

EXHIBIT EA-1 (ALTERNATE)

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR GENERAL PLAN AMENDMENT, HOUSING ELEMENT UPDATE, AND ASSOCIATED REZONING

I. INTRODUCTION

The City of Cupertino (City), as lead agency under the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, has prepared the Final Environmental Impact Report for the General Plan Amendment, Housing Element Update, And Associated Rezoning (the “Project”) (State Clearinghouse No. 2014032007) (the “Final EIR” or “EIR”). The Final EIR is a program-level EIR pursuant to Section 15168 of the State CEQA Guidelines.¹ The Final EIR consists of Volumes I and II of the June 2014 Public Review Draft Project Environmental Impact Report (the “Draft EIR”); the August 2013 Response to Comments Document; and the November 3, 2014 Supplemental Text Revisions memorandum,² which contains typographical corrections, insignificant modifications, amplifications and clarifications of the EIR.

In determining to approve the Project, which is described in more detail in Section II, below, the City makes and adopts the following findings of fact and statement of overriding considerations, and adopts and makes conditions of project approval the mitigation measures identified in the Final EIR, all based on substantial evidence in the whole record of this proceeding (administrative record). Pursuant to Section 15090(a) of the State CEQA Guidelines, the Final EIR was presented to the City Council, the City Council reviewed and considered the information contained in the Final EIR prior to making the findings in Sections II through XIII, below, and the City Council determined that the Final EIR reflects the independent judgment of the City. The conclusions presented in these findings are based on the Final EIR and other evidence in the administrative record.

II. PROJECT DESCRIPTION (the “Balanced Plan”)

As fully described in Chapter 3 of the Draft EIR, the Balanced Plan (also, the “Project”) involves all of the following: (1) a focused General Plan Amendment consisting of revised

¹ The State CEQA Guidelines are found at California Code of Regulations, Title 14, Section 15000 *et seq.*

² PlaceWorks, *Supplemental Text Revisions to the General Plan Amendment, Housing Element Update and Associated Rezoning Project Final Environmental Impact Report (EIR)* (November 3, 2014) (“Supplemental Text Revisions”).

city-wide development allocations for office commercial, hotel and residential uses, as well as buildings heights and densities for Major Mixed-Use Special Areas; (2) updating the General Plan Housing Element to accommodate the Regional Housing Needs Allocation (RHNA) for the 2014-2022 planning period to meet the City's fair-share housing obligation of 1,064 units; (3) amending certain Zoning and Density Bonus portions of the City's Municipal Code to be consistent with the Housing Element and to be consistent with requirements pertaining to emergency shelters; and (4) conforming changes to the General Plan Land Use Map, Zoning Ordinance and Zoning Map for consistency and for revisions required by State law, and reorganization for purposes of increasing clarity and ease of use.

The increased development allocations would be allowed in specific locations throughout the City, which are categorized as follows and are described and depicted on figures in the EIR:

- Special Areas (including City Gateways and Nodes along major transportation corridors);
- Study Areas;
- Other Special Areas (including Neighborhoods and Non-Residential/Mixed-Use Special Areas); and
- Housing Element Sites

The buildout of the potential future development in these identified locations is based on a horizon year of 2040; therefore, the EIR analyzes growth occurring between 2014 and 2040. The 2040 horizon year is generally consistent with other key planning documents, including Plan Bay Area, which is the Bay Area's Regional Transportation Plan/ Sustainable Community Strategy to Senate Bill 375, the Sustainable Communities and Climate Protection Act.

The EIR analyzed the proposed Project (which is "Land Use Alternative C")³ and three additional alternatives (No Project Alternative, Land Use Alternative A, and Land Use Alternative B), all at the same level of detail. The Balanced Plan is a revised version of Alternative C consisting of the same development allocations and Housing Element sites that were analyzed in the EIR for Alternative C, except, as described in more detail in the next section below, that the office allocation is reduced to the amount analyzed in the EIR for Alternative B, and the maximum height limits are reduced except at one location (Stelling Gateway) as part of reducing the office allocation. The purpose of the revisions to Alternative C in the Balanced Plan is to more closely achieve a balance among the project objectives (see Section II.A, below).

³ Draft EIR, p. 2-5 (Table 2-1, footnote a).

A. General Plan Amendment

Every city and county in California is required to prepare and to adopt a comprehensive, long-term general plan for the physical development of the county or city and, in some cases, land outside the city or county boundaries. Government Code § 65300. The City's current, 2000-2020 General Plan controls the area and density of commercial, office, hotel, and residential uses built in the city through development allocations in terms of square feet (commercial and office), rooms (hotel), and units (residential). The allocations are geographically assigned in certain neighborhoods, commercial, and employment centers so that private development fulfills both City goals and priorities and reduces adverse impacts to the environment. The City allocates development potential on a project-by-project basis to applicants for net new office and commercial square footage, hotel rooms, and/or residential units. As a result of several recent approvals of projects, a large amount of the current office, commercial and hotel development allocation has been granted, leaving an inadequate pool to allocate to additional development in the city.

While the Project is not a complete revision of the City's 2000-2020 General Plan. The current General Plan contains many goals, policies, standards, and programs that the City and community would like to continue into the future. The Project instead focuses on identifying and analyzing potential changes along the major transportation corridors in Cupertino that have the greatest ability to evolve in the near future because the rest of the city consists primarily of single-family residential neighborhoods.

The development allocations in the Balanced Plan are as follows:

- Office allocation (reduced to amount in Alternative B): 2,540,231 square feet (net increase of 2,000,000 square feet from the 2000-2020 General Plan)⁴
- Commercial allocation (same as Alternative C): 1,343,679 square feet (net increase of 0 square feet from the 2000-2020 General Plan)⁵

⁴ The Alternative C proposed office allocation is 4,040,231 square feet (net increase from 2000-2020 General Plan of 3,500,000 square feet).

⁵ The EIR provided an analysis for the commercial development allocation of 1,343,679 square feet for Alternative C, which is an increase in commercial development allocation of 642,266 square feet over the remaining allocation of 701,413 square feet in the 2020 General Plan; however, the additional 642,266 square footage does not constitute a net increase in commercial development in Cupertino during the planning period of the General Plan Amendment (through 2040). That is because the entire 642,266 square feet of the increased allocation would come from demolition of Vallco Shopping Center and rebuilding and/or relocating that existing commercial square footage to other sites. Due to the high vacancy rate at the Vallco Shopping Mall under existing conditions, however, the EIR conservatively analyzed the total commercial development allocation of 1,343,679 square feet (642,266 existing square feet + 701,413 new square feet).

- Hotel allocation (same as Alternative C): 1,339 rooms (net increase of 1,000 rooms from the 2000-2020 General Plan)
- Residential allocation (same as Alternative C): 4,421 units (net increase of 2,526 units from the 2000-2020 General Plan)

As shown above, these development allocations consist of a balance among the development allocations in Alternatives B and C. The recommended heights are lower than those studied in Alternative C, however. In most Special Areas the Balanced Plan would have the same height limits as Alternative B, but in one case (South De Anza Avenue) the height limits would be the same as Alternative A. See Land Use and Community Design Element, Table LU-2.

The Balanced Plan provides a better balance of land uses than the Alternative C or any of the other alternatives due to the fact that the office/commercial-to-residential balance is even better than that in Alternative B, which had the lowest VMT of all of the alternatives studied in the EIR. However, it will continue to have significant avoidable impacts for traffic, air quality and noise even after incorporation of all feasible mitigation measures.

The majority of the Balanced Plan is located in the City's Special Areas as identified in the current General Plan. The development allocations can generally be used in Special Areas, Study Areas, Housing Element Sites and Other Special Areas; however, hotel development allocations may not be used in Other Special Areas. The boundaries and proposed changes within each Special Area, Study Area and Other Special Area are described in detail in Section 3.7 (Project Components) of Chapter 3 (Project Description) of the Draft EIR.

B. Housing Element Update

The Balanced Plan includes a comprehensive update to the City's Housing Element (the "2014-2022 Housing Element") in compliance with State law. The Housing Element's policies and programs are intended to guide the City's housing efforts through the 2014 to 2022 Housing Element period. The 2014-2022 Housing Element keeps many of the existing policies and strategies in the 2007-2014 Housing Element and revises them to conform to changes in State law or based on a critical evaluation of the programs and policies. The Housing Element assesses housing needs for all income groups and establishes a program to meet these needs. The policies and strategies have also been reorganized to provide for better readability and to eliminate redundancies.

State law requires each jurisdiction to address how it will satisfy the quantified objectives for new residential units as represented by the Regional Housing Needs Allocation (RHNA). The RHNA identifies Cupertino's housing needs by income levels. The City's housing needs allocation for the period 2014 to 2022 is 1,064 new housing units. The income levels are separated into four categories: very low, low, moderate and above moderate, shown in Draft EIR Table 3-20. Draft EIR, p. 3-66. State law allows jurisdictions

to take credit for residential projects that have been approved, building permits issued during the plan period in which the review is taking place, and second dwelling units (also known as accessory dwelling units) that are anticipated to be constructed during the plan period.

The City has issued entitlements and/or building permits for 30 units since January 1, 2014. Additionally, it is anticipated that because 32 second units (on single-family lots) were constructed in the 2007-2014 plan period, 32 second units will be constructed in the current plan period as well. Therefore, the City can take credit for a total of 62 units (30 units approved and 32 second units anticipated). As a result, the City is required to identify sites for the construction of 1,064 minus 62 units, or 1,002 units.

To accommodate the current planning period's RHNA, the Available Land Inventory in the Draft 2014-2022 Housing Element identified 19 potential housing sites, which are analyzed in the EIR. The State Department of Housing and Community Development (HCD) generally requires jurisdictions to show a surplus of sites/units in order to guarantee that the City could realistically accommodate the RHNA allocations. Of the original 19 sites identified in the Draft EIR, 12 remain for consideration.⁶ Approximately 2,084 units could be accommodated on these 12 sites. Draft EIR, Table 3-21, pp. 3-68 to 3-70 and City Council Staff Report for November 10, 2-14 (Table 3). The maximum number for the residential allocation pursuant to the Balanced Plan is 4,421 units, which allows for net new development of 2,526 units above the current General Plan buildout.

HCD generally requires jurisdictions to show a surplus of sites/units in order to guarantee that the RHNA realistically can be accommodated. Based on consultation with HCD and the City's housing consultant expert, it is anticipated that HCD will require sites to accommodate units equivalent to a moderate surplus above the City's housing need, or approximately 1,400 units. Of the 12 identified sites, the City Council has directed staff to submit six sites to HCD for review as to their adequacy under State Planning and Zoning Law. These six sites can accommodate 1,386 units.

⁶ Of the 19 studied in the EIR, only 12 sites are available for selection. That is because the largest property owner associated with the Intrahealth/Valley Church etc. site on Stelling Road, and the owners of two of the three parcels at Cypress Building/Hall property site notified the City that their properties should not be included in the Housing Sites Inventory. The property owner of a small portion of Shan Restaurant/Q-Mart/China Dance indicated that their parcel should not be included in the Housing Sites Inventory, the resulting reduction in size does not result in a significant change in the size of the site and the balance of the site is included as an Alternate Site. While the property owner of 40% of the Arya/Scandinavian Design site indicated that their property should be removed from the Housing Sites Inventory, this site was already recommended for removal in the Balanced Plan. In addition, four other sites were removed from consideration.

The means of achieving the development of these units are provided for in the policies and programs described in the Housing Element. The City's quantified objectives are identified in Table 3.4 of the Housing Element. The City is not obligated to construct the housing units identified by the RHNA. Rather, the City is required to demonstrate adequate capacity for 1,064 housing units by identifying sufficient specific sites in order to satisfy the RHNA under existing zoning and land use policy.

In addition to analyzing the 2014-2022 Housing Element for the specified planning period, the Final EIR analyzes the overall environmental effects of increasing housing units on a citywide basis to address, which is necessary the address the two future housing elements that are expected to be adopted during the period between 2014 and General Plan Amendment horizon year of 2040. The Plan Bay Area (the Bay Area Region's Sustainability Communities Strategy and Regional Transportation Plan) identifies that the City of Cupertino's housing need by 2040 will be 4,421 units. Therefore, while the Housing Element only identifies the potential for development of 1,064 units on six Available Land Inventory housing sites, the Balanced Plan also adds 2,526 units to the City's current residential development allocation for a total of 4,421 units, the impacts of which are analyzed in the EIR.

C. Conforming General Plan Amendments, Zoning Amendments, and Density Bonus Amendments

As part of the Housing Element update process, Chapter 19.56 (Density Bonus) in Title 19 (Zoning) of the City's Municipal Code will be amended to be consistent with the 2007–2014 Housing Element Program 12 (Density Bonus Program). Chapter 19.20 (Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones), Chapter 19.76 (Public Building (BA), Quasi-Public Building (BQ) and Transportation (T) Zones), and Chapter 19.84 (Permitted, Conditional And Excluded Uses In Open Space, Park And Recreation And Private Recreation Zoning Districts), also in Title 19 (Zoning) of the City's Municipal Code, will be amended to ensure conformance with SB 2 requirements pertaining to permanent emergency shelters and to comply with the State Employee Housing Act with respect to farmworker housing and employee housing. In addition, Program 17 of the Housing Element, which addresses the potential loss of multi-family housing and displacement of lower- and moderate-income households due to new development, will be amended to comply with recent legislation and to mitigate the potential displacement impacts to renters (e.g. tenant relocation benefits).

The Balanced Plan also includes revisions to the General Plan Land Use Map, Zoning Ordinance (including the Chapters listed above and 19.08 (Definitions) and 19.144 (Development Agreements), and the Zoning map to ensure consistency with the General Plan as a result of changes to Housing Element policies or to address changes required as a result of State legislation adopted since the last General Plan update (such as Assembly Bill

1358, Complete Streets), and as a result of bringing non-conforming land uses into conformance with the General Plan and Zoning Ordinance.

D. Project Objectives

The project objectives are as follows:

- Emphasize employment and a mix of economic development opportunities by replenishing, reallocating, and increasing city-wide office, commercial, and hotel, allocations in order to capture:
 - A share of the regional demand for office and hotel development, and
 - Retail sales tax leakage in the trade area.
- Address local needs and regional requirements for new housing, including affordable housing, in Cupertino by replenishing, re-allocating and increasing city-wide residential allocations to be consistent with 2040 Bay Area Plan projections to allow flexibility for the city when future state-mandated updates are required to the Housing Element.
- Update the Housing Element as required by State law.
- Creating opportunities for mixed-use development consistent with Regional Sustainable Communities Strategies for greenhouse gas emissions reductions as required by SB 375.
- Investing in improvement to adapt to climate change over time.
- Consider increased heights in key nodes and gateways, if proposed development provides retail development and benefits directly to the community.
- Update General Plan policies to implement multi-modal traffic standards as opposed to LOS thresholds currently identified. Balancing development objectives with transportation constraints and opportunities.
- Revitalize the Vallco Shopping District by adopting policies to support its redevelopment, so it becomes a cohesive, vibrant shopping and entertainment destination that serves both the region and the local community.

III. ENVIRONMENTAL REVIEW PROCESS

A. Environmental Impact Report

On March 5, 2014, the City circulated a Notice of Preparation (NOP) of the Draft EIR to the Office of Planning and Research (OPR) State Clearinghouse and interested agencies and

persons. A postcard notice had previously been delivered in February 2014 to all postal addresses in the City to announce upcoming dates for the General Plan and Housing Element projects. The NOP was circulated for comment by responsible and trustee agencies and interested parties for a total of 30 days, from March 5, 2014 through April 7, 2014, during which time the City held a public scoping meeting on March 11, 2014. Comments on the NOP were received by the City and considered during preparation of the Draft EIR.

The Draft EIR was made available for review by the public and interested parties, agencies, and organizations for a 45-day comment period starting on June 18, 2014 and ending August 1, 2014. The Draft EIR was distributed to local, regional and State agencies. Copies of the Draft EIR in paper or electronic format were available to interested parties for purchase or review at Cupertino City Hall. The Draft EIR was also available for review at libraries in the City and in surrounding communities, and an electronic version of the Draft EIR and all appendices were posted on a website the City created for the combined General Plan and Housing Element projects at www.cupertino.org, which included an electronic comment portal to receive public comment 24 hours a day, seven days a week. The City continues to make these documents available on its website for the Project at the following URL: http://www.cupertino.org/app_folders/view/1. The public was also invited to submit written comments on the Draft EIR to the City of Cupertino Community Development Department by mail or e-mail to planning@cupertino.org.

Notice of availability of the Draft EIR was made in several ways. The City sent a postcard announcing the availability of the Draft EIR and inviting attendance at the Draft EIR comment meeting to all postal addresses in Cupertino. In addition, in accordance with CEQA, the City posted the Notice of Availability (NOA) on the Project website. The City also sent emails providing notice of the Draft EIR's availability to all persons who had indicated an interest in the Project and signed up for notifications through the City's website. The local media publicized the availability of the Draft EIR and the public comment period.

The City held a Community Open House and EIR Comment Meeting during the comment period on June 24, 2014. The City solicited written comments at the meeting by distributing comment cards that were collected at the end of the evening.

The 45-day comment period on the Draft EIR ended on August 1, 2014 at 4:30 p.m. Agencies, organizations, and members of the public submitted written comments on the Draft EIR. The Responses to Comments Document, which is the third volume of the Final EIR, was issued for public review on August 28, 2014 and sent to public agencies who had commented on the Draft EIR. Chapter 5 of the Responses to Comments Document provides responses to the comments received during the comment period on the Draft EIR. Late comments received after the close of the public comment period have been addressed in memoranda submitted to the City Council.

On September 9, 2014, the Planning Commission held a Study Session on the EIR and took public comments. On October 7, 2014, the City Council held a Study Session on the Final EIR and took public comments.

On October 2, 2014, the Environmental Review Committee determined that the EIR was adequate and recommended that the City Council certify the EIR. On October 20, 2014, following a duly noticed public hearing on October 14, 2014 that was continued on October 20, 2014, the City Planning Commission, recommended that the City Council certify the Final EIR.

B. Additional Housing Element Public Review Process

The Housing Element must identify community involvement and decision-making processes and techniques that constitute affirmative steps for receiving input from all economic segments of the community, especially low-income persons and their representatives, as well as from other members of the community. Public participation, pursuant to Section 65583(c)(8) of the Government Code, was accomplished in a variety of ways. Outreach was conducted in the form of in-person interviews with stakeholders including several housing-related non-profits and organizations that provide services to low income families and individuals in the City; and with parties interested in the Housing Element process, including property owners and community groups such as the Concerned Citizens of Cupertino and neighborhood groups. Below are some examples of outreach and noticing conducted as part of the Housing Element update.

- Notice postcard sent to every postal address in the City.
- Joint Housing Commission and Planning Commission workshop – January 23, 2014
- Housing Commission Workshop – February 12, 2014
- Open House – February 19, 2014, September 16, 2014
- Study Session held with Planning Commission – February 19, 2014
- Study Session held with City Council – March 3, 2014
- Housing Commission meeting on housing policy – March 19, 2014
- Joint Planning Commission/City meeting on housing policy – April 1, 2014
- Newspaper notices.
- Notices sent to all prospective housing element site property owners prior to City Council authorization to commence environmental review.

- Notices sent to all prospective housing element site property owners prior to Planning Commission and City Council prioritization of the sites for HCD review.
- Webpage hosted focusing on the Housing Element Update process.
- Notice of website additions and Workshop reminders e-mailed to over 300 Housing Element website subscribers.
- Staff presentations at the Chamber of Commerce.
- Housing Commission Meeting – August 28, 2014
- Planning Commission Hearing – October 14, 2014 and October 20, 2014

The City's outreach also included stakeholder meetings with non-profit and for-profit housing developers, building industry trade groups, architects, planners, and affordable housing funders. The Housing Element update process in the City has involved a number of groups and individuals in the process of reviewing current housing conditions and needs and considering potential housing strategies. Two public workshops were held at Housing Commission meeting and at a Joint Planning Commission Housing Commission meeting. In addition, one publicly noticed Planning Commission Study Session was held and included opportunity for public comment. Feedback from these study sessions and public workshops was used to identify needs, assess constraints and develop draft programs for the Housing Element update, and are included in Section 1.3 of Appendix A of the General Plan.

IV. FINDINGS

The findings, recommendations, and statement of overriding considerations set forth below (the "Findings") are made and adopted by the Cupertino City Council as the City's findings under CEQA and the State CEQA Guidelines relating to the Project. The Findings provide the written analysis and conclusions of this City Council regarding the Project's environmental impacts, mitigation measures, alternatives to the Project, and the overriding considerations that support approval of the Project despite any remaining environmental effects it may have.

These findings summarize the environmental determinations of the Final EIR with regard to project impacts before and after mitigation, and do not attempt to repeat the full analysis of each environmental impact contained in the Final EIR. Instead, these findings provide a summary description of and basis for each impact conclusion identified in the Final EIR, describe the applicable mitigation measures identified in the Final EIR, and state the City's findings and rationale about the significance of each impact following the adoption of mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determinations regarding mitigation measures and the Project's impacts.

When evaluating cumulative impacts, CEQA allows the use of either a list of past, present, and probable future projects, including projects outside the control of the lead agency, or a summary of projections in an adopted planning document. The cumulative impacts analysis in the Final EIR uses the projections approach and takes into account growth from the Project within the Cupertino city boundary and Sphere of Influence (SOI), in combination with impacts from projected growth in the rest of Santa Clara County and the surrounding region, as forecast by the Association of Bay Area Governments (ABAG).

In adopting mitigation measures, below, the City intends to adopt each of the mitigation measures identified in the Final EIR. Accordingly, in the event a mitigation measure identified in the Final EIR has been inadvertently omitted from these findings, such mitigation measure is hereby adopted and incorporated into the Project in the findings below by reference. In addition, in the event the language of a mitigation measure set forth below fails to accurately reflect the mitigation measure in the Final EIR due to a clerical error, the language of the mitigation measure as set forth in the Final EIR shall control unless the language of the mitigation measure has been specifically and expressly modified by these findings.

Sections V and VI, below, provide brief descriptions of the impacts that the Final EIR identifies as either significant and unavoidable or less than significant with adopted mitigation. These descriptions also reproduce the full text of the mitigation measures identified in the Final EIR for each significant impact.

V. SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS AND DISPOSITION OF RELATED MITIGATION MEASURES RESULTING IN SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS

The Final EIR identifies the following significant and unavoidable adverse impacts associated with the approval of the Project, some of which can be reduced, although not to a less-than-significant level, through implementation of mitigation measures identified in the Final EIR. Public Resources Code § 21081(a)(1). In some cases, the City cannot require or control implementation of mitigation measures for certain impacts because they are within the responsibility and jurisdiction of other public agencies. Public Resources Code § 21081(a)(2). Therefore, as explained below, some impacts will remain significant and unavoidable notwithstanding adoption of feasible mitigation measures. To the extent that these mitigation measures will not mitigate or avoid all significant effects on the environment, and because the City cannot require mitigation measures that are within the responsibility and jurisdiction of other public agencies to be adopted or implemented by those agencies, it is hereby determined that any remaining significant and unavoidable adverse impacts are acceptable for the reasons specified in Section XII, below. Public Resources Code § 21081(a)(3). As explained in Section IX, below, the findings in this Section

V are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

A. Impact AQ-1: Implementation of the Project would conflict with or obstruct implementation of the applicable air quality plan.

The Final EIR finds that while the Project would support the primary goals of the 2010 Bay Area Clean Air Plan, the buildout of the Project would conflict with the BAAQMD Bay Area Clean Air Plan goal for community-wide VMT to increase at a slower rate compared to population and employment growth. The rate of growth in VMT would exceed the rate of population and employment growth, resulting in a substantial increase in regional criteria air pollutant emissions in Cupertino.

There are no mitigation measures to reduce this impact to a less-than-significant level. Policies and development standards in the Project would lessen the impact, but due to the level of growth forecast in the city and the programmatic nature of the Project, the impact would be significant and unavoidable.

B. Impact AQ-2: Implementation of the Project would violate any air quality standard or contribute substantially to an existing or projected air quality violation.

The Final EIR finds that future development under the Project would result in a substantial long-term increase in criteria air pollutants over the 26-year General Plan horizon. Criteria air pollutant emissions would be generated from on-site area sources (e.g., fuel used for landscaping equipment, consumer products), vehicle trips generated by the project, and energy use (e.g., natural gas used for cooking and heating). Because cumulative development within the City of Cupertino could exceed the regional significance thresholds, the Project could contribute to an increase in health effects in the basin until such time as the attainment standards are met in the San Francisco Bay Area Air Basin (SFBAAB). The impact is considered significant and unavoidable.

Implementation of Mitigation Measures AQ-2a and AQ-2b, set forth below, which are hereby adopted and incorporated into the Project, would reduce these impacts, but not to a less-than-significant level. Due to the programmatic nature of the Project, no additional mitigation measures are available beyond Mitigation Measures AQ-2a and AQ-2b; therefore, the impact would be significant and unavoidable.

Mitigation Measure AQ-2a:

As part of the City's development approval process, the City shall require applicants for future development projects to comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM10.

Mitigation Measure AQ-2b:

As part of the City's development approval process, the City shall require applicants for future development projects that could generate emissions in excess of the Bay Area Air Quality Management District's (BAAQMDs) current significance thresholds during construction, as determined by project-level environmental review, when applicable, to implement the current BAAQMD construction mitigation measures (e.g. Table 8-3 of the BAAQMD CEQA Guidelines) or any construction mitigation measures subsequently adopted by the BAAQMD.

- C. Impact AQ-3: Implementation of the Project would result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors).**

The Final EIR finds that the Project will combine with regional growth within the air basin to result in a cumulatively considerable net increase of pollutants for the SFBAAB, which is currently designated a nonattainment area for California and National O₃, California and National PM_{2.5}, and California PM₁₀ ambient air quality standards (AAQS). Any project that produces a significant regional air quality impact in an area that is in nonattainment adds to the cumulative impact. Mitigation measures AQ-2a and AQ-2b, set forth and incorporated above, would reduce impacts to the extent feasible, but the Project's impacts would remain significant and unavoidable.

There are no mitigation measures to reduce the impact to a less-than-significant level. Air pollutant emissions associated with the Project would result in a cumulatively considerable contribution to air quality impacts, and the Project's impacts would be significant and unavoidable.

- D. Impact AQ-6: Implementation of the Project would cumulatively contribute to air quality impacts in the San Francisco Bay Area Air Basin.**

As described in the discussion of Impact AQ-3, the Final EIR finds that regional air quality impacts will be significant. Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would result in a significant cumulative impact with respect to air quality even with the applicable regulations, as well as the Mitigation Measures AQ-2a, AQ-2b, AQ-4a and AQ-4b and the General Plan policies outlined in Impact AQ-1 through AQ-5. Therefore, this cumulative impact would be significant and unavoidable.

There are no mitigation measures to reduce the impact to a less-than-significant level. Implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-4a and AQ-4b and the General Plan policies outlined in Impact AQ-1 through AQ-5, would lessen the impact, but not to a less-than-significant level. Because the San Francisco Bay Area Air Basin is currently

designated as a nonattainment area for California and National O₃, California and National PM_{2.5}, and California PM₁₀ AAQS , the Project's cumulative impact would be significant and unavoidable.

E. Impact NOISE-3: Implementation of the Project would result in a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project.

The Final EIR finds that implementation of the Project would have a significant impact if it results in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the Project. The Final EIR anticipates that there would be substantial permanent increases to ambient noise levels throughout Cupertino as a result of implementation of the Project and ongoing regional growth, and that these increases would result primarily from increases in transportation-related noise, especially noise from automobile traffic.

Although the Project contains policies that could in certain cases reduce or prevent significant increases in ambient noise at sensitive land uses upon implementation (e.g., noise-reducing technologies, rubberized asphalt, soundwalls, berms, and improved building sound-insulation), the measures described in these policies would not be universally feasible, and some of the most effective noise-attenuation measures, including sound walls and berms, would be infeasible or inappropriate in a majority of locations where sensitive land uses already exist.

There are no mitigation measures to reduce the impact to a less-than-significant level. All conceivable mitigations would be either economically impractical, scientifically unachievable, outside the City's jurisdiction, and/or inconsistent with City planning goals and objectives. Therefore, even after the application of relevant, feasible regulations and General Plan policies, the impact to ambient noise levels would remain significant and unavoidable.

F. Impact NOISE-5: Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would result in significant cumulative impacts with respect to noise.

The Final EIR finds that the analysis of the Project, as described in the discussions of Impact NOISE-3, addresses cumulative noise impacts from implementation of the Project. Similarly, the noise contours and traffic-related noise levels developed for the Project include and account for regional travel patterns as they affect traffic levels in the City. Thus, the future noise modeling which served as the foundation for the overall Project analysis was based on future, cumulative conditions, and finds that implementation of the Project would result in significant cumulative impacts.

The Final EIR finds that even after the application of pertinent policies and strategies of the General Plan Amendment cumulative noise impacts of the Project, as described in the discussion of Impact NOISE-3, would remain significant and unavoidable. Thus, implementation of the Project would result in a significant and unavoidable cumulative impact with respect to noise.

There are no feasible mitigation measures to reduce the impact to a less-than-significant level. As explained in the discussion of Impact NOISE-3, all conceivable cumulative noise mitigations would be economically impractical, scientifically unachievable, outside the City's jurisdiction, and/or inconsistent with City planning goals and objectives, and would be infeasible. Therefore, even after the application of relevant, feasible regulations and General Plan policies, the cumulative impact would remain significant and unavoidable.

G. Impact TRAF-1: Implementation of the Project would conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.

The Final EIR finds that implementation of the Project would generate additional motor vehicle trips on the local roadway network, resulting in significant impacts to sixteen (16) out of 41 study intersections during at least one of the AM or PM peak hours. See Draft EIR, Table 4.13-13.⁷

Implementation of Mitigation Measure TRAF-1, set forth below, which is hereby adopted and incorporated into the Project, would secure a funding mechanism for future roadway and infrastructure improvements that are necessary to mitigate impacts from future projects based on then current standards, but not to a less-than-significant level. Impacts would remain significant and unavoidable because the City cannot guarantee improvements at these intersections at this time. This is in part because the nexus study has yet to be prepared and because some of the impacted intersections are within the jurisdiction of the City of Sunnyvale, the City of Santa Clara, and Caltrans. The City will continue to cooperate with these jurisdictions to identify improvements that would reduce or minimize the impacts to intersections and roadways as a result of implementation of future development projects in Cupertino, but, because many of the improvements in Mitigation Measure TRAF-1 are within the responsibility and jurisdiction of other agencies and not the City of Cupertino, this impact would remain significant and unavoidable.

⁷ Following completion of the Draft EIR, the impacts to Intersection #29 were determined to be less-than-significant rather than significant. See Supplemental Text Revisions Memo.

Mitigation Measure TRAF-1:

The City of Cupertino shall commit to preparing and implementing a Transportation Mitigation Fee Program to guarantee funding for roadway and infrastructure improvements that are necessary to mitigate impacts from future projects based on the then current City standards. As part of the preparation of the Transportation Mitigation Fee Program, the City shall also commit to preparing a "nexus" study that will serve as the basis for requiring development impact fees under AB 1600 legislation, as codified by California Code Government Section 66000 et seq., to support implementation of the Project. The established procedures under AB 1600 require that a "reasonable relationship" or nexus exist between the transportation improvements and facilities required to mitigate the transportation impacts of new development pursuant to the Project. The following examples of transportation improvements and facilities would reduce impacts to acceptable level of service standards and these, among other improvements, could be included in the development impact fees nexus study:

- ◆ ***SR 85 Northbound Ramps and Stevens Creek Boulevard (#2):*** *An exclusive left-turn lane for the northbound leg of the intersection (freeway off-ramp) at the intersection of SR 85 and Stevens Creek Boulevard would result in one left-turn lane, one all-movement lane, and one right turn lane. The additional lane could be added within the existing Caltrans right-of-way.*
- ◆ ***Stelling Road and Stevens Creek Boulevard (#3):*** *The addition of a second exclusive left-turn lane for the eastbound leg of the intersection from Stevens Creek Boulevard to northbound Stelling Road, which could be accomplished by reworking the median. Right turns would share the bike lane.*
- ◆ ***Sunnyvale-Saratoga Road/De Anza Boulevard and Homestead Road (#5):*** *Widen De Anza Boulevard to four lanes in each direction or the installation of triple left-turn lanes.*
- ◆ ***De Anza Boulevard and I-280 Northbound Ramp (#6):*** *Restriping of De Anza Boulevard in the southbound direction to provide room for right turn vehicles to be separated from through traffic may be required. The bike lane would be maintained, and right turns would occur from the bike lane. The right turns would continue to be controlled by the signal and would need to yield to pedestrians.*
- ◆ ***De Anza Boulevard and Stevens Creek Boulevard (#8):*** *Restripe westbound Stevens Creek Boulevard to provide room for right turn vehicles to be separated from through vehicles may be required. The right turn vehicles will share the bike lane and will still be controlled by the traffic signal. Paint a bike box at the front of the lane to provide bikes a place to wait at red lights. The pedestrian crossings will not be affected may enhance the bicycling experience.*
- ◆ ***De Anza Boulevard and McClellan Road/Pacifica Drive (#9):*** *Realign the intersection that is currently offset resulting in inefficient signal timing such that the McClellan Road and*

Pacifica Drive legs are across from each other may be required. In addition, double left turn lanes may be required to be added to De Anza Boulevard with sections of double lanes on McClellan Road and Pacifica Drive to receive the double left turn lanes. These improvements will require the acquisition of right-of-way and demolition of existing commercial buildings. However, some existing right-of-way could be abandoned, which would reduce the net right-of-way take.

- ◆ ***Wolfe Road and Homestead Road (#16):*** *The addition of a third southbound through lane to the southbound approach of the intersection of Wolfe Road and Homestead Road may be required, as well as the addition of a southbound exclusive right-turn lane. Three southbound receiving lanes on the south side of the intersection currently exist. An additional westbound through lane for a total of three through-movement lanes, an additional receiving lane on Homestead westbound to receive the additional through lane, as well as the addition of a westbound exclusive right-turn lane may be required. This will require widening Homestead Road. An additional eastbound through lane for a total of three through-movement lanes, an additional receiving lane on Homestead eastbound to receive the additional through lane, as well as the addition of an eastbound exclusive left-turn lane for a total of two left-turn lanes may be required. These improvements will require the acquisition of right-of-way and demolition of parking areas.*
- ◆ ***Wolfe Road and I-280 Northbound Ramp (#18):*** *The Apple Campus 2 project will be adding a third northbound through lane starting at the northbound on ramp. This third lane will need to be extended farther south to effectively serve the additional northbound traffic due to the General Plan development. This could require widening the Wolfe Road overcrossing. Right-of-way acquisition may be required. In accordance with Caltrans procedures, a Project Study Report (PSR) will need to be prepared. The PSR will look at all interchange improvement options, which may include widening the overcrossing and may also include a redesign of the interchange to go from a partial cloverleaf design to a diamond design. This could help with heavy volumes in the right lane, which contributes to the level-of-service deficiency.*
- ◆ ***Wolfe Road and I-280 Southbound Ramp (#19):*** *An additional through lane for a total of three through-movement lanes for the northbound leg of the intersection at the Wolfe Road and I-280 Southbound Ramp may be required. This additional northbound through lane would require widening to the freeway overcrossing. In addition to widening the overcrossing, the City may wish to pursue a redesign of the interchange to go from a partial cloverleaf design to a diamond design. This could help with the problem of heavy volume in the right lane, which contributes to the level of service deficiency.*
- ◆ ***Wolfe Road/Miller Avenue and Stevens Creek Boulevard (#21):*** *The restriping of the westbound leg of the intersection to provide room so that right turn vehicles can be separated from through vehicles may be required. Right turn vehicles would share the bike lane. Right turn vehicles would still be controlled by the signal, and pedestrian crossings would not be affected. Paint a bike box at the front of the lane to provide bikes a place to wait at red lights may enhance the bicycling experience.*

- ◆ **North Tantau Avenue/Quail Avenue and Homestead Road (#24):** Restriping of the southbound leg of the intersection (Quail Avenue) to provide a separate left turn lane may be required. This will require the removal of on-street parking near the intersection. The level-of-service calculations show that with implementation of these improvements, the intersection would operate at an acceptable LOS D.
- ◆ **Tantau Avenue and Stevens Creek Boulevard (#27):** The addition of a separate left-turn lane to northbound Tantau Avenue may be required. Right-of-way acquisition and demolition of existing commercial buildings would be required.
- ◆ **Stevens Creek Boulevard and Agilent Technologies Driveway (#30):** The restriping of the westbound leg of the intersection to provide room so that right turn vehicles can be separated from through vehicles may be required. Right turn vehicles would share the bike lane. Right turn vehicles would still be controlled by the signal, and pedestrian crossings would not be affected. Paint a bike box at the front of the lane to provide bikes a place to wait at red lights may enhance the bicycling experience.
- ◆ **Lawrence Expressway Southbound Ramp and Stevens Creek Boulevard (CMP, County)(#31):** The addition of a second right-turn lane for the southbound leg of the intersection at the Lawrence Expressway Southbound Ramp and Stevens Creek Boulevard may be required. Both lanes would need to be controlled by the signal, and disallow right turns on red. Right-of-way acquisition may be required.
- ◆ **Lawrence Expressway Northbound Ramp and Stevens Creek Boulevard (CMP, County) (#32):** Redesign of the northbound leg of the intersection at the Lawrence Expressway Northbound Ramp and Stevens Creek Boulevard to provide one through-movement lane, and one exclusive right-turn lane may be required. Right-of-way acquisition would be required.

The fees shall be assessed when there is new construction, an increase in square footage in an existing building, or the conversion of existing square footage to a more intensive use. The fees collected shall be applied toward circulation improvements and right-of-way acquisition. The fees shall be calculated by multiplying the proposed square footage, dwelling unit, or hotel room by the appropriate rate. Traffic mitigation fees shall be included with any other applicable fees payable at the time the building permit is issued. The City shall use the traffic mitigation fees to fund construction (or to recoup fees advanced to fund construction) of the transportation improvements identified above, among other things that at the time of potential future development may be warranted to mitigate traffic impacts.

- H. Impact TRAF 2: Implementation of the Project would conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.**

The Final EIR finds that of the 41 intersections studied in the EIR traffic analysis, 21 are included in Santa Clara County's Congestion Management Program (CMP). See Table 4.3-13, Draft EIR. The Project would result in significant impacts to 11 CMP intersections during at least one of the peak hours. Implementation of Mitigation Measure TRAF-1, set forth and incorporated above, would reduce these impacts, but not to a less-than-significant level.

Mitigation Measure:

Implement Mitigation Measure TRAF-1.

As described in the discussion of Impact TRAF-1, because many of the improvements in Mitigation Measure TRAF-1 are within the responsibility and jurisdiction of other agencies and not the City of Cupertino, these impacts would remain significant and unavoidable.

- I. **Impact TRAF-6: Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would result in additional cumulatively considerable impacts.**

The Final EIR finds that the analysis of the Project, as described in the discussions of Impact TRAF-1 and Impact TRAF-2, addresses cumulative impacts to the transportation network in the city and its surroundings; accordingly, cumulative impacts would be the same as Project-specific impacts. Therefore, the cumulative impacts to the City's transportation network resulting from the Project would be significant and unavoidable.

Mitigation Measure:

Implement Mitigation Measure TRAF-1.

As discussed under TRAF-1, because many of the improvements in Mitigation Measure TRAF-1 are within the responsibility and jurisdiction of other agencies and not the City of Cupertino, this cumulative impact would remain significant and unavoidable.

VI. SIGNIFICANT ADVERSE IMPACTS IDENTIFIED IN THE FINAL EIR THAT ARE REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES ADOPTED AND INCORPORATED INOT THE PROJECT

The Final EIR identifies the following significant impacts associated with the Project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures conditions into the Project. Public Resources Code § 21081(a)(1). As explained in Section IX, below, the findings in this Section VI are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

A. Impact AQ-4: Implementation of the Project would expose sensitive receptors to substantial concentrations of air pollution.

The Final EIR finds that the Project could result in locating sensitive receptors in proximity to major sources of air pollution or the siting of new sources of air pollution in proximity to sensitive receptors in the city. Nonresidential land uses that generate truck trips may generate substantial quantities of air pollutants within 1,000 feet of off-site sensitive receptors. In addition, proposed sensitive land uses in Cupertino may be within 1,000 feet of major sources of air pollutants, which would create a significant and unavoidable impact.

Implementation of the Mitigation Measures AQ-4a and AQ-4b, set forth below, which are hereby adopted and incorporated into the Project, would reduce this impact to a less-than-significant level.

Mitigation Measure AQ-4a:

Applicants for future non-residential land uses within the city that: 1) have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered Transport Refrigeration Units (TRUs), and 2) are within 1,000 feet of a sensitive land use (e.g. residential, schools, hospitals, nursing homes), as measured from the property line of the Project to the property line of the nearest sensitive use, shall submit a health risk assessment (HRA) to the City of Cupertino prior to future discretionary Project approval. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment and the Bay Area Air Quality Management District. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM_{2.5} concentrations exceed 0.3 µg/m³, or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxic (T-BACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include but are not limited to:

- *Restricting idling on-site.*
- *Electrifying warehousing docks.*
- *Requiring use of newer equipment and/or vehicles.*
- *Restricting offsite truck travel through the creation of truck routes.*

T-BACTs identified in the HRA shall be identified as mitigation measures in the environmental document and/or incorporated into the site development plan as a component of the Project.

Mitigation Measure AQ-4b:

Applicants for residential and other sensitive land use projects (e.g. hospitals, nursing homes, day care centers) in Cupertino within 1,000 feet of a major sources of TACs (e.g. warehouses, industrial areas, freeways, and roadways with traffic volumes over 10,000 vehicle per day), as measured from

the property line of the project to the property line of the source/edge of the nearest travel lane, shall submit a health risk assessment (HRA) to the City of Cupertino prior to future discretionary Project approval. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment (OEHHA) and the Bay Area Air Quality Management District. The latest OEHHA guidelines shall be used for the analysis, including age sensitivity factors, breathing rates, and body weights appropriate for children age 0 to 16 years. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM2.5 concentrations exceed 0.3 µg/m3, or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that mitigation measures are capable of reducing potential cancer and non-cancer risks to an acceptable level (i.e. below ten in one million or a hazard index of 1.0), including appropriate enforcement mechanisms. Measures to reduce risk may include but are not limited to:

- *Air intakes located away from high volume roadways and/or truck loading zones.*
- *Heating, ventilation, and air conditioning systems of the buildings provided with appropriately sized Maximum Efficiency Rating Value (MERV) filters.*

Mitigation measures identified in the HRA shall be identified as mitigation measures in the environmental document and/or incorporated into the site development plan as a component of the Project. The air intake design and MERV filter requirements shall be noted and/or reflected on all building plans submitted to the City and shall be verified by the City's Planning Division.

B. Impact BIO-1: Implementation of the Project would have a substantial adverse effect, either directly or through habitat modifications, on a plant or animal population, or essential habitat, defined as a candidate, sensitive or special-status species.

The Final EIR finds that some special-status bird species such as Cooper's hawk and white-tailed kite could utilize the remaining riparian corridors and heavily wooded areas for nesting, dispersal and other functions when they pass through urbanized areas. More common birds protected under MBTA may nest in trees and other landscaping on the Project Component locations. Given the remote potential for occurrence of nesting birds at one or more of the Project Component locations and possibility that nests could be inadvertently destroyed or nests abandoned as a result of construction activities, this would be considered a potentially significant impact.

Implementation of Mitigation Measure BIO-1, set forth below, which is hereby adopted and incorporated into the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure BIO-1:

Nests of raptors and other birds shall be protected when in active use, as required by the federal Migratory Bird Treaty Act and the California Department of Fish and Game Code. If construction activities and any required tree removal occur during the breeding season (February 1 and August 31), a qualified biologist shall be required to conduct surveys prior to tree removal or construction activities. Preconstruction surveys are not required for tree removal or construction activities outside the nesting period. If construction would occur during the nesting season (February 1 to August 31), preconstruction surveys shall be conducted no more than 14 days prior to the start of tree removal or construction. Preconstruction surveys shall be repeated at 14-day intervals until construction has been initiated in the area after which surveys can be stopped. Locations of active nests containing viable eggs or young birds shall be documented and protective measures implemented under the direction of the qualified biologist until the nests no longer contain eggs or young birds. Protective measures shall include establishment of clearly delineated exclusion zones (i.e. demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by a qualified biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified biologist if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified biologist only in consultation with California Department of Fish and Wildlife. The protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- C. Impact BIO-6: Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would result in significant cumulative impacts with respect to biological resources.**

The Final EIR finds that implementation of the Project could result in further conversion of existing natural habitats to urban and suburban conditions, limiting the existing habitat values of the surrounding area and potentially resulting in significant cumulative impacts with respect to biological resources.

With implementation of Mitigation Measure BIO-1, set forth and incorporated above, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure:

Implement Mitigation Measure BIO-1.

- D. Impact HAZ-4: Implementation of the Project would be located on a site which is included on a list of hazardous materials sites compiled pursuant**

to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment.

The Final EIR finds that because hazardous materials are known to be present in soil, soil gas, and/or groundwater due to past land uses at certain sites that may be redeveloped as part of the Project, the direct contact, inhalation, or ingestion of hazardous materials could potentially cause adverse health effects to construction workers and future site users. The severity of health effects would depend on the contaminant(s), concentration, use of personal protective equipment during construction, and duration of exposure. The disturbance and release of hazardous materials during earthwork activities, if present, could pose a hazard to construction workers, nearby receptors, and the environment and impacts could be potentially significant.

Implementation of Mitigation Measures HAZ-4a and HAZ-4b, set forth below, which are hereby adopted and incorporated into the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure HAZ-4a:

Construction at the sites with known contamination shall be conducted under a project-specific Environmental Site Management Plan (ESMP) that is prepared in consultation with the Regional Water Quality Control Board (RWQCB) or the Department of Toxic Substances Control (DTSC), as appropriate. The purpose of the ESMP is to protect construction workers, the general public, the environment, and future site occupants from subsurface hazardous materials previously identified at the site and to address the possibility of encountering unknown contamination or hazards in the subsurface. The ESMP shall summarize soil and groundwater analytical data collected on the project site during past investigations; identify management options for excavated soil and groundwater, if contaminated media are encountered during deep excavations; and identify monitoring, irrigation, or other wells requiring proper abandonment in compliance with local, State, and federal laws, policies, and regulations.

The ESMP shall include measures for identifying, testing, and managing soil and groundwater suspected of or known to contain hazardous materials. The ESMP shall: 1) provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during project excavation and dewatering activities, respectively; 2) describe required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and 3) designate personnel responsible for implementation of the ESMP.

Mitigation Measure HAZ-4b:

For those sites with potential residual contamination in soil, gas, or groundwater that are planned for redevelopment with an overlying occupied building, a vapor intrusion assessment shall be performed

by a licensed environmental professional. If the results of the vapor intrusion assessment indicate the potential for significant vapor intrusion into an occupied building, project design shall include vapor controls or source removal, as appropriate, in accordance with regulatory agency requirements. Soil vapor mitigations or controls could include vapor barriers, passive venting, and/or active venting. The vapor intrusion assessment and associated vapor controls or source removal can be incorporated into the ESMP (Mitigation Measure HAZ-4a).

- E. Impact HAZ-7: Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to hazards and hazardous materials.**

The Final EIR takes into account growth projected by the Project within the Cupertino city boundary and Sphere of Influence (SOI), in combination with impacts from projected growth in the rest of Santa Clara County and the surrounding region, as forecast by the Association of Bay Area of Governments (ABAG). Potential cumulative hazardous materials impacts could arise from a combination of the development of the Project together with the regional growth in the immediate vicinity of the Project Study Area. As discussed under Impact HAZ-4, disturbance and release of hazardous materials during earthwork activities, if present, could pose a hazard to construction workers, nearby receptors, and the environment and impacts could be potentially significant.

With implementation of Mitigation Measures HAZ-4a and HAZ-4b, set forth and incorporated above, in conjunction with compliance with General Plan policies and strategies, other local, regional, State, and federal regulations, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure:

Implement Mitigation Measures HAZ-4a and HAZ-4b.

- F. Impact UTIL-6: Implementation of the Project would result in a determination by the wastewater treatment provider, which serves, or may serve the project, that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.**

Buildout of the Project would have a significant impact if future projected demand exceeds the wastewater service capacity of the San Jose/Santa Clara Water Pollution Control Plan (SJ/SCWPCP) or the Sunnyvale Water Pollution Control Plan (SWPCP), or the Cupertino Sanitary District (CSD) or City of Sunnyvale collection systems.

Implementation of Mitigation Measures UTIL-6a, UTIL-6b, and UTIL-6c, set forth below, which are hereby adopted and incorporated into the Project, would avoid or reduce this impact to a less-than-significant level.

Mitigation Measure UTIL-6a:

The City shall work with the Cupertino Sanitary District to increase the available citywide treatment and transmission capacity to 8.65 million gallons per day, or to a lesser threshold if studies justifying reduced wastewater generation rates are approved by CSD as described in Mitigation Measure UTIL-6c.

Mitigation Measure UTIL-6b:

The City shall work to establish a system in which a development monitoring and tracking system to tabulate cumulative increases in projected wastewater generation from approved projects for comparison to the Cupertino Sanitary District's treatment capacity threshold with San Jose/Santa Clara Water Pollution Control Plant is prepared and implemented. If it is anticipated that with approval of a development project the actual system discharge would exceed the contractual treatment threshold, no building permits for such project shall be issued prior to increasing the available citywide contractual treatment and transmission capacity as described in Mitigation Measure UTIL-6a.

Mitigation Measure UTIL-6c:

The City shall work with the Cupertino Sanitary District to prepare a study to determine a more current estimate of the wastewater generation rates that reflect the actual development to be constructed as part of Project implementation. The study could include determining how the green/LEED certified buildings in the City reduce wastewater demands.

G. Impact UTIL-7: Implementation of the Project, in combination with past, present, and reasonably foreseeable projects, would not result in significant cumulative impacts with respect to wastewater treatment.

The Final EIR finds that buildout of the Project would generate a minor increase in the volume of wastewater delivered for treatment at SJ/SCWPCP and SWPCP, representing less than 1 percent of the available treatment capacity at the SJ/SCWPCP and SWPCP, and it would occur incrementally over a period of 26 years. Based on the recent trends of diminishing wastewater treatment demand and the projected population growth in the service areas, cumulative wastewater treatment demand over the Project buildout period is far below the excess capacity of the SJ/SCWPCP and SWPCP. Because the cumulative demand would not substantially impact the existing or planned capacity of the wastewater treatment systems, which have sufficient capacity for wastewater that would be produced

by the Project, the construction of new wastewater treatment facilities would not be necessary.

With implementation of Mitigation Measures UTIL-6a, UTIL-6b and UTIL-6c, set forth and incorporated above, cumulative development combined with the Project would not exceed wastewater treatment requirements. Therefore, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure:

Implement Mitigation Measures UTIL-6a, UTIL-6b, and UTIL-6c.

- H. Impact UTIL-8: The Project would not be served by a landfill(s) with sufficient permitted capacity to accommodate the Project's solid waste disposal needs.**

The Final EIR finds that anticipated rates of solid waste disposal would have a less-than-significant impact with regard to target disposal rates, and that the City would continue its current recycling ordinances and zero-waste policies. Nevertheless, the 2023 termination of the agreement between the Newby Island Landfill facility, as well as that facility's estimated closure date in 2025, would result in insufficient solid waste disposal capacity at buildout of the Project, resulting in a significant impact.

Implementation of Mitigation Measure UTIL-8, set forth below, which is hereby adopted and incorporated into the Project, would avoid or reduce this impacts to a less-than-significant level.

Mitigation Measure UTIL-8:

The City shall continue its current recycling ordinances and zero-waste policies in an effort to further increase its diversion rate and lower its per capita disposal rate. In addition, the City shall monitor solid waste generation volumes in relation to capacities at receiving landfill sites to ensure that sufficient capacity exists to accommodate future growth. The City shall seek new landfill sites to replace the Altamont and Newby Island landfills, at such time that these landfills are closed.

- I. Impact UTIL-10: Implementation of the Project, in combination with past, present and reasonably foreseeable projects, would result in significant cumulative impacts with respect to solid waste.**

The Final EIR finds that buildout of the Project will increase the quantity of solid waste for disposal. AB 939 established a goal for all California cities to provide at least 15 years of ongoing landfill capacity; however, growth from other cities in the region may exceed the growth that was taken into account when determining landfill capacity. Also, because the

Newby Island Landfill facility, which currently takes approximately 92 percent of the City's solid waste, is expected to close in 2025, Cupertino may eventually experience insufficient landfill capacity to accommodate existing or increased population and employment levels. Although implementation of existing waste reduction programs and diversion requirements would reduce the potential for exceeding existing capacities of landfills, the potential lack of landfill capacity for disposal of solid waste would be a significant cumulative impact.

With implementation of Mitigation Measure UTIL-8, set forth and incorporated above, the Project would not make a cumulatively considerable contribution to this cumulative impact, and the impact would be less than significant.

Mitigation Measure

Implement Mitigation Measure UTIL-8.

VII. GROWTH INDUCING IMPACTS

An EIR is required to discuss growth inducing impacts, which consist of the ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. State CEQA Guidelines § 15126.2(d); Public Resources Code § 21100(b)(5). Direct growth inducement would result, for example, if a project involves the construction of substantial new housing that would support increased population in a community or establishes substantial new permanent employment opportunities. This additional population could, in turn, increase demands for public utilities, public services, roads, and other infrastructure. Indirect growth inducement would result if a project stimulates economic activity that requires physical development or removes an obstacle to growth and development (e.g., increasing infrastructure capacity that would enable new or additional development). It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. State CEQA Guidelines § 15126.2(d). Section 6.3 of the Draft EIR analyzes the growth inducing impacts of the Project. As explained in Section IX, below, the findings in this Section VII are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

Implementation of the Project would directly induce population, employment and economic growth by replenishing the commercial, residential, hotel, and office space allocation within some areas of the city. The Project would result in the following growth patterns based on the expected growth assumptions for the city boundary:

- Implementation of the Project to the year 2040 would result in increased office space development allocation of approximately 2,540,231 square feet. This would result in a total anticipated office space of approximately 11,470,005 square feet by 2040.⁸
- Implementation of the Project to the year 2040 would result in a commercial space development allocation of approximately 1,343,679 square feet, which is an increase of 642,266 square feet in the allocation pool but a net increase of 0 square feet. That is because all 642,266 square feet of increase allocation would come from demolition and rebuilding of existing commercial square footage (see footnote 5, above). This would result in a total anticipated commercial space of approximately 4,430,982 square feet by 2040.⁹
- Implementation of the Project to the year 2040 would result in increased hotel room development allocation of approximately 1,339 rooms. This would result in a total anticipated hotel room inventory of approximately 2,429 rooms by 2040.¹⁰
- Implementation of the Project to the year 2040 would result in increased residential unit development allocation of approximately 4,421 units. This would result in a total anticipated residential unit inventory of approximately 25,820 residential units by 2040.¹¹

State law requires the City to promote the production of housing to meet its Regional Housing Needs Allocation made by ABAG. The housing and commercial/ industrial growth in Cupertino would allow the City to address its regional fair-share housing obligations.

The Project is considered growth inducing because it encourages new growth in the urbanized areas of Cupertino. Development in these areas would consist of infill development on underutilized sites, sites that have been previously developed, and sites that are vacant and have been determined to be suitable for development. However, because infrastructure is largely in place and commercial or office growth would be required to comply with the City's General Plan, Zoning regulations and standards for public services and utilities; secondary or indirect effects associated with this growth do not represent a new significant environmental impact which has not already been addressed in the individual resource chapters of this EIR.

⁸ Existing built/approved office space was 8,929,774 square feet in 2013.

⁹ Existing built/approved commercial space was 3,729,569 square feet in 2013.

¹⁰ Existing built/approved hotel rooms are 1,116 rooms. With the remaining commercial allocation, commercial buildout by 2040 is estimated to be 4,430,982 square feet. Cupertino Community Development Department (October 31, 2014).

¹¹ Existing built/approved residential units was 21,412 units in 2014.

VIII. ALTERNATIVES

The Final EIR analyzed four alternatives, examining the environmental impacts and feasibility of each alternative, as well as the ability of the alternatives to meet project objectives. The project objectives are listed in Chapter 3 (Project Description) of the Draft EIR; the potentially significant environmental effects of the Project, including feasible mitigation measures identified to avoid these impacts, are analyzed in Chapter 4 (Environmental Evaluation) of the Draft EIR; and the alternatives are described in detail in Chapter 5 (Alternatives to the Proposed Project) of the Draft EIR.

Brief summaries of the alternatives are provided below. A brief discussion of the Environmentally Superior Alternative follows the summaries of the alternatives. As explained in Section IX, below, the findings in this Section VII are based on the Final EIR, the discussion and analysis in which is hereby incorporated in full by this reference.

A. The No Project Alternative

CEQA requires evaluation of the “no project” alternative. State CEQA Guidelines § 15126.6(e). Consistent with State CEQA Guidelines section 15126.6(e)(3)(A), the No Project Alternative assumes that growth and development would continue to occur under the provisions of the current 2000-2020 General Plan, including the development allocations for office and commercial space, and hotel and residential unit allocations. Thus, no new development potential beyond what is currently permitted in the 2000-2020 General Plan would occur.

As shown in Draft EIR Table 5-1, the No Project Alternative would allow for the following new development allocations:

- **Office allocation: 540,231 square feet** (no net increase from 2000-2020 General Plan)
- **Commercial allocation: 701,413 square feet** (no net increase from 2000-2020 General Plan)
- **Hotel allocation: 339 rooms** (no net increase from 2000-2020 General Plan)
- **Residential allocation: 1,895 units** (no net increase from 2000-2020 General Plan)

As discussed in Section 5.1.7 of the Draft EIR, the No Project Alternative would not achieve any of the City’s project objectives, which are as follows, except that it would provide for the RHNA for the 20014-2022 planning period:

- Emphasize employment and a mix of economic development opportunities by replenishing, reallocating, and increasing city-wide office, commercial, and hotel, allocations in order to capture:

- A share of the regional demand for office and hotel development, and
- Retail sales tax leakage in the trade area.
- Address local needs and regional requirements for new housing, including affordable housing, in Cupertino by replenishing, re-allocating and increasing city-wide residential allocations to be consistent with 2040 Bay Area Plan projections to allow flexibility for the city when future state-mandated updates are required to the Housing Element.
- Update the Housing Element as required by State law.
- Creating opportunities for mixed-use development consistent with Regional Sustainable Communities Strategies for greenhouse gas emissions reductions as required by SB 375.
- Investing in improvement to adapt to climate change over time.
- Consider increased heights in key nodes and gateways, if proposed development provides retail development and benefits directly to the community.
- Update General Plan policies to implement multi-modal traffic standards as opposed to LOS thresholds currently identified. Balancing development objectives with transportation constraints and opportunities.
- Revitalize the Vallco Shopping District by adopting policies to support its redevelopment, so it becomes a cohesive, vibrant shopping and entertainment destination that serves both the region and the local community.

For the foregoing reasons, the No Project Alternative is hereby rejected as infeasible.

B. Land Use Alternative A

Land Use Alternative A identifies how growth would occur if the City largely continues the policies of the current 2005 General Plan, while making minor development allocation and boundary changes. The 2005 General Plan land use standards would continue to apply to Vallco Shopping Mall, and it would not be redeveloped in any substantial manner. Alternative A would increase city-wide office and hotel allocation but would not increase allocations for commercial and residential uses. No maximum height increases are proposed under this alternative.

As shown in Draft EIR Table 5-1, the Land Use Alternative A would allow for the following new development allocations:

- **Office allocation: 1,040,231 square feet** (net increase of 500,000 square feet from the 2000-2020 General Plan)
- **Commercial allocation: 701,413 square feet** (no net increase from the 2000-2020 General Plan)
- **Hotel allocation: 600 rooms** (net increase of 261 rooms from the 2000-2020 General Plan)
- **Residential: 1,895 units** (no net increase from the 2000-2020 General Plan)

As discussed in Section 5.2.8 of the Draft EIR, Alternative A would not achieve the project objectives concerning local needs and regional requirements for new housing, including affordable housing, in Cupertino, because it would not provide sufficient residential units to meet the City's Regional Housing Needs Allocation (RHNA) of 1,064 units. In order to fully comply with the RHNA, the City would need to provide a moderate surplus in addition to the RHNA or approximately 1,400 units. Alternative A only allows for a surplus of only eight units, however. Alternative A also would not increase the allocation of residential units to accommodate Plan Bay Area projections for residential growth by 2040 (4,421 units).

Alternative A fails to meet project objectives with regard to reallocating, replenishing and increasing city-wide office, commercial and hotel allocations for purposes of economic development, because Alternative A does not allow for any commercial growth beyond that allocated under the 2000-2020 General Plan and allows in insufficient amount of office and hotel growth. Further, Alternative A does not meet the project objective to consider increased heights in key Nodes and Gateways, because no maximum height increases are proposed under this alternative.

Alternative A also does not meet the City's objective of creating mixed use development consistent with Plan Bay Area and SB 375, because it would not concentrate development in major transportation corridors to the same degree as Alternatives B and C and the Balanced Plan. Alternative A does not envision a complete redevelopment for Vallco Shopping District that would involve adding office and residential uses as in Alternatives B and C. This would not completely meet the project objective to revitalize the Shopping District so it becomes a cohesive, vibrant shopping and entertainment destination that serves both the region and the local community.

For the foregoing reasons, Land Use Alternative A is hereby rejected as infeasible.

C. Land Use Alternative B

Land Use Alternative B identifies how the City can focus development along major mixed-use corridors in order to create more complete commercial, office and entertainment areas, and to address mid-term housing needs. It would increase development allocations for

office, commercial and hotel land uses in order to better capture retail sales leakage and regional demand for office development. Alternative B also envisions the transformation of the Vallco Shopping Mall into a retail, employment, housing and entertainment destination, but possibly at a slightly smaller scale than under Alternative C. Although the zoning and land use designations are the same in the Alternative B and Alternative C, the Foothill Market and Bateh Housing Element sites were not studied as part of Alternative B. Alternative B would allow for revised density and height standards at key Gateways and Nodes within Special Areas along major transportation corridors that are different from Alternative C. Alternative B also would increase residential allocations to the amount necessary to meet the City's RHNA of 1,064 units plus a moderate surplus, or approximately 1,400 units, but would increase the allocation of residential units to accommodate only 75 percent of Plan Bay Area projections for residential growth by 2040.

As shown in Draft EIR Table 5-1 and the Supplemental Text Revisions, the Land Use Alternative B would allow for the following new development allocations:

- **Office allocation: 2,540,231 square feet** (net increase of 2,000,000 square feet from the 2000-2020 General Plan)
- **Commercial allocation: 1,343,679 square feet** (net increase of 0 square feet from the 2000-2020 General Plan)¹²
- **Hotel allocation: 839 rooms** (net increase of 500 rooms from the 2000-2020 General Plan)
- **Residential: 3,316 units** (net increase of 1,421 units from the 2000-2020 General Plan)

While Alternative B meets all of the project objectives, in comparison with the Balanced Plan, described in Section II.A, above, the commercial, hotel, and residential allocations under Alternative B would not strike the optimal balance in attempting to achieve the City's economic development objectives. Furthermore, as described in Section 5.3.8 of the Draft EIR, Alternative B would not go as far as Alternative C in meeting project objectives with regard to reallocating, replenishing and increasing city-wide commercial and hotel allocations for purposes of economic development, and replenishment of the residential allocation because it would add less office square footage and fewer hotel rooms, thereby failing to capture as much regional demand for office and hotel uses and failing to capture as much retail sales tax leakage. Similar to the Balanced Plan, Alternative B envisions that the Vallco Shopping District will be completely redeveloped. Alternative B allows for 500 fewer hotel rooms and 1,105 fewer residential units than the Balanced Plan, however.

The City commissioned a Market Study¹³ which indicates that the City has a strong market for office, hotel room and residential development. An allocation of only 500 hotel rooms

¹² See footnote 5, above.

and only 75 percent of the Plan Bay Area projection for residential development by 2040 would not achieve the City's goal of capturing a share of the regional demand for hotel development or meeting the City's goals of providing fewer affordable housing options.

For the foregoing reasons, Land Use Alternative B is hereby rejected as infeasible.

D. Land Use Alternative C

Land Use Alternative C identifies a way to transform the Vallco Shopping Mall into a locally and regionally significant retail, employment, housing and entertainment destination, and account for a large portion of the City's RHNA. Similar to the Balanced Plan, Alternative B envisions that the Vallco Shopping District will be completely redeveloped. In addition, under Alternative C, the Vallco area would become the "downtown" of Cupertino, serving the mixed-use hub for residents, workers and the larger region. Alternative C would increase development allocations to levels higher than those that would be allowed under either Land Use Alternative A or Land Use Alternative B in order to fully capture retail sales leakage and regional demand for office and hotel development. Alternative C would allow for revised height standards at key Gateways and Nodes within Special Areas along major transportation corridors at heights greater than those allowed under Alternative B. The increases in heights and densities in key Nodes, Gateways and Sub-areas are consistent with the City's goals of concentrating development along the five mixed-use corridors. Alternative C also would increase residential allocations to the amount necessary to meet the City's RHNA of 1,064 units plus a moderate surplus, or approximately 1,400 units, and would increase the allocation of residential units to accommodate 100 percent of Plan Bay Area projections for residential growth by 2040.

As shown in Draft EIR Table 5-1 and the Supplemental Text Revisions, the Land Use Alternative C (the "proposed Project" in the EIR) would allow for the following new development allocations:

- **Office allocations: 4,040,231 square feet** (net increase of 3,500,000 square feet from the 2000-2020 General Plan)
- **Commercial allocation: 1,343,679 square feet** (net increase of 0 square feet from the 2000-2020 General Plan)¹⁴
- **Hotel allocation: 1,339 rooms** (net increase of 1,000 rooms from the 2000-2020 General Plan)

¹³ BAE Urban Economics, General Plan Amendment Market Study (February 13, 2014).

¹⁴ See footnote 5, above.

- **Residential allocation: 4,421 units** (net increase of 2,526 units from the 2000-2020 General Plan)

While Land Use Alternative C would meet all of the project objectives, the combination of the office allocation in Alternative C together with the other land use allocations in Alternative C would not be as effective or as balanced as the Balanced Plan, which includes the lower office allocation in Alternative B, in achieving the project objective of creating a mix of economic development opportunities.

Furthermore, the environmental effects from the larger office allocation in Alternative C would be marginally greater than the environmental effects from the office allocation in the Balanced Plan (which has the same office allocation as Alternative B). That is because the Alternative C office allocation is 59 percent greater than the office allocation in the Balanced Plan. Increased allocation to office development would mean more jobs and, as people move to Cupertino to fill those jobs, a higher population. Draft EIR Table 5-2 projects a 70 percent greater increase in jobs and a 75 percent greater increase in population under Alternative C compared to the increases under Alternative B. The increased development and population growth resulting from the Alternative C office allocation would have greater effects on the environment than the office allocation component of the Balanced Plan and Alternative B. Alternative B would reduce air quality impacts, as described in the analysis of Impact AIR-1, because the Vehicle Miles Traveled (VMT) for Alternative B is lower and reduces the impact to less than significant. See Draft EIR Table 5.5. This is because the mix of development in the Balanced Plan, which includes the same office allocation as Alternative B, represented a better balance of development. In categories where all of the alternatives were found to have significant and unavoidable impacts, namely air quality, noise, and traffic, Land Use C's office allocation would result in greater environmental impacts, as it represents the greatest amount of development, which would result in higher consumption of non-renewable resources, generate the greatest amount of waste and pollutants, and increase the demand of public facilities and infrastructure.

For the foregoing reasons, Land Use Alternative C is hereby rejected as infeasible.

E. Environmentally Superior Alternative

In addition to the discussion and comparison of impacts of the Balanced Plan and the Alternatives, Section 15126.6(e)(2) of the State CEQA Guidelines requires that an "environmentally superior" alternative be selected and the reasons for such a selection be disclosed. The environmentally superior alternative is the alternative that would be expected to create the least significant environmental effects. Identification of the environmentally superior alternative is an informational procedure and the alternative selected may not be the alternative that best meets the goals or needs of Cupertino.

As shown in Draft EIR Table 5-5, the impacts associated with each of the four land use scenarios analyzed in this EIR would essentially be the same. As previously stated, this is

because the recommended mitigation measures would apply to all of the alternatives, and compliance with the General Plan policies designed to reduce environmental impacts would also apply to all future development in Cupertino. However, as shown in Draft EIR Table 5-5, for Land Use Alternative B air quality Impact AQ-1 (Conflict with or obstruct implementation of the applicable air quality plan) would be less than significant for Alternative B but would be significant and unavoidable for the other alternatives. That is because the mix of development in Alternative B would increase office square footage, but to all lesser extent than Alternative C, while at the same time increasing the residential allocation unlike Alternative A and the No Project Alternative.

While Alternative C represents the maximum extent of residential development anticipated by the Plan Bay Area for Cupertino by 2040, Alternative C's higher increase in office square footage (4,040,231 square feet compared to the lower office increase in Alternative B of 2,540,231 square feet), together with the total increase in residential allocation, does not reflect a balanced jobs-housing ratio that results in lower per capita VMT when compared to Alternative B. Under Alternative C, land uses allocations in the General Plan would generate 897,419 VMT per day (10.47 miles per service population per day in 2013). Based on the future estimates of VMT per person for Cupertino for year 2040, 1,264,271 VMT per day (10.94 miles per service population per day in 2040) would be generated in Cupertino. Accordingly, the daily VMT in the Project Study Area under Alternative C would increase at a slightly greater rate (40.9 percent) between 2013 and 2040 than would the service population of the Project Study Area (34.8 percent). In comparison, under Alternative B, based on the future estimates of VMT per person for Cupertino for year 2040, 1,097,596 VMT per day (10.24 miles per service population per day in 2040) would be generated in the City. Under Alternative B, daily VMT in the Project Study Area would increase at a slower rate (22.3 percent) between 2013 and 2040 than would the service population of the Project Study Area (25.0 percent). When the VMT increase is less than or equal to the projected population increase, this represents a balanced jobs-housing ratio.

In identifying an Environmental Superior Alternative, the analysis in the EIR is based on the principle that less development would mean reduced effects on the environment. Each incremental increase in development allocations among the alternatives represents increased population and activity which would result in increased noise, air quality, greenhouse gas, traffic, and utilities impacts. Although a number of these impacts would be significant and unavoidable under every alternative, the severity of the significant and unavoidable impacts would vary according to the development allocations within a given alternative. For example, while Land Use Alternative B would reduce Air Quality Impact AQ-1, as described above in Section VIII.D, the No Project Alternative would be the environmentally superior alternative because it would not allow for new development to occur beyond what is currently planned for in the 2000-2020 General Plan, which would result in the least amount of development in the City and thereby reduce the consumption of renewable resources (e.g., lumber and water) and nonrenewable resources (e.g., fossil fuels, natural gas, and gasoline). Less development would place fewer demands on public

service providers (which could require new facilities), would require fewer road, sewer, water and energy infrastructure improvements, and would generate less waste, which would overall reduce impacts on the environment.

In accordance with State CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. Accordingly, the environmentally superior alternative would be Land Use Alternative A, because less development would occur compared to Land Use Alternative B, Land Use Alternative C, and the Balanced Plan. Under Land Use Alternative A, no new commercial space, hotel rooms or residential units would be permitted beyond the allocations in the current General Plan.

For the foregoing reasons, Alternative A is considered the environmentally superior alternative.

IX. INCORPORATION BY REFERENCE

These findings incorporate the text of the Final EIR for the Project, the Mitigation Monitoring and Reporting Program, City staff reports relating to the Project and other documents relating to public hearings on the Project, by reference, in their entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of mitigation measures, project and cumulative impacts, the basis for determining the significance of impacts, the comparison of the alternatives to the Project, the determination of the environmentally superior alternative, and the reasons for approving the Project.

X. RECORD OF PROCEEDINGS

Various documents and other materials related to the Project constitute the record of proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian for the documents and materials, which is the City of Cupertino Community Development Department, Cupertino City Hall, 10300 Torre Avenue, Cupertino, CA 95014-3202.

XI. NO RECIRCULATION REQUIRED

State CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when “significant new information” is added to the EIR after public notice is given of the availability of the Draft EIR but before certification. No significant new information was added to the Draft EIR as a result of the public comment process. The Final EIR responds to comments, and clarifies, amplifies and makes insignificant modifications to the Draft EIR. The Final EIR does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact.

The EIR analyzes full buildout of 2040 growth for Cupertino as projected in Plan Bay Area. The Balanced Plan consists of the same development allocations and Housing Element sites that were analyzed in the EIR for Alternative C except, as described in more detail in the next section below, the office allocation is reduced to the amount analyzed in the EIR for Alternative B, the maximum height limits are reduced except at one location. Accordingly, all portions of the Balanced Plan were analyzed in the EIR, either as part of Alternative C or as part of Alternative B. There are no new significant effects on the environment or a substantial increase in the severity of an environmental impact associated with substituting the smaller office allocation from Alternative B for the original, larger office allocation in Alternative B in order to create the Balanced Plan that are the subject of these Findings nor are there new significant effects on the environment or a substantial increase in the severity of an environmental impact associated with the changes in maximum height limits.

For the foregoing reasons, recirculation of the Final EIR is not required.

XII. STATEMENT OF OVERRIDING CONSIDERATIONS

As set forth above, the City has found that the Project will result in project and cumulative significant adverse environmental impacts related to air quality, noise, and traffic and transportation that cannot be avoided following adoption, incorporation into the Project, and implementation of mitigation measures described in the EIR. In addition, there are no feasible project alternatives that would mitigate or avoid all of the Project's significant environmental impacts. Section 15093(b) of the State CEQA Guidelines provides that when the decision of the public agency results in the occurrence of significant impacts that are not avoided or substantially lessened, the agency must state in writing the reasons to support its actions. See also Public Resources Code Section 21081(b). Having balanced the economic, legal, social, technological or other benefits of the Project, including region-wide or statewide environmental benefits, against its significant and unavoidable environmental impacts, the City finds that the Project benefits outweigh its unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

The following statement identifies the reasons why, in the City's judgment, specific benefits of the Project outweigh the significant and unavoidable effects. The substantial evidence supporting the benefits of the Project can be found in the preceding sections of these Findings, in the Project itself, and in the record of proceedings as defined in Section X, above. The City further finds that each of the project benefits discussed below is a separate and independent basis for these findings. The reasons set forth below are based on the Final EIR and other information in the administrative record.

- 1) The Vision Statement in the General Plan states that "Cupertino aspires to be a balanced community with quiet and attractive residential neighborhoods; exemplary parks and schools; accessible open space areas, hillsides and creeks; and a vibrant,

mixed use 'Heart of the City.' Cupertino will be safe, friendly, healthy, connected, walkable, bikeable and inclusive for all residents and workers, with ample places and opportunities for people to interact, recreate, innovate and collaborate." In incorporating the office allocation from Land Use Alternative B, the commercial allocations from Land Use Alternatives B and C, and the hotel and residential allocations from Land Use Alternative C, the Project provides the City with a balanced mix of economic development opportunities while seeking to lessen significant impacts by pursuing the highest possible levels of development.

- 2) The Project provides the City with the commercial development allocation it needs to increase sales and avoid retail leakage in the trade area as, recommended on page 85-86 of the General Plan Amendment Market Study (BAE Urban Economics, February 13, 2014), and would allow the City flexibility to encourage new commercial uses in other parts of the City in the future that will generate additional sales taxes. and as set forth in the project objectives.
- 3) The Project provides for economic growth by creating employment-related land uses. This will attract new businesses and allow existing businesses to stay and grow within the City, improve sales tax and property tax revenue to help the City maintain a healthy fiscal balance to provide its residents with high quality services.
- 4) The Project concentrates growth along the City's major transportation corridors and in the City's employment centers, which are areas that are within walking distance/bus distance of large employment areas. Encouraging development in existing urbanized areas results in fewer impacts from the construction of new infrastructure, maximizes use of existing impervious surfaces, provides multi-modal transportation opportunities, and reduces miles traveled, which translates into air quality benefits.
- 5) The Project concentrates growth at locations with existing uses and, as a result, potential future development under the Project would consist largely of either redevelopment of existing building, selective demolition of existing structures and replacement with new construction, or new infill development adjacent to existing uses, all of which would serve to lessen environmental impacts.
- 6) The Project policies concentrating growth along transportation corridors and in employment centers contributes to community goals of protecting the City's neighborhoods and connectivity.
- 7) The Project includes policies that encourage conservation of water and energy resources in conformance with the City's sustainability goals.

- 8) The Project is in conformance with the principles of planning sustainable communities by meeting both the present and future housing needs of the City, and fulfills the City Council's charge to prepare a Housing Element.
- 9) The Project is consistent with key planning documents, including Plan Bay Area, which is the Bay Area's Regional Transportation Plan (RTP)/Sustainable Community Strategy (SCS), as well as SB 375, the Sustainable Communities and Climate Protection Act.
- 10) The Project meets the City's Regional Housing Needs Allocation (RHNA) of 1,064 units, and provides a moderate surplus above the City's housing need, or approximately 1,400 units.
- 11) The Project provides opportunities for increased building heights in key Nodes and Gateways, and makes additional building height and residential density increases contingent on future development projects in Cupertino providing the City with community benefits.
- 12) The Project provides for revitalizing the Vallco Shopping Mall and transforming it into a locally and regionally significant retail, employment, housing and entertainment destination, which would become the "downtown" of Cupertino.
- 13) The Gateways and Nodes located within some of the Project's Special Areas represent key locations in the City that, with the use of design elements, such as buildings, arches, fountains, banners, signage, special lighting, landscaping and public art, have the opportunity to create a memorable impression of Cupertino. These key locations are essential for providing residents, visitors, and workers an attractive, friendly, and comfortable place with inviting active pedestrian spaces and services.

XIII. SUMMARY

1. Based on the foregoing Findings and the information contained in the record, the City has made one or more of the following Findings with respect to each of the significant environmental effects of the Project:
 - a. Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effects identified in the Final EIR.
 - b. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other public agency.

- c. Specific economic, legal, social, technological, or other considerations, make infeasible the mitigation measures or alternatives identified in the Final EIR that would otherwise avoid or substantially lessen the identified significant environmental effects of the Project.
- 2. Based on the foregoing Findings and the information contained in the record, the City determines that:
 - a. All significant effects on the environment due to the approval of the Project have been eliminated or substantially lessened where feasible.
 - b. Any remaining significant effects on the environment found to be unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations, above.