Comment Letters Received on the Initial Study

	Comment Letter From	Date of Letters
A.	Michael McWalters	September 25, 2016
B.	Betsy Stern	October 11, 2016
C.	County of Santa Clara Parks and Recreation Department	October 17, 2016
D.	Department of Transportation	October 17, 2016
E.	M.R. Wolfe & Associates	October 17, 2016
F.	Ada E. Marquez	October 17, 2016
G.	Santa Clara Valley Audubon Society, Citizens Committee to Complete the Refuge, Sierra Club - Loma Prieta Chapter, and Committee for Green Foothills	October 17, 2016

A. RESPONSES TO COMMENTS FROM MICHAEL MCWALTERS, DATED SEPTEMBER 25, 2016:

COMMENT A-1: I live in the manufactured home park (labeled 2) for sound and noise. I've read many things regarding Top Golf, all of them have complaints of NOISE. Top Golf in Alexandria, SLC, Kansas City and Roseville have huge complaints regarding noise. The one is Austin sells $525,000 a month in alcohol. That is a ton of money, which this site has a new land owner and most likely will close as the new land owner wants to redevelop the land. Alexandria will most likely close and be moved as the noise is a concern to many and the land owner will not renew the lease with top golf. How will Top Golf and the City of San Jose make sure that I'm not going waking up by a live band or loud music at 11pm?

> **RESPONSE A-1:** Noise impacts from the proposed project are discussed in *Section 4.12 Noise* of the Initial Study. Measurements taken in the vicinity of the commenter's residence show existing ambient noise levels range from 62 to 64 dBA Ldn. A noise assessment completed for the project (based in part upon noise measurements taken at the existing Roseville Topgolf facility) concluded that average noise levels in this area would not increase as a result of the project (refer to Table 4.12-4 in the Initial Study). Noise from the project would not exceed the thresholds established by the City of San Jose to determine significant noise impacts.

The project applicant will be required to comply with all applicable noise regulations in the City's General Plan and Municipal Code. The project applicant will be conditioned to implement various noise control strategies to reduce the levels of noise reaching nearby properties. All amplified sound at the facility, including noise from music at the outdoor terrace, would be connected to a noise limiter, allowing for a single volume control over the entire facility. The project applicant would be required to retain a sound engineer to conduct a noise evaluation once a week for the first four weeks of operation. Sound levels would be reconfigured as needed to ensure noise is within all applicable regulations. The project applicant will also be required to provide a contact person whom the community may contact during operations with noise concerns.

COMMENT A-2: Since Mayor Sam Liccardo sits on the VTA board I would expect that only 200 parking spaces should be available and EVERYONE ELSE CAN TAKE THE VTA AND BUS to attend Top Golf. That's what your department is striving for. I am opposed to 1400 parking places, its obnoxious. Take the bus or light rail. Planning rams this car issue in apartments and now it's time to move it to big business.

> **RESPONSE A-2:** The amount of parking proposed by the project is consistent with the requirements of the City's Municipal Code Chapter 20.90.060. The project applicant is proposing to provide 1,183 on-site spaces, and is not requesting a reduction in the number of parking spaces. Pursuant to the project's Development Standards, the commercial/retail use is required to have one vehicle parking space per 225 square feet of floor area, and the hotel use is required to have one vehicle parking space per guest room plus one per employee. The City is requiring that the project provide parking for the Topgolf facility based on the number of hitting bays at a rate of 3.75 vehicle parking spaces per hitting bay. Additional parking may be allowed for the Topgolf facility, pursuant to the projects Development Standards, up to 4.25 vehicle parking spaces if parking demand for the Topgolf facility warrants additional parking spaces. The Planned Development Zoning's Development Standard states any sequential development permit will include details of the final parking arrangement.

COMMENT A-3: Traffic is also a concern, how will they manage DRUNK PEOPLE and DRUNK DRIVERS? Let's face it, this is a NIGHTCLUB/BAR and ENTERTAINMENT CENTER where alcohol is served and people DO AND WILL get drunk. Will there be additional police in our area to address the issue of DUI? In addition Mayor Sam Liccardo was opposed to a girly bar for executives in downtown San Jose. He stated that it was too close to schools. Let's not forget that San Jose has CLOSED MANY BARS in downtown over the past decade. One being SJ Live, for drunken behavior and fights broke out. Isn't it odd that San Jose no longer wants BIG BAR in downtown so you will toss them out in Alviso. Where a limited number of complaints will come in. If this is built SAN JOSE WILL DIVIDE US. This is better suited for the Coyote Valley.

> **RESPONSE A-3:** Traffic impacts from the proposed project are discussed in *Section 4.16 Transportation* of the Initial Study. An analysis of the potential for drunk drivers is not required under CEQA, and the comment does not pertain to the conclusions of the Initial Study/Mitigated Negative Declaration. A development project cannot be conditioned to require any changes to police patrols, which are established by the police department. The project would incrementally increase demand for fire and police services. The proposed increase in development on the project site is accounted for in the planned growth for the City. This increase in demand would not result in a substantial adverse physical impact associated with a need for new facilities in order to maintain acceptable levels of services or performance objectives.

COMMENT A-4: Our manufactured home park currently receives a MAX OF 5.0 MB/S FROM AT&T INTERNET. How pathetic is that in Silicon Valley? When this object is built, I am 100 percent sure that all utility, phone and other lines will be buried. We are currently 600 feet from this site. I know fiber optic is currently in Alviso, but AT&T will not provide us with faster internet. Will this company deliver fiber optic to our park, if not we will than we will be the only area in Alviso with slow DSL service. I feel discriminated against. Who can I talk to regarding this issue? I can even give the owner of our park to this person.

RESPONSE A-4: This comment is acknowledged and will be considered by the decision makers. As the comment does not pertain to the analysis or conclusions of the Initial Study/Mitigated Negative Declaration, no further response is required.

COMMENT A-5: My last concern. I am very disappointed that I haven't received any information regarding this proposed project or any paperwork from the planning department. I've received stuff in the mail from SJ Planning Dept. regarding the Trommwell Crow and the other developer, but NO PAPERWORK WAS SENT TO ME REGARDING THIS PROJECT. I've also left a message with District 4 Fred Buzo regarding my disappointment.

RESPONSE A-5: This comment is acknowledged and will be considered by the decision makers. All applicable noticing requirements were followed by the City during the noticing for this project. On site notice was installed at the project site within 10 days of the filing of the application for this project. Over 1,400 notices of the June 16, 2016 community meeting were sent to property owners, residents and other interested parties within a 1000-foot radius of the project site. As the comment does not pertain to the conclusions of the Initial Study/Mitigated Negative Declaration, no further response is required.

B. RESPONSES TO COMMENTS FROM BETSY STERN, DATED OCTOBER 11, 2016:

COMMENT B-1: I am responding to the Mitigated Negative Declaration for TopGolf at Terra Project.

In reference to Appendix I, 2.6.4 NEIGHBORHOOD STREETS, where is the mitigation that will protect the pedestrians (especially the children and parents) going to and from George Mayne Elementary School while, in addition to increased traffic due to the physical presence of TopGolf, TopGolf will be serving alcohol from 9:00 am until 2:00 am, and this will have a direct impact on the increase in traffic accidents. Although the sale of alcohol itself doesn't fit into an MND, the impact of drunk driving does -- to the environment and to people.

The rezoning of this property to allow for an entertainment center that serves alcohol from 9:00 am to 2:00 am and is directly across the street from an elementary school is absolutely unconscionable.

RESPONSE B-1: Traffic impacts from the proposed project, including impacts related to pedestrians, are discussed in *Section 4.16 Transportation* of the Initial Study. No significant impacts related to pedestrian facilities were identified in the Initial Study, and, therefore, no mitigation is required.

In order to address the increase traffic along N. 1st Street and in the surrounding neighborhood, the project would construct a median island along the project frontage, enhanced crosswalk with flashing beacons at Grand Blvd. and N. 1st Street, a new traffic signal at N 1st Street and Trinity Park with protected pedestrian crosswalks. In addition, buffered bike lanes would be installed along North Taylor Street between Gold Street and Liberty Street.

In order to serve alcoholic beverages on site, the project applicant would be required to have a license from the State Department of Alcohol and Beverage Control (ABC) and meet all the requirements thereof.

C. RESPONSES TO COMMENTS FROM COUNTY OF SANTA CLARA PARKS AND RECREATION DEPARTMENT, DATED OCTOBER 17, 2016:

COMMENT C-1: The County of Santa Clara Parks and Recreation Department (the Department) has reviewed the proposed Topgolf at Terra Project. The proposed project includes changing the Planned Development Rezoning from the CIC Combined Industrial Commercial and R-M Multiple Residence Residential Zoning Districts to the CIC (PD) Planned Development Zoning District (PDC16-013). In addition to this amendment, the proposed project would amend the Alviso Specific Plan development standards for building heights (GPT16-001).

The developed Regional Trail S3 (Guadalupe Sub-Regional Trail) spans west of the project site, while a proposed San Francisco Bay Trail with an on-street bike route spans north of the project site. The approval of the proposed land use designation change and amendment to the Alviso Specific Plan will not adversely impact the existing adjacent recreational and commuter trails within the Countrywide Trails Master Plan.

PDC16-013 and GPT16-001 change does not impact the Trails Element of the Parks and Recreation Chapter of the 1995 General Plan. The Department has no further comments.

RESPONSE C-1: This comment is acknowledged and will be considered by the decision makers. No further response is required.

D. RESPONSES TO COMMENTS FROM DEPARTMENT OF TRANSPORTATION, DATED OCTOBER 17, 2016:

COMMENT D-1: Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the above-referenced project. In tandem with the Metropolitan Transportation Commission's (MTC) Sustainable Communities Strategy (SCS), Caltrans new mission signals a modernization of our approach to evaluating and mitigating impacts to the State Transportation Network (STN). We aim to reduce vehicle miles traveled (VMT) by tripling bicycle and doubling both pedestrian and transit travel by 2020. Our comments are based on the Mitigated Negative Declaration (MND). Please also refer to the previous comment letter, dated January 19, 2016, on this project and incorporated herein.

Project Understanding
The proposed project is located immediately adjacent to the north of State Route (SR) 237, on the east side of the Guadalupe River, and south of N. 1st Street. It would replace Pin High Golf Center, an existing driving range and golf facility located on the eastern portion of the site at 4701 N. 1st Street, as well as remove a recreational vehicle storage area located on the site's western portion. The proposed project will consist of the following:

- A 13.5-acre Topgolf entertainment complex in the southern portion of site, which would comprise of 125 hitting bays, an outdoor field enclosed by netting, and a 3-story structure with a full-service restaurant, a bar, lounges, corporate/event meeting space, and a family entertainment area. Additionally, these Topgolf facilities are anticipated to be open as late as 2:00AM and would be supported by an adjacent 460-space paved parking lot.
- A 200-room hotel spanning 6.8 acres on the western portion of the site.
- A retail component consisting of five structures totaling 100,000 square feet (or 100 KSF).
- 5.8 acres of undeveloped land on the southeast corner of the project site would remain undeveloped.

Lead Agency
As the lead agency, the City of San Jose (City) is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

> **RESPONSE D-1:** All mitigation measures for traffic impacts are described in *Section 4.16 Transportation* of the Initial Study. As required by CEQA (Section 15097), a Mitigation Monitoring and Reporting Program (MMRP) will be adopted with the Initial Study/Mitigated Negative Declaration. The MMRP will include the impacts of the project, mitigation for those impacts, the relative responsibilities of various City departments for various aspects of the monitoring and reporting, and general standards for determining project compliance with the mitigation measures or revision and related conditions of approval. The Initial Study did not identify any significant impacts to state highways or mitigation measures that would require improvements to state highways.

COMMENT D-2: *Traffic Impacts*

1. N. 1st Street/SR 237 Overpass: The MND states that the project will add a third northbound left-turn lane from N. 1st Street onto the westbound (WB) SR 237 on-ramp. The on-ramp should also be widened, so it can provide enough storage on the SR 237 on-ramp. The project should provide analysis for the above operation for Caltrans review and comments.

RESPONSE D-2: The Initial Study does not state that the project would add a third northbound left-turn lane from N. 1st Street on the westbound (WB) SR 237 on-ramp. This roadway improvement is not proposed by the project and is not required as part of any CEQA mitigation. The Initial Study does identify significant impacts at the intersection of N. 1st Street and the SR 237 westbound on-ramps under both background-plus-project and cumulative-plus-project conditions (refer to Impact TRAN-1 and Impact C-TRAN-1). Mitigation is identified to reduce the impacts to a less than significant level (refer to MM TRAN-1 and MM C-TRAN-1) that would require the project to contribute fair share payment toward required improvements at this intersection. As described on page 218 of the Initial Study, on December 17, 2013, the City Council modified the North San José Area Development Policy (NSJADP) to allow projects outside the policy area boundary (such as the proposed project) that contribute trips to intersections within the policy area to pay the North San José (NSJ) traffic impact fee as fair share fees to fund traffic mitigation. Therefore, it would be appropriate for the proposed project to pay the NSJ impact fee for its contribution to impacted intersections within the NSJADP boundary, even though the project is not within the NSJADP boundary. The payment of the NSJ impact fee would provide a proportional fair share payment toward the required improvements to the N. First Street and SR 237 intersections, and would constitute effective mitigation of the project's impacts.

Based on the administrative record, there is substantial evidence to conclude that traffic generated from the proposed project will be below the City's threshold for significant impact on the environment with the proposed mitigation described above.

COMMENT D-3: 2) Ramp Capacity: A ramp-capacity analysis should be performed on the Great America Parkway/SR 237 on-ramp for both the eastbound (EB) and WB side of SR 237. If the queue on these ramps back up onto the City streets, then mitigation is necessary to widen the ramps.

RESPONSE D-3: Pages 224-225 of the Initial Study and Chapter 9 of Appendix I include a discussion of vehicle queuing at the on-ramp mentioned in the comment. As stated in the Initial Study, the City has no adopted thresholds of significance related to vehicle queues at intersections. However, for CEQA purposes, the City analyzes impacts to intersections based on the level of service thresholds of significance. Based on the City's adopted thresholds, no significant level of service impacts were identified at the intersection of Great America Parkway and the SR 237 on-ramps.

COMMENT D-4: 3) Queue Analysis: Please provide the 95th percentile queue analysis for the following intersections:

- Great America Parkway/SR 237 WB off-ramp.
- Great America Parkway/SR 237 EB off-ramp.
- Great America Parkway/Gold Street Connector.

- N. 1st Street/SR 23 7 WB off-ramp.
- N. 1st Street/SR 237 EB off-ramp.
- N. 1st Street/Hoglar Way.

If the findings of the analysis result in queues that extend onto the freeway that extend beyond the through lane storage between intersections or left-turn pocket storage, then the project should fully mitigate these impacts.

RESPONSE D-4: Chapter 10 in Appendix I presents the results of the left-turn queue evaluation at locations that would add a minimum of 10 vehicles to a dedicated left-turn movement in at least one of the peak hours. Table 22 in Appendix I presents the results of the left-turn queue analysis at selected locations, which include Great America Parkway/SR 237 Eastbound Ramps, Great America Parkway/Gold Street Connector, and N. 1st Street/SR 237 Eastbound Ramps. As shown in the table, these locations were not projected to have queues that would extend outside of their respective available storage lengths under existing and background conditions with and without the project in place.

Based on the project trip assignment, the proposed project would not add more than 10 vehicle trips (if any) to dedicated left-turn movements at Great America Parkway/SR 237 Westbound Ramps, N. 1st Street/SR 237 Westbound Ramps, and N. 1st Street/Holgar Way. Thus, these locations were not evaluated in the queueing assessment.

Based on the administrative record, there is substantial evidence to conclude that traffic generated from the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that traffic generated from the proposed project will create a significant impact.

COMMENT D-5: 4) Freeway Segment Analysis: The 2,300 vehicle per hour per lane (vhl) capacity stated in the report for Freeway Segment analysis is too high, based on passenger car equivalent volume. If this capacity is used, then all of the count volumes need to be adjusted to passenger car equivalent volumes.

RESPONSE D-5: The Congestion Management Plan (CMP) range of densities for freeway segment level of service is presented in the CMP guidelines and are also reported in the VTA's 2014 CMP Monitoring and Conformance Report. Additionally, the City of San Jose's Traffic Impact Analysis Handbook states that the 2,300 vhl capacity for six-lane or larger freeway segments is ideal and shall be used for the freeway segment analysis. Since this analysis is consistent with other area-wide studies and governing jurisdiction guidelines, the 2,300 vhl capacity used in this TIA's freeway segment analysis is appropriate.

COMMENT D-6: 4) Figure 2.0-2 Vicinity Map: The Vicinity Map of the Initial Study Report has SR 237 mislabeled as SR 87. Please correct the Figure to accurately depict the State facility as SR 237.

RESPONSE D-6: A revised figure is included in the *Revisions to the Text of the Initial Study*, below.

COMMENT D-7: *Vehicle Trip Reduction*

Transportation Demand Management (TDM) programs should be documented with annual monitoring reports by an onsite TDM coordinator to demonstrate effectiveness. Suggested TDM strategies include working with the Santa Clara Valley Transportation Authority (VTA) to decrease headway times and improve way-finding on bus lines to provide a better connection between the project, the Great America Station, and regional destinations and providing:

- Membership in a transportation management association.
- Transit subsidies and/or EcoPasses to all employees.
- Ten percent vehicle parking reduction.
- Transit and trip planning resources.
- Carpool and vanpool ride-matching support.
- Carpool and clean-fuel parking spaces.
- Secured bicycle storage facilities.
- Bicycles for employee uses to access nearby destinations.
- Showers, changing rooms and clothing lockers.
- Fix-it bicycle repair station(s).
- Transportation and commute information kiosk.
- Outdoor patios, outdoor areas, furniture, pedestrian pathways, picnic and recreational areas.
- Nearby walkable amenities.
- Kick-off commuter event at full occupancy.
- Employee transportation coordinator.
- Emergency Ride Home program.
- Bicycle route mapping resources and bicycle parking incentives.

Please refer to "Reforming Parking Policies to Support Smart Growth," a MTC study funded by Caltrans, for sample parking ratios and strategies that support compact growth. Reducing parking supply can encourage active forms of transportation, reduce regional VMT, and lessen future traffic impacts on SR 237 and other nearby State facilities. These smart growth approaches are consistent with the MTC's Regional Transportation Plan (RTP)/SCS goals and would meet Caltrans Strategic Management Plan.

> **RESPONSE D-7:** Caltrans' recommendations regarding vehicle trip reduction are acknowledged and will be considered by the decision makers. As described on page 126 of the Initial Study, the project is not required to implement a TDM program in order to comply with the City's GHG Reduction Strategy. Additionally, a TDM program is not identified as mitigation for significant transportation impacts. No formal TDM is currently proposed by the project applicant or required to mitigate any CEQA impacts. The amount of parking proposed by the project is consistent with the requirements of the City's Municipal Code Chapter 20.90.060.

COMMENT D-8: *Traffic Impact Fees*

Given the project's contribution to area traffic and its proximity to SR 237, the project should contribute fair share traffic impact fees toward the Caltrans sponsored planned construction of the auxiliary lanes on both EB and WB sides of SR 237 between the Zanker Road interchange and the N. 1st Street interchange. Also, the project should contribute to the SR 237 Express Lanes Project. These

contributions would be used to lessen future traffic congestion and improve transit in the project vicinity.

> **RESPONSE D-8:** The Initial Study/Mitigated Negative Declaration did not identify any project-generated significant traffic impacts to freeway segments requiring mitigation such as payment of fair share traffic impact fees.

COMMENT D-9: *Voluntary Contribution Program*

We encourage the City to participate in the VTA's voluntary contribution program and plan for the impact of future growth on the regional transportation system. Contributions by the City funding regional transportation programs would improve the transportation system by reducing congestion and improving mobility on major roadways throughout the San Francisco Bay Area.

> **RESPONSE D-9:** The comment is acknowledged and will be considered by the decision makers.

COMMENT D-10: *Bridges, Trestles, Culverts and Other Structures in Riparian Environments*

Some project level activities may affect riparian flow patterns upstream of bridges, trestles, culverts or other structures for which Caltrans holds responsibility. Please ensure your project level environmental documents include hydrological studies to determine whether such impacts will occur, and to identify appropriate mitigation measures.

> **RESPONSE D-10:** Impacts to the Guadalupe River are discussed in *Sections 4.4 Biological Resources* and *4.8 Hydrology and Water Quality* of the Initial Study. No project-generated impacts were identified that would affect riparian flow patterns upstream of bridges, trestles, culverts or other structures for which Caltrans holds responsibility.
>
> Based on the administrative record, there is substantial evidence to conclude that hydrological impacts of the project will be below the City's threshold for significant impact on the environment and there is no factual basis to support a fair argument that the project will create a significant hydrological impact.

COMMENT D-11: *Habitat Restoration and Management*

Project level activities related to habitat restoration and management should be done in coordination with local and regional Habitat Conservation Plans, and with Caltrans where our programs share stewardship responsibilities for habitats, species and/or migration routes.

> **RESPONSE D-11:** This comment is acknowledged and will be considered by the decision makers. As discussed in *Section 4.4 Biological Resources* of the Initial Study, the project would comply with the requirements of the Santa Clara Valley Habitat Conservation Plan. All impacts to biological resources would be reduced to a less than significant level with implementation of identified mitigation measures.

COMMENT D-12: *Sea Level Rise*

The effects of sea level rise may have impacts on transportation facilities located in the project area. Executive Order (EO) S-13-08 directs State agencies to plan for potential impacts by considering a range of sea level rise scenarios for the years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels and change sediment movement along shores and at estuaries and river mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. All these factors must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans.

> **RESPONSE D-12:** This comment regarding existing transportation facilities in the project area is acknowledged and will be considered by the decision makers. As the comment does not pertain to the conclusions or analysis of the Initial Study/Mitigated Negative Declaration, no further response is required.

COMMENT D-13: *Encroachment Permit*

Please be advised that any work, staging, or traffic control that encroaches onto the State right-of-way (ROW) requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See this website for more information: www.dot.ca.gov/hq/traffops/developserv/permits.

> **RESPONSE D-13:** The project does not propose any work within a State ROW. If the project were to encroach on any State ROW, the required encroachment permit procedures would be followed.

E. RESPONSES TO COMMENTS FROM M.R. WOLFE & ASSOCIATES, DATED OCTOBER 17, 2016:

COMMENT E-1: Please accept the following comments on the above-referenced mitigated negative declaration, submitted on behalf of Organizacion Comunidad de Alviso ("OCDA"). OCDA is an unincorporated association of residents, citizens, property owners, taxpayers, and electors residing in the Alviso community of San José, who will be directly affected by any adverse environmental impacts that the Topgolf project ("Project") may generate.

We have reviewed the initial study and proposed mitigated negative declaration ("IS/MND") together with its various technical appendices. As explained below, the City's proposed reliance on a MND for this large-scale retail/hotel/recreational project in lieu of a full environmental impact report ("EIR") is improper. Evidence contained in (or missing from) the IS/MND shows that the Project – the first of its kind in the City -- may have one or more significant environmental impacts notwithstanding the mitigation measures identified in the MND. Under these circumstances the California Environmental Quality Act ("CEQA") requires the City to prepare and circulate an EIR before it may lawfully approve the Project.

I. Traffic Impacts

The Transportation Impact Analysis ("TIA") appended to the IS/MND states that existing (i.e., baseline) traffic conditions were based on traffic counts obtained from the City. Although most of the counts were taken in 2015 or 2016, some are as old as 2013 (see pp. 208 - 211 of the Appendix I PDF comprising counts for North First and Tasman). Other counts date from 2014 (see Appx I PDF pages 257-258; 260 -261; 263-266, comprising respectively counts of Great America Parkway with SR 237 westbound ramps, Great America Parkway with eastbound SR 237 ramps and Vista Montana with West Tasman). Still other count data is of indeterminate age – 2014 or older (pp. 178, 183, 228, 259, and 262, comprising respectively data for the key intersections of N. First with SR 237 westbound ramps, N. First with SR 237 eastbound ramps, N. First with Montague Expressway, Great America with SR 237 westbound ramps and Great America with SR 237 eastbound ramps; dates on these sheets are dates on which data was entered into data base or extracted from data base; actual count date is indeterminately older).

The TIA should have used growth factors to update older count data to approximate current levels. No such adjustment is documented. As the City should aware, North San Jose has seen substantial new development in recent years, and reasonable growth factor adjustments (or new counts) are thus essential to fair representation of existing conditions in this area. It is also noteworthy that Levi's Stadium, which has major effects on weekday as well as weekend traffic in the area, did not open for events until July, 2014. If the existing conditions data base is understated, the analysis is skewed to minimize disclosure of project traffic impacts. Please circulate a revised TIA that reflects current traffic count data, or growth-adjusted earlier data before taking any action to approve the Project.

> **RESPONSE E-1:** As noted on pages 22 and 46 of Appendix I to the Initial Study, the analysis of existing traffic conditions was based on traffic counts obtained from the City of San Jose and supplemented with new manual turning-movement counts collected in 2015. Additionally, as noted in Section 4.16.1.4 of the Initial Study, existing conditions (and by extension the baseline for the analysis of transportation impacts) were established at the time the City initiated the traffic analysis for the proposed project in February 2016. At this time,

all but one of the traffic counts utilized in the analysis were 18 months old or newer. There is no information in the administrative record that would indicate the traffic count is outdated or that the result of the traffic analysis would change with updated traffic count of today's date.

At one intersection, N. 1st Street/Tasman Drive, counts were utilized that were older than 18 months. At this intersection, new counts were completed in September 2015. However, intersection counts completed in 2013 showed greater volumes than those completed in 2015. The City utilized the 2013 counts in order to yield more conservative results since the 2013 volumes were higher than 2015 volumes. The Initial Study, therefore, established an appropriate and conservative baseline for the evaluation of impacts resulting from the project.

The comment also mentions Levi's Stadium. Events at Levi's Stadium are not a regular occurrence and counts for the project were conducted during typical AM and PM weekday peak hour conditions in October 2015 or March 2016. Additionally, Levi's Stadium is located roughly three miles south of the project site and event traffic is unlikely to have any significant effect on traffic within the immediate project area.

COMMENT E-2: The TIA's trip generation analysis, documented in Appendix I, Table 10, used the average trip generation rate for shopping centers from ITE Trip Generation, 9th Edition to estimate the gross trip generation (trip generation before reductions for internalization and passerby attraction) for the Project's retail component. However, trip generation varies by shopping center size with very large centers having lower than average generation per square footage, small ones having greater than average generation per square foot. Because of this, the ITE document advises use of the regression equation provided in the document rather than the average rate. The retail floor area in the Topgolf Project falls in the area where actual generation by the regression equation is greater than the average rate. Please update the trip generation analysis accordingly.

RESPONSE E-2: Consistent with the Department of Public Works' Transportation Impact Analysis Handbook, average trip generation rates for the shopping center land use were used in the analysis. The use of average trip generation rates is standard practice and appropriate for the proposed project because it accounts for variability of the final composition of the specific retail uses at the project site. The regression equation, or fitted curve, recommended by the commenter looks at a specific set of parameters. Given that the specific retail uses are currently unknown, it is speculative to rely on the specific retail use parameters of the regression equation. There is information in the administrative record to support the use of average trip generation rate for shopping centers.

COMMENT E-3: The TIA's trip generation analysis assumes that 25 percent of the daily and PM peak trips to the Project's retail component would be attracted from existing traffic passing the site. While this is ordinarily a conventional assumption, it is inappropriate with respect to this Project for two reasons. First, the limited amount of traffic passing the site makes attracting 25 percent of the Project's retail traffic from regular passers-by unsustainable. Second, the retail to be developed on the site is unlikely to be attractive to passers-by given the socioeconomics of the local community who comprise the passerby traffic.

RESPONSE E-3: The 25 percent pass-by reduction for retail uses during daily and PM peak hour traffic is based on a review of ITE's Trip Generation Handbook, 3rd Edition (2014) and a review of pass-by reductions for retail uses made in other Santa Clara County TIAs. It is a

typical and standard reduction that is applied in traffic analyses throughout Santa Clara County. No data or supporting information is provided in the comment that would demonstrate this is an unreasonable assumption. The assumptions made in the comment are speculative and there is no information in the administrative record to support such assumptions.

COMMENT E-4: The TIA reports that under the original assumption of 117,000 square feet of retail space, the Project was found to cause a significant impact on a freeway segment. After reducing the retail component by 7,000 square feet, the TIA finds a reduction in overall PM peak generation of about 20 net trips (after discounting for internalization and passers-by), thereby avoiding the freeway impact. Had the TIA properly accounted for the gross PM peak retail trip generation and for realistic passer-by attraction, the result would have been substantially more trips generated per 1,000 square feet, such that the removal of just 7,000 square feet would not eliminate the freeway impact.

RESPONSE E-4: As described in Responses E-2 and E-3, the trip generation and pass-by reduction assumptions utilized in the traffic analysis are standard rates and are appropriate for the proposed project. No data or supporting information is provided in the comment that would demonstrate the TIA relies on unreasonable assumptions. The assumptions made in the comment are speculative and there is no information in the administrative record to support such assumptions.

Based on the administrative record, there is substantial evidence to conclude that freeway traffic generated from the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that traffic generated from the proposed project will create a significant traffic impact to any freeway segments.

COMMENT E-5: The TIA also indicates that the Project could add 21 to 28 percent to traffic on Gold Street. The Project traffic assignment on Appendix I, Figure 8 shows the project adding 136 trips to Gold Street in the PM peak, which is a 20.4 percent increase in the existing Gold Street PM peak traffic of 666 shown on Appendix I, Figure 6. But if the Project trip distribution route information displayed on Appendix I, Figure 7 is combined with the project trip generation information contained on Appendix I, Table 10, Project trips could add some 32 percent to traffic on Gold Street. And if the gross retail trip generation and passer-by attraction had been properly estimated as detailed in the points above, the percent increase on Gold would be even greater.

RESPONSE E-5: As stated on pages 11 and 135 and shown in Table 21 of the TIA, the project could add 21 percent to the average daily trips (ADT) on Gold Street at its intersection with Moffatt Street, and add 28 percent to the ADT on a segment of N. Taylor Street between Gold Street and Liberty Street. Gold Street would not experience a 28 percent increase in ADT.

The comment states that Gold Street could experience a 32 percent increase in ADT, but it is unclear how this percentage was derived and is speculative. As noted in Table 21, the project's addition to the ADT on Gold Street was estimated by applying the same proportionality or ratio between the PM peak hour project trip generation and the daily project trips to the project's PM peak hour roadway segment volumes. This methodology

yields an ADT increase of 21 percent. It should be noted that this data is provided in the TIA in the context of a discussion of traffic added to neighborhood streets in Alviso. This discussion was included in Appendix I, but not the text of the Initial Study, at the request of the City and is intended for informational and transportation planning purposes only. The discussion is not an analysis of the project's impacts under CEQA. The project's impacts under CEQA are analyzed in *Section 4.16 Transportation* of the Initial Study, where significant transportation impacts are analyzed and associated mitigation measures are identified.

As described in Responses E-2 and E-3, the trip generation and pass-by reduction assumptions utilized in the traffic analysis are standard rates and are appropriate for the proposed project.

COMMENT E-6: The TIA also includes an analysis of Project impacts on Alviso neighborhood streets, finding that the Project would increase average daily trips on Gold Street at Moffatt Street by 21 percent, and on North Taylor Street between Gold and Liberty Streets by 28 percent. The TIA then identifies various "potential transportation improvements." The listed improvements, which include installation of bulb-outs, speed feedback signs, roundabouts, raised crosswalks and the like, are not identified as mitigation measures in the IS itself. The TIA in essence has found potentially significant traffic impacts on Alviso neighborhood streets and recommended mitigation measures for them, that the IS/MND has failed to disclose. At a minimum, the IS/MND should be updated to specify these measures as binding mitigation measures that the Project applicant and/or the City will be required to implement if the Project is ultimately approved.

RESPONSE E-6: The comment is referring to pages 102-104 of Appendix I to the Initial Study, which includes a discussion of traffic added to neighborhood streets in Alviso. This discussion was included in Appendix I, but not the text of the Initial Study, at the request of the City and is intended for informational and transportation planning purposes only. The discussion is not an analysis of the project's impacts under CEQA. The project's impacts under CEQA are analyzed in *Section 4.16 Transportation* of the Initial Study, where significant transportation impacts are analyzed and associated mitigation measures are identified.

The potential transportation improvements referenced in the comment are provided in Appendix I as examples of traffic calming options that could help slow down motorists and/or keep unwanted through traffic out of the area. These measures are not mitigation measures for any identified significant transportation impacts, and are, therefore, presented as recommendations only, should the City desire to achieve traffic calming in the area. Of the recommendations listed in Appendix I, the City will require the project to implement bulb-outs at all four corners of the North Taylor and Liberty Street intersection, as well as buffered bicycle lanes on North Taylor Street between Gold Street and Liberty Street. In addition, the project would construct a median island along the project frontage, enhanced crosswalk with flashing beacons at Grand Blvd. and N. 1st Street, a new traffic signal at N 1st Street and Trinity Park with protected pedestrian crosswalks.

Based on the administrative record, there is substantial evidence to conclude that traffic generated from the proposed project will be below the City's threshold for significant impact on the environment with the proposed mitigation described in the Initial Study/Mitigated

Negative Declaration, and there is no substantial evidence to support a fair argument that traffic generated from the proposed project will create a significant traffic impact to neighborhood streets.

COMMENT E-7: In sum, the City should correct the foregoing flaws and inconsistencies in a revised TIA circulated for further public review and comment.

RESPONSE E-7: For the reasons described in Responses E-1 through E-7, the Initial Study provides an adequate analysis of the project's transportation impacts, and therefore, a revised TIA is not necessary.

Based on the administrative record, there is substantial evidence to conclude that traffic generated from the proposed project will be below the City's threshold for significant impact on the environment with the proposed mitigation described in the Initial Study/Mitigated Negative Declaration.

COMMENT E-8: II. Air Quality Impacts

The Project uses CalEEMod to calculate Project emissions. The model appears to rely on unsubstantiated input parameters to estimate Project emissions. For example, the CalEEMod output files for the Hotel/Retail portion of the Project model the parking lot with 178 spaces, but then assigned a lot acreage of zero to this land use (Appendix A, p. 55). Meanwhile, according to figures presented in the IS/MND itself, the surface parking lots are in fact a part of the total lot acreage (IS/MND, p. 13, p. 39). As such, the parking lot land use should have an acreage assigned to it in the CalEEMod model. By failing to include this, pollutant emissions, such as fugitive dust and VOCs, from grading and asphalt paving have been underestimated. Please correct this omission in a revised initial study.

RESPONSE E-8: Based on the information contained in this comment, the CalEEMod input parameters were revised to include the correct number of parking spaces and parking lot acreage. The revised air quality modeling results are attached as Attachment B to these responses to comments. It should be noted that the total site acreage assumed in the original CalEEMod input parameters was correct, but the acreage of the parking lot areas was included in the acreage assigned to the land use categories proposed for the site, such as retail and hotel. The revised modeling did not indicate any new significant air quality impacts that were not already identified and disclosed in the Initial Study.

COMMENT E-9: The IS/MND finds a potentially significant air quality impact from emissions of NOx during Project construction. (IS/MND p. 65.) It then claims this impact would be reduced to a less than significant level with mitigation measure MM AQ-1.1, which provides: "[a]ll diesel-powered construction equipment larger than 50 horsepower and operating on site for more than two (2) continuous days shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent" (IS/MND, p. 65). The IS/MND does not, however, explain or document the feasibility of this mitigation measure. The assumption that a combined total of 75 pieces of construction equipment for both the TopGolf Complex and Hotel/Retail components of this Project will be equipped with Tier 4 engines is dubious, given that current regulations do not require construction fleets to consist of solely Tier 4 equipment, and that retrofitting older equipment with Tier 4 engines is extremely expensive. Please explain how the City plans to enforce this mitigation measure.

RESPONSE E-9: As required by CEQA (Section 15097), a Mitigation Monitoring and Reporting Program (MMRP) will be adopted with the Initial Study/Mitigated Negative Declaration. The MMRP will include the impacts of the project, mitigation for those impacts, the relative responsibilities of various City departments for various aspects of the monitoring and reporting, and general standards for determining project compliance with the mitigation measures or revision and related conditions of approval. The project will be required to implement MM AQ-1.1 as described in the Initial Study, and will print these requirements on construction documents, contracts, and/or project plans. Mitigation requiring the use of Tier 4 engines in construction equipment has been successfully implemented in other projects in San Jose, including the Communications Hill 2 project, which is currently under construction.

COMMENT E-10: The IS/MND calculated average daily construction emissions by averaging annual emissions over 396 workdays. (Table 4.3-4, IS/MND, p. 65). This averaging period appears to be based on the CalEEMod default schedule used to model the TopGolf Complex. At the same time, construction of the Retail/Hotel component of the Project was done using a Project-specific construction schedule provided by the applicant, which assumes construction over 300 work days. However, the annual emissions from both the TopGolf Complex and the Retail/Hotel are spread over a 396 day averaging period instead of using a 396 day averaging period for the TopGolf Complex and a 300 day averaging period for the Hotel Retail Component, and adding the average daily emissions with each other. By using a larger averaging period to estimate the Retail/Hotel average daily emissions, the Project's average daily construction emissions are underestimated. Please address this inconsistency in a revised Air Quality analysis.

RESPONSE E-10: The calculation of construction emissions was completed using methodology recommended by the Bay Area Air Quality Management District (BAAQMD). In Appendix B of the 2012 BAAQMD CEQA Air Quality Guidelines, BAAQMD provides direction on the averaging of daily construction emissions, stating, "The average daily emissions of each pollutant that would occur throughout the entire construction period should be identified and compared with the lead agency's threshold of significance."[1] Following the direction of the BAAQMD guidelines, the project's total construction emissions were averaged over the entire construction period.

As noted in Response E-8, the air quality modeling for the project was updated to ensure the assumptions used as input parameters precisely match the project description in the Initial Study. The revisions to the modeling include updating the overall construction period to 24 months. It should be noted that the 18-month assumption used in the initial modeling was accurate when the modeling was completed. However, subsequent to the modeling effort, the applicant requested that the project description be revised to include 24 months for construction. This revision was due to a potential later start date to construction of certain portions of the proposed project, not an increase in the overall amount of construction. The overall amount of proposed construction has not changed from the original modeling effort. The revised air quality modeling results are attached as Attachment B to these responses to comments, and summarized in *Revisions to the Text of the Initial Study*, below. The revised modeling did not indicate any new significant air quality impacts that were not identified in the Initial Study.

[1] BAAQMD. *California Environmental Quality Act Air Quality Guidelines*. Updated May 2012.

COMMENT E-11: III. Health Impacts from Diesel Exhaust Emissions

The IS/MND includes a health risk assessment ("HRA") in Appendix A for exposing nearby sensitive receptors to hazardous pollutant emissions during Project construction. Specifically, the ISCST3 dispersion model was used to predict concentrations of diesel particulate matter (DPM) and PM2.5 at affected sensitive receptor locations. The ISCST3 output files do not appear to have been provided, however. This makes it impossible for the public to verify the accuracy or legitimacy of the various assumptions that the dispersion model relied upon. Because the public is entitled to review and comment upon all technical information relied upon in the IS/MND (CEQA Guidelines § 15072(g)(4)), please circulate the ISCST3 for a minimum 20-day review period before any action is taken to approve the Project**.**

RESPONSE E-11: The ISCT3 output files are included in Attachment B to these responses to comments.

CEQA Guidelines § 15072(g)(4) states that "The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours." Section 2.3 of the Initial Study discloses the address where documents associated with the Initial Study are available for review. The ISCST3 output files were available throughout the circulation period and could have been viewed at any time upon request. The assumptions used as input parameters for the model were disclosed in Appendix A, as were the results of the modeling.

COMMENT E-12: The IS/MND does not include a HRA for the Project's operational phase. Diesel-powered delivery truck trips associated with the hotel and retail land uses of the Project will undoubtedly produce significant quantities of DPM emissions, exposing nearby sensitive receptors in Alviso to a potentially significant direct and/or cumulative health risk. The City should prepare and circulate a HRA that evaluates the Project's individual and cumulative operational health risks prior to taking action to approve the Project.

RESPONSE E-12: There is nothing unique about the project that would suggest an unusual volume of diesel truck deliveries compared with other hotel or retail projects. The cumulative health risk portion of the air quality analysis addressed health risks from vehicle trips based on cumulative plus project volumes obtained from the project traffic report. The trip generation assumptions used in the air quality modeling for the project include a typical rate of truck delivery trips for the proposed uses on the site. The cumulative roadway volumes would include future heavy-duty truck trips in the project area from cumulative conditions plus implementation of the project. As discussed on page 11 of air quality report (Appendix A), the HRA completed for cumulative plus project conditions indicated no significant health risk resulting from vehicle and truck trips, including those generated by project.

COMMENT E-13: IV. Noise Impacts

The Noise Assessment appended to IS/MND does not appear to have evaluated the Project's cumulative traffic noise impacts in the manner required by CEQA. Under CEQA, a legally adequate cumulative impact analysis requires an agency first to determine whether will be a significant cumulative noise impact from the Project in combination with other past, present, and future projects in the vicinity, i.e., whether all relevant projects together will generate noise exceeding the City's noise standards at the affected locations. See CEQA Guidelines, § 15130; Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98. If the agency in fact finds a significant cumulative impact, it must then separately determine whether the project's contribution to that impact is "cumulatively considerable." Id. The IS/MND's Noise Assessment does not adhere to this mandatory two-step approach.

We would note that the Noise Assessment indicates that traffic noise levels at 7 affected roadway segments already exceed the City's residential noise standard of 60 dB, and will continue to do so with the Project. This suggest there is already a significant cumulative noise impact, thus triggering a duty to ascertain, using specific significance thresholds, whether the Project's contribution to it in the future is cumulatively considerable. The City should prepare and circulate a legally adequate cumulative traffic noise analysis before taking any action to approve the Project.

> **RESPONSE E-13:** The discussion of cumulative noise impacts in the Initial Study was revised to more clearly state that the project would neither result in a significant cumulative noise impact nor would it make a cumulatively considerable contribution to one (refer to *Revisions to the Text of the Initial Study*, below). Pages 34 and 35 of Appendix H to the Initial Study were also revised in a similar manner (refer to Attachment C). The conclusion of the Initial Study, which in Section 4.18.2.3 states that the project "…would not result in or make a considerable contribution to significant cumulative noise impacts," is unaffected by these revisions.
>
> Based on the administrative record, there is substantial evidence to conclude that noise generated from the proposed project will be below the City's threshold for significant cumulative noise impact and there is no substantial evidence to support a fair argument that noise generated from the proposed project will create a significant cumulative noise impact.

COMMENT E-14: V. Conclusion

Under CEQA, an agency may rely on a negative declaration or mitigated negative declaration only if there is no substantial evidence whatsoever that a project may have a significant environmental impact. CEQA Guidelines, § 15064(f)(3). While a fair argument of environmental impact must be based on substantial evidence, CEQA places the burden of environmental investigation on government rather than the public. "If a local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 311.

Here, the foregoing deficiencies, errors and omissions render the IS/MND inadequate to support approval of the Project under CEQA. The City should prepare a full EIR that contains new/revised analyses discussed above before taking any action to approve the Project.

Thank you for your consideration of this comments and concerns.

RESPONSE E-14: The comment letter raised questions regarding assumptions and methodologies utilized in the Initial Study and technical appendices. Responses E-1 through E-13, as well as revisions to the Initial Study and technical appendices, provide clarification on how the conclusions of the Initial Study were reached and adequately respond to the questions raised in the comment letter. None of the revisions or responses result in changes to the conclusions of the Initial Study, and the comment letter provides no substantial evidence that the conclusions of the Initial Study are incorrect. Based on the administrative record, there is substantial evidence to conclude that impacts generated from the proposed project will be below the City's thresholds for significant impact on the environment with the proposed mitigation discussed in the Initial Study/Mitigated Negative Declaration. There is no substantial evidence to support a fair argument that noise generated from the proposed project will create a significant cumulative noise impact. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is appropriate for the proposed project.

F. RESPONSES TO COMMENTS FROM ADA E. MARQUEZ, DATED OCTOBER 17, 2016:

COMMENT F-1: In regards to Topgolf IS/MND File No. PDC16-013, Planned Development Rezoning from the CIC Combined Industrial Commercial and R-M Multiple Residence Residential Zoning Districts to the CIC(PD) Planned Development Zoning District to allow up approximately 110,000 square feet of commercial/retail space, a 200 room hotel, approximately 72,000 square feet of indoor/outdoor recreation use (Topgolf) and late night use. File No. GPT16-001: General Plan Text Amendment to amend the Alviso Specific Plan to change the development standards for height under the "Village Area Guidelines for Commercial Development" to include a maximum allowable building height of 65 feet in certain areas and a maximum allowable non-building structure height of 170 feet in certain areas.

An EIR should be prepared per CEQA for the following inadequacies and lack of quantitative analyses:

1. GHG's : This project does not conform to the General Plan and therefore cannot use the Greenhouse Gas Reduction to replace a separate analysis.

Per The City of San Jose Greenhouse Gas Reduction Strategy: The City chose the Establishment of a GHG Reduction Target (updated December 2015) per BAAQMD CEQA Guidelines (May 2011) thresholds for assessing the required reduction in GHG by the year 2020: Meeting the plan efficiency threshold of 6.6 metric tons of CO2 equivalent per service population per year (MT CO2e/SP/year)." However, the IS/MND does not disclose thresholds for their analysis of greenhouse gases. In addition, the IS/MND fails to disclose the following information:
a) The IS/MND does not disclose the environmental baseline for greenhouse gases in the City of San Jose;
b) Does not disclose existing GHG's emissions around the project's perimeter and cumulative GHGs impacts. The document is inadequate by disclosing qualitatively only "Existing On-Site Emissions" of the Golf Center, RV storage area, on-site electricity and transportation. Per CEQA, what are other sources in Alviso emit greenhouses gases, both stationary and mobile sources, approved projects, and future projects?
c) Does not provide quantitative analysis of GHG's of the project for approximately 110,000 square feet of commercial/retail space, a 200 room hotel, approximately 72,000 square feet of indoor/outdoor recreation use (Topgolf), separately and cumulatively.

RESPONSE F-1: As described in Section 4.7.3 of the Initial Study, in jurisdictions where a qualified GHG Reduction Strategy has been reviewed under CEQA and adopted by the decision makers, compliance with the GHG Reduction Strategy would reduce a project's contribution to cumulative GHG emission impacts to a less than significant level. The Initial Study goes on to state the following:

> "Although the project proposes a text amendment to the Alviso Master Plan to allow increased building heights for the Topgolf and hotel structures, the proposed uses are consistent with the General Plan designations set for the site in the Land Use/Transportation Diagram, and the amount of development proposed is within the range assumed for the site in the General Plan. The proposed height increases would not increase the amount of allowed development on the site, nor

would the proposed development differ from the assumptions of future land uses on the site utilized when the City developed its GHG Reduction Strategy. Therefore, the City's GHG Reduction Strategy would still apply to this project, and the project would be consistent with Mandatory Criteria 1."

Mandatory Criteria 1 requires consistency with the City's General Plan Land Use/ Transportation Diagram (use and density). Since the proposed project would be consistent with the City's GHG Reduction Strategy, GHG emissions from the proposed project would be less than significant.

Based on the administrative record, there is substantial evidence to conclude that greenhouse gas emissions generated from the proposed project will be below the City's thresholds for significant impact on the environment, and there is no substantial evidence to support a fair argument that greenhouse gas emissions generated from the proposed project will create a significant impact. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT F-2: d) The City of San Jose per CEQA section 15065, must prepare an EIR to disclose the cumulative impacts of this project and other projects in Alviso:

a. The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
b. The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (CEQA Statutes and Guidelines, 2016)

RESPONSE F-2: The proposed project would not preclude the City from meeting its long-term environmental goals because the proposed project would be required to implement mitigation measures to reduce impacts to less than significant levels and would be required to comply with all applicable regulatory requirements. Item "a" in the above comment refers to a former CEQA checklist question that is no longer included in Appendix G of the CEQA Guidelines. For this reason, it is not addressed in the Initial Study. The analysis and conclusions of the Initial Study/Mitigated Negative Declaration are based on existing environmental setting conditions, policy and regulatory conditions, proposed project characteristics, and, where applicable, project-specific technical studies detailing both long- and short-term potential impacts.

The remainder of the above comment refers to the project's cumulative impacts. Cumulative impacts are discussed in Section 4.18.2 of the Initial Study, which concluded that the project would not result in or make a considerable contribution to a significant cumulative impact.

Based on the administrative record, there is substantial evidence to conclude that impacts generated from the proposed project will be below the City's thresholds for significant cumulative impact on the environment, and there is no substantial evidence to support a fair argument that impacts generated from the proposed project will create a significant cumulative impact. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT F-3: e) Disclose quantitatively, how much this project will reduce GHGs by implementation of the Greenhouses Gas Reduction Strategy for the hotel, retail, and the Topgolf? This project fails to comply with the Reduction Strategy, "This Diagram was specifically designed to minimize greenhouse gas emissions along with other environmental impacts by guiding the City's future growth in a form which will reduce the need for automobile travel while also promoting transit use, bicycling and walking as alternative means of mobility instead of automobiles." Disclose how the City will "maximize the future share of transit, pedestrian and bicycle use as transportation modes, focusing almost all new employment and residential growth in areas with a high degree of transit access, proximity to services and designed in a way to foster those transportation modes" per the City's Strategy. GHG analysis must show evidence significant impact will not occur (Mejia v. City of Los Angeles (2005) 130 Cal. App. 4th 322).

RESPONSE F-3: As described in response F-3 and Section 4.7.3 of the Initial Study, in jurisdictions where a qualified GHG Reduction Strategy has been reviewed under CEQA and adopted by the decision makers, compliance with the GHG Reduction Strategy would reduce a project's contribution to cumulative GHG emission impacts to a less than significant level. The project proposes a Planned Development (PD) rezoning of the site, and would be consistent with the conditions applied to the newly created PD zoning. New structures would comply with the San Jose Green Building Ordinance (Policy 6-32) and the California Green Building Code (CALGreen). The project includes improvements to pedestrian and bicycle facilities in the project area. The project, therefore, would be consistent with Mandatory Criteria of the GHG Reduction Strategy. Since the proposed project would be consistent with the City's GHG Reduction Strategy, GHG emissions from the proposed project would be less than significant.

COMMENT F-4: 2. Air Quality Impact Analysis is inadequate for the following reasons per BAAQMD CEQA Guidelines Updated May 2011 as cited in this IS/MND.
a. Inconsistent information for the duration of construction, square footage of the hotel, and the amount of parking spaces in the project description and the technical report Appendix A. Therefore, the IS/MND provides inaccurate analyses and significance levels for construction and TACs to sensitive receptors, elementary school, youth center, library, park, and residents.
b. In the IS/MD, please disclose impacts to sensitive receptors from mobile sources and cumulative sources per CEQA from existing, approve, and future projects.
c. Disclose air quality analysis with correct project description for Community Risk and Hazard Impacts; and cumulative air quality impacts on human health per BAAQMD CEQA.

RESPONSE F-4: As noted in Response E-8, the air quality modeling for the project was updated to ensure the assumptions used as input parameters precisely match the project description in the Initial Study. The revisions to the modeling include updating the overall construction duration, square footage of the hotel, and number of proposed parking spaces. The revised air quality modeling results are attached as Attachment B to these responses to comments, and summarized in *Revisions to the Text of the Initial Study*, below. None of the conclusions of the Initial Study were affected by these revisions.

Section 4.3 Air Quality of the Initial Study, utilizing information in the air quality analysis contained in Appendix A, discloses all required air quality impacts resulting from the project. Based on the administrative record, there is substantial evidence to conclude that air

emissions generated from the proposed project will be below the City's thresholds for significant impact on the environment, and there is no substantial evidence to support a fair argument that air emissions generated from the proposed project will create a significant impact.

COMMENT F-5: (Children's Environmental Health Protection Act (Senate Bill 25, Escutia, Chapter 731, Statutes of 1999, Health2 and Safety Code Sections 39669.5 et seq.) The Air Quality and the Hazards sections do not disclose this project is specifically subject to BAAQMD's Regulation 11, Rule 2. (Asbestos Demolition, Renovation, and Manufacturing) and California Code of Regulations, Section 93105.

RESPONSE F-5: The buildings to be demolished on the site were constructed in 1993, after the use of asbestos in building materials had been prohibited in 1978, and are not expected to contain asbestos containing materials (ACMs). However, as described in the Initial Study, unknown ACMs may exist in soils on the site due to historic unregulated dumping of waste materials in the project vicinity. The Initial Study identifies a significant impact related to the potential exposure of construction workers and the public to hazardous materials, including asbestos, during construction (Impact HAZ-1). The Initial Study identifies mitigation measures to reduce this impact to a less than significant level, including the preparation and implementation of an Asbestos Dust Mitigation Plan, should asbestos be detected in soil samples taken on the site (MM HAZ-1.1 through 1.5). The Asbestos Dust Mitigation Plan would be submitted to BAAQMD for review and approval prior to project grading activities. The mitigation identified in the Initial Study would ensure the project would not result in significant impacts related to ACMs, and that the project would comply with all relevant regulations related to asbestos, including BAAQMD's Regulation11, Rule 2, and California Code of Regulations Section 93105.

COMMENT F-6: Construction Emissions: "A total of up to 50,000 cubic yards (c.y.) of fill would be imported to the site. The project would require minimal cut on the site, mostly limited to the removal of existing paved surfaces, which would result in the off-haul of up to 20,000 tons of materials. The project proposes weekend (Saturday-Sunday) construction hours, 9:00 AM to 5:00 PM, as part of their Planned Development (PD) Permit. The duration of construction for all project elements would be roughly 24 months." (p.11)

However, according to Appendix A, "The project would require up to 50,000 cubic yards (cy) of soil import for the hotel/retail component, which was entered into the model. The anticipated 20,000 tons of demolition for the hotel/retail component was also entered into the model. In addition, 25,000 cy of asphalt is anticipated during the paving phase and was entered based on 16cy per truck. The anticipated construction schedule assumes that the project would be built out over a period of approximately 18 months beginning in 2017, or an estimated 396 construction workdays (assuming an average of 22 construction days per month).(p.5)

The IS/MD fails to disclose accurate information on construction emissions and duration which will expose sensitive receptors: George Elementary School, Alviso Library, Alviso Community Center, the park, and families of Alviso to TAC's, PM's, and hazardous materials that exceed thresholds such as, asbestos, TPH, pesticides, arsenic, lead, beryllium and cadmium, and VOCs.

RESPONSE F-6: As noted in Response E-8, the air quality modeling for the project was updated to ensure the assumptions used as input parameters precisely match the project description in the Initial Study. The revisions to the modeling include updating the overall construction period to 24 months. It should be noted that the 18 month assumption used in the initial modeling was accurate when the modeling was completed. Subsequent to the modeling effort, however, the applicant requested that the project description include 24 months for construction. This revision was due to a potential later start date for construction of certain portions of the proposed project, not an increase in the overall amount of construction. The overall amount of proposed construction has not changed from the original modeling effort. The revised air quality modeling results are attached as Attachment B to these responses to comments, and summarized in *Revisions to the Text of the Initial Study*, below. The minor revisions to in the input parameters used in the air quality modeling did not result in changes to any impact conclusions in the Initial Study, which determined that that project would result in less than significant impacts with mitigation.

COMMENT F-7: Technical Report Appendix A; (p.10) Explain why meteorological data set of 1996-2000 was used for dispersion modeling to predict concentrations of DPM and PM2.5 near sensitive receptors? A current environmental baseline must be used for CEQA analysis.

RESPONSE F-7: BAAQMD states in their "Recommended Methods for Screening and Modeling Local Risks and Hazards" that the ISCST3 meteorological data available from the District "provide reasonable approximations of common meteorological conditions" for impact evaluation. Use of the Alviso meteorological data utilized in the air quality analysis is consistent with BAAQMD's recommended impact evaluation methods for CEQA and is the most current meteorological dataset available from BAAQMD for use with the model in the project area. Therefore, it is an appropriate environmental baseline for this air quality analysis.

COMMENT F-8: The TAC's from construction emissions of residential cancer risks 47.9 in one million for infant exposure and 0.8 in one million for adult exposure exceeds BAAQMD thresholds. However, this must be reanalyzed with current baseline data and for George Mayne elementary school. PM2.5 thresholds exceed also for residential receptor location, but current baseline is needed as well.

RESPONSE F-8: As described in response F-7, the baseline meteorological data used is in the analysis is the most recent available for the project area. The air quality analysis includes an evaluation of impacts to sensitive receptors at George Mayne Elementary School. As described on page 67 of the Initial Study, the project would be required to implement mitigation measures that would reduce impacts related to construction TACs to a less than significant level (MM AQ-1.1 and MM AQ-1.2).

COMMENT F-9: For cumulative construction risk: Appendix A incorrectly identified N. Taylor Street/N. 1st Street as 1,000 feet from the project site and nearby receptors.

RESPONSE F-9: The comment misinterprets language in Appendix A which describes how all potential sources of TACs within 1,000 feet of the sensitive receptor most affected by project construction were considered. N. Taylor Street/N. 1st Street was identified as a source

of TACs within this 1,000-foot radius. TAC emissions from N. Taylor Street/N. 1st Street were analyzed at a distance of 50 feet from the roadway.

COMMENT F-10: The Technical Report did not analyze significant cumulative impacts of "the total of all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project" for TACs and PM 2.5/PM 10(BAAQMD, 2011, p. 5-15). Please correctly disclose and analyze the correct roadways with traffic volumes (North First Street and Highway 237), correct distance for stationary sources, and correct PM2.5, PM10, cancer and non-cancer risks, and adequate mitigation measures per BAAQMD for operational impacts.

RESPONSE F-10: As described in Response F-9, the air quality analysis considered all potential sources of TACs within 1,000 feet of the sensitive receptor most affected by project construction, as recommended by BAAQMD. Highway 237 is over 2,000 feet from this receptor. No stationary sources were identified within this 1,000-foot radius.

The air quality analysis was revised to include in its evaluation of cumulative impacts the Midpoint at 237 Project, also known as the Trammel Crow Project (refer to Attachment B and *Revisions to the Text of the Initial Study*). The addition of cumulative emissions associated with this project did not result in changes to the conclusions of the Initial Study, which determined that the project would result in less than significant impacts with mitigation.

COMMENT F-11: The IS/MND and technical report fails to disclose quantitative reduction of mitigation measures to protect sensitive receptors in Alviso from both construction, stationary, and mobile sources.

RESPONSE F-11: Page 12 of Appendix A and page 67 of the Initial Study include discussions of the quantitative reductions in impacts achieved by identified mitigation measures.

COMMENT F-12: The technical report and the IS/MND also failed to disclose the cumulative exposure of ROG, NOx, and local CO from this project, approved projects, and future projects in the General Plan and other amendments, mobile sources from Highway 237, and existing stationary sources. (CCR §15355, §15130) (PRC §21083(b), CCR §15065) The City must prepare an EIR to disclose Substantial Adverse effects of Human per CEQA.

RESPONSE F-12: Air pollution, by nature, is primarily a cumulative impact. The significance thresholds utilized by the City for criteria pollutants (i.e., ROG, NOx, and CO) represent the levels at which a project's individual emissions of criteria pollutants and precursors would result in a cumulatively considerable contribution to the region's air quality conditions, as determined by BAAQMD. Therefore, the analysis of criteria pollutant impacts in the Initial Study is an analysis of the project's contribution to cumulative air quality impacts. The Initial Study determined that the project would not result in significant emissions of criteria pollutants (e.g., ROG, NOx, and CO) during project operation. The Initial Study identified mitigation measures (MM AQ-1.1 and MM AQ-1.2) to reduce temporary emissions of NOx during construction to a less than significant level.

Based on the administrative record, there is substantial evidence to conclude that air emissions generated from the proposed project will be below the City's thresholds for significant cumulative impact on the environment, and there is no substantial evidence to support a fair argument that air emissions generated from the proposed project will create a significant cumulative impact. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT F-13: 3. Hydrology Project Description and Mitigation Measures: The IS/MND's significance levels for all hydrological impacts concluded "Less than Significant Impact" in the checklist and "Impacts Evaluation". The document fails to disclose Mitigations are required per CEQA. The project description chapter does not disclose details of the design features and best management practices. For example, "Project-specific Low Impact Development Measures would be determined as part of the PD Permit Process; Detailed design of any detention area(s) would be subject to review and approval during the project PD permit process (pp.10-11). Therefore, the Hydrology chapter must identify the mitigations required to adequately conclude reduction of the project impacts (Lotus v. Department of Transportation (2014) 223 Cal.App.4th 64). The purpose of CEQA is to inform the decision-makers and informed public participation (CEQA Statutes and Guidelines, 2016).

RESPONSE F-13: The Initial Study concluded that the project would not result in significant hydrology and water quality impacts; therefore, no mitigation measures are required. As described in the Initial Study, the project would be required to comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the RWQCB Municipal Regional NPDES permit (MRP)/C.3 requirements. Page 233 of the Initial Study goes on to state that, "In order to meet these requirements, stormwater runoff from the site would be collected via new onsite catch basins, most of which would be located in proposed bio-retention areas on-site (refer to Figure 3.0-12). Stormwater collected in the bio-retention areas would be treated prior to discharge to the City's storm drain system. The proposed treatment facilities would be numerically sized and would have sufficient capacity to treat the runoff entering the storm drainage system consistent with the NPDES requirements." The precise design of these facilities would be determined during the PD Permit Process, and would be subject to review and approval by the City for compliance with relevant requirements from the NPDES permit.

COMMENT F-14: Transportation: The project requires an EIR to fully disclose the cumulative impacts of this project's daily 6,915 daily new vehicle trips in Alviso, plus approved and future projects and mitigations measures. The Transportation chapter includes inadequate mitigation measures that fails to disclose how much of the project's percent contribution to the North San Jose Area Traffic Impact Fee (TIF), the timeline for payment and improvements in the Alviso community specifically or exactly where the improvements will occur, monitoring and reporting responsibility, consequences if the fees are not paid to the City, etc. For example, the document states that this "project's cumulative traffic represents 25% or more of the increase in total traffic volume from background traffic conditions to cumulative conditions". Intersection 5: N. First Street & SR 237 Westbound Ramps (LOS E, PM peak hour) (p.220). Furthermore, "A significant cumulative impact is deemed mitigated to a less than significant level by the City of San Jose if the measures implemented would restore the intersection LOS to background conditions or better at non-protected intersections (p.220)." Since the IS/MND only includes the "payment of the TIF would represent a fair share" as mitigation measure, an EIR is required to disclose an unmitigated significant impact,

when the traffic impact fee mitigation will paid, the timeline for improvements in Alviso, and monitoring and reporting. The families and children in Alviso are entitled as City of San Jose residents to full disclosure per CEQA. (CCR §15355, §15130) (PRC §21083(b), CCR §15065).

RESPONSE F-14: An analysis of the project's cumulative traffic impacts is included on pages 218-224 of the Initial Study, as well as Section 7.0 of Appendix I. The Initial Study concluded that the project would result in significant impacts at the intersection of N. First Street and SR 237 Westbound Ramps under cumulative plus project conditions (Impact C-TRAN-1). The Initial Study identifies mitigation that would reduce the impact to less than significant (MM C-TRAN-1). As described in the Initial Study, the payment of the NSJ impact fee would provide a proportional fair share payment toward the required improvements to the N. First Street and SR 237 intersection, and would constitute effective mitigation of the project's impacts. Payment would be based on the project's percent contribution of added traffic at the impacted intersection. As shown on Table 4.16-10, the project's contribution to the significant cumulative impact at this intersection would be 55 percent.

As required by CEQA (Section 15097), a Mitigation Monitoring and Reporting Program (MMRP) will be adopted with the Initial Study/Mitigated Negative Declaration. The MMRP will include the impacts of the project, mitigation for those impacts, the relative responsibilities of various City departments for various aspects of the monitoring and reporting, and general standards for determining project compliance with the mitigation measures.

Based on the administrative record, there is substantial evidence to conclude that traffic generated from the proposed project will be below the City's thresholds for significant impact on the environment with the proposed mitigation described above, and there is no substantial evidence to support a fair argument that traffic generated from the proposed project will create a significant impact. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT F-15: In January 2017, SB 1000 (Leyva) will require General Plan updates to identify disproportionately environmental impacted communities and implement an Environmental Justice element. Alviso is a unique community, the residents are disproportionately impacted by numerous environmental impacts such as TAC's, PM2.5, Union Pacific Railroad, Highway 237, South Bay Asbestos/NPL site, methane vapor from numeorus surrounding landfills7, diesal generators, Calpine Energy Plant, SJWPCP, Midpoint@237 Office and Industrial Project's trucks, and many other proposed projects. According to BAAQMD (2011), diesel PM from mobile sources is the most predomoniate TAC in the Bay Area which accounts for over 80% of the inhalation cancer risk in the Bay Area. I hope that with the implementation of SB 1000 Planning for Healthy Communities Act, vulnerabale communities in the City of San Jose, like Alviso, will finally be acknowledged and receive equitable enviromental protection and informed public participation accessibility.

RESPONSE F-15: This comment is acknowledged and will be considered by the decision makers. As the comment does not pertain to the analysis or conclusions of the Initial Study/Mitigated Negative Declaration, no further response is required.

G. RESPONSES TO COMMENTS FROM SANTA CLARA VALLEY AUDUBON SOCIETY, CITIZENS COMMITTEE TO COMPLETE THE REFUGE, SIERRA CLUB - LOMA PRIETA CHAPTER, AND COMMITTEE FOR GREEN FOOTHILLS, DATED OCTOBER 17, 2016:

COMMENT G-1: Santa Clara Valley Audubon Society (SCVAS), the Citizens Committee to Complete the Refuge (CCCR), and the Loma Prieta Chapter of the Sierra Club (SCLP) are local environmental organizations focused on the conservation of our natural resources and biological diversity. Our members appreciate birds and wildlife along the Bay and creek corridors, and are always concerned when development proposals are adjacent to the Don Edwards National Wildlife Refuge, the Bay, or creek corridors. We believe the project will impose significant and unavoidable impacts to the Alviso community, to migratory birds, and to our members who enjoy recreation on the Guadalupe Creek Trail.

The project proposes to redevelop the site with a Topgolf entertainment complex, a 5 story 65-ft tall hotel and retail space. The proposed Topgolf entertainment complex would be located on the southern portion of the site and would include a three-story structure reaching up to 54 feet in height that would be enclosed on the north, east and west sides. The south side of the structure, facing the Guadalupe River Trail and the river, will be open to the environment. The building includes roughly 120 hitting bays which would face south toward a 5.2-acre lighted artificial turf field enclosed by poles and netting that would reach up to 170- feet in height at a setback of 100- ft from Guadalupe River and the Creek Trail. Each hitting bay can accommodate up to six players at a time. Hitting bays include seating, television screens and overhead speakers providing amplified music. The facility would also include a full-service restaurant, bar, lounges, rooftop entertainment area, corporate/event meeting space, and a family entertainment area with games. Entertainment will be offered every day, morning to 2AM in the morning. Thus, the Topgolf can be reasonably expected to attract thousands of visitors every day (employees, restaurant, bar and events visitors, and several groups of up to 6 people at each of 120 bays each day).

The surrounding land uses include sensitive ecological features (creek, bay) and a plethora of sensitive land-uses that accommodate sensitive receptors: George Mayne Elementary school (500+ students), Alviso Branch Library, Residences (including a mobile home park), and the Guadalupe Creek Trail where people go to exercise and to enjoy nature. Most of the Project area is currently ruderal open space, is dark at night, and is relatively quiet. If the Project is permitted, tall buildings, expansive parking, overwhelming netting, excessive noise, traffic, light, and air pollution will impose significant and unavoidable operations-related impacts to the creek corridor and to nearby residents and sensitive receptors, changing the character of the Alviso community forever.

We believe an Environmental Impact Report (EIR) must be prepared for the Project to allow full study of the project specific and cumulative impacts, offer and evaluate alternatives. It is likely that decision makers will have to make a declaration of overriding considerations to allow the project to proceed as described.

RESPONSE G-1: The comment incorrectly describes the hotel and retail portion of the project. As described in Section 3.2 of the IS/MND, the proposed hotel would be four stories and up to 65 feet in height. The proposed retail space would be one to two story structures up to 40 feet in height.

The project site is currently developed with a driving range facility and paved parking area utilized for RV storage. The driving range facility includes 90-foot tall netting and field lighting that operates during nighttime hours. A three-acre area on the far western end of the site that is currently undeveloped would be the only ruderal area developed as a result of the project. As discussed in Section 4.1.3 of the IS/MND, the project would not substantially degrade the existing visual character or quality of the site and its surroundings with implementation of policies from the City's Commercial Design Guidelines and the Alviso Master Plan's Village Area Guidelines for Commercial Development.

The Initial Study fully evaluated all proposed elements of the project and determined that the project would not result in significant unavoidable environmental impacts, including cumulative impacts. No data or supporting information is provided in the comment that would demonstrate that this determination is unreasonable. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is appropriate for the proposed project. There is substantial evidence in the administrative record to conclude that the environmental impacts generated from the proposed project will be below the City's threshold for significant impact on the environment with the proposed mitigation described in the Initial Study/Mitigated Negative Declaration. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT G-2: <u>The project is incompatible with the Alviso Master Plan (Plan)</u>

The Alviso Master Plan was the result of a lengthy public process that engaged the entire Alviso community and multiple stakeholders for years (a 24-participants task force, multiple public meetings, 5+ years of planning). The Plan aimed at "full build-out" to year 2020 and beyond stating, "It is important to set forth a vision now to avoid piecemeal development and to better respond to potential development pressure within the community". Clearly, the Alviso Master Plan was created with the exact intent of preventing speculative projects such as the Topgolf@Terra.

When the Alviso Specific Plan was developed, height considerations were an integral part of the discussion. The intent was to preserve the unique characteristics of Alviso, and it was agreed upon that taller building and structures did not fit in with the character of the community. The Plan's objectives allowed for economic development, but also included:

- Maintain the small town character, strong community identity, and neighborhoods
- Allow for new development at, or at least compatible with, the scale and intensity of existing development within specific areas
- Beautify Alviso
- Preserve and protect Alviso's strong natural amenities, including the Guadalupe River, Coyote Creek, and baylands.

The Project is not compatible with these objectives: it does not beautify Alviso (rather the opposite), degrades the small town character, is incompatible with the scale and intensity of existing development, and harms Alviso's natural amenities along the Guadalupe River as well as the birds and wildlife at the Don Edwards National Wildlife Refuge, a major bird migratory destination only a half mile away from the project site.

Therefore, the proposed text amendment to the Alviso Master Plan (section 3.2.5, page 121) that allows tall buildings (up to 65-feet) and 170-foot tall structures (poles, netting) must be considered a potentially significant and unavoidable impact to land use.

Mitigation for the impact on land use should be considered (i.e. elimination of this aspect of the proposed Project).

RESPONSE G-2: The proposed text amendment to the Alviso Master Plan would allow increased building and netting heights on the site. The text amendment would only apply to the project site, and would not affect allowed building heights throughout the remainder of the Alviso Master Plan area. The environmental impacts of the proposed text amendment are analyzed throughout the Initial Study, with special attention paid to potential impacts to aesthetics, biological resources, and land use. The Initial Study determined that no significant environmental impacts would result from the proposed text amendment.

The comment lists objectives contained within the Alviso Master Plan. A project's consistency with a Master Plan is not based on its consistency with the Plan's objectives, but rather its consistency with policies adopted to achieve those objectives. As described in the Initial Study, the project would be consistent with relevant policies in the Alviso Master Plan, with the exception of policies related to height limits. The proposed uses and site design are consistent with the Alviso Master Plan. The Alviso Master Plan includes design guidelines that promote the preservation and enhancement of the existing small town quality of Alviso, while allowing for new commercial and industrial development along North 1st Street near Highway 237. These design guidelines offer flexibility for larger-scale development provided that new development contributes to the unique design and architecture of Alviso. With the exception of the recreation facility and hotel, the majority of the height of the buildings would be consistent with the existing Alviso Master Plan height requirements of 40 feet. The proposed buildings would be similar in scale to existing structures on nearby properties. As described in Section 4.1.3 of the Initial Study/Mitigated Negative Declaration, the proposed net poles would be substantially taller than any surrounding structures, including those currently under construction on the adjacent property. However, the net poles would not block views in the same nature as a solid structure, and the netting between the poles would be mostly transparent. 90-foot tall net poles and netting associated with the existing driving range facility are currently present on the site. Although the proposed net poles and netting would be taller than those currently on the site, the visual effect would be similar to existing conditions. The project proposes the text amendment to the Alviso Master Plan referenced above in order to achieve consistency with relevant height limit policies.

Final architectural design of project structures would be subject to review by the City for consistency with relevant policies in the Alviso Master Plan prior to issuance of building permits.

Based on the administrative record, there is substantial evidence to conclude that land use impacts from the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that the proposed project will create a significant impact to land use.

COMMENT G-3: The aesthetic impacts of the proposed Project are significant and unavoidable

The MND states, in one sentence, that the proposed Project will have no aesthetic impacts. This finding seems to overlook the fact that the Project will include structures up to 170 feet in height. This would be far higher than any other nearby structure and should be considered a significant impact.

Tall golf netting such as this can has a significant visual impact to the environment, and often elicit pronounced negative response from the public. For our members who frequent the Guadalupe Creek Trail, the Bay Trail, and the Don Edwards National Wildlife Refuge, the proposed 170-ft poles and netting (and the noise-generating, tall buildings) will violate the sense- of-place end enjoyment of recreation and bird watching north of HWY 237, along the River and the Bay. While the existing 90-ft tall fences are not visually pleasing, replacing them with 170-ft netting creates a much stronger imposition and further degrades the enjoyment of sky, vistas and nature.

Thus, the 170-ft tall poles and netting will impose significant, unavoidable aesthetic impacts. The finding that the impacts are less than significant is not justified. Instead, the visual impact of this high a structure should be further analyzed and found to be a significant impact. Lowering the height or, better yet, eliminating this aspect of the Project altogether should be considered as mitigation.

> **RESPONSE G-3:** The aesthetics impacts of the proposed project are thoroughly analyzed in *Section 4.1 Aesthetics* of the Initial Study. The discussion spans 30 pages and includes 16 graphics and six photos. Included in the 16 graphics are 12 photosimulations depicting day and night conditions both with and without the project from six different viewpoints. The factors mentioned in the comment were carefully considered when completing the analysis in the Initial Study. After a thorough evaluation, based on adopted City policies and the City's longstanding methodology for analyzing such impacts, the City concluded that the proposed project would not result in significant aesthetics impacts. There is no substantial evidence to support a fair argument that the proposed project will create a significant unavoidable aesthetic impact.

COMMENT G-4: The change to the Envision 2040 General Plan must be vetted in Citywide community outreach due to Growth Inducing Impacts

The proposed text amendment to the Alviso Master Plan (section 3.2.5, page 12) applies by extension the Envision 2040 General Plan. It is reasonable to expect that such a substantial change (from a height limit of 40 feet to that of 170 feet) – a change that changes the skyline of North San Jose all the way to the downtown area - should have visually-significant growth- inducing impacts, encouraging other property owners in the City of San Jose to seek modifications that would allow them to exceed existing height limitations for various structures on rooftops etc. This is a potentially significant impact and should be acknowledged.

Furthermore, there was no outreach to the entire San Jose community regarding this change to the Envision 2014 General Plan. An amendment of such citywide significance should be communicated in a transparent, citywide process.

> **RESPONSE G-4:** As described in the Initial Study and in Response G-2, above, the language of the proposed text amendment to the Alviso Master Plan specifically limits the

height increases to the project site. The text amendment would not apply to other properties in Alviso or the rest of the City. The text amendment, therefore, would not result in citywide growth-inducing impacts. Any citywide change proposed under a General Plan amendment would require separate community outreach and environmental review.

COMMENT G-5: Cumulative impacts

The project IS/MND fails fully evaluate cumulative impacts of project-related noise and air quality criteria pollutants during operations.

Section 15355 of the CEQA Guidelines states: "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Important direction to the practical use of this definition is found in Section 15130 of the CEQA Guidelines: "As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."

Several projects are currently in the process of permitting, or have been recently permitted, or are under construction in Alviso in the immediate vicinity of the project site:

Alviso near / along North First Street
PD13-039 Trammel Crow Distribution Center
PDC15-016: Residence Inn by Marriott & Fairfield Inn and Suites by Marriott Project PDC14-004, PD14-007: Midpoint at 237 Office and Hotel Project
C14-010: 237 at North First St. Homewood Suites Hotel

America Center Area (Gold St/237 access)
PDC 15-058 & PD15-053: America Center Phase III Project (Build 192,350 sq ft. office building and expand existing garage.)
PDC15-016: Residence Inn and Fairfield Inn & Suites America Center Court Project (aka Marriott Hotels)
PDC15-058 and PD15-053 America Center Planned Development Zoning and Planned Development Permit and Subsequent Environmental Impact Report (SEIR). Zanker Road/McCarthy Blvd access
C15-054: Cilker Property, Rezoning from A/PD to LI (Light Industrial)

The IS/MND fails to evaluate the Project's cumulative impacts associated with the projects identified above.

RESPONSE G-5: The Initial Study includes a full and adequate analysis of cumulative impacts (refer to Section 4.18.2). The analysis takes into account the projects listed above. Appendix C of the TIA includes a list of projects used in the analysis of background and cumulative conditions. For example, the analysis of cumulative air quality, noise, and transportation impacts all utilize cumulative traffic volumes that include the above-mentioned projects, as well as other projects in the area that would result in additional traffic on nearby roadways. The Initial Study determined that the project would not result in or make a considerable contribution to a significant cumulative impact.

COMMENT G-6: Cumulative Air Quality impacts require additional analysis

Air pollution impacts on sensitive receptors from hundreds of weekday and weekend car trips during operations of the Project should be evaluated cumulatively, combined with the impacts of air pollution from Hwy 237, truck trip operations at the Trammel Crowe Distribution Center and car trips to and from the newly constructed and planned hotels and office buildings in the vicinity.

RESPONSE G-6: The Initial Study includes a full and adequate analysis of cumulative air quality impacts. As discussed in response G-5, the analysis of cumulative air quality impacts accounts for the cumulative traffic volumes that include the above-mentioned projects. Please refer to *Section 4.3 Air Quality* and Appendix A of the Initial Study, as well as Attachment B to these responses to comments and *Revisions to the Text of the Initial Study*, which include a specific discussion regarding the Trammel Crow project.

COMMENT G-7: The IS/MND proposes that the Project will not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard including releasing emissions which exceed quantitative thresholds for ozone precursors. The IS/MND states (page 68), "As described above in the response to checklist question "b", the project would not result in a considerable net increase of any criteria pollutant with implementation of mitigation measures." But offers no mitigation measures for operation-related air pollution.

RESPONSE G-7: Emissions of criteria pollutants from the proposed project would occur in two forms: ongoing operational emissions and temporary construction emissions. As discussed in Section 4.3.3 of the Initial Study, operational emissions would not exceed thresholds of significance, and no mitigation is required. Temporary emissions of NOx during the construction period, however, would exceed the threshold of significance for average daily emissions. A significant impact is identified for emissions of NOx during construction (Impact AQ-1), and mitigation is identified to reduce this impact to a less than significant level (MM AQ-1.1 and MM AQ-1.2).

COMMENT G-8: These cumulative impacts are significant and potentially unavoidable and likely to affect the health of the students and teachers of the George Mayne elementary school, visitors to the Alviso Branch Library, residences of nearby residences and the Summerset Mobile Home Park across the Guadalupe River from the Project Site.

Please provide a comprehensive analysis in an EIR to fully study, disclose and mitigate cumulative operations-related air quality impacts. Please offer mitigations including a Traffic Management Plan.

RESPONSE G-8: As stated in Response G-6, the Initial Study includes a full and adequate analysis of cumulative air quality impacts. This analysis includes an evaluation of construction period and operational impacts to nearby sensitive receptors such as residential uses and students at George Mayne Elementary School. The Initial Study identifies mitigation measures where needed to reduce impacts to a less than significant level. No data

or supporting information is provided in the comment that would demonstrate this is an unreasonable conclusion. A Traffic Management Plan is not required as a mitigation measure to reduce air quality impacts to a less than significant level. Because no significant unavoidable air quality impacts were identified in the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document and an EIR is not required.

Based on the administrative record, there is substantial evidence to conclude that cumulative air emissions resulting from the construction and operation of the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that air emissions from the construction and operation of the proposed project will create a significant cumulative impact.

COMMENT G-9: Noise impacts are likely to prove significant and unavoidable

The IS/MND inadequately addresses the significance of noise impacts on the community of Alviso. There should be an analysis of noise impacts from the Project after it is developed, both on a project specific and cumulative levels. The proposed Project will generate noise into the evening, within close proximity to Alviso residents and to sensitive species in the Alviso area. The MND for the project specifically points out that "late night use" would be part of the Project (MND, page 1). These noise impacts should be explained and mitigation adopted if needed.

RESPONSE G-9: Noise impacts from the proposed project are analyzed in *Section 4.12 Noise*, and cumulative noise impacts are discussed in Section 4.18.2.3. The noise analysis takes into account nighttime noise and utilizes a weighted noise measurement that applies an additional 10 dB penalty to nighttime noise when determining average noise levels resulting from the project. As discussed in Response A-1, the noise analysis concluded that average noise levels in this area would not increase as a result of project operation (refer to Table 4.12-4 in the Initial Study). Noise from the project would not exceed the thresholds established by the City of San Jose to determine significant noise impacts. The Initial Study did not identify significant noise impacts, and no mitigation is required. Based on the administrative record, there is substantial evidence to conclude that noise resulting from the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that the proposed project will create a significant unavoidable noise impact.

COMMENT G-10: Sensitive Receptors

The IS/MND defines sensitive receptors to the project, "an existing residence located on the southern corner of N. First Street and Liberty Street, adjacent to the northwest boundary of the site. Residences are also located across N. First Street, Liberty Street, and Moffat Street from the site. Additionally, George Mayne Elementary School is located across N. First Street from the site." The IS/MND's analysis must include the Alviso Branch Library as a sensitive receptor. Additionally, people who utilize the Guadalupe Park Trail and guests of nearby hotels should also be included as sensitive receptors.

RESPONSE G-10: Although the Alviso Branch Library was not mentioned in the text quoted in the comment, it was considered a sensitive receptor in the noise analysis completed for the project (refer to page 7 of Appendix H to the Initial Study). Noise impacts to the library were determined to be less than significant.

The City considers exterior noise levels of 65 dBA Ldn "normally acceptable" for outdoor recreational uses, which would include trails. As shown in Figure 4.12-2 of the Initial Study, noise levels from the project would not exceed 65 dB at the trail. Additionally, users of the

trail would only experience project-generated noise for a brief period of time as they pass by the site.

The nearest sensitive residential receptors evaluated in the noise analysis are located closer to the site than any nearby hotels. As a result, the finding of less than significant noise impacts to these residential receptors would extend to any nearby hotels that are located at further distances from the site.

COMMENT G-11: Noise monitoring survey, average inadequate, effects of noise

The IS/MND states, "a noise monitoring survey was completed at various locations near the site on Wednesday December 16, 2016 and Thursday December 17, 2016". As these dates have not yet occurred, we ask that this statement be clarified.

RESPONSE G-11: The erroneous dates provided in the Initial Study are the result of a typo. The dates should read 2015 instead of 2016. This text has been corrected in the *Revisions to the Text of the Initial Study*, below.

COMMENT G-12: It seems that the proposed noise monitoring survey did not include the George Mayne Elementary School or the Alviso Branch Library as study locations. In order to measure the full impact of the Project, a noise monitoring survey must include the Alviso Branch Library and George Mayne Elementary School and should be completed during days that the elementary school is in session, outdoors and in a classroom.

RESPONSE G-12: Measurements of existing ambient noise levels were taken on the east side of N. 1st Street in the vicinity of the school and library. While the noise survey location was not directly in front of these uses, the ambient noise measurements taken at this location provide a reasonable baseline for existing noise levels along this segment of N. 1st Street.

COMMENT G-13: The noise monitoring survey measured the "Ldn...the average energy level intensity of noise over a given period of time such as the noisiest hour". Results from the noise monitoring survey show that the average ambient noise was measured between 65 dB and 66 dB at the residences on North First Street. The maximum noise was measured between 74-88 dB during daytime hours and 71-81 dB during nighttime hours at the residences on North First Street.

Noise levels of above 55 decibels outside and 45 decibels indoors have been shown to be preventing and interfering with activities and creating feelings of annoyance, leading to observable impairments in reading comprehension and memory skills in children. San Jose's Envision San Jose 2040 General Plan Comprehensive Update, Noise Background Report, 2009 states, "Sleep and speech interference is therefore possible when exterior noise levels are about 57-62 dBA DNL with open windows and 65-70 dBA DNL if the windows are closed" and "When the DNL increases to 70dBA, the percentage of the population highly annoyed increases to about 12 percent of the population."

Given its location near the George Mayne elementary school, the proper measure for the Project's noise impact to sensitive receptors should be the noise generated during operation hours, when music is ongoing and guests are active. This is because children who live near the project will be affected during the school day, afternoon activities, homework preparation, evening relaxation, and bedtime. They will not be able to escape to the Alviso Park or library, since the noise will invade these places as well. For an accurate analysis of the impact of noise, Project specific noise impacts should be analyzed for the operation hours only (no averaging with quiet-time hours.

RESPONSE G-13: The City's thresholds of significance for evaluating noise impacts are based on day-night average noise levels (Ldn or DNL). For this reason, noise impacts from the project are calculated in terms of average noise levels.

The calculation of the average noise levels generated by the project only considers hours when the project is in operation. Hours when the project is not operating are not included in the calculation of average noise levels. Additionally, noise generated by the project during nighttime hours (after 10:00 PM) receives an additional 10 dB penalty due to the increased sensitivity of nearby receptors during these nighttime hours. This penalty is then factored into the average. As discussed in Section 4.12.3 of the Initial Study/Mitigated Negative Declaration, noise generated by the proposed project, including all on-site sources combined, would meet the City's exterior noise criteria at the property line of the nearest noise-sensitive land uses. Based upon the above process utilized by the City in evaluating noise impacts, the project was determined to not result in significant noise impacts.

COMMENT G-14: Cumulative Noise Analysis

The IS/MND failed to include a study of the cumulative noise generated by the activities, traffic, construction, and aircraft noise surrounding the project site. Further, the MND only includes noise impacts generated during the construction phase of the project and fails to analyze noise impacts during operation hours.

Noise generation from Topgolf@Terra operations, including traffic related noise as well as outdoor music and noise generating guest activities (cheering, thumping) must be analyzed cumulatively with noise generated by traffic and nearby activities, including the upcoming operations of the Trammel Crow Distribution Center (for example, trucks traffic, backing up and beeping at the nearby Distribution Center). The study and analysis should focus on the George Mayne elementary school since it is located between the Distribution Center and the Project site, but cumulative impacts should also be evaluated for other sensitive receptor locations.

RESPONSE G-14: *Section 4.12 Noise* includes a full evaluation of noise impacts resulting from the project, including both construction and operational noise. Cumulative noise impacts are analyzed in Section 4.18.2.3. Since operational noise generated by the project would be well below existing ambient noise levels at the nearest sensitive receptors (refer to Table 4.12-4 in the Initial Study), the primary way the project would contribute to cumulative noise impacts is through an increase in traffic noise on surrounding roadways. As mentioned in Response E-13, the discussion on pages 34 and 35 of Appendix H of the Initial Study was revised to more clearly state that the project would neither result in a significant cumulative noise impact nor would it make a cumulatively considerable contribution to one. The conclusion of the Initial Study, which in Section 4.18.2.3 states that the project "…would not result in or make a considerable contribution to significant cumulative noise impacts," is unaffected by these revisions.

Based on the administrative record, there is substantial evidence to conclude that noise resulting from the proposed project will be below the City's threshold for significant impact on the environment and there is no substantial evidence to support a fair argument that the proposed project will create a significant cumulative noise impact.

COMMENT G-15: Conclusions (Noise)

The failure to adequately analyze and mitigate noise impacts after the project is built (operation hours) and cumulative noise impacts means that potentially significant and unavoidable impacts to

sensitive receptors have not been disclosed. The City must prepare an Environmental Impact Report to provide transparency and inform the public and decision makers of noise impacts.

The noise generation and cumulative noise impacts are significant to the extent that the project may not accomplish compliance with the City of San Jose's General Plan Envision 2040 GOAL EC-1, 1.1, Goal EC-1 - "Community Noise Levels and Land Use Compatibility: Minimize the impact of noise on people through noise reduction and suppression techniques, and through appropriate land use policies". The obvious mitigation would be to restrict the hours of operation to eliminate noise during the school hours, and at night. We recommend that the Topgolf portion of the Project not operate after 9 PM.

> **RESPONSE G-15:** As described in Responses G-9 through G-14, the Initial Study adequately analyzed the project's noise impacts. The project would not result in noise levels in excess of the City's adopted thresholds of significance, including those based on General Plan policies. Because no significant noise impacts were identified, no mitigation is required. The recommendation will be considered by the decision makers.

COMMENT G-16: Biological Impacts

Congdon's Tarplant
Impact Bio-1 identifies potentially significant impacts to Congdon's Tarplant, and offers to mitigate by establishing other populations of the plant onsite. What evidence does the City have that such mitigation can be successful? Can the City produce any documents providing substantial evidence that this mitigation would reduce the impact to less than significant? In particular, are there documents from previous projects that used the same mitigation successfully?

> **RESPONSE G-16:** Please refer to Attachment D to these responses to comments, which includes documentation of successful Congdon's Tarplant mitigation utilizing methods similar to those described in mitigation measures MM BIO-1.1 and MM BIO-1.2 in the Initial Study. The mitigation measures identified in the Initial Study include requirements for ongoing monitoring to ensure success and contingency planning if specific performance criteria are not met.

COMMENT G-17: Nesting Birds
Many of the bird species that nest in this area are ground or shrub nesting birds. Pre-construction nesting bird surveys (and burrowing owl surveys) should include the entire project site, and not be limited to trees.

> **RESPONSE G-17:** Please refer to *Revisions to the Text of the Initial Study*, below, where mitigation measure MM BIO-3.2 has been revised to clarify that all potential nesting substrates will be investigated during the preconstruction survey for nesting birds.

COMMENT G-18: Netting and birds
Since 1987, the San Francisco Bay Bird Observatory (SFBBO, an avian research organization) operates the Coyote Creek Field Station at Coyote Creek, at a similar distance from the Bay to the location of the Project site. Research at the station is based on the use of mist-nets to capture birds in the creek corridor, banding the birds with uniquely numbered, federally-issued bands, and analyzing the data to study the bird community of the region and migration patterns.

The attached SFBBO Species List indicates that 249 species protected by the Migratory Bird Treaty Act, including multiple rare and endangered species, breed or otherwise use habitat of lower Coyote Creek and most likely, Guadalupe River. The list also identifies 52 species that are currently listed by a government agency, by the State of the Birds 2016 report or by the National Audubon Society.

These include Federal and California threatened and endangered migratory species such as the Willow Flycatcher and Swainson's Hawk. In addition, note State and Federal Species of Special Concern such as Burrowing Owl, San Francisco Common Yellowthroat, Nuttel's Woodpecker, Painted Bunting, Loggerhead Shrike, and Long-billed Curlew.

RESPONSE G-18: The comment, citing data from the Coyote Creek Field Station at Coyote Creek, states that 249 species protected by the Migratory Bird Treaty Act, including multiple rare and endangered species, breed or otherwise use habitat of lower Coyote Creek and most likely, Guadalupe River. While the City appreciates this information, it is the City's opinion that the bird data from lower Coyote Creek are not entirely representative of conditions along the lower Guadalupe River near the project site. The Coyote Creek data are from an area with a much broader array and higher quality of habitats than those that are present near the project site. The Coyote Creek Field Station is located on Lower Coyote Creek. In this region, habitat is characterized by a mature cottonwood and willow riparian forest, including broad riparian restoration areas, and broad grassy overflow channels. In addition, many of the waterbirds included on the list of species at this location were apparently recorded in the nearby Reach 1A Waterbird Pond, which is specifically managed for the benefit of waterbirds, and the adjacent diked marsh.

In contrast, the reach of the Guadalupe River adjacent to the project site has been channelized, and woody riparian vegetation is completely absent. Marsh habitat occupies portions of the channel, but the marsh is dominated by emergent vegetation that does not provide the structural complexity found along lower Coyote Creek. Although a VTA wetland mitigation site is present to the southwest of the project site on the far side of the Guadalupe River, the marsh present in this location is intended to be fully tidal and is not managed specifically as waterbird habitat. In addition, the level of urban development on both sides of the Guadalupe River near the project site is higher than what occurs along lower Coyote Creek. Therefore, because of the relatively low quality and heterogeneity of habitat types present along the Guadalupe River adjacent to the project site in comparison to lower Coyote Creek, the variety of bird species that use this reach of the Guadalupe River as habitat is expected to be much lower than what has been recorded along Coyote Creek.

In addition, many of the special-status species that are referred to in the comment letter are not rare or declining birds locally and are listed (e.g., as federal species of concern) for reasons that do not apply in the South Bay. For example, the willow flycatcher formerly nested commonly in riparian habitats on the Santa Clara Valley floor, but local populations were extirpated by the late 1960s. This species still occurs as an uncommon migrant in the project area, moving between wintering areas in Mexico and breeding areas to the north. However, migrant willow flycatchers occurring in the project area are likely from breeding populations outside the state, and, therefore, would not be individuals from the state-listed California population or the federally listed subspecies extimus that resides in riparian habitat of southern California. In other words, willow flycatchers occurring as migrants in the South Bay are not from special-status populations. Further, many of the special-status species referred to occur in the northern San Jose area only as infrequent transients or vagrants (e.g., Swainson's hawk, painted bunting).

COMMENT G-19: The City of San Jose recognizes the importance of the lower Guadalupe River corridor for bird migration in its 2010 General Plan Envision 2040 in Goal ER-7 – Wildlife Movement and the City's Riparian Corridor ordinance. Goal ER-7 states,

- In the area north of Highway 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strike for species associated with the baylands or the riparian habitats of lower Coyote Creek. (emphasis added).

The MND acknowledges that the 170-ft tall netting is a potentially significant impact to birds (Impact Bio-7). The proposed mitigation (MM BIO-7.1) is borrowed from methods used to reduce collision of large birds with powerlines. These mitigations are not likely to reduce the risk for millions of night-flying migratory passerines and shorebirds that visit the Don Edwards National Wildlife Refuge or fly through near the Bay and along the Guadalupe River. Even for day flying birds, these deterrents require a much closer spacing than 15-feet for many bird species.

It is our expert opinion that the risk to migratory birds remains significant after mitigation (see also attached expert opinion from Dr. Christine Sheppard, American Bird Conservancy).

RESPONSE G-19: The City appreciates the commenter's concern regarding the potential impact of the proposed netting on migratory birds, and potential bird strikes with the proposed netting were considered significant in the Initial Study. During preparation of the Initial Study, considerable research was conducted into previous precedents for requiring flight diverters on golf course netting or for such netting being considered a significant impact to birds under CEQA. However, no precedent was found for impacts of such netting on birds being considered significant, or any documentation that substantial impacts to birds resulted from such netting. As a result, the City's decision to consider the impact of netting from the proposed project potentially significant and to require mitigation measures was both cautious and conservative.

The comment letter, including the letter from the American Bird Conservancy, does not provide any justification for the opinion that the risk to migratory birds due to the construction of the netting would remain significant after mitigation. The commenter indicates that it is their expert opinion. They also cite the expert opinion of Dr. Christine Sheppard of the American Bird Conservancy. Dr. Sheppard indicates that, based on her review of a meta-analysis of studies on this type of device (Barriento et al. 2012), it is her conclusion that wire markers do not address local, smaller species, nor will they warn night-flying migrants. However, the study cited by Dr. Sheppard concludes that wire markers result in a significant reduction in avian mortality at power lines. Similarly, the Avian Power Line Interaction Committee's 2012 *Reducing Avian Collisions with Powers Lines* states that most studies have shown a reduction in collisions and/or an increase in behavioral avoidance at marked lines when compared to unmarked lines. Further, Jenkins et al. (2010) concluded that any sufficiently large line marking device that thickens the appearance of a power line for at least 7.8 inches in length and is placed with at least 16.4 to 32.8 foot spacing is likely to lower collision rates by 50 to 80 percent. The City has taken a conservative approach to the spacing of net markers. Mitigation measure MM BIO-7.1 limits the maximum distance between marking devices, and/or between such marking devices and support poles, to 15 feet. Although such markers are typically used for larger birds, it is the City's opinion that they will also help smaller birds see the netting. The netting is not like glass, completely invisible to birds, and at many angles it is highly visible (based on an assessment of the Topgolf location in Roseville by the City's biological consultant). The diverters were included as mitigation to help birds see what many will already be able to see – that there is netting present.

The commenter writes "The measures outlined are intended to reduce diurnal collisions of large water birds with power lines.... Unfortunately, these products will not address local, smaller species, nor will they warn night-flying migrants." The City included glow-in-the dark diverters in mitigation measure MM BIO-7.1 (both the referenced net marking devices, Mark BM-AG (After Glow) and the FireFlys, glow in the dark) to reduce impacts on night-flying migrants. Nevertheless, the City has revised MM BIO-7.1 to clarify that net marking devices will glow in the dark (refer to *Revisions to the Text of the Initial Study*, below).

The commenter provides no justification for the statement that flight diverters on the netting do not address smaller species. The diverters will make the netting more evident to birds, and if the diverters glow in the dark they will address night-flying migrants. Further, per Christine Sheppard of the American Bird Conservancy, as cited in the San Francisco Planning Department's Standards for Bird-Safe Buildings (2011), nocturnal migrants typically fly at an altitude of approximately 2,000 feet, well above the height of the proposed nets. It is the City's opinion that it is locally flying birds that are most likely to fly at the altitude of the proposed project nets. Although numerous waterbirds are known to congregate at the Don Edwards San Francisco National Wildlife Refuge to the north of the project site, because the area surrounding the proposed project site is heavily urbanized and contains no habitats of high value to estuarine birds using the Don Edwards San Francisco National Wildlife Refuge, it is not expected that large numbers of waterbirds will be flying over or through the project site at altitudes low enough for substantial bird-strike mortality to occur.

In addition to the mitigation required for the proposed netting, the Initial Study also identifies mitigation to reduce the potential for bird strikes on the buildings proposed for the site (MM BIO-6.1). The mitigation requires implementation of bird-safe design features in the proposed buildings.

For these reasons, the mitigation measures identified in the Initial Study are adequate to reduce potential impacts related to bird strikes to a less than significant level.

COMMENT G-20: Light may attract birds

We are concerned with the potential negative impacts of light that this project will impose upon nearby sensitive habitats. The project site is located 100 feet away from the Guadalupe River and about half a mile away from the Don Edwards National Refuge. Due to the close proximity of these sensitive areas, light emitted from Topgolf may have significant negative impacts on birds and wildlife.

Our primary concern is that night-flying migratory birds may become attracted to the light, causing increased collisions with the 170-ft tall netting. (see attached opinion from Dr. Christine Sheppard, American Bird Conservancy).

In accordance with the Alviso Master Plan, new development should be designed "as not to create glare or other negative impacts to nearby sensitive habitats, including baylands, riparian corridors, and other biotic communities". The Topgolf development does not align with the Alviso Master Plan in that it will create significant glare and negative impacts on surrounding sensitive habitats.

RESPONSE G-20: Impacts of the proposed field lighting on biological resources is addressed on page 91 of the Initial Study, which concluded that the project would result in a less than significant impact. The existing driving range facility on the site includes field lighting and netting. Therefore, the lighting and netting proposed by the project would not create a new source of overhead light compared to existing conditions. In fact, the field lighting proposed by the project would reduce the number of light standards on the site, and place them at a lower height than those that currently exist on the site. Currently, there are 10 light standards on the site, with four located behind the existing hitting area facing east, three on top of the southern net poles facing north, and three on top of the northern net poles facing south, all at a height of approximately 90 feet. The proposed project would include a total of six light standards located on top of the proposed Topgolf structure at a height of 64 feet, all facing east, away from the Bay and Guadalupe River. Additionally, the lights would be

directed downward with an aluminum reflector, light hood, and visor to direct light onto the field and reduce the amount of glare and spill light.

COMMENT G-21: Loss of Open Space

Open spaces in the Alviso area are particularly important due to Alviso's proximity to the Don Edwards National Wildlife Refuge and other open space areas such as the burrowing owl preserve of the Water Pollution Control Plant, where the only relatively sizeable population of burrowing owls persists in the South Bay region. Many bird species common to the National Wildlife Refuge and creek corridors utilize the remaining ruderal and open spaces in the Alviso area for upland foraging or roosting.

When the Alviso Specific Plan was adopted, the City Council discussed a goal that, on the large open spaces in Alviso, one-third of the land should remain in open space when they are developed. At the time, Council discussed the Planning Recommendation of a 1 acre/2 acre open space ratio requirement and recommended that the Administration provide Council with information on the percentage of open space achieved at the beginning of the development process to enable Council to determine the maximum open space achievable and if no land is available, Council consider requiring financial mitigation funds in-lieu for purchase and restoration of habitat and removal of illegal fill.

The MND should analyze impacts to open space in Alviso due to the proposed project. We assert that those impacts should be found significant. Mitigation for the impact should be considered, including leaving one-third of the property in open space or preserving alternate open space in the Alviso area, with management of that area designed to maximize benefits to rare plants, wetlands, and Burrowing owls, as well as for the more common species found in the Alviso area.

RESPONSE G-21: The area of the project site proposed for redevelopment is not considered open space. The eastern portion of the project site is developed with a driving range facility, and the western portion is developed with a paved parking area utilized for RV storage. Two areas of the site are currently undeveloped. A 5.8-acre undeveloped area at the far eastern end of the site would remain undeveloped with the proposed project. A three-acre area on the far western end of the site that is currently undeveloped and consists of ruderal grassland would be developed as part of the project. This area consists of a vacant lot that has been fenced off and is regularly disturbed with disking. It is surrounded on all sides by urban development. As discussed in *Section 4.4 Biology* in the Initial Study, this area is not considered valuable habitat for any special-status species. The project would not result in significant impacts related to the loss of open space.

COMMENT G-22: Potential Impacts on Aerial Activity of Emergency Services

The Initial Study fails to analyze the potential impact of the 170' net structure on local, aerial activity of emergency services as may occur in the vicinity of the Project. Helicopters from multiple agencies, commonly fly along SR 237 regarding traffic problems. It is also known that the County Sheriff's Department flies helicopters in the Alviso area to respond to boating problems along Alviso Slough and the South Bay. It is also possible that a flooding or earthquake event could produce a situation involving use of helicopters for emergency evacuation in Alviso. Nothing in the Initial Study shows that any effort was made to evaluate whether or not the height of the nets would impact these services.

We note that in the Hazards Environmental checklist in Section 4.8.2, the Initial Study responds as "No Impact" to: "Would the project: Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?" (P. 137, question g). In

discussion, in Section 4.8.3, p. 141, we find analysis is limited to "adopted" plans with no evidence of analysis nor consideration of cross-jurisdictional public safety activity in the area.

Further we find that Section 4.14, Public Services, fails to analyze potential interference on the aerial response actions of Public Safety organizations.

In an area where helicopter activity is common, these findings are inadequate and need to be reviewed in full Environmental Impact Report.

> **RESPONSE G-22:** As described on page 134 of the Initial Study, none of the proposed structures on the project site, including the 170-foot high net poles, would exceed the Federal Aviation Regulations (FAR) Part 77 thresholds requiring Federal Aviation Administration (FAA) airspace safety review.
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> The discussion in Section 4.8.2 of the Initial Study adequately analyzes the project's impacts in relation to the threshold of significance under CEQA, which specifically refers to "adopted" emergency response and emergency evacuation plans. The Initial Study also adequately analyzes the project's impacts to Public Services (Section 4.14), in which the CEQA checklist question asks if a project would "Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services…". In response to both CEQA thresholds identified above, the project would result in less than significant impacts.
>
> Based on the administrative record, there is substantial evidence to conclude that the proposed project will be below the City's threshold for significant impact to emergency services, and there is no substantial evidence to support a fair argument that the proposed project will create a significant impact to emergency services. Based on the conclusions of the Initial Study, a Mitigated Negative Declaration is the appropriate CEQA document for the proposed project.

COMMENT G-23: Our groups have reasonable concerns and have provided substantial evidence that the IS/MND has not adequately evaluated project impacts, and that mitigation measures are not sufficient. This project may impose significant, unavoidable impacts to the environment. We ask the City of San Jose to require an Environmental Impact Report for this Project in order to provide full transparency and in-depth analysis of the issues we have brought up. An EIR is also needed in order to explore alternative locations for the Topgolf@Terra project. We believe that moving the Entertainment Complex part of the project to an area that is not as environmentally sensitive may avoid most of the significant impacts to birds, wildlife and the environment, to the health and well-being of elementary school children, and to the Alviso community.

> **RESPONSE G-23:** As described in Responses G-1 through G-22, the Initial Study adequately analyzes the project's impacts under CEQA, and no substantial evidence has been provided to invalidate the conclusions of the Initial Study. Because the Initial Study did not identify any significant unavoidable impacts, an Environmental Impact Report is not required, and a Mitigated Negative Declaration is appropriate level of CEQA review for the proposed project.