



August 30, 2018

City of Cupertino
Attn: Amy Chan, Interim City Manager
10300 Torre Avenue
Cupertino, CA 95014

Re: Final Environmental Impact Report (EIR) (Draft and Response to Comments) for the Vallco Special Area Specific Plan Project (File Number EA-2017-05)

Dear Ms. Chan:

Thank you for the City of Cupertino's response to comments made in the City of Santa Clara's (CSC) letter dated July 9, 2018, regarding the draft Environmental Impact Report (EIR) for the Vallco Special Area Specific Plan Project ("project"). The CSC and City of Cupertino also met to review the CSC's concerns with the EIR in terms of new sanitary sewer flows coming into CSC's system from the project.

As stated in the CSC July 9, 2018, comment letter, "[a]n evaluation of the sanitary sewer conveyance capacity impacts of this Project to the City of Santa Clara's sanitary sewer system is required and the results of the evaluation along with the mitigation measures need to be included in the EIR." The City of Cupertino has yet to conduct this requested evaluation. The CSC has reviewed the Response to Comments in the Final EIR, and because this complete evaluation of the sanitary sewer system has not been performed, the CSC still has concerns most notably the following:

- 1) The likelihood that future flows from the project entering the CSC will exceed the 13.8 million gallon per day (mgd) maximum instantaneous rate of flow set forth in the agreement between the CSC and the Cupertino Sanitation District (CuSD).
- 2) The potential that the project will be constructed without enforceable mitigation measures in place to address sanitary sewer flows that exceed the 13.8 mgd maximum instantaneous rate of flow.

Because of these shortcomings in the evaluation of the sewer systems, it is difficult to fully assess the sewer conveyance capacity impacts and we believe that there could be substantial impacts to the CSC's sanitary sewer system in the event of full project build out. The following comments are provided in response to the CSC's review of the Response to Comments in the Final EIR:

Comment 1: The Final EIR provides the following response to the sanitary sewer comments in CSC's July 9, 2018, comment letter:

Response C.2: *The text of mitigation measure UTIL-2.3 has been revised to clarify the mitigation measures for sanitary sewer impacts downstream of the project, within the City of Santa Clara. Refer to Section 5.0 (revisions to pages 389-390 of the Draft EIR) and Section 6.0 (revisions to pages 255-256 of the Draft EIR Amendment) for the text revisions.*

The text revisions added (Draft EIR pages 389-390 and Draft EIR Amendment pages 255-256) still do not adequately address the potential impacts to the CSC's sanitary sewer system. The added text states that, "[t]he existing CuSD peak wet weather flow into the Santa Clara system is modeled at 10.7 mgd." However, the existing flow used in the model is not defined, it is not clear if it is based on any recent flow monitoring, and whether or not it includes flow from the recently occupied Apple Campus. The added text also states that, "Incorporating estimated sewer generation rates from the project and from other potential projects as established by the General Plan..." however the potential projects are not defined. Is there a list of these projects? What is the projected incoming sanitary sewer flow to the CSC system due to these potential projects? Does the modeled 10.7 mgd flow include the projected flow from these potential projects (i.e., cumulative impact) as well as inflow and infiltration projections?

Comment 2: MM UTIL-2.2 states that future development under the proposed project shall install new mains of an adequate size determined by CuSD, or install a parallel pipe of adequate size to the existing 27-inch sewer main as determined by CuSD. However, determining whether or not upsizing these pipes are required should be evaluated during the EIR process, as it is a foreseeable consequence of the project. If impacts require up-sizing of these pipes, the flow to CSC will be altered. Furthermore, a full evaluation of the effects of the project on the CSC's sewer system should be finalized before completing the environmental review process so the extent of the impacts to the CSC sewer system and necessary mitigations are known.

Comment 3: MM UTIL-2.3 states that, "no certificates of occupancy shall be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system being exceeded". This language creates the potential that the entire project will be constructed prior to any necessary mitigation being planned, let alone installed. An EIR must provide fully enforceable mitigation measures through permit conditions, agreements, or other legally-binding instruments. A limitation tied to occupancy permits is inadequate and at a minimum, the text of MM UTIL-2.3 "no certificate of occupancy shall be issued" should be revised to

“no building permit shall be issued”. Connections should not be made into a sanitary sewer system unless the adequate capacity has been established. Using the potential withholding of a certificate of occupancy to delay flow that would exceed capacity is not an adequate mitigation measure.

Comment 4: Final EIR, page 938, revisions to Impact UTL-2; Project – Under the latest revisions to the EIR several assumptions were made regarding existing flows and capacity within the CSC sewer system. The section indicates that existing flows entering the CSC system are 10.7 mgd with an available capacity of 3.1 mgd. Due to the lack of information it is not clear on how any of these projections were arrived at and if they are accurate. Furthermore the section states that *“Because the needed capacity is less than the total available capacity there is adequate sewage capacity between CuSD and the City of Santa Clara to serve the project and the General Plan Buildout”*. The CSC has not received any information from the City of Cupertino or the CuSD to support this statement so this conclusion lacks the requisite substantial evidence.

This section also states that *“If additional hydraulic modeling is performed on the CuSD system and the model indicates that the 13.8 mgd contractual limit through the City of Santa Clara would be surpassed by the project, the future developer(s) would not be permitted to occupy any structures or units that result in the contractual limit being exceeded until additional capacity is available through the City of Santa Clara’s sewer system.”* This defers the necessary hydraulic modeling to evaluate the impacts, and does not commit the City of Cupertino or the Developer to conducting the hydraulic modeling at any specific time. In addition, as discussed previously, any such modeling should not be tied to occupancy permits, and at a minimum, this section should be revised to read, *“the future developer(s) would not be granted building permits...”*.

Comment 5: Finally, in the second paragraph on page 939 of the Final EIR, construction impacts are discussed. However, without an evaluation of the impacts from the proposed development to the CSC’s sanitary sewer system, the need for improvements cannot be determined. Without this assessment it is not clear what the construction impacts would be, how they would be addressed as well as what the necessary mitigations would be.

The CSC maintains that a full sanitary sewer impact analysis is needed to determine whether or not there are any sanitary sewer conveyance capacity impacts to the CSC’s sanitary sewer system with the buildout of the project. The Final EIR contains detailed and full analyses related to traffic/transportation, and water services, but falls short in terms of a full analysis of the sanitary sewer impacts to the CSC system. As the CSC stated in the July 9 comment letter and on several other occasions, a full analysis of the potential impacts and mitigations to the CSC sanitary system is necessary

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as the potential for sanitary sewer overflows cannot be left unresolved. Additionally the CSC has requested that the total sanitary sewer discharge information, including the flow generated from the project, be provided as CSC has offered to work with an on-call engineering sanitary sewer hydraulic modeling consultant to perform an analysis. To date, the requested information has not been provided to CSC.

The City is requesting that the comments noted above be addressed as part of the environmental process for the project, and that the City of Cupertino defer consideration and certification of the EIR until these issues have been addressed. The CSC is available to meet with the City of Cupertino and discuss these items further.

Should you have any questions regarding this letter, please contact Andrew Crabtree, Director of Community Development, via email at acrabtree@santaclaraca.gov or by phone at 408-615-2450.

Sincerely,



Deanna J. Santana
City Manager
City of Santa Clara

cc: Santa Clara City Council
Piu Ghosh
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