of explaining more fully our concerns with the inadequate CEQA analysis undertaken for the proposed Project. In the prior comment letter submitted to the Planning Commission and in this letter, Better Neighborhoods provides substantial evidence for this administrative record that supports a fair argument that the proposed Project might have a significant environmental impact not previously considered. Accordingly, the City Council should deny the Project approval and remand the Project to the Planning Commission for further and more complete CEQA review.
Response 2-3	The comment is noted. Please see Responses to Comments 2-4 to 2-16.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
Comment 2-4	**Hazards and Hazardous Materials** The subject property very likely has an underground storage tank ("UST") that contains waste oil. In the MND, the Applicant admits that the geophysical survey was performed only "within accessible areas of the site". A substantial surface area of the site was ignored, and no borings were performed, due to limited accessibility. This is discussed in Section VIII, Hazards and Hazardous Materials, on page 4-44 and page 4-47 of the MND. As a result of this limited investigation, the applicant has not found the location of the UST. Nonetheless, the Environmental Data Resources (EDR) records show that the UST was installed at the project site in 1973. There is no record of the UST removal. Therefore, one can and should conclude that a UST remains buried somewhere on the site. The Response Memo attempts to avoid this issue by claiming that the chances of finding the UST are low. It continues by stating that even if the UST is discovered during grading of the site, the developer will simply comply with California law and sample the soil, remove the tank, clean up any toxins, and proceed with the project. We know that the project will have four levels of subterranean parking. The massive hole that must be created to allow for this underground garage is certain to come upon the UST. Before the digging begins, we must understand the nature and extent of the contamination. There is substantial evidence that the UST exists now. CEQA does not allow the City to defer the nature, type and specification of a mitigation measure. In this case, if the UST has leaked and contaminated surrounding soil and possibly groundwater, the whole cleanup process will be an unknown new project. For this reason, the City should require as much additional boring and testing as may be required until the UST is identified. Then, the soils samples should be taken to confirm whether or not contamination has occurred. Then, when the facts are known, the City can require an appropriate mitigation measure.
Response 2-4	The commenter correctly states that the site could contain a 200-gallon waste oil UST, as discussed in Section VIII, Hazards and Hazardous Materials, on page 4-44 and page 4-47 of the IS/MND. The commenter incorrectly asserts that the IS/MND includes deferred mitigation. Although CEQA Guidelines Section 15126.4 prohibits the formulation of mitigation measures to be deferred until some future time, the IS/MND concluded that the impacts due to potential discovery of an underground storage tank during construction would be less than significant, because the project would comply with mandatory regulations applicable to removal and closure of underground storage tanks and remediation of any associated contamination. As stated in the CEQA Guidelines Section 15126.4(a)(1)(B), compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
	As described in the IS/MND on page 4-44, a Phase I Environmental Site Assessment (ESA) dated August 8, 2018 was prepared for the project site by AEI Consultants (See Appendix E of the IS/MND).[2] The purpose of the Phase I ESA was to identify potential Recognized Environmental Conditions (RECs) associated with the presence of hazardous substances or petroleum products in the vicinity of the project site. Note that the Phase I ESA also evaluated Controlled RECs, which are locations where the past release of hazardous materials has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls, and Historical RECs, which are also satisfactorily addressed but are not subject to any required controls. As described in the IS/MND, the site supported agricultural land uses between 1939 to 1968. The existing building was built in 1971 and 1972 and the tank was installed in 1973. Therefore, the UST, if still underground, has been there for 47 years. As described in the IS/MND, the possibility that the UST could still be on the site remains because there are no records of the tank being removed (see page 4-47 of the IS/MND). For this very reason, as part of the Phase II ESA, ground penetrating radar (GPR) was conducted around the "accessible areas," which are the perimeter areas around the building structure. These areas are described as accessible because the GPR cannot be performed where the building is located. The image of the accessible area is shown here in the red boxes surrounding the existing building and in Appendix B of the Phase II ESA. 

[2] Applied Remedial Technologies, Inc. (ARTI), 2018, Limited Phase II Environmental Site Assessment Soil & Vapor Sampling Results, 10931 North De Anza Boulevard, Cupertino, California. October 26, 2018.

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In addition to the GPR, the Phase II ESA included seven soil boring samples and two soil vapor samplings of which six were in the automobile maintenance bays inside the existing building and one was at the ground surface. The images of the soil boring locations is shown on Figure 2 in the Phase II ESA and shown here.

The Phase II ESA determined that very low detectable concentrations of diesel, motor oil, Volatile Organic Compounds (VOCs), and Polychlorinated Biphenyl (PCB) contaminants were reported in the seven soil borings. These soil concentrations were determined to be below the San Francisco Regional Quality Control Board (RWQCB) Tier 1 Environmental Screening Levels (ESLs). The soil vapor samplings detected low levels of VOCs that are also below the San Francisco Bay RWQCB Tier 1 ESLs for soil gas.[3,4]

As previously described in the prior Response to Comment Memo for the Planning Commission, it is because of the relatively small size (approximately 2 feet by 4 feet) of the 200-gallon waste oil UST there remains the remote possibility that the geophysical survey (or GPR) could have missed the single UST that Environmental Data Resources (EDR) records show was installed at the project site in 1973 but has no record of its removal.

The removal of a UST in the State of California is a routine and regulated procedure. As described in the IS/MND, if a UST is encountered during site grading and excavation activities, it would be required to be removed in accordance with the existing standards and regulations of, and oversight by, the Santa Clara County Fire District, based on compliance authority granted through the California Code of Regulations, Title 23, Division 3, Chapter 16, Underground Tank

[3] Tier 1 ESLs are used as a general screening guide to determine whether additional investigation, remedial actions, or risk assessment may be required. The Tier 1 ESLs are conservative, and are based on the lowest exposure pathway of concern, whether it is direct human exposure in residential land use, construction worker exposure, potential leaching of contaminants to shallow groundwater, open space terrestrial habitat, or other exposure pathways.

[4] Applied Remedial Technologies, Inc. (ARTI), 2018, Limited Phase II Environmental Site Assessment Soil & Vapor Sampling Results, 10931 North De Anza Boulevard, Cupertino, California. October 26, 2018.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
	Regulations. Under these regulations, if a UST is encountered then soil samples from areas where UST is removed or where soil contamination is suspected would be required to be analyzed for hydrocarbons including gasoline and diesel in accordance with procedures set forth by the Santa Clara County Fire District. If hydrocarbons are identified in the soil, the appropriate response/remedial measures would be required to be implemented as directed by the Santa Clara County Fire District with support review from the San Francisco Bay Regional Water Quality Control Board until all specified requirements are satisfied and a Tank Closure Letter is issued. Compliance requirements pertaining to the removal/closure of storage tanks are set forth in California Health and Safety Code, Sections 25280 through 25299. Although future soil sampling could be required if a UST is encountered, as explained above soil samples have already been collected and tested, all samples were tested and found to be below the San Francisco Bay Regional Water Quality Control Board Tier 1 Environmental Screening Levels and Soil Gas Environmental Screening Levels.
Comment 2-5	**General Plan Amendment** The Project site, a 1.29-acre parcel at 10931 North De Anza Boulevard, is currently developed with a one-story Goodyear Auto Service Center. The site is now designated under the General Plan as Commercial/Residential, General Commercial (CG) with special development regulations (rg), referred to as CG-rg. This Project is in conflict with the General Plan. Simply Amending the General Plan to accommodate this Project is improper. The Vision for the Homestead Special Area is "The Homestead Villa neighborhood is largely developed and is ***not anticipated to change in character***."
Response 2-5	As discussed in Section 3, Project Description, page 3-9 of the IS/MND, the General Plan land use designation is Commercial/Residential, which allows primarily commercial uses and secondarily residential uses or a compatible combination of the two. The Zoning District for the project site is General Commercial (GC), with special development regulations (rg), together referred to as CG-rg. As described in Cupertino Municipal Code (CMC) Section 19.60.010, the CG zoning district is intended to provide a means of guiding land development or redevelopment of the city to establish retailing, offices, and service establishments that ensure the maximum compatibility with surrounding residential areas. The special development regulation applies to three parcels in the city. Ordinance 436 requires a driveway equal to the width of three cars (e.g., three 10-foot travel lanes would equal a 30-foot driveway) to serve the project site and Homestead Shopping Center.[5] Hotel uses are allowed in the CG-rg Zoning District with a Conditional Use Permit issued by the Planning Commission pursuant to CMC Section 19.60.030.[6] The adopted General Plan Amendment Authorization resolution allows the project applicant to apply for a General Plan Amendment to increase the hotel development allocation on the site;[7] therefore, the project must be reviewed and approved by

[5] City of Cupertino Ordinance 436 (not codified).

[6] The City of Cupertino Municipal Code, Title 19, Zoning, Chapter 19.60, General Commercial, Section 19.60.030, Permitted, Conditional, and Excluded Uses. Table 19.60.030: Permitted, Conditional and Excluded Uses in General Commercial Zoning Districts.

[7] City of Cupertino General Plan Amendment Authorization Number 2018-01, Resolution Number 19-010, Passed and Adopted at a Regular Meeting of the City Council of the City of Cupertino on January 15, 2019.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
	the City Council. With the approval of a Conditional Use Permit from the Planning Commission, and a General Plan Amendment Authorization from City Council, the proposed project would be in consistent with the General Plan. As discussed in Section 3, Project Description, page 3-8 of the IS/MND, the Homestead Special Area includes residential, commercial, office and hotel uses along Homestead Road, between I-280 and the Sunnyvale city limit (see Chapter 2, Planning Areas (PA), on page PA-12). Additionally, the North De Anza Gateway, which is within the Homestead Special Area, includes one other hotel (Cupertino Hotel). According to the General Plan, the Homestead Special Area will continue to be a predominantly mixed-use retail commercial area with residential uses and neighborhood centers providing services to local residents.[8] Therefore, the proposed hotel project would be consistent with the surrounding neighborhood character.
Comment 2-6	This General Plan Amendment is the worst sort of "spot zoning." The staff report clearly states that "It should be noted that the General Plan amendments would only apply to the proposed hotel." In *Foothill Communities Coalition v. County of Orange*, the court of appeal concluded that spot zoning can be found where an isolated parcel is zoned ***less*** restrictively than surrounding property. This project is exactly this sort of impermissible spot zoning. The developer has not suggested, and there is no reason why this Project should justify a General Plan Amendment. There is no substantial public need for this hotel here, at this location in the City and this hotel project certainly is not in the public interest.
Response 2-6	This is a comment on the project, not on the adequacy of the environmental review. No further response is required.
Comment 2-7	Also, the City should not attempt to allocate hotel rooms across Special Areas within the General Plan and change the height limitations within this Homestead Special Area – unless the City conducts an exhaustive and thoughtful analysis of what the future will likely bring for development across the City if this Project is approved. There are many, many unintended consequences of this General Plan Amendment. For example, if this Project is approved, there will be increased pressure and demand to densify properties near this Project site, and the City will have set a precedent with this particular approval, thus making it much more likely that additional General Plan Amendments will be approved for intense uses and for taller and more prominent buildings – thus further changing the essential character of this area of the City. Also, if hotel rooms are moved out of other Special Areas and placed into the Homestead area, the City has done nothing more that create pressure for future plan amendment requests in the other Special Areas that are now losing allocated hotel rooms.
Response 2-7	The commenter's opinion is noted. Please see Responses to Comments 2-5 and 2-8. The type of development proposed is contemplated in the General Plan.

[8] City of Cupertino General Plan, Community Vision 2040, Chapter 3, Land Use, page LU-61.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
Comment 2-8	The General Plan was approved after a very long and information rich process. Now, the CG zoning district is intended to provide a means of guiding development to establish retail, office and services "that ensure the maximum compatibility **with surrounding residential areas**." This Project is directly contradictory to this. The City should not be whimsical to alter the General Plan just to accommodate one developer's desire to build a hotel where it does not belong.
Response 2-8	The commenter's opinion is noted. As discussed in Section 3, Project Description, page 3-9 of the IS/MND, the project site is within the General Commercial (CG) with special development regulations (rg) land use designation for the site (together referred to as CG-rg).[9] Hotel uses are allowed in the CG-rg Zoning District with a Conditional Use Permit issued by the Planning Commission pursuant to CMC Section 19.60.030.[10] Please see Response to Comment 2-5.
Comment 2-9	**Compatibility with the General Plan** The MND fails to analyze and explain why this hotel Project should be approved, notwithstanding all of the many inconsistencies with the General Plan. Staff reports that "Staff has evaluated the proposed General Plan Amendments and concludes that based on the net positive fiscal impacts of the project (see Attachment 7) and minimal environmental impacts of the project, the proposed amendment supports several of the City's other General Plan goals including:…" However, staff fails entirely to comply with CEQA and identify, analyze and explain all of ***inconsitiencies*** that the Project creates with the General Plan. The MND is practically silent on all of the many inconsistencies between this Project and the General Plan. There are many, many examples of this, but just a few are instructive: First, Page PA-3 of the General Plan, regarding Special Areas, states that "[The Special Areas] should be enhanced with more pedestrian, bicycle and transit facilities; supported by focused development standards." This Project does the opposite, including ignoring the development standards that have been developed for this area. Second, Page LU-12 of the General Plan (LU-1.3.1: Commercial and Residential Uses), regarding Land Use Allocations, states that "All mixed-use areas with commercial zoning will require retail as a substantial component.". The Staff was a bit disingenuous when they refer to the compatibility of the Project with Goal LU-1.3 – that encourages mixed use areas in certain circumstances. However, the specific strategies for achieving this goal seem to preclude putting a hotel in the middle of this residential area.

[9] City of Cupertino Ordinance 436 (not codified).

[10] The City of Cupertino Municipal Code, Title 19, Zoning, Chapter 19.60, General Commercial, Section 19.60.030, Permitted, Conditional, and Excluded Uses. Table 19.60.030: Permitted, Conditional and Excluded Uses in General Commercial Zoning Districts.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
	For this reason alone, the MND fails to comply with CEQA. The City should deny the approvals of this Project and have the CEQA document updated to explore the General Plan inconsistencies. In fact, Better Neighborhoods believes that CEQA requires a full environmental impact report to be completed if the General Plan is to be amended. We urge the City to deny the approvals and require that a full environmental impact report be created, so that the requirements of CEQA can be met for a General Plan Amendment.
Response 2-9	As stated in Section X, Land Use and Planning, of the IS/MND on page 4-56, a CEQA land use impact would occur if the project would cause a significant environmental impact due to a conflict with any land use plan, policy or regulation that was "adopted *for the purpose of avoiding or mitigating an environmental effect*." (Emphasis added.) As demonstrated in the IS/MND, the proposed project was found to have no significant effects on the environment, , because any such impacts were found to be less than significant or less than significant with mitigation. Therefore, no conflict with any land use plan, policy or regulation that was adopted for the purpose of avoiding or mitigating an environmental effect would occur. Please see Responses to Comments 2-5 and 2-8 regarding consistency of the project with the General Plan.
Comment 2-10	**Greenhouse Gas Emissions** IN our prior letter, Better Neighborhoods raises several questions about the GHG analysis in the MND. The Response Memo attempts to respond to all of these comments, but does so inadequately. First, we think the GHG analysis does not take into account all of the sensitive receptors that will surround the Project. The City acknowledges that prior to mitigation, there will be construction air quality impacts. The Response Memo sates that causing the large construction equipment to use heavy duty air filters should bring the total GHG impacts to a level of less than significant. We would like to see the arithmetic of how this was confirmed. Also, does this merely create a smeared average of GHG toxins, but in fact result in some nearby sensitive receptors actually receiving a large dose of the bad gases?
Response 2-10	GHG emissions generated by the project would contribute to cumulative world-wide CO_2 concentrations and climate change impacts. This is a global impact, not a local impact. There are no ambient air quality standards for GHGs. While GHG emissions are generated locally, the effects of such emissions are global in nature. As a result, there are no localized impacts to sensitive receptors surrounding the project from project-related GHG emissions. The IS/MND did not identify any GHG impacts from the construction phase of the project and no mitigation measures for construction-related GHGs were identified. The air filters described by the commenter relate to emissions other than GHG. Section II, Air Quality of the IS/MND identifies potentially significant localized impacts from construction emissions of diesel particulate matter, and requires use of construction equipment fitted with Level 3 Diesel Particulate Filter (DPF) to reduce the concentrations of diesel particulate matter. The results of the emissions modeling are included in Revised Appendix A (CalEEMod runs) and Appendix B (Health Risk Assessment) in the IS/MND.
Comment 2-11	Also, Mitigation Measure GHG-1 for buying GHG "credits" or "offsets" is not a proper mitigation measure. Even though the local air quality board may allow it, in fact this does nothing for the neighbors that will be harmed by the bad GHG that the Project creates. We urge the City to reject GHG offset credits, and

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
	instead require the developer to actually reduce the GHG emissions – not simply pay to pretend they are not harmful. Al Gore may buy offsets so that he can fly in a private jet with a clear conscience, but this is not a proper use of the City's power to protect its citizens.
Response 2-11	See response to Comment 2-10 above. There are no localized impacts to sensitive receptors or others in the vicinity of the project due to project-related GHG emissions. Because the project's GHG emissions impacts are a result of contribution to global concentrations of CO_2e emission, use of carbon offsets to reduce emissions would mitigate the project's contribution to the cumulative impact. It is noted that use of carbon offsets to mitigate GHG emissions is done after applying all onsite measures to reduce emissions. As part of the project design, the applicant is constructing buildings to achieve the 2019 Building and Energy Efficiency Standards and built to achieve LEED Silver; including photo voltaic (PV) cells for onsite electricity production, reducing landscape water use through drought-resistant plants and trees, and providing electric vehicle (EV) charging parking spaces in order to support the future transition to zero electric vehicle (ZEV) cars. Because the City is part of a Community Choice Aggregate (CCA) provided through the Silicon Valley Clean Energy (SVCE), GHG emissions from building energy represent less than 25 percent of the project's energy, and these emissions are primary from natural gas use. The vast majority (65 percent) of project emissions are from transportation emissions, which the City does not have jurisdictional control over. Consequently, use of carbon offsets is a way to reduce emissions beyond what can be done on an individual project site (including from the transportation sector) in order to minimize the project's cumulative contribution to GHG emissions impact.
Comment 2-12	**Noise and Light Nuisance** The Response Memo indicates that the noise study contemplated the decibel impact of multiple human conversations from the roof top bar. Better Neighborhoods primary noise concern about the rooftop bar relates to large events and amplified sound. We require that to protect the surrounding sensitive receptors, the Hotel Project should include a condition of approval that prohibits amplified sound (speakers, music, megaphones, etc.) entirely. Also, it should prohibit more than a certain number of persons on the rooftop at one time, based on the cumulative noise levels that could be created by a crowd.
Response 2-12	Large events with amplified sound such as concerts are not proposed at the rooftop bar. Noise from patrons of the rooftop bar would be shielded by the proposed metal panel screen wall shown in the rooftop plan drawings. Furthermore, the rooftop bar would be required to comply with the exterior noise standards contained in the CMC.
Comment 2-13	In addition to the Noise issue, there is no analysis of light and glare impacts that will be created when events occur on the bar rooftop area. We urge the City to deny the approvals, and require a full analysis of all lighting fixtures, glare and colored, blinking or other lighting that will be visible from surrounding properties. We also require that to protect the surrounding sensitive receptors, the Hotel Project should include a condition of approval that prohibits any bright lights, strobe lights, colored lighting or other obnoxious use of light – if it can be seen from the surrounding neighborhood.

TABLE 1 RESPONSES TO LATE COMMENTS ON THE PUBLIC REVIEW DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Number	Comment/Response
Response 2-13	As described in Section 3, Project Description, page 3-23 and Section 4.I, Aesthetics, page 4-6 of the IS/MND, the source, intensity, and type of exterior lighting for the project site would be typical for becoming orientated (i.e., getting your bearings in the dark) and safety needs. All on-site lighting would be low-level illumination and shielded to reduce light spill or glare. There would be no up-lighting on the building exterior. The commenter's suggestion will be forwarded to the decision-makers for consideration as a condition of approval.
Comment 2-14	**Light, Glare and Shadow** Better Neighborhoods previously asked for a shadow study. The Response Memo states that there are no thresholds of significance, and that shadow studies are only conducted for impacts on public spaces. This is not correct. If there is no threshold of significance, then the City is obligated to use one that is otherwise applicable, and possibly from another city. The shadow impact we are concerned with is the shadow this overly tall building will throw onto surrounding residential uses. Please complete a shadow study to show that nearby residences will not use the reasonable use of their front yards and back yards – especially during the summer months. We can recommend the thresholds of significance established by the City of Los Angeles for shade and shadow impacts on residential properties.
Response 2-14	Shadow studies are most commonly prepared to determine if a project would result in substantial effects to outdoor recreation facilities or other public areas. There are no such areas adjacent to the project site.
Comment 2-15	**Development Agreement** The City intends to enter into a Development Agreement with the applicant. The developer will obtain substantial benefits under this agreement – not the least of which is a General Plan Amendment that rezones their property and allows for this dense and incompatible project. The only significant consideration provided by the applicant is a one-time $500,000 Community Amenity Funding payment. In the context of a project that will cost perhaps $15 million or $20 million to complete, this fee is a paltry sum. Many cities negotiate Development Agreements that result in much more favorable benefits for the City. The City and we citizens are entitled to receive park fees, traffic mitigation fees, school fees and other benefits – that would justify the substantial value being transferred to this developer. We urge the City Council to deny this Development Agreement and return the negotiation to the City Manager and the Planning Commission to come up with a Development Agreement that is not a naked charity gift to this developer.
Response 2-15	This is a comment on the project, not on the adequacy of the environmental review. The project applicant would be responsible for the payment of all applicable developer impact fees imposed by the City and public services providers that ensure each developer pays for their fair-share contribution towards any necessary improvements as a result of their project.
Comment 2-16	This letter provides substantial evidence for this administrative record that supports a fair argument that the proposed Project might have a significant environmental impact not previously considered. Accordingly, the City Council should deny the Project approval and remand the Project to the Planning Commission for further and more complete CEQA review.

Number	Comment/Response
Response 2-16	The commenter's opinion is noted. Please also refer to responses to Comments #1 through #15.

REVISIONS TO THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

The following text revisions do not require any "substantial revisions" to the IS/MND as defined in the CEQA Guidelines Section 15073.5. The following revisions to the text of the IS/MND merely clarify, amplify, or make insignificant modifictions to the IS/MND and do not affect any conclusions or significance determinations provided in the Public Draft IS/MND.

Chapter 3 Project Description

Changes to the project building parameters have been revised to reflect the most recent site plans and to correct a rounding error.

The second sentence in the first paragraph under subheading "Construction" on page 3-25 of Chapter 3, Project Description, has been revised as follows:

> According to the most recent site plans submitted for the project dated April 19, 2019, the ~~P~~project construction would result in a ~~approximately 129,000~~130,716-square-foot hotel building, ~~88,000~~95,205-square-foot subterranean garage, and ~~18,000~~19,163-square-foot driveway and surface parking.

The third sentence in the third paragraph under subheading "Demolition and Site Preparation" on page 3-25 of Chapter 3, Project Description has been revised as follows:

> The proposed project would require ~~up to~~ ~~72,000~~ 71,054 cubic yards of cut.

Section VII. Greenhouse Gas Emissions

This section has been reformatted from a list followed by a paragraph to a matrix style.

The bulleted list and the second paragraph on pages 4-42 and 4-43 of Section VII, Greenhouse Gas Emissions, has been revised as follows:

> In addition, a specific project proposal is considered consistent with the Cupertino CAP if it does not conflict with the required GHG reduction measures contained in the adopted CAP. Project consistency with t~~T~~he adopted GHG reduction measures ~~applicable to the proposed project~~ include the following:
>
> - ~~Measure C-E-1 Energy Use Data and Analysis: Increase resident and building owner/tenant/operator knowledge about how, when, and where building energy is used.~~
> - ~~Measure C-W-1-SB-X7-7: Implement water conservation policies contained within Cupertino's Urban Water Management Plan to achieve 20 percent per capita water reduction by 2020.~~

- ~~Measure C-SW-1 Zero Waste Goal: Maximize solid waste diversion community-wide through preparation of a zero-waste strategic plan.~~
- ~~Measure C-SW-3 Construction & Demolition Waste Diversion Program: Continue to enforce diversion requirements in City's Construction & Demolition Debris Diversion and Green Building Ordinances~~.

~~As described in Chapter 3, Project Description, energy conservation measures would be used as part of interior lighting for the new building, such as employing automatic sensors to turn off lights when guests are not present in guest rooms and various glazing treatments on exterior facades. The project incorporates water conservation features for on-site irrigation. The irrigation water on the site would be dual-sourced recycled water and potable water as available from the LASD. Any lawn areas would use 100 percent recycled water. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which requires water conservation and requires new buildings to reduce water consumption by 20 percent. The project would also comply with CMC Chapter 16.72, Recycling and Diversion of Construction and Demolition Waste, and the City's Zero Waste Policy. Additionally, the proposed project would include a photovoltaic system that would offset GHG emissions from electricity generated by the project.~~

Cupertino Climate Action Plan Consistency Matrix

Measure	Consistency
Measure C-E-1 Energy Use Data and Analysis *Increase resident and building owner/tenant/operator knowledge about how, when, and where building energy is used.* *2035 GHG Reduction Potential: 850 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. This measure is not relevant because the proposed project receives energy through Silicon Valley Clean Energy (SVCE) and therefore utilizes renewable energy for the building. Additionally, the project includes solar photovoltaic system cells and other energy efficiency design features, pursuant to the 2019 Building Energy Efficiency Standards and CALGreen. As described in Chapter 3, Project Description, energy conservation measures would be used as part of interior lighting for the new building, such as employing automatic sensors to turn off lights when guests are not present in guest rooms and various glazing treatments on exterior facades. The proposed project would not conflict with implementation of this measure.
Measure C-E-2 Retrofit Financing ***Promote** existing and support development of new private financing options for home and commercial building retrofits and renewable energy development.* *2035 GHG Reduction Potential: 10,525 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The project proposes a new building that would comply with the 2019 Building Energy Efficiency Standards and CALGreen, at minimum, in addition to being designed to achieve either a LEED Silver rating pursuant to CMC Chapter 16.58, Section 16.58.220, Table 101.10, as stated on pages 3-11 and 3-12 of Chapter 3, Project Description. The proposed project would not conflict with implementation of this measure.

Cupertino Climate Action Plan Consistency Matrix	
Measure	**Consistency**
Measure C-E-3 Home & Commercial Building Retrofit Outreach ***Develop*** *aggressive outreach program to drive voluntary participation in energy- and water-efficiency retrofits.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project includes the construction of a new and therefore these measures would not apply as a retrofit. Additionally, the proposed project would comply with the latest building code and utilize energy and water efficient fixtures. The proposed project would not conflict with implementation of this measure.
Measure C-E-4 Energy Assurance Plan *Develop a long-term community-wide energy conservation plan that considers future opportunities to influence building energy efficiency through additional or enhanced building regulations.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project includes buildings that would comply with the 2019 Building Energy Efficiency Standards and CALGreen, at minimum, in addition to being designed to achieve either a LEED Silver rating pursuant to CMC Chapter 16.58, Section 16.58.220, Table 101.10, as stated on pages 3-11 and 3-12 of Chapter 3, Project Description.
Measure C-E-5 Community-Wide Solar Photovoltaic Development *Encourage voluntary community-wide solar photovoltaic development through regulatory barrier reduction and public outreach campaigns.* *2035 GHG Reduction Potential: 4,400 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure. The project includes photovoltaic system cells for on-site electricity production, pursuant to the 2019 Building Energy Efficiency Standards and CALGreen.
Measure C-E-6 Community-Wide Solar Hot Water Development *Encourage communitywide solar hot water development through regulatory barrier reduction and public outreach campaigns.* *2035 GHG Reduction Potential: 925 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, the proposed project would include a photovoltaic system that would offset GHG emissions from electricity generated by the project. The proposed project would not conflict with implementation of this measure.
Measure C-E-7 Community Choice Energy Option ***Partner*** *with other Santa Clara County jurisdictions to evaluate the development of a regional CCE option, including identification of the geographic scope, potential costs to participating jurisdictions and residents, and potential liabilities.* *2035 GHG Reduction Potential: 56,875 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. The City of Cupertino is a member of Silicon Valley Clean Energy (SVCE) which partners with PG&E to provide clean electricity. The proposed project would receive energy from SVCE. The proposed project would not conflict with implementation of this measure.

Cupertino Climate Action Plan Consistency Matrix	
Measure	**Consistency**
Measure C-T-1 Bicycle & Pedestrian Environment Enhancements ***Continue to*** *encourage multi-modal transportation, including walking and biking, through safety and comfort enhancements in the bicycle and pedestrian environment.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. As stated in Section XV, Transportation, page 4-83 of the IS/MND, the proposed project would not remove existing bicycle facilities along North De Anza Boulevard, nor would it conflict with the City's 2016 *Bicycle Transportation Plan*. The proposed project would provide Class 1 bicycle parking spaces in the subterranean parking garage, and Class 2 bicycle parking spaces for guests and employees near the main entrance. Therefore, the proposed project would promote these alternative modes of transportation.
Measure C-T-2 Bikeshare Program ***Explore feasibility of*** *developing local bikeshare program.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would not conflict with implementation of this measure. The proposed project includes Class 1 bicycle parking spaces in the subterranean parking garage, and Class 2 bicycle parking spaces for guests and employees near the main entrance.
Measure C-T-3 Transportation Demand Management *Provide informational resources to local businesses subject to SB 1339 transportation demand management program requirements and encourage additional voluntary participation in the program.* *2035 GHG Reduction Potential: 2,375 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-22 of the IS/MND, the proposed project is an infill project near transit stations served by VTA bus routes 55 and 81. The proposed project would not conflict with implementation of this measure.
Measure C-T-4 Transit Route Expansion *Explore options to develop local community shuttle or community-wide car sharing to fill gaps in existing transit network.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-22 of the IS/MND, the proposed project would include a dedicated shuttle program for hotel employees and guests, which would promote the development of a local community shuttle. The proposed project would not conflict with implementation of this measure.
Measure C-T-5 Transit Priority *Improve transit service reliability and speed.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-22 of the IS/MND, the proposed project is an infill project near transit stations served by VTA bus routes 55 and 81. The proposed project would not conflict with implementation of this measure.
Measure C-T-6 Transit-Oriented Development *Continue to encourage development that takes advantage of its location near local transit options*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-22 of the IS/MND, the proposed project is an infill project near transit stations served by VTA bus routes 55 and 81. As described in Section VII, Greenhouse Gas Emissions, page 4-40

Cupertino Climate Action Plan Consistency Matrix	
Measure	**Consistency**
(e.g., major bus stops) through higher densities and intensities to increase ridership potential. *Supporting Measure*	of the IS/MND, the proposed project is within the Santa Clara Valley Transportation Authority City Cores, Corridors & Station Areas PDA. The proposed project would not conflict with implementation of this measure.
Measure C-T-7 Community-Wide Alternative Fuel Vehicles *Encourage community-wide use of alternative fuel vehicles through expansion of alternative vehicle refueling infrastructure.* *2035 GHG Reduction Potential: 10,225 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. Pursuant to the CMC Chapter 16.58.420, the proposed project would include 10 percent of the total number of parking spaces as capable of supporting installation of future electric vehicle supply equipment. The proposed project would not conflict with implementation of this measure.
Measure C-W-1 SB-X7-7 *Implement water conservation policies contained within Cupertino's Urban Water Management Plan to achieve 20 percent per capita water reductions by 2020.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. The proposed project would comply with SB X7-7, which requires California to achieve a 20 percent reduction in urban per capita water use by 2020 and would implement best management practices for water conservation to achieve the City's water conservation goals. As described in Chapter 3, Project Description, the project incorporates water conservation features for on-site irrigation. The irrigation water on the site would be dual-sourced recycled water and potable water as available from the LASD. Any lawn areas would use 100 percent recycled water. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which requires water conservation and requires new buildings to reduce water consumption by 20 percent. The proposed project would not conflict with implementation of this measure.
Measure C-W-2 Recycled Water Irrigation Program *Explore opportunities to use recycled water for irrigation purposes to reduce potable water demands.* *Supporting Measure*	**Consistent.** The City is the responsible party for this measure. City must build the infrastructure to provide recycled water for projects to use. As described in Chapter 3, Project Description, the project incorporates water conservation features for on-site irrigation. The irrigation water on the site would be dual-sourced recycled water and potable water as available from the LASD. Any lawn areas would use 100 percent recycled water. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which requires water conservation and requires new buildings to reduce water consumption by 20 percent. The proposed project would not conflict with implementation of this measure.
Measure C-SW-1 Zero Waste Goal	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-25 of

Cupertino Climate Action Plan Consistency Matrix	
Measure	**Consistency**
Maximize solid waste diversion communitywide through preparation of a zero-waste strategic plan. *Supporting Measure*	the IS/MND, pursuant to CMC Chapter 16.72, Recycling and Diversion of Construction and Demolition Waste, during construction, the project would reduce construction waste and divert materials from landfill and promote recycling of construction waste. The proposed project would not conflict with implementation of this measure.
Measure C-SW-2 Food Scrap and Compostable Paper Diversion *Continue to promote the collection of food scraps and compostable paper through the City's organics collection program.* *2035 GHG Reduction Potential: 750 MT CO_2e/yr*	**Consistent.** The City is the responsible party for implementing this measure. The proposed project would include compost and yard waste disposal services through the City's contracts with Recology South Bay. The materials would be collected by the City garbage waste hauler. The proposed project would not conflict with implementation of this measure.
Measure C-SW-3 Construction & Demolition Waste Diversion Program *Continue to enforce diversion requirements in City's Construction & Demolition Debris Diversion and Green Building Ordinances.* *2035 GHG Reduction Potential: 550 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. As described in Chapter 3, Project Description, on page 3-25, the proposed project would comply with the City's Construction and Demolition Debris Diversion Ordinance (CMC Chapter 16.72), which requires applicable construction projects to divert 65 percent of construction waste. Pursuant to CMC Section 16.72.050, Information Required Before Issuance of Permit, the project would create a construction waste management plan to reduce construction waste and divert materials from landfill and promote recycling of construction waste. Prior to receiving a final building inspection, a construction recycling report would be submitted to show the tons recycled and disposed by material type. The proposed project would not conflict with implementation of this measure.
Measure C-G-1 Urban Forest Program *Support development and maintenance of a healthy, vibrant urban forest through outreach, incentives, and strategic leadership.* *2035 GHG Reduction Potential: 725 MT CO_2e/yr*	**Consistent.** The City is the responsible party for this measure. All 11 existing trees would remain on-site under the proposed project, as described in Chapter 3, Project Description, page 3-22 of the IS/MND. Based on sheet C3.0 of the April 2019 Conceptual Stormwater Control Plan Second Floor, the proposed project would include 2,100 square feet of pervious landscaped surfaces, including 14 new trees. The new landscaping reduces storm water run-off, increases carbon dioxide plantings, and reduces the heat sink profile of the site. The proposed project would not conflict with implementation of this measure.

Section IX. Hydrology and Water Quality

As described in the Response to Comments Memo to the Planning Commission, because the proposed project would comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program C.3

requirements, no post-construction treatment measures as mandated by new State Water Regional Water Quality Control Board standards. Therefore, for clarification, the paragraph on page 4-52 of the IS/MND under criterion (a) has been revised as follows:

> Because the project would disturb one or more acres during construction, the project applicant would be required to comply with State's Construction General Permit and submit PRDs to the SWRCB prior to the start of construction. The PRDs include a NOI and a site-specific construction SWPPP that describes the incorporation of best management practices to control sedimentation, erosion, and hazardous materials contamination of runoff during construction. ~~New requirements by the SWRCB would also require the project applicant to prepare a construction SWPPP that includes post construction treatment measures aimed at minimizing storm water runoff.~~ With implementation of these ~~measures~~ best management practices, water quality impacts during construction would be *less than significant*.

Section XI. Noise

The following change has been made because the project applicant has clarified that no emergency generator will be installed as part of the project.

Following the second paragraph under subsection "Project-Related Operational Noise, Stationary Noise," on page 4- the text has been revised as follows:

> ~~In addition, an emergency backup generator is proposed on the roof inside an enclosure. It is anticipated that the generator would be power rated at 275 kilowatt (kW) and would only be used during an emergency power outage or for routine testing (up to 50 hours per year per BAAQMD regulations). A typical 275 kW generator with a weatherproof enclosure would produce noise levels of approximately 84 dBA at a distance of 23 feet. With a Level II sound attenuation enclosure, a typical 275 kW generator would produce noise levels of approximately 75 dBA at a distance of 23 feet. The proposed six-foot metal rooftop panel, shown in Figure 3-8, would provide additional shielding, as might the roof itself depending upon the final design. However, to provide a conservative assessment of operational noise impacts, these project features were not factored into the estimated noise level at nearby receptors since the height of the exhaust/enclosure is unknown at this time. At the nearest non-residential receptor (commercial uses to the west), noise levels would be reduced to approximately 76 dBA with a weatherproof enclosure and 67 dBA with a Level II sound enclosure. In both cases, this would potentially exceed the CMC daytime noise limit of 65 dBA. The commercial uses to the west would not be any more sensitive during nighttime hours than daytime hours. At the nearest residential receptors (Aviare Apartments 150 feet to the east), noise levels would be reduced to approximately 65 dBA with a weatherproof enclosure and 56 dBA with a Level II sound enclosure. In both cases, this would potentially exceed the CMC nighttime noise limit of 50 dBA for residential receptors. Therefore, this impact would be potentially significant. With~~

~~implementation of Mitigation Measure NOISE-2, project-related operational noise impacts would be *less than significant*.~~

~~**Impact NOISE-2:** The proposed project could result in the generation of a substantial permanent increase in ambient noise levels in the vicinity of the project during the operation phase that would be in excess of standards established in the local general plan or noise ordinance, or in other applicable local, State, or federal standards.~~

~~**Mitigation Measure NOISE-2:** Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the Cupertino Municipal Code noise limits of 60 dBA and 50 dBA at residential uses during daytime and nighttime, respectively, and 65 dBA and 55 dBA at non-residential sensitive uses (i.e., the Cupertino Hotel) during daytime and nighttime, respectively. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level requirements. Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's noise level requirements. Noise reduction measures could include, but are not limited to:~~

- ~~Selection of equipment that emits low noise levels;~~
- ~~Installation of noise dampening techniques, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors;~~
- ~~Locating equipment in less noise-sensitive areas, where feasible.~~

Section XVII. Utilities and Service Systems

The discussion of wastewater treatment capacity in the IS/MND has been revised to acknowledge the updated generation rates in the CSD's *Flow Modeling Analysis for Homestead Flume Outfall to City of Santa Clara* published December 6, 2019 after the release of the Public Draft IS/MND on July 2, 2019.

Text in Criterion (c) starting on page 4-93 has been revised as follows:

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Based on the ~~May 2007 *City of Santa Clara Sewer Capacity Assessment*~~ *CSD's Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara* dated December 6, 2019, the estimated ~~wastewater~~ average dry weather flow (ADWF) generation rate for hotel uses is ~~100~~ 84.6 gpd per room. Applying this generation rate, the proposed 156-room hotel would generate up to ~~15,600~~ 13,197.6 gpd or approximately ~~0.0156~~ 0.0132 mgd of wastewater.

The SJ/SCWPCP's ~~current total~~ projected peak wet weather capacity stated in *The San Jose Santa Clara Water Pollution Control Plant Master Plan (see page 15)*, November 2013, ~~of~~ is 450 mgd. The ADWF capacity is 167 mgd pursuant to the most recent National Pollutant Discharge Elimination System

(NPDES) permit for the SJ/SCWPCP (Order No. R2-2014-0034, NODES No. CA0037842). Combined, the proposed project's wastewater generation (~~0.0156~~ 0.0132 mgd) and the existing wastewater generated (~~105~~ 110 mgd) would not exceed the SJ/SCWPCP's current ~~total~~ peak wet weather or ADWF capacity ~~of 450 mgd~~ limits.

The CSD has a contractual maximum treatment allocation of 7.85 mgd, on average, with the SJ/SCWPCP. At the time of the General Plan EIR, the wastewater generation of 5.3 mgd was estimated by the CSD.[123] Combined, the existing wastewater flow (5.3 mgd) plus the proposed project (~~0.0156~~ 0.0132 mgd) would not exceed the City's contractual allocation limits (7.85 mgd). Furthermore, the proposed 156-room hotel is within the 1,339-hotel-room limit evaluated in the General Plan EIR; therefore, no new impact would result.

The CSD wastewater system flows through a portion of the City of Santa Clara's sewer system. The contractual agreement between CSD and the City of Santa Clara, for this portion of the Santa Clara sewer system, allows 13.8 mgd during peak wet weather flows. The existing CSD peak wet weather flow into the Santa Clara system is ~~13.29~~ 13.14 mgd.[~~124~~] However, the estimated wastewater generation from the proposed project and from other potential projects as established by the General Plan and other approved projects, the total capacity needed to serve these projects is approximately ~~14.02~~ 14.61 mgd.[~~125~~] Therefore, the proposed project, and other approved and potential projects as established by the General Plan buildout, will require a reduction in sewer generation from the CSD system prior to flowing into the City of Santa Clara system, or additional capacity rights will need to be acquired from the City of Santa Clara.

~~CSD performed smoke testing of a portion of the sewer system in 2018. The results of the smoke testing showed that certain portions of their system are being impacted by inflow from illegal connections to the system. These illegal connections include area drains, catch basins and roof rainwater leaders from both public and private facilities within the City of Cupertino and the City of Saratoga jurisdictions. These illegal connections collect storm water and direct the flow to the sewer system. Calculating the flows from these illegal connections, using the Manning's flow equation and the size of the areas that flow to these connections, there is an addition of approximately 0.4 mgd to the sanitary sewer peak wet weather flow. Disconnecting these illegal connections and redirecting these storm water flows to the public storm drain system would result in a reduction of the sewer peak wet weather from 14.02 mgd to 13.62 mgd, which is below the City of Santa Clara contractual limit.~~

Footnotes:

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

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

[125] Mark Thomas & Co. Inc., C*upertino Sanitary District Flow Modeling Analysis Homestead Flume Outfall to City of Santa Clara*. ~~February 20, 2019~~ December 6, 2019. ~~Sewage coefficients use to calculate the sewer generation rates for the various uses in the project and the General Plan buildout were taken from the San Jose- Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient table and from the City of Santa Clara Sanitary Sewer Capacity Assessment, May 2007.~~

Mitigation Measure UTIL-1

Revisions to Mitigation Measure UTIL-1 shown on pages 4-94 and 4-95 as well as pages 2-9 in Chapter 2 Executive Summary, and 5-10 and 5-11 in Chapter 5, Mitigation Monitoring and Reporting Program have been revised as follows.

> **Mitigation Measure UTIL-1:** No building permits shall be issued by the City for the proposed De Anza Hotel Project that would result in exceeding the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD), that the proposed hotel would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:
>
> 1) Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows; or
>
> 2) Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.
>
> 3) The proposed project's estimated wastewater generation shall be calculated using the generation rates used by the ~~*San Jose-Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient* table in the May 2007, *City of Santa Clara Sanitary Sewer Capacity Assessment*,~~[126] CSD in the *Flow Modeling Analysis for the Homestead Flume Outfall to the City of Santa Clara*, prepared by Mark Thomas & Co. Inc. dated December 6, 2019 ~~and *California Green Building Standards*~~, unless alternative (i.e., lower) generation rates achieved by the proposed project are substantiated by the project applicant based on evidence to the satisfaction of the CSD. To calculate the peak wet weather flow for a 10-year storm event, the average daily flow rate shall be multiplied by a factor of 2.95 as required by CSD pursuant to their December 2019 flow modeling analysis.

Footnote:

~~[126] Mark Thomas and Associates, Email communication with Cupertino Public Works. July 19, 2018.~~

Appendix A: Air Quality and Greenhouse Gas Emissions Data

As described in the Response to Comments Memo for the Planning Commission, Appendix A of the IS/MND has been revised to include additional modeling worksheets that begin on page 45 of the Revised Appendix A.