

First Amendment to the Draft EIR

Almaden Corner Hotel Project

File No. H18-038

Prepared by the



In Consultation with



December 2019

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SECTION 1.0 INTRODUCTION

This document, together with the Draft Environmental Impact Report (Draft EIR), constitutes the Final Environmental Impact Report (Final EIR) for the Almaden Corner Hotel project.

1.1 PURPOSE OF THE FINAL EIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is intended to be used by the City in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the lead agency shall certify that:

- (1) The final EIR has been completed in compliance with CEQA;
- (2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
- (3) The final EIR reflects the lead agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify that the Final EIR shall consist of:

- a) The Draft EIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at office of the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third floor, San Jose, California on weekdays during normal business hours. The Final EIR is also available for review on the City's website: <http://www.sanjoseca.gov/index.aspx?nid=6294>.

SECTION 2.0 DRAFT EIR PUBLIC REVIEW SUMMARY

The Draft EIR for the Almaden Corner Hotel project, dated August 2019 was circulated to affected public agencies and interested parties for a 45-day review period from August 19, 2019 through October 3, 2019. The City undertook the following actions to inform the public of the availability of the Draft EIR:

- A Notice of Availability of Draft EIR was published on the City’s website (<http://www.sanjoseca.gov/index.aspx?nid=6294>) and in the San José Mercury News;
- Notification of the availability of the Draft EIR was emailed to members of the public who had indicated interest in the project;
- The Draft EIR and associated documents was delivered to the State Clearinghouse on August 19, 2019, as well as sent to various governmental agencies, organizations, businesses, and individuals (see Section 3.0 for a list of agencies, organizations, businesses, and individuals that received the Draft EIR); and
- Copies of the Draft EIR were made available on the City’s website (<http://www.sanjoseca.gov/index.aspx?nid=6294>)

SECTION 3.0 DRAFT EIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The Notice of Availability (NOA) for the Draft EIR was emailed to interested parties, including community members who have requested for notice and attendees of the EIR scoping meetings. The NOA was also sent by notify of the City's Newsflash website functionality that would notify all users who have signed up for Planning notifications on the City's website.

The following agencies received a copy of the Draft EIR or NOA from the City or via the State Clearinghouse:

- Adams Broadwell Joseph & Cardozo
- Air Resources Board, Transportation Projects
- Association of Bay Area Governments
- Bay Area Air Quality Management District
- Calfire
- California Air Resources Board
- California Department of Fish and Wildlife, Region 3
- California Department of Housing and Community Development
- California Department of Parks and Recreation
- California Department of Transportation, District 4
- California Department of Transportation, Division of Aeronautics
- California Native Plant Society-Santa Clara Valley Chapter
- California Natural Resources Agency
- California Public Utilities Commission
- California State Lands Commission
- City of Campbell, Planning Division
- City of Cupertino Community Development Department
- City of Fremont Community Development Department
- City of Milpitas
- City of Morgan Hill, Planning Division
- City of Mountain View
- City of Palo Alto
- City of Santa Clara Department of Planning and Inspection
- City of Saratoga Community Development Department
- City of Sunnyvale, Planning Division
- Department of Toxic Substances Control
- Greenbelt Alliance
- Guadalupe-Coyote Resource Conservation District
- Kevin Johnston
- Lozeau Drury LLP

- Metropolitan Transportation Commission
- Native American Heritage Commission
- Office of Historic Preservation
- Regional Water Quality Control Board, Region 2
- PG&E Land Rights Services
- San José Unified School District
- San José Water Company
- Santa Clara Audubon Society
- Santa Clara County Planning Department
- Santa Clara County Roads & Airports Transportation Planning Department
- Santa Clara Valley Open Space Authority, Community Projects Review Unit
- Santa Clara Valley Transportation Authority
- Santa Clara Valley Water District
- Sierra Club-Loma Prieta Chapter
- State Water Resources Control Board
- Town of Los Gatos, Community Development Department
- United States Fish and Wildlife Service

Copies of the Draft SEIR or NOA for the Draft SEIR were also sent by email to the following organizations, businesses, and individuals by the City of San José:

- Ada Marques
- Alan Leventhal, SJSU College of Social Sciences and Anthropology
- Amah Mutsun Tribal Band
- Amah Mutsun Tribal Band of Mission San Juan Bautista
- André Luthard, Preservation Action Council of San José
- Andrew Cheng
- Anand Naidu
- Andrew Galvan, The Ohlone Indian Tribe
- Anthony Bentanco
- Bay Area Air Quality Management District, Josephine Fong
- Bhagwindes S. Phul
- Brian Gluth
- Brian Grayson
- Bobbie Burns
- California Historic Center and Foundation
- Carol Harell
- City of Campbell, Planning Division
- City of Cupertino Community Development Department
- City of Fremont Community Development Department
- City of Milpitas, Ned Thomas
- City of Morgan Hill, Planning Division, Terry Linder
- City of Mountain View
- City of Palo Alto
- City of Saratoga Community Development Department, Christopher Riordan

- City of San Jose City Council Offices
- City of San Jose Planning Staff
- City of San Jose Historic Landmarks Commission
- City of San Jose Planning Commissioners
- City of Santa Clara Department of Planning and Inspection, Reena Brilliot, John Davidson, Andrew Crabtree
- City of Sunnyvale, Planning Division
- County of Santa Clara Planning, Rob Eastwood and Mark Connolly
- Deanna Libert
- Denny Yan
- Douglas Rocketobd
- Erik Schoennauer
- Farhad Tchoubineh
- George Casey
- Gino Padovani
- Grace Yang
- Greenbelt Alliance
- Gregory Johnson
- Hoge Fenton Law Firm, George Casey and Sblend Sblendorio
- J. Michael Satergren
- Janet Laurain, Adams Broadwell Joséph & Cardozo
- Jeanie Verbeckmoes
- Jennifer Nulefall
- Jim and Peg Juncoce
- Jodi Starbird, Starbird Consultant
- Jose De La Cruz
- Josue Garcia
- Kevin Johnston
- Larry Johmann, Guadalupe-Coyote Resource Conservation District
- Lawrence Ames
- Linda Dahlberg
- Lozeau Drury LLP -- Richard Drury, Theresa Rettinghouse, Michael R. Lozeau, Hannah Hughes, Komalpreet Toor
- Lucy Lofrumento
- Maria Crema
- Mariella Yosh
- Mark Lewis
- Mary Robertson
- Michael Kass
- Michael Smullen
- Muwekma Ohlone Tribe
- Nachiket Karmarcar
- Nathera Mawla
- North Valley Yokuts Tribe
- Patricia Curia

- Philip Castaneda
- Preservation Action
- Radhika Kulkarni
- Rob La Hue
- San José Downtown Association -- Scott Knies, Nate LeBlanc
- Scott Hakeem
- Shani Kleinhaus, Santa Clara Valley Audubon Society
- Sierra Club-Loma Prieta Chapter
- SPUR
- Steve Pai
- Sylvia Caroll
- Tommy Cusick
- Tony Gutierrez
- The Ohlone Indian Tribe Angelina Andrade
- UNITE HERE Local 19, Tawna Vargo
- Vendome Neighborhood Association
- Yves Hansel

SECTION 4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft EIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Appendix A of this document. Comments received on the Draft EIR are listed below.

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FEDERAL AND STATE AGENCIES

A. Department of Toxic Substances Control (dated 09.18.19)

Comment A.1: I represent the Department of Toxic Substances Control, a responsible agency, reviewing the Draft Supplemental Environmental Impact Report (SEIR) for the Almaden Corner Hotel Project. The project contact within the SEIR is listed as Thai-Chau Le. However, they appear to be out of the office until September 23rd. As our comment period for the SEIR ends prior to their return I thought I would direct our comments to the contact information on their “away message.” Upon review of the document DTSC requires the following comments be addressed in the revised SEIR.

Due to the Recognized Environmental Condition (REC) that was indicated in the Phase I, hazards and hazardous materials should be fully investigated and characterized. The following comments are related to relevant past and future Hazards and Hazardous Materials topics that should be discussed in the SEIR. As indicated on the San José website, the Initial Study appears to be in draft form. Some of these comments may also apply to changes requested to be made to the Initial Study.

The report notes that a fire pump with an approximately 200 horsepower engine will be installed within the northern end of the basement. Typically fire pumps utilize a day tank with petroleum products as part of the fueling operations. Please discuss how this fire pump will be powered and the planned regulatory permitting (if any) that will be instituted as part of operations.

Response A.1: Prior to the issuance of any building permits, the specifics of the fire pump shall be evaluated by the Fire Department to ensure compliance with City and state regulations prior to installation and operation.

Comment A.2: The report notes that one emergency back-up diesel generator will be utilized within the western end of the basement of the proposed building. Within your description of the generator please include information on the type of diesel storage (i.e. day tank, underground storage tank, belly-tank, etc.).

Response A.2: The generator is a 400kW diesel generator. The project has completed air quality analysis on the back-up generator as part of the air quality analysis (Appendix B of the Draft SEIR) and would be subject to Bay Area Air Quality Management District (BAAQMD) approval through a separate permit prior to operations. Furthermore, prior to issuance of any building permits, the generator would be evaluated by the Building Division and Fire Department to ensure compliance with City and state regulations prior to installation and operations.

Comment A.3: A discussion of the project site history is included within the Initial Study. However, the project site history is not included within the SEIR. Please include a description of past uses of the site. Discuss potential hazards associated with these past uses.

Response A.3: As discussed in Section 1.2.4 of the Draft SEIR, page 3, the City of San José prepared the Initial Study to focus the SEIR analysis on cultural resources. All other resource issues were determined to be less than significant based on the analysis in the Initial Study. The Initial Study is included in the Draft SEIR as

Appendix A. No further analysis of Hazards and Hazardous materials is required in the Draft SEIR. The site history is provided in Section 4.9 of the Initial Study.

Comment A.4: According to the Initial Study, a gasoline service station/automotive repair facility operated on the project site from at least 1935 to 1955. In addition, according to the Phase I ESA the adjacent property to the south, addressed 1 Almaden Boulevard, formerly operated as a gasoline service station/automotive repair business from at least 1915 to 1960. According to the report, there is no data indicating whether or not the underground storage tanks associated with the former gasoline service station/automotive repair located on the project site were removed. Furthermore, the presence or absence of contamination on the site from the former gasoline service station/automotive repair facility or the former adjacent gasoline service station has not been determined. Prior to beginning work on the planned project, a Phase II Environmental Site Assessment (ESA) should be conducted on the Project Site. The Phase II ESA should conduct appropriate sampling (i.e. soil, soil gas, groundwater, etc.) in order to confirm the absence or presence of contamination at the site. In addition, an anomalies survey should be conducted by a licensed contractor to determine if any underground storage tanks associated with the former gasoline service station/automotive repair are still present at the project site. Should the Phase II indicate contamination at the site above the regulatory screening levels, the local Certified Unified Project Agency and other pertinent regulatory agencies should be notified.

Response A.4: The Initial Study identified mitigation to address the recognized environmental conditions of the project site and area. Specifically, mitigation measure that details the project's requirement to remediate conditions on-site under regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH) using their Voluntary Cleanup Program (VCP), or equivalent regulatory agency and program. The project proponent is required to develop a Soil and Groundwater Management Plan, or similar document, as required by SCCDEH, to be implemented prior to and during construction to protect construction worker safety, the public, and the environment. This plan includes measures such as provisions for collecting additional soil samples to confirm the extent of soil contamination, soil management protocols for contaminated soils, procedures to follow if unknown historic releases are discovered, and dewatering procedures. To be more specific, the mitigation measures has been revised (refer to Section 5.0 Draft EIR Text Revisions) to explicitly include the need for sampling prior to the development of the Soil and Groundwater Management Plan has been added to the mitigation measures. The project proponent shall perform a soil, soil gas and groundwater investigation to determine if the former gas station. auto repair uses and nearby contaminated sites have impacted the project site. A subsurface utility locator shall also be retained to determine if the underground tanks from the historic gas station are still present. If underground tanks are found, they must be removed under permitting and regulatory oversight from Santa Clara County Department of Environmental Health (SCCDEH) and San Jose Fire Department. If the tanks have been determined to have leaked or other contamination above regulatory environmental screening levels is found, then the project proponent must contact the SCCDEH and obtain regulatory overs.

The clarification in the mitigation measure protocol does not change the intent or measure, result in new significant environmental impacts, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment A.5: The SEIR indicates that a Soil and Groundwater Management Plan will be implemented as part of construction activities. Unless the contamination is characterized and the extent of contamination (if any) is delineated on the project site, a proper Soil and Groundwater Management Plan cannot accurately be implemented. It is pertinent to assess the extent of contamination (if any), media affected, and potential exposure pathways to protect construction workers, site personnel, and future guests and workers at the project site.

Response A.5: Refer to Response A.4.

Comment A.6: The SEIR does not discuss open contamination cases within the project site vicinity. According to the Regional Water Quality Control Board's Geotracker website, there are four open contamination sites within a .25-mile radius of the project site. These open contamination cases could potentially affect the project site. Please discuss these off-site contamination sources within the revised SEIR. In addition, a discussion of any open sites within DTSC's Envirostar website should be discussed within the revised SEIR. If there are no open cases listed that could potentially affect the project site, please state this within the revised report.

Response A.6: Based on the DTSC Envirostar website, there are no DTSC Envirostar open sites within 0.25 mile of the project site. As noted by the commenter, there are four open sites currently listed on the Geotracker website. These sites are 211 W. Santa Clara Street, 95 Almaden, 333 W. San Fernando, and W. Santa Clara/Delmas Avenue. As shown in Figure 2 of the Phase I ESA, the groundwater flow direction in the project area is to the northeast. The intent and purpose of an environmental analysis is to disclose potential environmental effects. If no effect would occur, or in this case if a recorded release is not a recognized environmental condition (REC), it is not necessary to disclose this information.

The site at 211 W. Santa Clara Street is east-northeast of the project site. Based on data from the Geotracker website, soil remediation was completed between May 1998 and March 2000, and groundwater extraction occurred from October 1999 to March 2000, all of which coincided with construction of the existing building on-site. The site was determined to be eligible for case closure as of February 2019. Contamination from this site does not have the potential to impact the project site due to previous remediation activities and the direction of groundwater flow relative to the project site. This is not an REC.

The site at 95 Almaden is southeast of the project site. The site is currently undergoing verification monitoring. This site was previously assessed by the City as part of the Greyhound Residential Project (SP16-021 & T16-017, 2017), located on the east side of Almaden Avenue, directly across the roadway from 95 Almaden. The findings of the Greyhound Residential Project SEIR were that the 95 Almaden property has been impacted by releases of petroleum hydrocarbons. Nevertheless,

based on data from groundwater monitoring wells, as well as the age of the on-site petroleum releases, the low permeability of underlying soils, the heavy-end nature of the majority of the contaminants, and low overall groundwater gradient, the contaminant plumes on the 95 Almaden site are stable and have not migrated to the Greyhound project site. Because of the lack of migration of contaminants on the 95 Almaden site, previous remediation activities, and the direction of groundwater flow relative to the project site, this is not a recognized environmental condition.

The site at 333 W. San Fernando is southwest of the project site. The site currently has an open-assessment and interim remedial action as of October 2018. This site was previously assessed by the City as part of the 333 W. San Fernando Office project. The findings of the office project Initial Study were that there are no recorded contaminants on the site. Nevertheless, because of identified off-site releases it was determined that site excavation and grading could result in impacts to construction workers from exposure to contaminated soils and groundwater during construction activities. The open-assessment and interim remedial action issued in October 2018 is a result of the site currently being under construction and the mitigation measures required by the City to ensure that any impacts from off-site contaminants were addressed. This is not a recognized environmental condition for the proposed hotel site.

The W. Santa Clara/Delmas site is west of the project site. The site was identified in the Phase I ESA prepared for the Almaden Corner Hotel project, but it was determined that based on the media impacted and the relative distance from the subject property (approximately 0.235 mile from the site on the opposite side of the Guadalupe River), this site is not a recognized environmental condition. Per the Geotracker website, in June 2019 the Regional Water Quality Control Board rescinded a previous Soil Management Plan (2016) for the site and determined that a new Soil Management Plan was required, which was well after circulation of the Notice of Preparation. Even with the new Water Board requirement, the findings of the Phase I ESA would not change. This information does not change the analysis of the project's and therefore, the new information does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

REGIONAL AND LOCAL AGENCIES

B. Santa Clara Valley Transportation Authority (dated 10.03.19)

Comment B.1: The City of San José’s General Plan identifies the Santa Clara Street/Alum Rock Avenue corridor as a Grand Boulevard which provides preference for transit over other modes (p. 41). Santa Clara Street in downtown is VTA’s busiest transit corridor in the County of Santa Clara. Buses travel on this corridor every two minutes.

City of San José Downtown Transportation Plan

Currently, the City of San José is leading the Downtown Transportation Plan (DTP) to define transportation projects and programs to enhance access, mobility and livability downtown. The DTP promotes a transportation future that enables a safer and more convenient environment for walking, biking and using transit. VTA has had ongoing discussion with City Department of Transportation staff about including the concept of “Public Service Lanes” in the DTP. Public Service Lanes would be located along the curb-sides of Santa Clara Street for use by public transit and emergency vehicles only. VTA strongly supports the creation of Public Service Lanes, which will enhance downtown, support sustainable transit-oriented communities, and fast, frequent and reliable transit through downtown.

Response B.1: This commenter’s encouragement of future Public Service Lanes in the City is acknowledged. The comment did not raise any environmental issue under CEQA and therefore, no specific response is required.

Comment B.2: Valet Drop-off/Pick-up Zone Operations

VTA does not support the proposed curb-side three-car valet along the site’s Santa Clara Street frontage because it is inconsistent with the DTP’s concept of curbside Public Service Lanes. While the valet would be subject to a renewal on an annual basis, allowing an auto-oriented use such as valet, along Santa Clara Street would set a negative precedent that could preclude and interrupt a continuous future Public Service Lane serving the downtown core and the future downtown BART station.

If a valet is established on Santa Clara Street, VTA is concerned about the safety of the valet operation given that it will be located directly adjacent to an 11-foot travel lane containing a 10.5-foot wide buses operating at two-minute intervals. The proposed valet would be much more active than current uses along the corridor. Valet workers and passengers entering and existing cars will occur many times per hour into the #2 travel lane along the valet.

Response B.2: Pursuant to the City Council Policy 5-1, as the project is located within the Downtown Core and is not located within an area that has the potential to exceed acceptable VMT levels, the project and would not require additional VMT analysis. As part of the project review, the project has completed a Local Transportation Analysis (LTA) for informational purposes. As part of the LTA, valet parking was analyzed and was concluded to be adequate for the operation purposes. The commenter’s opposition to the valet parking spaces is acknowledged. The comment does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment B.3: Proposed Valet Drop-off/Pick-up Scenario

As a proposed alternative to a curb-side valet zone, VTA would be open to relinquishing the bus stop across from the proposed project on Santa Clara Street for valet use. This bus stop location provides over 100 feet of curb space in a much wider configuration than directly adjacent to the project's frontage. The project valet could operate at this location and not disrupt VTA transit operations. Hotel patrons could safely cross Santa Clara Street in high visibility crosswalks at the Almaden Boulevard intersection. VTA requests a meeting to discuss the proposed valet and VTA's alternative with City planning and transportation staff.

Response B.3: Refer to Response B.2. While the existing proposed project is deemed adequate for the purposes of CEQA, the request for an alternative location to the existing proposed valet parking is acknowledged.

Comment B.4: Transportation Demand Management (TDM)

VTA commends the project's proposed TDM measures, including:

- Free VTA SmartPasses for all employees
- Incentives for off-site parking
- On-site TDM coordinator

VTA recommends the following items to further support the project TDM goals:

- Available transportation for emergency use by employees who do not drive to work
- On-site showers for employees (not apparent on August 2019 SEIR siteplan)

Response B.4: Pursuant to the City Council Policy 5-1, a full VMT analysis was not required for the project. Furthermore, the project does not result in VMT impacts or adverse effects in the LTA that would require additional TDM measures. The project is, however, proposing reduced parking and is subject to TDM as part of the project. As discussed on page 138 of the Initial Study, "Since the completion of the transportation analysis, the project has proposed a TDM plan that is under review for the purposes of the parking reduction requirements. The proposed TDM plan includes some of the same measures as the recommendations in the LTA including free VTA SmartPass for employees and an on-site TDM coordinator. The project also proposes employee parking incentives and annual monitoring of the plan."

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment B.5: BART Silicon Valley Extension Project Coordination

As currently planned, VTA's BART Silicon Valley (BSV) Phase II tunnel adjacent to the proposed project (Almaden Corner Hotel) would be approximately 65 feet below surface level. The design is progressing and more information will be available early next year. Continued coordination (meetings, plan reviews, sharing of design information) between the VTA's BSV Phase II Project Team, the City of San José, and developer from the initial planning stages through preliminary design and construction phases will be required for successful delivery of both projects.

- **Construction:** Because of the proximity between the proposed project and VTA’s BSV Phase II project, specifically underground facilities, the development’s design including but not limited to the building’s foundation system, shoring, and support of excavation plans shall be shared with VTA to ensure there are no potential impacts on either project. Additionally, as both projects may be built concurrently, it is recommended that construction activities (including but not limited to haul routes, times, logistics, etc.) be further discussed as design progresses.

Response B.5: The commenter’s request and encouragement for interagency coordination for the future BART plan is acknowledged. The comment did not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

Comment B.6: Monitoring impacts to historic structures: Per the SEIR (p. 35): “construction of the proposed project could result in cosmetic damage to the De Anza Hotel (a City Landmark).” The SEIR identifies mitigation measures to monitor construction impacts on the De Anza Hotel. VTA’s BSV Phase II Project will be implementing a similar program to monitor and evaluate impacts to historic structures due to construction of the underground tunnel. Coordination between developer and VTA will be required in order to accurately evaluate and monitor impacts cause by one or both construction activities.

Response B.6: The City acknowledges that if both projects were to be under construction in the same time frame, coordination would be required to accurately evaluate and monitor vibration impacts on the De Anza Hotel. This comment did not raise new information or new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

C. Jonathan Gordon (date 09.19.19)

Comment C.1: I'm a downtown resident writing to express my support of this project. I am very excited to have increased hotel space for events and for people to come visit our beautiful city.

I also love that it will include a restaurant/bar on the 19TH floor. That will be one of the premiere rooftop venues in the entire south bay!

Move this project forward!

Response C.1: The commenter's support for the project is acknowledged. The comment did not raise any environmental issue under CEQA and therefore, no specific response is required.

D. Linda Dahlberg (dated 09.25.19)

Comment D.1: A 19-story, 272-room hotel providing no on-site parking, blocking an adjacent condo, and destroying an adjoining historic hotel will soon be approved by San José powers-that-be. Nothing any of us can say will change your votes which you have, in all likelihood, already cast. I wish you could see how ridiculous this proposed plan is, how foolish you all appear to be, knowing to developers' sweet talk and money. There is still time to save the street trees and to allow us to enjoy the Life Abundant mural before it is obliterated forever. Thank you for giving consideration to declining permission for this fiasco.

Response D.1: The commenter's opposition to the project is acknowledged. The project has undergone review with regard to the adjacent hotel and the analysis is disclosed in Section 3.0 of the Draft SEIR. The results of the analysis conclude that the proposed project would not result in significant impacts under CEQA. The project, however, may have temporary construction impacts and would require mitigation measures CUL-1.1 through 1.3 and CUL-2.1 through CUL-2.4.

E. Amah Mutsun Tribe (dated 09.28.19)

Comment E.1: So what did Sonoma State Clearing house say about Sacred sites in the area

Response E.1: Previous studies were used to determine site sensitivity. Based on the information completed for the adjacent development within the same block in 2004, no prehistoric cultural resources were previously recorded within the project area, but there are numerous prehistoric resources that have been recorded along the Guadalupe River floodplain. Based on information of past projects in and around this site, there has not been any records found of sacred sites.

Furthermore, based on the initial trench work that was done for the adjacent Axis residential project, it is known that artifacts pertaining to the Notre Dame School were present on the adjacent site. Testing and archival research has shown that two types of historic archaeological resources were present on the adjacent project site that retain integrity of location and setting and were found to be eligible for the CRHR under Criterion 4. Therefore, the project has included mitigation measures for subsurface work.

F. Bill Souders (dated 10.01.19)

Comment F.1: As you are aware, I am a homeowner at the Axis Condominiums which are located next to the proposed 19-story Almaden Corner Hotel. I am writing to strongly encourage you to delay any decision on the approval of this plan. I make this request given the significant, and as yet unknown, implications that this decision will have on the traffic congestion at this intersection, and on the surrounding streets.

The traffic report prepared in connection with the supplemental EIR estimated the hotel will generate 2,274 trips per day. I have received the Downtown Strategy 2040 EIR Transportation Analysis and it makes virtually no reference to the West Santa Clara St-Almaden Blvd-Notre Dame intersections' future plans nor possible congestion. As of yet we have no real sense of the traffic impacts from the nearly completed construction at San Pedro and Silvery Towers, nor the status of the planned hi-rise at Andy's Pets. Additionally, there is a huge push to significantly activate Arena Green and Guadalupe River Park with unknown consequences. This intersection is frequently closed for community activities all year long, for races, fun runs, parades, marches, etc. And of course, there are the peak traffic levels of automobiles, pedicabs, and pedestrians for Sharks games, concerts, and large conferences.

Response F.1: As discussed on page 268 of the Integrated Final EIR for the Downtown Strategy 2040 and page 127 of Appendix A of the Draft SEIR for the proposed project, the City no longer uses level of service at individual intersections as the metric to address traffic impacts from new development projects. Consistent with Senate Bill 743, the City uses vehicle miles traveled (VMT) as the metric to assess traffic impacts under the California Environmental Quality Act (City Council Policy 5-1). As a result, there would have been no specific intersection analyses in the vicinity of the project site in the Downtown Strategy 2040 Final EIR.

The Draft SEIR does include a local transportation assessment (LTA) to address any potential operational issues associated with the proposed project. The LTA is summarized in Section 4.17 of Appendix A and provided in full in Appendix G1. As discussed in Section 4.17.3.1 of Appendix A, the queuing analysis shows that the eastbound left-turn movement at the Notre Dame Avenue and Santa Clara Street intersection currently experiences a queue that exceeds the available storage capacity under existing conditions and would continue to do so under future conditions. The proposed project would increase the queue for the eastbound left-turn movement by two vehicles during the AM and PM peak hours. Nevertheless, because of the site's proximity to major transit services and the proposed Transportation Demand Management (TDM) plan, the traffic analysis found that the project would actually generate fewer trips than calculated in the LTA (Page 8 of Appendix G1 of the Draft SEIR). Furthermore, the project was determined to have a less than significant traffic impact based on the City's adopted transportation policy.

All projects are addressed individually and at a cumulative level. The proposed hotel is within the planned growth approved under the Downtown Strategy 2040 which addressed the cumulative effect of all proposed growth within the plan area. The comment does not provide new information that would change the project's impact or

provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment F.2: I do not need to remind you that this intersection is the de facto gateway into Downtown from the planned Grand Central Station of the West. You have personally raised concerns about access to the transit center recently. The Diridon Integrated Station Plan is still in its very early stages, the Envision 2040 Urban Plan review is just getting underway, BART plans have been delayed, and the Google draft plan (which may or may not include traffic flow estimates is not due until mid-next year.

I am just not convinced that now is the time to approve this large, 19-story, 272-room hotel with no onsite parking and only five assigned spaces on the street. These five spaces will need to accommodate all drop-offs, pick-ups, valet parking, and deliveries. Three of those five spaces will be on W. Santa Clara Street which will interfere with mass transit and bicycle lanes raising serious safety concerns. For reference, the 100 room Hotel De Anza has approximately one dozen loading and valet spaces, and that corner can become completely jammed at times.

I have been traveling around downtown observing various hotel locations like AC, Marriott, Fairmont, Hilton, St. Claire, etc., and NONE OF THEM manage their traffic with only five spots. And their locations have other areas to cope with virtually all of their other service delivery needs. As of now, it is still unclear how and where delivery services and waste removal will be effectively managed at the hotel. Try to imagine the Fairmont Hotel, or any of those other hotels, with dumpsters out in front six days a week. I cannot even visualize what a mess that will be on Almaden Blvd, especially now that the AXIS has been forced to move our dumpsters out to the front of our building six days per week due to DOT changes on Notre Dame Ave.

Response F.2: Regarding the five valet parking spaces, the valet parking analysis was part of the LTA (Appendix G1 of the Draft SEIR) and the number of spaces in addition to the number of valet staff would be adequate for the operation of the proposed project. Regarding the garage service comments, a condition to restrict truck access to the loading spaces during garbage pick-up days to provide space for waste bins at the loading dock entrance will be part of the project.

The commenter's opposition to the project is acknowledged. Therefore, the comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment F.3: Approving this plan NOW just seems extremely PREMATURE. As far as I know, this lot has been vacant since 1930! It will be very disappointing if the city feels compelled to move quickly forward with a hotel of this size, on this tiny lot, at this crucial time. Please let's not risk the future our 100-year vision in the Station Area by constraining ourselves with such a suboptimal design.

Response F.3: The comment did not raise any environmental issue under CEQA and therefore, no specific response is required.

G. Jeanie Verbeckmoes (dated 10.02.19)

Comment G.1: Massing

I am writing to present some comments to the Draft Supplemental Environmental Impact Report (SEIR) prepared in connection with the Almaden Corner Hotel project. I would like to bring up one of the areas of public concern that was discussed in the SEIR. Although I am concerned with other issues including but not limited to the increased traffic, insufficient parking and associated lack of specificity as to how the valet activities will be operated to accommodate an additional 2,274 vehicles trips per day, I would like to emphasize the issue of massing with you, since you are reviewing and will be providing comments on the historic resource analysis for the subject.

On August 19, 2019 I emailed Patrick Kelly stating that I saw a reference to a design plan set for the subject property dated 05/10/19. I requested those plans and any other documents that had been submitted since my last document request on May 7, 2019. Mr. Kelly provided me with a copy of a plan set dated June 7, 2019. I am using information from that plan set in this memorandum. That June 7, 2019 plan set included on Sheet No. G000, the rendering shown on the right side of page 3 below. The rendering shows a diagonal cutaway at the southeast corner of the building.

Along with the SEIR, an Initial Study was prepared. The Initial Study includes certain renditions of the subject including the South elevation at page 14 and the East elevation at page 17. These two elevations are shown on the left side of page 3 below. Both elevations have shading that depicts a diagonal cutaway of the portion of a portion of the building's southeast corner.

Although the Initial Study has the elevations, it does not have the analysis of the subject's impacts to cultural resources within it states are evaluated in the SEIR and no further analysis was provided in the Initial Study.

The SEIR states at page 30 (emphasis added):

The southeast diagonal cutaway is designed so that the corner is square at the lower levels and is diagonally **carved away at a point starting approximately at the height of the De Anza Hotel**. The upper levels of the proposed new building would visually angle away from the historic property. According to the site plans, the "reverse corner slice at Almaden corner, spring[s] from De Anza roof datum." **The renderings illustrate the corner cutaway starting at about the tenth floor, the height of the De Anza Hotel.**

The SEIR goes on to state at page 30 (emphasis added):

Some massing details also provide compatibility between the historic and proposed building. The detailing meets the intent, but not the letter, of the guideline that a new building be "broken down" in scale to be compatible with nearby historic resources. **Although the proposed hotel does not literally step down to the height of the De Anza Hotel, the southeast diagonal corner wedge is aligned with the height of the historic roof**, providing a shared reference point within their separate massing designs.

The SEIR states the cutaway begins at the 10th floor, and the rendering shows that as well, on Sheet No. G000. However, the cutaway, as shown in the rendering, is a much larger cutaway than what is

shown on Sheet No. A131 of the same plan set. A portion of Sheet No. A131 (at the top of page 4 below) shown the cutaway doesn't begin at the 10th floor but rather begins at the 17th floor. Further, the cutaway is much smaller in the area than appears in the rendering. At the bottom of page 4 below, is a portion of Sheet G100 showing the building area summary including the gross area of each floor. The difference between the largest floor area and the smallest (excluding the rooftop bar area) is only 42 square feet. This would make it a very small cutaway.

When analyzing the impact of the subject on the Hotel De Anza, the SEIR assumes the cutaway started at the 10th floor. The SEIR also seems to rely on the carved cutaway as evidence that the proposed hotel does not crowd the Hotel De Anza or loom over it. Given that the plans at Sheet No. A131 show that the cutaway doesn't start until the 17th floor, the analysis of the massing in the Compatibility of New Building Design and Scale with Historic Resources section of the SEIR should be revised.

Response G.1: As the Draft SEIR correctly states, the cutaway starts at the level of the historic De Anza Hotel roofline, or just above the datum of floor level 10. The section on sheet A131 is cut approximately seven feet inboard (north) from the face of the building, which in that specific location may give the impression that the diagonal starts higher up on the building, but only because the section line is cutting through the slope at a higher elevation. As shown in the elevation and perspective images provided by the commenter, which are taken from the plan set sheets A301, A304, the diagonal cutaway starts as described in the Draft SEIR, at the level of the historic De Anza Hotel roofline.

The commenter states that "Although the Initial Study has the elevations, it does not have the analysis of the subject's impacts to cultural resources within it states are evaluated in the Draft SEIR and no further analysis was provided in the Initial Study." A full assessment of the project's effects on cultural resources is provided in Section 3.0 of the Draft SEIR. This comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

H. Jeanie Verbeckmoes – Axis Homeowners Association (dated 10.02.19)

Comment H.1: I am writing to you as the Chairperson of the Land Development Committee of the Axis Homeowners Association, which represents approximately 700 owners and residents of the Axis Residential Tower (“Axis Tower”) at 38 N. Almaden Boulevard.

Attached to this letter are the following:

1. Memorandum dated October 2, 2019 (“Comment Memo”), from Jodi Starbird of Starbird Consulting LLC, to the Axis Homeowners Association, containing numerous comments regarding the above-referenced SEIR;
2. Appendix to the Comment Memo, containing numerous photographs;
3. Letter from Axis Homeowners Association dated February 14, 2019, with supplemental comments to the NOP;
4. Letter from Axis Homeowners Association dated October 18, 2018, commenting on the Downtown Strategy EIR; and
5. Copy of Conceptual Utility Plan for this Project.

All of the above attachments, and all comments and information contained therein, are hereby incorporated by reference into this letter as if fully restated herein. This letter, the attachments to this letter, and all other correspondence and other communications between the City of San José, on the one hand, and the Axis Homeowners Association, the Land Development Committee of the Board of Directors of the Axis Homeowners Association, their respective members, and residents of the Axis, on the other hand, should be considered to be part of the administrative record for this Project in connection with any future legal action.

Since the preparation of the Downtown Strategy 2040 EIR and the Notice of Preparation for the SEIR, the Land Development Committee and many other members of the Axis Homeowners Association have made it clear that they do not support the Project, to be located adjacent to the Axis Tower at the northeast corner of N. Almaden Boulevard and Santa Clara Street in Downtown San José. These views were also expressed at the public meeting on February 4, 2019.

Response H.1: This comment is to establish background for the full letter and does not have any specific comments on the Draft SEIR and therefore, does not require any more responses.

Comment H.2: Please refer to the Comment Memo for a detailed description of our continuing concerns. In particular, we would like to highlight the following matters:

Areas of Controversy

As discussed in the Comment Memo, there are numerous areas of public concern and controversy that are not adequately discussed in the SEIR. These areas include increased traffic, insufficient parking, height and massing, and impacts on the Hotel De Anza. These issues, as well as others, are of the utmost concern to us.

It is of particular concern that the summary of impacts at page 47 of the SEIR does not include traffic. The SEIR estimates the number of vehicle trips generated daily will be 2,274 with 128 during

the peak AM hour and 163 during the peak PM hour. Surely the Downtown Strategy did not contemplate this concentration of traffic from a hotel with no on-site parking and only five loading/valet parking spaces. As stated in the Comment Memo, the Hotel De Anza with only 100 rooms has 12-15 loading/valet parking spaces. Unquestionably traffic needs to be included as a significant impact.

Response H.2: As stated in Response F.1, as discussed on page 268 of the Integrated Final EIR for the Downtown Strategy 2040 and page 127 of Appendix A of the Draft SEIR for the proposed project, the City no longer uses level of service at individual intersections as the metric to address traffic impacts from new development projects. Consistent with Senate Bill 743, the City uses vehicle miles traveled (VMT) as the metric to assess traffic impacts under the California Environmental Quality Act (City Council Policy 5-1). As a result, there would have been no specific intersection analyses in the vicinity of the project site in the Downtown Strategy 2040 Final EIR.

Consistent with the City Council Policy 5-1, the project is not required to further assess VMT and a Local Transportation Analysis (LTA) was completed for informational purposes. Based on the LTA, there are no adverse effects of the project to the environment and no additional conditions were required. This comment does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

Comment H.3: Valet Staffing

We are also very concerned about the valet staffing. As described in the Comment Memo, the Initial Study states only 3-4 valet attendants are needed while the supplemental valet report states up to 10 valet attendants will be needed during both the AM and PM Peak Hours. How many valet attendants will actually be required if it is “up to” 10? Who could possibly enforce this so that N. Almaden Boulevard does not become a parking lot when more cars arrive than the number of valet attendants can handle? What will happen when the SAP Center has events? Who will enforce the condition when 10 valet attendants are needed but the hotel management has fewer?

Response H.3: While the traffic consultant concluded that three to four valet attendants would be sufficient for five valet parking spaces, the project proposes up to 10 valet attendants during both the AM and PM peak hours at maximum hotel occupancy (Appendix G2 of the Draft SEIR). The total number of valet attendants at any given time would be dependent on demand. This information is also provided in the project description on page 9 of the Initial Study and page 6 of the Draft SEIR. Refer to Response H.74, H.76, and H.78 for additional responses to the valet parking analysis.

Comment H.4: Inadequate Project Description

The Project description fails to mention anything about the Almaden Boulevard Couplet Conversion, even though the memorandum from Public Works dated August 12, 2019, devotes three paragraphs to this topic. The memorandum also includes, as a project condition, that the “project will provide voluntary contribution in the amount of \$250,000 to be used toward the future Almaden Boulevard couplet conversion and installing bike detection improvements...” Changing from a one-way to a

two-way street could significantly increase congestions, queuing problems and other issues, and should have been studied as part of the Local Transportation Analysis.

Response H.4: The Almaden Boulevard Couplet Conversion is currently a Department of Transportation (DOT) planline as part of the potential roadway changes to the area. Detailed information for the design is not currently available and was not available during preparation of the Draft SEIR for the project to study adverse effects under the project's LTA or construct the improvements. The City has the ability to request contributions towards the future improvements. Any future changes to the roadways would require additional outreach and analysis at the time it is proposed.

Comment H.5: Reduced Height Alternative

As stated in the Comment Memo, the original environmental document for the Axis Tower project was the 47 Notre Dame Supplemental EIR (Axis SEIR), which described the Axis Tower as Phase I. Phase II was described as a six-story residential and retail building. The applicant of the proposed 19-story Almaden Corner Hotel (Applicant) represented to us, purchasers of the Axis condominiums, that the project evaluated in the Axis SEIR would be the project constructed. The reduced height alternative would be in keeping with the promises made by the Applicant.

The reduced height alternative, with fewer hotel rooms, would have a much reduced effect on the traffic and this significant impact would be mitigated appreciably. The reduced height alternative would also avoid the cultural impact a building taller than the Hotel De Anza would create.

We would like to make an observation about the project objectives. This Project has the objective of building a high density building. That is one objective. The applicant has reiterated that particular objective in four of its seven project objectives. If one can state one single objective in all of the project objectives, not satisfying that one objective eliminates that alternative. This is clearly biased and we do not believe it is the intent of CEQA to allow one objective to eliminate a project alternative.

Response H.5: While the Axis SEIR assessed a six-story, mixed-use building on the current project site, no site permit was issued and, therefore, any private applicant has due process to pursue developments that could be consistent with City's policies and goals. All proposed projects are subject to City review, including CEQA review.

As disclosed in the Draft SEIR Initial Study (Appendix A of the SEIR), most of the impacts pertaining to the proposed project are construction related. Mitigation measures has been identified to reduce those impacts to less than significance.

Furthermore, the Draft SEIR does not assert that the Reduced Height and Massing Alternative is infeasible. Page 53 of the summary section of the Draft SEIR states that the alternative, "would not allow for new high-density development to be constructed on the project site consistent with the General Plan but would result in a mid-rise structure that would not be the highest and best use of the site based on the General Plan land use designation. This alternative meets some of the objectives of the proposed project and is generally consistent with the General Plan policies."

Refer to Response H.12 through H.17 for more detailed responses pertaining to alternatives.

Comment H.6: Historic Resources

The peer Urban Design Review that was done by Skidmore, Owings and Merrill (SOM) had some significant design revisions. The revisions actually made by the Applicant to the subject plans were very minor and not at all meaningful. The SOM comments have genuinely not been addressed. For example, SOM stated that the applicant should use more solid materials and avoid cladding the entire building with glass curtain wall that lacks articulation of windows and floors. SOM also stated that the massing of the top of the towers should be further reduced to create variations in form.

Response H.6: An analysis of the project design was completed by a qualified historic consultant in consultation with City staff and the City concluded that the proposed design of the building is consistent with the City's applicable design guidelines and does not result in a substantial adverse change to the integrity of the De Anza Hotel. Refer to Response H.20 for more additional responses to materials.

Comment H.7: Land Taking

The Project Description states that the Project footprint would be set back 2.5 feet from the northern property line. This is a mistake because the plans call for a 3-foot wide flow-through drainage planter between the building and the Axis property line (see Attachment 5 to this letter).

In our letter dated February 14, 2019, we pointed out that the only way the Project could practically maintain these drainage facilities is by trespassing onto the Axis property. In its response 0.9, the City says that the Project "is proposing a lot line adjustment to extend the property line to the chain link fence to the northern property, giving more area between the planter and the northern (proposed) property line ... Without the lot line adjustment, the plans show areas for foot access to the planter area ... "

To be clear, no one from the City or the Project has ever contacted the Axis Homeowners Association about a lot line adjustment, so how is it possible that they are proposing one? Also, members holding 2/3 of the entire voting power of the Association would be required to sign any lot line adjustment or easement deed, and so this is not a very realistic proposal.

To suggest that the Project's maintenance crew can just walk on the Axis property without permission is to condone trespass on our property, which would be a de facto taking of property without compensation. The City cannot do this! The Axis Homeowners Association reserves the right to move its fence to the property boundary line and to utilize the strip of land that currently exists between the fence and the property line for purposes benefitting the Axis residents.

Response H.7: The project is requiring a two-foot dedication for the sidewalk along the frontage on Almaden Boulevard. Since the completion of the Draft SEIR, it has been clarified that the project would not encompass the areas to the north between the edge of property line to the existing northern fence line and a lot line adjustment is not requested as part of the application. Nevertheless, the project has been designed and analyzed without the incorporation of the space between the northern property line to the fence line. In addition, as disclosed in Appendix H1 NOP Responses in

Response O.9, even without the extension of the northern property line, the planters are at ground level and foot access for maintenance is feasible. The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Attachment – Starbird Consulting LLC

Comment H.8: The following are comments prepared on behalf of the approximately 700 owners and residents of the Axis Residential Tower (“Axis Tower”) at 38 N. Almaden Boulevard.

The comments in this memorandum address the SEIR as well as the responses provided in the SEIR to the Axis comment letters dated January 25, 2019 and February 14, 2019, with respect to the Notice of Preparation dated January 11, 2019 (the “NOP”).

Responses to Notice of Preparation (NOP)

As was stated in the Supplemental NOP letter submitted to the City by the Axis Homeowners Association on February 14, 2019, the NOP did not state that the Hotel De Anza is listed on the National Register of Historic Places. This is vital information that the responsible and trustee agencies (in particular, the State Office of Historic Resources and National Parks Service) should have been notified of in order to provide specific comments related to potential impacts to this highly sensitive resource.

The City's response to this comment in Appendix H1 of the SEIR is insufficient. As stated in the comment letter, the Hotel De Anza is listed on the National Register of Historic Resources – not just a City Landmark. To have not gotten input from SHPO consistent with the California Environmental Quality Act (CEQA) Guidelines Section 15082(a)(1), about how the impacts to the Hotel De Anza should have been analyzed is a serious flaw in the environmental review and a violation of CEQA.

Without the vital information related to the adjacent historic Hotel De Anza included in the NOP, the responsible and trustee agency was not provided with enough information to enable them to make a meaningful response related to the environmental impacts that could occur to this sensitive resource. It was recommended in Axis' letter that the NOP be recirculated; however, this simple rectification did not occur. The preparation of an EIR without this input can be considered to be inadequate and a violation of CEQA.

Response H.8: As documented by the City's records and by information provided on the State Clearinghouse website (<https://ceqanet.opr.ca.gov/2003042127/12>) the NOP for the proposed project was submitted by the State Clearinghouse to SHPO for input on the scope of the environmental analysis. No response was received. Furthermore, the Draft SEIR (which fully characterized the historic significance of the De Anza Hotel) was sent to SHPO for review and no response was received. CEQA includes a definition of historic resources (Guidelines Section 15064.5) which refers to the California Register and listing at the local level, it does not refer to the National Register. However, properties listed on the National Register are automatically listed on the California Register. The NOP adequately disclosed the Hotel De Anza as a historic resource under CEQA that could be potentially impacted

by the project. Therefore, the Draft SEIR's analysis takes into account the Hotel De Anza's listing at the federal, state, and local level.

As the project has informed the Office of Historic Preservation pursuant to the CEQA guidelines for NOP and NOA noticing, the information does not change the analysis of the project's and therefore, the information does not result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices.

Comment H.9: It must also be noted that the tone of the responses to the NOP comments is one of project support. City staff must not take a tone that seemingly recommends approval or denial of a project. The SEIR Section 1.1 states "It is not the intent of an EIR to recommend either approval or denial of a project." The environmental review must be objective and non-biased; however, the responses to the NOP comments and many sections of the SEIR do not achieve this. Neither the City, nor their consultants, are permitted to take on the appearance of being project proponents. This is a violation of the intent of CEQA to provide the decision makers and the public with objective analysis.

Response H.9: The City's responses to the NOP comments are to provide additional information and to clarify areas of analysis in the Draft SEIR as commented during the NOP stage. Neither the responses nor the analysis provide an approval or denial of the project. Without specific concerns noted, the City cannot respond to the commenter's opinion regarding the tone of the NOP responses and Draft SEIR. The commenter's assessment of the tone in the NOP is acknowledged.

Comment H.10: Supplemental Environmental Impact Report

The SEIR prepared for the Almaden Corner Hotel project is a Focused SEIR tiering from the Downtown Strategy 2040 EIR certified by the City Council in December 2018. An Initial Study was also prepared to supposedly confirm that the proposed project would not result in greater or different environmental impacts than the Downtown Strategy. As stated in the Summary of the SEIR, areas of controversy include increased traffic, insufficient parking, height and massing, interface with Hotel De Anza (a historic resource) and potential impacts to the hotel, and impacts to subsurface cultural resources.

Section 15063(c)(3)(A) of the CEQA Guidelines states that one of the purposes of an Initial Study is to assist in the preparation of an EIR, if one is required, by focusing the EIR on the effects determined to be significant. The proposed project would result in many significant impacts consistent with the Downtown Strategy; however, the impacts of most concern to the surrounding community were omitted from detailed specific analysis in the SEIR. The Downtown Strategy and Envision San José 2040 General Plan EIRs provide program-level environmental review; therefore, the project-level environmental review should have been completely included in the SEIR.

Response H.10: Based on the findings of the Draft SEIR and Initial Study, the proposed project would have no project level impacts that would require preparation of a new full EIR. The project could have qualified for an Addendum to the Downtown Strategy 2040 EIR as there are no new significant impacts beyond those analyzed and disclosed in the Downtown Strategy 2040 EIR. The City, however,

chose to prepare an EIR to address the potential impacts to the De Anza Hotel because of public concern, and to facilitate public participation by allowing for public review and comment. As is allowed by CEQA, the Initial Study is incorporated by reference into the Draft SEIR and provides sufficient details for analysis in the resource sections addressed as required by CEQA. The Initial Study is an appendix to the Draft SEIR, and is to be read together with the Draft SEIR, and the detailed analysis requested in the comment is present for the public's understanding and decision-makers' use in considering the project.

Regarding the areas of controversy noted by the commenter, traffic for all projects within the development capacity of the Downtown Strategy Plan was addressed in the Downtown Strategy 2040 EIR, consistent with the previous Downtown Strategy Plan EIR. Pursuant to City Council Policy 5-1, no additional VMT analysis was required under CEQA, and the transportation discussion was included in the Initial Study.

Lack of parking is not a CEQA issue, but was included in the Initial Study for informational purposes along with the Local Transportation Assessment (LTA) which addresses potential operational issues related to traffic. Height and massing of the building were addressed with regard to the De Anza Hotel in the Cultural Resources section of the Draft SEIR, as was the interface with the hotel and any potential impacts to the integrity and physical condition of the hotel. All other relevant discussions pertaining to height and massing were provided in the Initial Study in their respective sections. Subsurface cultural resources were also addressed in the Draft SEIR in the Cultural Resources section.

The comment does not change the analysis of the project's and the analysis of the project on a project-level has been included in their respective sections, whether in the Draft SEIR or in the associated Initial Study. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.11: The only issue described in the SEIR is impacts to cultural resources, which of course are tremendously important. However, traffic, parking, noise, air quality, aesthetics and greenhouse gas emissions are all topics that also are of the utmost importance to the neighbors and issues for which the Downtown Strategy EIR determined would require project-level review. These issues/concerns were not given the level of analysis and impacts and mitigation measures are not identified in the Initial Study to the level required for an EIR.

As stated in Section 15146 of the CEQA Guidelines, "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Constructing a 19-story, 225-foot tall structure on an 8,000 square foot lot adjacent to existing high-rise development and busy streets can only be described as highly technical. The project description and analysis in the SEIR must, as CEQA requires, be as detailed and comprehensive for environmental impacts to be adequately addressed.

City Planning staff had represented to the neighbors that a new Supplemental EIR would be prepared for the project that included at least construction-related and long-term traffic operations, and air

quality and noise analyses. This did not occur and the level of review in the Initial Study is inadequate for these significant project-level impacts. Technical reports were prepared, so why wasn't the very important analysis included in the SEIR at a level of detail that provides a meaningful and complete discussion of impacts, mitigation measures, alternatives, and cumulative impacts?

As stated in CEQA Section 15063(a)(3), "an Initial Study is neither intended nor required to include the level of detail included in an EIR." The Downtown Strategy EIR was a program-level environmental document that did not provide project-level review. The SEIR was supposed to provide this and it did not. This is a violation of CEQA.

By eliminating these topics from the SEIR, areas of controversy were not addressed and the level to which the alternatives and cumulative analyses were prepared is inadequate and disappointing. The residents of the Axis Tower and visitors to the Hotel De Anza will be subjected to months of construction impacts and a lifetime of privacy loss, gridlock traffic, and noise from the adjacent hotel. These impact should have been analyzed in depth in the SEIR as required by CEQA Guidelines section 15064. Because the SEIR only analyzed one issue, a full description of the environmentally superior feasible alternatives is not provided, as described below.

Response H.11: Project level noise (Section 4.13 in Appendix A of the Draft SEIR), air quality (Section 4.3 in Appendix A of the Draft SEIR), aesthetics (Section 4.1 in Appendix A of the Draft SEIR), and greenhouse gas emissions (Section 4.8 in Appendix A of the Draft SEIR) were addressed in the Initial Study (Appendix A of the Draft SEIR), which is part of the SEIR. The project-level analysis includes modeling and quantification of noise and air pollutant emissions when appropriate.

Loss of privacy is not a CEQA impact and, therefore, was not analyzed in the Draft SEIR.

In addition, pursuant to the City Council Policy 5-1, the project is located within the Downtown Core and is not located within an area that has the potential to exceed acceptable VMT levels and would not require additional VMT analysis. The threshold of significance to address transportation impacts is VMT and, consistent with state law, gridlock traffic and intersection congestion are not deemed significant impacts under CEQA. However, as previously mentioned, the project has completed an operations analysis to addresses operational issues and provide additional information.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.12: Inadequate Alternatives Analysis

The 22-story Axis Tower was constructed in 2008 with 329 units, most of which are owner-occupied. The original environmental document for the Axis Tower project was the 47 Notre Dame Supplemental EIR (Axis SEIR), which tiered off the original Downtown Strategy 2000 Program EIR.

Page 1 of the Axis SEIR describes the Axis Tower project as the construction of a “22-story (approximately 228 feet above grade), L-shaped 350-unit residential condominium on the northwest corner of the property (referred to as Phase I).”

The project description continues on page 4 of the Axis SEIR and includes the following: “The southwest corner of the site, adjacent to the Hotel De Anza, will be developed with a six-story residential/retail building (referred to as Phase II) with two levels of below grade parking that are open to and accessed through the Phase I underground parking area. The Phase II building will be comprised of approximately 35 condominium units and 8,000 square feet of retail.”

As stated on page 18 of the Axis SEIR, “To minimize the overall visual impact of the residential tower on the Hotel De Anza, the tower is proposed to be located with the greatest possible setback from the hotel on the project site at the northwest corner of the block.” In fact, the Axis Tower building itself is also stepped back from the hotel as shown in the photo below. The 6-story Phase II building would not have been taller than the Hotel De Anza and would not block views of the hotel’s iconic rooftop neon sign. In other words, it would not have contributed significantly to the impact of the Axis Tower structure, as described in the Axis SEIR.

Based on this information in the previous EIR for the site, the Axis Homeowners Association requested that the alternatives section of the EIR include an analysis of construction of the 6-story building on the site, as promised by the project applicant while the units at Axis were being purchased. The Axis project and SEIR included a 6-story structure on the project site and the applicant gave prospective buyers reassurances that the project evaluated in the SEIR would be the project constructed. The applicant has therefore misled the buyers of units in his building as well as the historic preservation community. This is totally unacceptable.

Response H.12: There are two issues raised in this comment. The first issue is the alternative requested by the Axis Homeowners Association. Section 8.0 of the SEIR includes a Reduced Height and Massing Alternative which assesses a seven to eight-story hotel with no rooftop bar. As noted on page 52 of the Draft SEIR, “In response to comments from the Historic Landmarks Commission (April 3, 2019 meeting) and public comments on the Notice of Preparation, a reduced building height and massing alternative was considered. In addition, some commenters stated the new project should be consistent with the previous proposed project for the site which was a six-story building so as not to interfere with views from the adjacent residential building to the north of the project site. To address these concerns a reduced height alternative was considered, which would include a seven to eight-story hotel with no roof top bar.”

The second issue is that the project applicant misled the historic preservation community and neighbors by proposing a new project that differs from the project analyzed in the original Axis SEIR. While the Axis SEIR assessed a six-story, mixed-use building on the current project site, no site permit was issued and, therefore, any private applicant has due process to pursue developments that would be consistent with City’s policies and goals. All proposed projects are subject to City review, including CEQA review.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.13: The SEIR states in Section 1.13.2.2 that a six-story building (Reduced Massing and Scale Alternative) would still impact the Hotel De Anza to the same extent as the proposed 19-story structure and would not avoid the less than significant impacts to the hotel. It also states that all construction impacts would be reduced, which is obviously true since the construction timeframe would be substantially less. However, to state that all of this is fine because the impact is less than significant, does not allow for the AVOIDANCE of the impact. Why not avoid the impact altogether?

Response H.13: It is unclear from the comment which impact the commenter is referencing with regard to avoiding the impact. For construction impacts, avoidance is not feasible, but impacts can be reduced to less than significant through mitigation and standard measures, as discussed in the Initial Study and Draft SEIR for the proposed project. With regard to the De Anza Hotel, the analysis in Section 3.1 of the Draft SEIR found that the proposed project would not have a significant impact on the historic integrity of the De Anza Hotel.

CEQA Guidelines Section 15126.6 states that “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” The proposed project would not result in any significant effects that cannot be mitigated and, as a result, an alternative to the project which reduces the height and massing of the project is not required under CEQA, nor is the City required by law to identify an alternative that would avoid a less than significant impact. As noted in Response I.8, the Reduced Height and Massing Alternative was included based on requests from the Historic Landmarks Commissions and members of the public, including the Axis Homeowners Association. Even so, and as previously mentioned, any redevelopment of the site would be unlikely to reduce all construction related impacts. Other alternatives were also considered but rejected as discussed in Section 8.0 (pages 48-51) of the Draft SEIR.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts, mitigation measures, or alternatives than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.14: Operational impacts as a result of the lack of parking and limited vehicle storage that will cause massive congestion would also be reduced because the hotel would have substantially fewer rooms. If the building were an office building, drop-off and pick-up needs would be minimal, and would be more conducive to the use of transit than a hotel use. A shorter building would not significantly affect the views, shading, or privacy of residents of the Axis Tower and Hotel De Anza

guests, yet none of these reduced impacts are mentioned. Just because the impact would not be completely avoided, does not mean that the reduced height and massing alternative is not environmentally superior.

Response H.14: Office use was considered in the Draft SEIR in Section 8.0.

The Reduced Height and Massing Alternative did not address any changes relative to views or privacy of the Axis Tower residents and De Anza Hotel guests, or shading of either property as these are not considered impacts under CEQA. The CEQA Checklist is explicit in assessing the impacts to public views, which are views experienced from publicly accessible vantage points (page 24 of Appendix A of the Draft SEIR). There is no threshold for the protection of private views.

Neither the City of San José nor any other regulatory body has thresholds for shading of private property. As such, shading of the Axis Tower property is not an impact under CEQA. In dense, urban environments, private buildings cast shadows on adjacent private properties. San José, in EIRs evaluating downtown development the past several decades, has only treated shading of certain downtown public parks as CEQA impacts. In certain circumstances, shading on historic structures can be considered an impact if the shading would cause a change in the experience of features such as stained-glass windows. The western façade and northern end of the De Anza have no such features which could be impacted by shading from the project and, as such, new shadows were not identified as an impact to the historic integrity of the building. Full analysis of the De Anza Hotel is disclosed in Section 3.1 of the Draft SEIR.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.15: The SEIR also states in Section 1.14 that while construction impacts of the 6-story structure would be reduced, less than significant impacts to the Hotel De Anza would still occur. No analysis is provided to show how the De Anza's rooftop sign would continue to be visible from the east and west, nor that the Diving Lady painting could still be viewed under this alternative. Similarly, it is not mentioned nor any analysis provided to demonstrate that a shorter construction timeframe would result in fewer structural impacts to the De Anza, which is certainly the case. The alternatives section simply defies logic. All impacts would be significantly reduced with this alternative, which would also be the project the applicant promised and what many Axis Tower homeowners were expecting.

Response H.15: According to the Draft SEIR's historic report, any reduction in views of the De Anza's rooftop sign was not identified as an impact to the integrity of the historic building. While any building on the project site that is less than 10 stories would allow the existing views of the sign to remain, maintaining unobstructed views of the roof top is not necessary to reduce or avoid a significant impact of the project.

The Diving Lady mural is located at the fourth floor of the De Anza Hotel. As noted on page 53 of the Draft SEIR, the Reduced Height and Massing Alternative is based on a reduction in overall height of the building but assumes the same floor plan as the proposed project. As such, the view of the Diving Lady, which is locally popular but not considered a character-defining feature of the De Anza Hotel (as discussed in the previous Axis SEIR), would not likely be more obstructed than with the Reduced Height and Massing Alternative compared to the proposed project. Therefore, the alternative would not be different than the existing proposed project in regards to visibility to the Diving Lady.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.16: Section 15126.6(c) of the CEQA Guidelines states that “Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts. As stated in the SEIR, this alternative meets some of the objectives of the project proposed and is generally consistent with General Plan (GP) policies.

The Downtown Strategy 2040 includes up to 3,600 new hotel rooms and in fact, one of the objectives of the Downtown Strategy 2040 project is to preserve the jobs sites (commercial, office, and hotel development) envisioned in the Downtown Strategy 2000 and 2040 General Plan. Many news reports in recent years have bemoaned the fact that Downtown has far fewer hotel rooms than even adjacent smaller cities. Yet, the City seems intent on approving a project that will affect the booking rates and thus, financial viability, of one of its existing iconic historic hotels.

The noise that will result during construction and after will affect the Hotel De Anza’s ability to book rooms on its west side (approximately 45 rooms out of a total of 98), including its most expensive penthouse suite. Two years of construction would significantly affect the bottom line and the hotel could face financial ruin. It must be acknowledged in the Alternatives Section of the SEIR that the construction of the Reduced Height and Massing Alternative would significantly reduce these environmental and financial impacts of the proposed project. Decision makers must have information required to make an informed decision. That is one of the main purposes of CEQA, yet that is not occurring.

Response H.16: Section 15131 of the CEQA Guidelines states “Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.” Furthermore, Section 15131 states that “Economic or social information may be included in an EIR or may be presented in whatever form the

agency desires.” The lack of economic analysis in the Draft SEIR is not counter to the main purpose of CEQA.

Given the total number of hotel rooms allowed under the Downtown Strategy 2040, the relatively small geographic area of the Downtown Plan Area relative to the volume/density of growth allowed, and the limited availability of land to be redeveloped, it is reasonable to assume that some disruption of existing businesses would occur with implementation of the Downtown Strategy. This presumably also occurred with the construction of the Axis Phase I tower. The disruption for any particular site would, however, be temporary. In addition, a two-year construction time frame does not equate to two years of heavy equipment use. A portion of the work is the finishing of the interior of the building.

It should also be noted that the De Anza Hotel continued to operate during construction of the Axis Tower. If construction activities associated with the project did result in a slowdown of business at the De Anza Hotel, it is speculative to assume that this would result in a physical effect to the environment.

The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.17: The six-story alternative is certainly feasible and can be considered the highest and best use of the site. Evidence of this can be seen in the AC Hotel right across the street! This alternative would significantly REDUCE and in some instances, AVOID, all of the impacts of the proposed project and must be considered the environmentally preferable option if development on this site is to occur at all. This alternative must not be so easily dismissed and as CEQA requires, “must be discussed in a manner to foster meaningful public participation and informed decision marking.” (Section 15126.6(f)) The EIR Alternatives discussion in the SEIR does neither and is thus, in violation of CEQA.

Response H.17: The SEIR does not assert that the Reduced Height and Massing Alternative is infeasible. Page 53 of the summary section of the SEIR states that the alternative, “would not allow for new high-density development to be constructed on the project site consistent with the General Plan but would result in a mid-rise structure that would not be the highest and best use of the site based on the General Plan land use designation. This alternative meets some of the objectives of the proposed project and is generally consistent with the General Plan policies.” In addition, the fact that a mid-rise hotel has been constructed nearby does not dictate what would constitute the highest and best use of the project site.

The Reduced Height and Massing Alternative was not specifically called out as the Environmentally Superior Alternative because it does not avoid or substantially lessen any significant impacts of the proposed project as many of the impacts of the proposed project are construction-related. While the proposed project did identify construction related impacts, and the Draft SEIR acknowledged that a smaller

building would have lesser construction impacts, the construction impacts of the proposed project would be reduced to less than significant by the identified mitigation measures and standard conditions. Because the Reduced Height and Massing Alternative is included in the Draft SEIR, it will still be considered by the decision-makers in deciding whether to approve the project. However, given the Draft SEIR did not identify any significant and unavoidable impacts, the decision-makers will not be required to adopt findings (overriding considerations) regarding the feasibility of the alternatives presented in the SEIR, if they are inclined to approve the project, given the decision-makers will be able to instead find that all project impacts are capable of being reduced to less than significant levels through implementation of feasible mitigation measures.

Comment H.18: It should also be noted that although the City wishes to encourage denser development, it does not mean that every building should be built to its full density. In fact, for good planning, some parcels must not be built to the full potential height. Google certainly recognizes this. In presenting its conceptual development plan for its Diridon area development at a community meeting last month, the Google representatives emphasized numerous times that they intentionally were not planning their development to the full density limits, because there needs to be space and light and air in order to have a healthy, well-planned community.

Response H.18: The commenter's suggestion on good planning is acknowledged. As this comment does not raise specific environmental issues, no further response is required.

Comment H.19: The SEIR also evaluated an office use alternative. However, this section does not evaluate a 6-story office building, even though it would be viable and feasible and would be the environmentally superior alternative. A reduced-size office use would result in less traffic and parking issues and would not result in significant impacts to the privacy loss and noise as the proposed project. This alternative should have been included in the project. Also, to state that noise generated by an office versus a hotel would be "comparable" is not true and this statement is not substantiated in the noise analysis. An office space would not typically have a rooftop bar or occupants after 7pm. Its noise generation would definitely be less.

Response H.19: The proposed project was not found to have a significant transportation impact under CEQA and privacy is not a CEQA issue.

The Draft SEIR concluded that noise from an office would be comparable to the proposed hotel because both uses would be interior to the building. While the proposed hotel would have a roof top patio, the noise analysis prepared for the project concluded that the outdoor patio would not increase ambient noise levels in the project area. As a result, there would be no perceptible noise increase at nearby residences or the De Anza Hotel, and the project would be consistent with the City's noise standards and policies.

The commenter's assertion that a six-story office building would be viable and feasible, would be the environmentally superior alternative, would result in less

traffic and parking issues, and would not result in significant impacts loss of privacy and noise is not supported by the evidence provided by the commenter.

The Draft SEIR provides a reasonable range of alternatives that were either considered but rejected for various reasons, or were analyzed in comparison to the impacts of the proposed project, based on the project's impacts and input from the public and regulatory agencies. For these reasons, the commenter does not provide new information that would change the project's impact or provide new information that would result in new significant impacts, mitigation measures, or alternatives than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.20: Impacts to Cultural Resources

The impacts to the Hotel De Anza as a result of the proposed project relies on a Historic Resources Project Assessment and a supplement to that assessment prepared by Archives & Architecture. It appears that the supplemental report was prepared after the project was somewhat redesigned. The hotel still fails to reflect a "stepped back" design (comparable to the stepping back that was required of the Axis or 1 South Market residential towers, as shown in the photos below).

As was stated in the supplemental NOP letter submitted by the Axis Homeowners Association, the peer review by Skidmore, Owings & Merrill (SOM) dated November 16, 2018 suggests a number of significant design revisions, as depicted in the photo below. It continues to appear that the applicant has not addressed these comments and the City is ignoring that fact. The City must be sure that the project conforms to its own design requirements and incorporates the design recommendations from the peer review. In addition, they must apply their own regulations consistently especially for impacts to previous and diminishing cultural resources.

Response H.20: As explained in Appendix H1, Response O.5 of the SEIR (Response to NOP Comments), an analysis of the project design was completed by a qualified historic consultant in consultation with City staff and the City concluded that the proposed design of the building is consistent with the City's applicable design guidelines and does not result in a substantial adverse change to the integrity of the De Anza Hotel. The design guidelines were used to provide a framework for architectural analysis of the proposed project and was used to inform the analysis of the seven aspects of historic integrity, as indicated by the National Register and State of California's definition of authenticity of resources.

Based on the analysis, the project does not result in a significant impact on historic resources. The building design went through internal City review and review by the City's outside architectural consultants. The City, as Lead Agency, is best equipped to evaluate the conformance of a project with the City's guidelines.

While the commenter references the original draft historic assessment and the peer review by SOM (which was completed as part of the City's Architectural Review process), these documents were based on the original design of the building. After review of the SOM conclusions and the historic assessment, City staff worked with the applicant over several months to revise the design of the building to be more consistent with the City's Historic Design Guidelines. This is a standard process in

San José, particularly in the downtown area where adjacencies to historic buildings are common. The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.21: The Historic Resource Assessment (Appendix C) does not meet the requirements of CEQA Section 15064.5. It appears to only be a minimal analysis of whether the project is consistent with the City's Historic Design Review Guidelines. Project-level environmental review, as required by the Downtown Strategy EIR, for impacts to the Hotel De Anza is required to ensure that the proposed project does not materially alter in an adverse manner those physical characteristics of the resource that convey its historical significance. For example, physical impacts associated with construction-generated noise and dust are not evaluated.

Response H.21: As explained in Appendix H1, Response O.5 of the Draft SEIR (Response to NOP Comments), an integrity analysis was completed for the Draft SEIR which concluded that the proposed project would have less than significant impact on the historic significance of the De Anza Hotel. Project impacts on historic resources would be less than significant. Because the De Anza Hotel is not located on the project site and would not be modified by the project site, the proposed building itself would not alter the character defining features of the De Anza Hotel. The project is physically separated from the De Anza Hotel at the side elevation and is setback from the De Anza Hotel. The project has a smaller footprint than the De Anza Hotel, and is located next to a secondary elevation of the De Anza Hotel. The Draft SEIR identified potential vibration impacts from construction in Section 3.0 of the Draft SEIR and Section 4.13 of the Initial Study. Mitigation measures were identified to reduce this impact to less than significant.

It is unclear from the information provided by the commenter how dust or noise could impact the historic integrity of the De Anza Hotel. The De Anza Hotel is historic based on its architecture/physical features. Construction dust and noise would not result in a physical impact to the building that could alter these features. Sections 4.3 and 4.13 of Appendix A (Initial Study) and Appendices B and F in the Draft SEIR address construction dust and construction and operational noise. The analysis found that with the standard permit conditions and mitigation measures, the project would have a less than significant construction impact. No operational noise impacts resulting from the project were identified.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.22: The analysis provided is subjective and not substantiated in fact. The information provided seems to simply be opinions and conclusions that can easily be countered by common sense. There should be more evidence of the conclusions and a robust discussion of how the conclusions were reached. Examples of other structures constructed Downtown were required to

respect and “step-back” from the historic resources and how successful those projects have been in protecting resources, should have been included.

For example, a determination that exterior materials of the proposed materials (sic) would be compatible with the Hotel De Anza without those materials being known, is somewhat irresponsible and not adequate for a CEQA analysis – especially when impacts to such a valuable historic resource will be so detrimental.

Response H.22: Each project and project site within the Downtown Plan Area and its interaction with adjacent and/or proximate historic structures is unique to each situation. As such, the requirements of other projects are not applicable. It is incorrect to assume that all projects within the Downtown Plan Area would have the same requirements for compatibility with historic structures and the City’s Historic Design Guidelines. The historic consultant and City planning staff had a variety of plans and renderings on file at the City by which to make their determination that the proposed structure is consistent with the City’s historic design guidelines, including the proposed materials. Furthermore, the analysis conducted by the City’s historic consultant was completed consistent with City standards and the findings were confirmed by City staff and the City’s Historic Preservation Officer. While the commenter may have a different opinion than the City, the professional opinion of a qualified historic consultant evaluating proposed project plans is considered substantial evidence under CEQA (Section 15384). No evidence has been provided by the commenter to refute the findings of the analysis. The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.23: Also, the SEIR states (on page 30) that “The detailing meets the intent, but not the letter, of the guidelines that a new building be “broken down” in scale to be compatible with nearby historic resources.” There is no substantiation as to the intent, and we do not agree that the detailing meets the intent. The SOM sketch above shows what we believe is the intent when the guideline uses the term “broken down.”

Response H.23: The commenter’s opinion regarding interpretation of the City’s Historic Design Guidelines is acknowledged and no documentation or source has been provided to support this statement. The professional judgement of a qualified historic consultant, as well as the City’s professional staff, evaluating proposed project plans is considered substantial evidence under CEQA. The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.24: Lot patterns are described and a determination made that because the proposed project would be approximately 11-13 feet from the historic Hotel De Anza (not shown on any plans), the project is compatible with the guidelines. Without substantive information in the way of project plans (not “estimations” by the consultant), this cannot be proven. And while the fire escapes and Diving Lady mural may not be removed, they will not be seen either. A pedestrian on the street

can only back up so far before they are in the middle of W. Santa Clara Street to look up and see the mural.

Response H.24: The plans on file for the project show that the building is set back three feet from the eastern property line. While the solid wall of the lower floor is directly adjacent to the property line, the main massing of the De Anza Hotel is set back approximately 8.5 feet from the property line. There is sufficient data on the setbacks from the project plans on file at the City for the historic consultant and the City to make a determination on lot patterns.

The fire escapes are not noted in the documentation for the National Register (<https://catalog.archives.gov/id/123861659>) and are not a character-defining feature of the building that contribute to its historic significance. In addition, the Diving Lady, while locally known, is not original to the building and not a character-defining feature of the building. Nevertheless, it will still be preserved as part of the proposed project as the building will not be built right against it. The loss of visibility of the fire escape and Diving Lady mural do not result in a significant impact to a historical resource under CEQA.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.25: In addition, it is stated by the consultant that they believe the Hotel De Anza design somehow intended for another building to be built adjacent to the west side of the structure. There is no evidence of this assertion. If that were the case, why are there up to 56 windows and the required fire escapes on that side of the structure? There has never been a real structure of any kind on that side of the building save a gas station and a parking lot, as shown in the photo below which is from about the time the hotel was opened in 1931. In addition, the architecture on the front (Santa Clara Street side) is not different than the western side. This is another example of how conclusions of this section are speculative and not substantiated, which leads any reader to believe that the proposed project is not consistent with the City's historic guidelines.

Response H.25: There are two issues raised in this comment. The first is the commenters opinion that there is no evidence that the De Anza Hotel was intended to be adjacent to another structure based on design. This finding was made both by the City's historic consultant and the previous historic consultant for the Axis tower project based on their professional expertise and the general design of the De Anza Hotel.

Based on a review of the De Anza Hotel by the City's CEQA consultant and corroborated by the City's Historic Preservation Officer, while there are windows on the west side of the building, they are setback from the property line by approximately 8.5 feet, allowing for light and air even if a building is located adjacent. The blank façade of the lower floors along the property line is indicative of another building being anticipated. Furthermore, at the time the building was

constructed, the fire escape would not have been a feature of the building, but a utilitarian necessity that was placed so as not to be visible from the two prominent facades along West Santa Clara Street and Notre Dame Avenue.

The second issue is that the commenter believes the architecture on the front of the structure is the same as the western side of the building. Based on a review of the De Anza Hotel by the City's CEQA consultant and corroborated by the City's Historic Preservation Officer, this is incorrect. While both facades have black frame windows, the pattern and spacing is different. In addition, all the windows on the front façade have some sort of decorative elements or color variation which separates them from the linear lines created by the solid surfaces. The front façade also has arched windows, a stepped roof, and balconies on a few of the windows. As can be seen in the commenter's photos, the western façade has different windows and no ornamentation other than along the roofline. When compared to the eastern façade, which has the same decorative window elements, arched windows, and similar window configuration as the building's front façade, it is clear that the western façade was never intended to be a primary view of the building.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.26: The conclusions of the report as to whether the massing of the proposed structure is compatible with the historic Hotel De Anza building is especially subjective. The project plans do not clearly show the degree to which the proposed "reverse corner slice" would push the proposed building away from the Hotel De Anza, however, it would only push it away at the corner – not along the entire western side of the historic hotel.

The project plans do not show that the new hotel would not "crowd" the Hotel De Anza. The setbacks are very minimal and appear to both crowd and diminish the historic hotel. The report includes the following statement:

"The perceived overall massing of the neighboring buildings appears to be visually balanced, The wider, deeper, and shorter, visually heavier, symmetrical, stucco-façade Hotel De Anza would be visually balanced in massing with a narrower, shallower, taller, glass-curtained wall building that includes cutaway corners and an open-air penthouse."

There is nothing apparent in the project plans, including the rendering in the Initial Study that prove this point. Again, applying common sense, to conclude that the proposed 19-story structure (the building materials for which are not included in the SEIR or Initial Study), is consistent with the massing of a 10-story art deco stucco building just doesn't ring true. The differences between these two structures are dramatic. The new hotel would be shallower or narrower on its lot than the high-rise portion of the Hotel De Anza, as shown in the rendering below from the project plans.

Response H.26: The quote from the historic report (page 4 of Appendix C Historic Evaluation of the Draft SEIR) does not state that the proposed tower is narrower and shallower on its lot as the commenter contends. The comparison is to the De Anza

Hotel itself. As shown on the project plans and description of the project within the Draft SEIR and associated documents, the proposed building clearly utilizes a substantial portion of the lot size.

It is unclear from the comment what plans, other than the renderings provided in the Initial Study, were reviewed by the commenter. The historic consultant and City staff have a variety of plans and renderings on file at the City by which to make the determination that the proposed structure is consistent with the City's historic design guidelines. The commenter provides no expert opinion or supportable evidence to offer a different conclusion than that of the City.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.27: It is not known whether the new structure will be glass, since the materials have not been decided. Further, a "penthouse", which would affect not only the historic hotel but the AXIS Tower, is not shown on any plans. This is an opinion without technical evidence and should not be considered a concluding statement that renders the project consistent with the guidelines.

Response H.27: Any potential impact to the Axis Tower (a recent modern structure) has no relevance with regard to the City's historic design guidelines. Nevertheless, all potential impacts from the bar/restaurant are addressed in the Draft SEIR (which includes the Initial Study).

The commenter states that it is not known if the project will be constructed of glass, even though the figure provided by the commenter clearly shows glass curtain walls and the penthouse. The project would also be assessed prior to issuance of building permits for consistency to the proposed Planning entitlements. If major changes are requested to the building, the project would be required to resubmit to Planning for an Adjustment or Amendment prior to fully changing materials.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.28: The consultant acknowledges that these statements are their opinion and that others "may be concerned". I have similar comments on the evaluation of the facades and entries and, using simple common sense and the fact that the building materials are not yet provided, do not agree with the unsubstantiated conclusions of the report. The Hotel De Anza is a unique and valuable community asset that must be respected. Therefore, a peer review of the Historic Resources Assessment should be completed, and it appears that the consultant would not object to such. This peer review should be included in the Final EIR.

Response H.28: The conclusions of the Draft SEIR are based on the findings of a qualified expert who has experience interpreting and applying the City’s historic design guidelines. Furthermore, the historic consultant’s findings were confirmed by the City’s Historic Preservation Officer (HPO). A peer review, therefore, is not required.

The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.29: Initial Study

Project Description

Section 2.8 of the Initial Study states many project-related approvals, agreements, and permits, including “Public Easement Vacation/Street Vacation” and Easements, Sale of Land”. It is unclear what these related approvals are and they are not discussed or evaluated in either the Initial Study or SEIR. These approvals could result in impacts that cannot be evaluated. The Initial Study must be revised to include this vital information. For example, street vacations could affect the surrounding land uses and result in safety impacts to drivers, bicyclists, and pedestrians, a significant impact under CEQA (Appendix G of the CEQA Guidelines). It is also not described how the on-street and truck loading areas would operate if streets are “vacated”.

Response H.29: This section is to inform and disclose all potential related agreements, permits, or actions to be taken to implement the full development of the project as proposed and shown on plans on file with the City. It is not to represent additional direct or indirect physical changes to the environment that require additional review in the Draft SEIR.

Comment H.30: It should be reiterated that the Axis Homeowners Association has not granted an easement or otherwise relinquished any property rights to the applicant and is unlikely to do so (it would require that 2/3 of the total voting power of the Association sign the easement or lot line adjustment document). Therefore, no portion of the Axis property can be included as an easement (including air rights), and mitigation based on the assumption that such land is available for use by the hotel is not realistic. This could further exacerbate operational impacts of the proposed project.

Response H.30: Refer to Response H.7.

Comment H.31: Section 3.17 states that construction staging locations have not yet been determined. This information is also very important to evaluate safety and operational traffic impacts. In addition, it is not mentioned where construction workers would park. Again, the safety of these workers, transit users, bicyclists, and pedestrians must be evaluated and mitigation measure must be identified.

Response H.31: The project description in both the Initial Study and the Draft SEIR states that staging areas will be located on and off-site. The specific location of staging areas and worker parking would not be known at this stage of the planning process, as has been the case with previous downtown projects. If the project is

approved, the logistics of construction including staging, worker parking, temporary road closures, truck routes, etc. will be reviewed and approved with the issuance of the Public Work's encroachment permit for the public street improvements required by the project. The Public Work's encroachment permit must be obtained by the project prior to issuance of the Building Permit. This is the typical approval process with all construction projects, both inside and outside of Downtown.

Comment H.32: Figures 3.0-4, -5, -6, and -7 show the elevations of the proposed building from the south, west, north, and east. These elevations do not clearly depict the architecture of the proposed project. The portions of the building to be diagonally “cut away” at the southeast and southwest corners are not really depicted. How can the public, decision makers, or architectural historian evaluate the structure with confusing graphics? The “cut-aways” cannot be seen – are they truly part of the project? The supplemental historic report dated May 31, 2019 does not include graphics, so it is impossible to know what was actually evaluated, especially since the report was revised based on new plans.

Response H.32: The cutaways on the building are shown through color variations on the schematic. The intent of the elevations is to show general massing and floor heights, unlike renderings which show more realistic representations of architecture and materials. Figures 3.0-4 and 3.0-7 in both the Draft SEIR and Appendix A show the cutaway on the southeast corner of the building starting at the 10th floor and extending to parapet 2. Figures 3.0-4 and 3.0-5 show the cutaway on the southwest corner of the building from the ground floor to 18th floor.

Comment H.33: This issue becomes more suspect as a result of a “rendering” included in the SEIR on page 30. This rendering appears to show no “cut-away” at the southeast corner of the building and appears to expand as it gets taller, which was part of the original design. So, what building was evaluated in the Initial Study, SEIR, and historic architecture reports and how are the public and decision makers to know what building is being proposed? These graphics, renderings, and the historic evaluation must be revised.

Response H.33: The rendering on page 30 of the Draft SEIR is one of several included in the plan set on file at the City and utilized by the City and the City's historic consultant to assess the project's consistency with the City's historic design guidelines, as discussed in the Draft SEIR. This rendering on page 30 of the Draft SEIR was not intended to be the only rendering of the project.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. The project is not required to provide revisions to the historical evaluation. For additional information, the full site plan for the project will be added to this First Amendment document.

Comment H.34: Perhaps most troubling is the fact that the Project Description does not include the fact that N. Almaden Boulevard may be altered in the future to be a two-way street rather than a one-way street, even though the Department of Public Works comment memorandum dated 8/12/19

devotes three paragraphs to this topic. The memorandum also specifies, as one of the project conditions, that “The project will provide voluntary contribution in the amount of \$250,000 to be used toward the future Almaden Boulevard couplet conversion and installing bike detection improvements...”

Changing from a one-way to a two-way street could significantly increase congestion, queuing problems and other issues, and should have been studied as part of the traffic operations analysis/Local Transportation Analysis (“LTA”) prepared by Hexagon Transportation Consultants. The LTA failed to analyze this (and many other factors affecting local traffic operations as described below), and therefore the LTA should be revised and recirculated for comment.

Response H.34: Refer to Response H.4.

Comment H.35: Aesthetics

There is no doubt that the proposed hotel structure would block views of the historic Hotel De Anza from both the east and west. While SR-87 is not a scenic resource, the loss of views of the historic resource must be evaluated in a more detailed level in the SEIR. The loss of views of the Diving Lady on the Hotel De Anza will be lost from all directions – vehicles and pedestrians. The loss of views of this resource will never be regained. The view from the Guadalupe River Park (a “major open space area in Downtown San José”) of the iconic neon sign and the Hotel De Anza will be lost. The loss of the view of the sign from this public park or traffic (vehicle, pedestrian, and bicycle) traveling eastbound, would not occur if a six-story structure were constructed instead, resulting in a significant reduction of the impact. This fact should also be included in the evaluation of Alternatives in the SEIR.

Response H.35: Refer to Response H.15 and H.24 with regard to the Diving Lady and its lack of relationship to the historic integrity of the De Anza Hotel.

With regard to the aesthetics analysis, the discussion provided in the Initial Study is based on the checklist questions in Appendix G of the CEQA Guidelines. As State Route 87 is not a scenic highway as designated under Caltrans Scenic Highway requirements, and the De Anza Hotel is not located within a state scenic highway, the project would not substantially damage scenic resources pursuant to Aesthetics Question 2 of Appendix G. Views of the Diving Lady are not considered a significant visual or aesthetic resource in any prior EIR or planning document prepared for the Downtown.

While there are limited views of the historic hotel’s roof sign from Guadalupe River Park, the commenter does not provide any threshold by which the City would assess the loss of this view from certain vantage points. Under Aesthetics Question 3 of Appendix G, the sign is not a prominent aesthetic feature of the park, and from the park vantage point a tower structure on the project site would be compatible with the other nearby towers and tall buildings and would not substantially degrade the existing visual character or quality of public views of the site and its surroundings. The views the commenter is concerned about have not been identified in the Downtown Strategy 2040 FEIR as important to the aesthetic or visual character of the Downtown area as a whole.

Lastly, based on Senate Bill 743, aesthetics impacts shall not be considered significant impacts on the environment for residential, mixed-use residential, or employment center projects on in-fill sites within a transit priority area. The project and project site meet the criteria as an employment center as follows:

- The project proposes a commercial land use on a site zoned for commercial development.
- The project would have a floor area ratio (FAR) of more than 0.75 (the project FAR is 16.7).
- The project site is located within a transit priority area less than one-half mile from a major transit stop (multiple bus lines and Diridon).

Consistent with Senate Bill 743 and the CEQA Guidelines, the City was not required to address aesthetics, but could have concluded less than significant without any formal analysis. Given that the public expressed concerns about the aesthetics of the project during the EIR Scoping period, however, the City choose to include a full analysis of this resource area.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.36: Further, the EIR that was prepared for the original Axis project which included construction of a 6-story structure (similar to the Reduced Height and Massing Alternative of the Almaden Corner EIR) would not have obscured the view of the iconic sign from either SR-87 or the Guadalupe River Park. It would also not result in the shading of either the Axis Tower of Hotel De Anza. This alternative would reduce this impact to a less than significant level; however, as stated previously, this was not disclosed in the SEIR Alternatives discussion.

Response H.36: Based on the analysis disclosed in the Initial Study Section 4.1 Aesthetics, the City did not identify an aesthetic impact from the project and, as noted by the commenter, a comparable alternative to the original proposal for the Axis project is included in the Draft SEIR. There is no requirement that the Draft SEIR include an alternative that reduces the degree to which the view of the hotel's sign would be obscured since there was no basis for the Draft SEIR to conclude that obscuring the sign was a significant impact. Alternatives are to be developed to reduce or avoid significant impacts, and the reduced visibility of the sign was not determined to be a significant impact. Refer to Response H.14 regarding shading. The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.37: Impact AES-4 states that the proposed building would not create a new source of substantial light or glare, yet the Historic Resources reports states that building materials were not known when the evaluation was conducted. This results in an inadequate evaluation of both aesthetics and historic resource impacts. These impacts must be evaluated in the SEIR per the CEQA Guidelines.

Response H.37: The commenter has incorrectly represented the discussion in the historic analysis. The historic report dated May 31, 2019 states that “The exterior materials were previously reviewed and found to be assumed compatible with the historic Exterior Materials guideline. The revised design has no revised material notes, so would also be expected to be compatible based on the information provided.” The report also includes the analysis of the original building design which states that exterior materials were not included in the drawings provided for analysis, but a list of assumed materials was included. It is clear that the analysis was based on the materials list provided, which has not changed, and those materials would not result in substantial new light or glare, based on the analysis in the Initial Study (Appendix A of the Draft SEIR). The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.38: The plans seem to show an illuminated sign at the top of the southwest corner of the proposed building. No information is included in the Initial Study or SEIR that describes the size of this sign or details about its assumed illumination. If there is an open roof top bar at the top of the structure, it appears that this sign would be visible to residents of the higher levels of the Axis building. Neither the Initial Study or SEIR evaluate impacts from this sign and how night views from or privacy to the Axis Tower and Hotel De Anza will be affected.

Response H.38: It is unclear from the comment how light and glare from a rooftop sign could result in a privacy impact to either the Axis Tower or the De Anza Hotel. Privacy is not an environmental quality evaluated under CEQA.

Any signage on the building would have to comply with the City’s sign ordinance. Specifically, any building signage would be required to comply with the downtown sign zone as defined in Section 23.04.100.D of the City Code and go through design review, including consideration of the proposed illumination. Therefore, the comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.39: An evaluation of how the project would conflict with GP policies regarding aesthetics was not included in the SEIR or Initial Study. Again, the Downtown Strategy was a program-level document and did not evaluate impacts on a project-by-project level. For example, Policy CD-1.18 states that loading docks and other utility uses be placed within parking structures or at other locations that minimize their visibility and reduce their potential to detract from pedestrian activity. The current site plan shows the loading dock on the backside (northern) of the building, adjacent to residential uses on a street that will be activated by pedestrians and clogged with vehicles attempting to pick-up and drop-off hotel patrons. This is inconsistent with this policy.

Response H.39: The actual verbiage of the policy is “Encourage the placement of loading docks and other utility uses within parking structures or at other locations that minimize their visibility and reduce their potential to detract from pedestrian

activity.” The policy does not make this a requirement because the City recognizes that site constraints do not always allow for this to be the case.

CEQA Guidelines Section 15125(d) states that an EIR “shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.” The Draft SEIR did not identify inconsistencies between the proposed project and applicable General Plan aesthetics policies.

Comment H.40: 2040 General Plan Policies CD-10.2 and CD-10.3, new development adjacent to Gateways, Grand Boulevards, and freeways shall be designed to preserve and enhance attractive natural and man-made vistas.” The proposed Hotel Project is along such a “Grand Boulevard” – Santa Clara Street, yet the design is far from the one that preserves and enhances attractive natural and man-made vistas. In fact, the design would completely destroy the views from the street and surrounding land uses. Inconsistency with GP Policy CD-10.3 is described under Land Use, below.

Response H.40: While the commenter’s opinion is that the project is inconsistent with Policy CD-10.3, the project went through design review consistent with City requirements and was found to be compatible with all applicable design guidelines.

Comment H.41: Air Quality

The air quality section of the Initial Study has not been prepared to the level required of an EIR. The construction toxic air contaminant discussion on page 41 of the Initial Study states that the project would result in a significant impact related to single-source impacts at construction (Table 4.3-3).

Figure 2 of the Air Quality Assessment (Appendix B) shows the location of maximum off-site cancer risk and PM 2.5 impacts, including those as a result of an emergency generator and fire pump. This location is at the southeast corner of the residential Axis Tower! The report does not give analytical data as to how the project would be able to reduce these impacts to sensitive residential uses to a less than significant level. Especially when most of the units on the south side of the tower have balconies. The document only states that a plan must be prepared that “demonstrates” that impacts would be reduced, yet does not include such a plan. This plan should have been included in an EIR analysis to give residents and visitors a level of comfort that living or sleeping near the project site will not result in cancer. Peace of mind should not be discounted.

Response H.41: Table 4.3-3 of the Initial Study only quantifies construction emissions. Any equipment on-site that would be required for operation of the proposed project, would not be active during the construction phase. As such, only construction emissions are shown in Table 4.3-3.

Operational emissions are shown in Table 4.3-5 of the Initial Study. Per the results in Appendix B Air Quality Assessment of the Draft SEIR, the emergency diesel generator and fire pump combined would be well below the cancer risk thresholds for toxic air contaminants (TACs). When combined with all other identified source emissions, including project construction, the project would have a less than significant cumulative impact.

The commenter has misrepresented the mitigation measures included in the Draft SEIR. The mitigation is as follows:

MM AIR-1.1: The project applicant shall ensure that all diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 engines. An alternative option would be equipment that meets Tier 3 engines that have California Air Resources Board (CARB) certified Level 3 Diesel Particulate Filters or equivalent. Alternatively, the use of equipment that includes alternatively-fueled equipment (i.e., non-diesel) would meet this requirement. If any of these alternative measures are proposed, the project applicant shall include them in the construction operations plans (as stated in MM AIR-1.2) which include specifications of the equipment to be used during construction prior to the issuance of any demolition, grading, or building permits, whichever occur the earliest. Additionally, large stationary cranes shall be powered by electricity, and generators and welders using diesel fuel shall be limited to 200 hours over the entire construction period.

MM AIR-1.2: Prior to the issuance of any demolition, grading, and/or building permits, whichever occurs earliest, the project applicant shall submit a construction operations plan that includes specifications of the equipment to be used during construction to the City's Director of Planning or Director's designee for review and approval. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in these mitigation measures.

The mitigation is explicit that construction equipment shall, at a minimum, meet U.S. Environmental Protection Agency particulate matter emissions standards for Tier 4 engines. If Tier 4 equipment is not readily available, then Tier 3 equipment can be used under the criteria specified in the mitigation. The plan is required to show compliance with the mitigation, which cannot be done at this stage of the project because there is no general contractor associated with the project and construction equipment would not be purchased or rented at this time. However, the performance standard that future construction activity must meet has been clearly identified, and there is feasible mitigation available to ensure it is met.

The Air Quality Assessment (Appendix B of the Draft SEIR) quantified the reduction in emissions with the Tier 4 (or equivalent) mitigation. As stated on page 42 of the Initial Study, implementation of the mitigation measures and the City's standard permit conditions would reduce the infant residential cancer risk to 6.7 in one million which is below the Bay Area Air Quality Management District (BAAQMD) threshold. The approach provided in the mitigation measure is one employed routinely for construction projects adjacent to housing or other sensitive receptors, and there is nothing unusual about the impact disclosed nor the mitigation approach to reduce health risks to acceptable levels established by BAAQMD and the City.

The comment does not provide new information that would change the project's impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.42: The air quality analysis also relies on the installation of 36 bicycle parking spaces. These spaces are not included in the project description, nor are they shown on any of the plans included in the Initial Study or SEIR. If these spaces are including in a Transportation Demand Management (“TDM”) plan, which is not included in the Initial Study or SEIR, they must be shown somewhere. In addition, Appendix B mentions that truck trips to the site would be “infrequent.” While it is true that the site is very small and the number of truck trips for disposition of soil may not be significant, ALL Materials must arrive by truck daily – that can’t be done “off-site”. The correct information must be factors into the air quality analysis now.

Response H.42: The bicycle parking is required by City Code and the bicycle parking spaces are shown on Figure 3.0-1 (Site Plan First Floor) in both the Draft SEIR and Initial Study.

There is no reference in Appendix B Air Quality Assessment of the Draft SEIR of truck trips to the site being infrequent. Appendix B states that “Construction equipment and associated heavy-duty truck traffic generates diesel exhaust are known as a TAC. These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations. Construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents.” It further states “Construction activity, in terms of schedule, equipment usage and truck traffic generation was based on the model default settings.” Lastly, Appendix B states “The on-road emissions are a result of haul truck travel during demolition and grading activities, worker travel, and vendor deliveries during construction. A trip length of one mile was used to represent vehicle travel while at or near the construction site. It was assumed that these emissions from on-road vehicles traveling at or near the site would occur at the construction site.”

As is shown, the air quality analysis took into account the construction truck trips and the analysis is correct. Therefore, the comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.43: Biology

Neither the Initial Study nor the SEIR include a discussion of how the project has been designed taking into account the City's policies related to Bird Safe Design Building Standards. The proposed building is located within 500 feet of the Guadalupe River (not 600 feet as stated on page 101 of the Initial Study) and Los Gatos Creek, which are regarded as important wildlife corridors. The proposed building has apparently not been evaluated for bird safe design as there is no project-level discussion provided; therefore, the project is not consistent with GP policies ER-5.1 and -5.2.

Response H.43: Policy ER-5.1 and 5.2 apply specifically to activities which could result in the loss of active bird nests. The Initial Study includes mitigation to reduce impacts to nesting birds from construction activities to a less than significant level.

Policy ER-5.2 requires development projects incorporate measures to avoid impacts to nesting migratory birds. It appears that the commenter is implying that bird strikes on a building would equate to an impact on nesting migratory birds under this policy. Regardless, the City has a Council Policy which outlines which projects are required to provide bird safe design. Primarily, bird safe design is encouraged in the area north of State Route 237. While not specific to the policy, the City requires bird safe design analysis of “Riparian Projects”. Council Policy 6-34 defines Riparian Projects as “any development or activity that is located within 300 feet of a Riparian Corridor’s top of bank or vegetative edge, whichever is greater, and that requires approval of a Development Permit as defined in Chapter 20.200 of Title 20 of the San José Municipal Code (the Zoning Code), ...”

The project, including the site location, does not meet any of the criteria for requiring bird safe design. It should also be noted that between the project site and the nearby creeks/rivers, there are existing buildings and an elevated freeway. The Downtown Strategy 2040 FEIR did not identify the need for analysis of new buildings in regard to impacts from bird strikes east of SR 87.

Comment H.44: Hazards and Hazardous Materials

The proposed project does not appear to have been evaluated at a project level as to whether emergency response or evacuations can occur at the project site. Neither the Initial Study nor the SEIR include a discussion of whether the project has been evaluated and deemed sufficient by any responsible emergency organizations, including the police, fire, or ambulance services.

Response H.44: Per City standards, San José Police and Fire review all private development projects, along with City planning staff, to ensure that projects meet the City’s requirements. Emergency response for the project would take place from the adjacent public right of way, just as any property downtown. Refer to Response H.45 for more information. Therefore, the comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.45: If all of the loading zones on W. Santa Clara Street and N. Almaden Boulevard, as well as the loading dock area are occupied (which they most likely will be, given no on-site parking), how will these vital services get to the project site for any emergency access. It also appears that fire hydrants will be blocked by vehicle loading zones on the streets. Again, project-level environmental review must be included in the SEIR.

Response H.45: It is assumed that the commenter is referring to Appendix G checklist question 6 under Hazards and Hazardous Materials. The question is “Would the project impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?” An emergency response

plan or evacuation plan is in reference to specific plans that City's may adopt in the event of a natural disaster or other comparable large-scale event. The commenter is requesting that the SEIR address the accessibility of the site to police, fire, and ambulance services for on-site issues. The accessibility of the street frontages for emergency vehicles is an operational issue, not a CEQA issue.

As with all projects, review by the City's police and fire departments is required and redesign is required if there is determined to be an access or feasibility issue. Given that no such requirements has been requested and the project has completed its review with the respective departments, the project would comply with City's policies and codes for accessibilities. Therefore, the comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.46: Land Use

Section 4.11, Land Use of the Initial Study asks the question of whether the project would result in a 10 percent or greater increase in the shadow cast onto the Guadalupe River Park. The impact analysis then states that the project will, in fact, shade "roughly 188 feet onto the Guadalupe River Park" during the morning.

The discussion then goes on to state that the Guadalupe River Park is roughly 120 acres in size. This is an inaccurate depiction of the park in proximity to the project and does not take into account its linear shape as it traverses Downtown. A defensible analysis would have compared the existing condition to Arena Green, which is a stand-alone park within the Guadalupe River Park, to the condition after the project is completed. The percentage of Arena Green affected would have been much greater. In addition, the park is closer to 500 feet from the site rather than 600, thus extending the shaded areas further.

Response H.46: The Downtown Strategy 2040 FEIR has a specific threshold for shading impacts within the downtown plan area. The threshold is "Would the project result in a 10 percent or greater increase in the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park?)"

The City does not recognize Arena Green by itself as one of the six major open space areas within downtown that is covered by this threshold. It is considered part of the Guadalupe River Park. The analysis was completed as such, accounting for the totality of the River Park. To the commenter's point, the City did take into account the linear shape of the park as it traverses downtown which is why it was assessed based on the entire 120 acres along Guadalupe River.

Please note that the Guadalupe River Park is not within 500 feet of the westernmost street curb of the project site (as measured from the publicly accessible areas of the park west of State Route 87). If measured based on the green space, which is inaccessible, on the east side of State Route 87 then the project site is within

approximately 260 feet of that area. The nearest accessible point of Guadalupe River Park to the project site is the tennis courts along State Route 87, which are approximately 594 feet from the project site, or roughly 600 feet as noted in the Draft SEIR. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.47: The shading of the Hotel De Anza would affect the ability to rent rooms on the west side of the hotel. The owners of the historic hotel state that approximately 45 rooms with 56 windows would be virtually un-bookable, especially in the winter. At an average room rate of \$230.00 per night and an 80% occupancy rate (both 2018 and 2019 thus far), this is a loss of \$8,280 per night or approximately three million dollars per year. This does not take into account potential booking lost for rental of the Palm Court convention/reception area that has an occupancy of approximately 225 guests due to its canvas roof that has little or not ability to attenuate noise during construction of the proposed project. This will lead to financial losses that would be devastating. To render existing hotel rooms in the Downtown as un-bookable is not consistent with the goals of the Downtown Strategy 2040. Further, it would compromise the historic designation of the building as a hotel since 1931.

Response H.47: As disclosed in Section 3 of the Draft SEIR, the historic significance of the De Anza Hotel is not based on its business model or function as a hotel, but on the architecture and historic significance of the structure.

The commenter has provided no documentation showing that the proposed project would result in 45 rooms being un-bookable. There are 15 windows on the primary western façade of the building and six windows on the secondary façade which is set further back from the property line which do not equate to 45 rooms. There are no windows (only two doors) on the western façade of the penthouse. It is unclear which rooms the commenter is referencing. Nevertheless, economic issues are not the purview of CEQA (Refer to Response H.16). Since the comment does not identify any new or more severe impacts, no further action is necessary. Refer to Response H.25 for a discussion of the western façade.

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.48: It must be said again that this significant impact should have been included in the SEIR with a detailed study and an accurate depiction of this impact and views of the sign. The benefits of the Reduced Massing and Height Alternative should also have been discussed in the Alternatives section of the SEIR. Mitigation Measures should have been included as well. As such, the SEIR is not complete.

Response H.48: As stated in Responses H.10, based on the findings of the Draft SEIR and Initial Study, the proposed project would have no project level impacts that

would require preparation of a full EIR. Furthermore, the Alternatives analysis in the Draft SEIR did include a Reduced Massing and Height Alternative. Refer to Responses H.14 and H.15 regarding the alternatives. In addition, the project did include mitigation measures and conditions to reduce the project's impact to less than significant. It should be noted that the Initial Study of the Draft SEIR disclosed potential impacts to be construction related and mitigation measures were identified to reduce those impacts.

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.49: Noise and Vibration

Significant construction-related and long-term noise would be generated by the proposed project; however, the noise section of the Initial Study does not reflect this. Page 109 of the Initial Study states that "Similar to the site development evaluated in the Downtown Strategy 2040 FEIR and the General Plan FEIR (as amended), the proposed project, by itself, would result in less than significant noise and vibration impacts, as described below." The section below then states that the project would result in noise in excess of City and other applicable agency's standards. This is a conflicting statement that must be clarified.

As stated on page 6 of the Noise Assessment (Appendix F), the adjacent land uses are sensitive receptors; therefore, impacts must be carefully determined and mitigation must result in reduced noise levels. Standard Permit Conditions on page 112 of the Initial Study include construction from 7 AM to 7 PM. This is an excessively long day for residents and hotel patrons to withstand construction noise – especially when it is right outside their windows and balconies, which will be rendered useless. In fact, the Air Quality Assessment (Appendix B) modeled air quality emissions for the time period of 7 AM to 4 PM. This reduced construction period should be mandated for this project, as well as a prohibition on construction on weekends or holidays observed by the City of San José.

Response H.49: The project has completed a noise and vibration analysis and has been included in Appendix F of the Draft SEIR. The analysis includes operation and construction noise and vibration. The sentence the commenter refers to is a statement meant to summarize the conclusion of that analysis and preempt the detailed analysis in the following discussion of Section 4.13.3 of the Initial Study of the Draft SEIR. Section 4.13.3 of the Initial Study of the Draft SEIR continue to disclose reasons why the project would not result in significant impacts.

As clearly stated on page 112 of the Initial Study, "Construction activities shall be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence." The project applicant has not requested any modification to the construction hours allowed by the City. As a result, construction would only occur on weekdays between 7 AM and 7 PM, consistent with allowable construction hours as stated in the Municipal Code.

As noted in the Air Quality Assessment, the timeframe for the modeling of construction emissions is based on when the majority of construction activity would occur. It did not assume no construction would occur after 4 PM.

Therefore, the comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.50: The Standard Permit Conditions also require the construction of “solid plywood fences around construction sites and adjacent to operational businesses, residences, or other noise-sensitive land uses.” How will this be accomplished for a 19-story structure? If this cannot be implemented, then these measures are not feasible which is required by CEQA and the project would result in a significant unavoidable impact. In addition, with the small size of the project site, how will noise-generating equipment be located far away from the adjoining sensitive land uses and enclosed in noise barriers while construction occurs. Again, if these conditions cannot be implemented effectively, they are not proper mitigation measures under CEQA – whether impacts are temporary or not.

Response H.50: As with all high-rise projects downtown, the plywood fencing would be located along the perimeter of the project site, at the ground level. With regard to the location of noise-generating equipment, the measure does not state that “noise-generating equipment be located far away from the adjoining sensitive land uses and enclosed in noise barriers while construction occurs.” The measure specifically says “Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.” Furthermore, the Downtown Strategy 2040 EIR concluded implementation of these measures would be sufficient to reduce impacts on adjacent sensitive receptors, and there is nothing unusual about the project location that there is adjacent housing and hotel uses. In addition, the noise assessment prepared for the project provides the substantial evidence that the City's noise standards and policies would reduce the temporary construction noise to less than significance.

Therefore, the comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.51: The mitigation measures MM NOI-1.1-1.3 are for vibration impacts and are mislabeled. They are also different between the Initial Study, SEIR, and Supplemental Historic Resources Assessment. MM NOI-1.3 of the Initial Study (which should be labeled MM NOI-2.3) should be identical to MM NOI-2-3 of the SEIR which should also be identical to the mitigation measures in the Historic Resources Assessment. Where different, the most restrictive and comprehensive measures must be included in the project and Mitigation Monitoring and Reporting Program (“MMRP”) to be completed for the project. If these measures are not clearly stated in the

MMRP with the entity responsible for their implementation accurately identified, the project will definitely result in significant unavoidable project-specific impacts NOT previously identified.

Response H.51: The mitigation measures have been renumbered as indicated by the comment. Refer to the proposed text amendments in this FEIR.

The mitigation measures in the noise discussion are consistent with the vibration measures required by the City for many downtown projects. The mitigation measures in the cultural resources section provide additional measures specific to the potential impact to a historic resource. All the measures included in the Draft SEIR (which includes the Initial Study) are required to be implemented.

The historic assessment offers four recommendations: 1) an existing conditions survey by a qualified historian prior to construction, 2) preparation and implementation of a Historic Resources Protection Plan, 3) periodic site visits by a historic architect to monitor the condition of the De Anza Hotel, and 4) requiring the project applicant to repair any damage to the De Anza Hotel caused by construction of the project consistent with the Secretary of the Interior's Standards. These recommendations are consistent with the detailed mitigation measures included in the Draft SEIR. These measures are incorporated in a Mitigation Monitoring and Reporting Program (MMRP) and will be implemented, as applicable, for the project.

The change in the numbering does not present new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.52: Noise impacts are also not evaluated in terms of effects on the Hotel De Anza, particularly during construction. Two years of construction with heavy financial losses would be devastating for Hotel De Anza and inconsistent with the Downtown Strategy 2040 and Envision San José 2040 General Plan goals. In the long term, all rooms on the west side of the structure with up to 56 windows and the penthouse would be affected by the rooftop bar and/or penthouse noise.

Response H.52: Refer to Response H.47 regarding operation of the De Anza Hotel.

As discussed on page 110 of the Initial Study, the noise assessment specifically modeled the noise that would result from the roof top bar/restaurant and found that the roof top bar/restaurant and adjacent patio would have no measurable increase on ambient noise levels in the project area. Therefore, the Draft SEIR concluded a less than significant impact for both the De Anza Hotel and the Axis Tower. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.53: The Historic Resources Assessment requires that the Historical Resources Protection Plan ("HRRP") include a reconnaissance and discussion of other historic structures in the

project vicinity. This evaluation is missing from the mitigation measures in the SEIR and should be included to understand the context and far-reaching impacts of damage to the Hotel De Anza.

Response H.53: On Page 21 of the Historic Resource Assessment (Appendix C of the Draft SEIR) the consultant recommends the HHRP to include, “construction controls for activity near historic resources, monitoring, during construction, and repair of any damage to character defining features of the De Anza Hotel and, perhaps, the three landmarked buildings identified as a grouping of commercial buildings on West Santa Clara Street, the Luis Maria Peralta Adobe, and/or the Fallon Residence.” As noted on page 27 of the Draft SEIR, the De Anza Hotel is the only historic resource within 200 feet of the project site.

There is no correlation between potential impacts to other historic buildings from construction vibration and the potential impacts to the De Anza Hotel. Table 4.12-3 of the Initial Study (Appendix A of the Draft SEIR) shows that at 60 feet, no vibratory construction equipment would exceed the City’s historic building vibration threshold of 0.08. A vibratory roller could generate vibration levels equal to 0.080 at 60 feet. Because vibration levels diminish over distance, common sense dictates that any historic building more than 60 feet from the project site would not experience vibration levels in excess of the City’s threshold. As there are no other historic buildings within 200 feet of the project site, the recommendation by the historic consultant that evaluation of other historic properties in the project vicinity be completed is not necessary.

Furthermore, as disclosed in the Initial Study and the Draft SEIR, the potential impacts were identified and mitigation measures are required for all construction phases. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.54: The discussion of noise to be generated by the hotel’s rooftop bar is not adequate in either the Initial Study or Appendix F. Neither document has a rooftop plan to show the configuration or true location of the bar and information regarding the bar is only provided in the noise report and not in either the Initial Study or SEIR. The noise report states:

“The rooftop bar would have a maximum occupancy of 135 people, with hours of operation from 4:00 pm to 12:00 pm. The venue does not propose any live music. An open terrace is proposed along the western portion of the rooftop, wrapping around to the south. The eastern portion of the bar/restaurant would be enclosed and would not be anticipated to generate noise that is audible outside of the building structure. The restaurant structure on the eastern portion of the rooftop would also provide substantial acoustical shielding from rooftop terrace activities to receptors to the east (Hotel De Anza).”

This information should have been in the project description of both environmental documents. It is also confusing. What is on the eastern portion of roof – a restaurant or a bar? While the eastern portion may be enclosed, noise would emanate from the open areas – especially when the Hotel De

Anza would long be 11-13 horizontal feet away. The penthouse hotel room on the top floor of the Hotel De Anza has an open patio that must also be shielded from noise generated at the top of the proposed hotel. The western portion of the bar must also be enclosed to avoid noise impacts to residents of the Axis units and their balconies which will be must closer to the bar. In addition, the privacy impacts to Axis residents and Hotel De Anza guests, and safety impacts to patrons drinking at 225 feet at an open-air bar are not described.

Response H.54: Page 5 Section 1.6.1 of the Draft SEIR (Project Description) notes that restaurants and bars are proposed on both the ground floor and the 19th floor (meaning the rooftop). Section 1.6.2 notes that the “bar would be enclosed and would provide access to an open-air patio. The bar would have a maximum occupancy of 135 people and is proposed to operate from 4:00 PM to midnight.” This information is also included in the Project Description on page 8 of the Initial Study. While no floor plan is provided for the roof top bar in the Draft SEIR, the area is clearly shown on the elevations, particularly Figure 3.0-4 which shows the enclosed bar/restaurant space and open patio on the western end of the building. The additional project plans on file with the City also show the configuration of the roof top bar/restaurant.

The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.55: The report and analysis depend on an ambient noise level of 65 dBA. This may be the noise level at the ground level, but at 225 feet at the top of the structure, it can only be expected that noise would be less. In addition, the noise modeled to be generated by the bar appear to be much closer in characteristics to a restaurant, not an open bar where music, even if not live, would permeate. Therefore, this bar should be enclosed with no windows on the northern side of the building.

Response H.55: When noise measurements are taken, they are taken from a height of approximately 12 feet to represent the second floor of a building. For traffic noise, this is the loudest floor. Traffic noise decreases as you go higher in the building. Aircraft noise is calculated using a computer model. A location identified at a 65 dBA CNEL noise level would experience somewhat higher noise levels on the upper floors of a building compared to the lower floors because of proximity to the noise source.¹ The noise level for the project site used to assess the rooftop patio and bar/restaurant is based on the noise contours for the Mineta San José international airport. Contrary to the commenters opinion, the ambient exterior noise level at the upper floors of the Axis Tower would likely be higher than 65 dBA CNEL.

The northern façade of the rooftop bar and deck are glass and there are no operable windows on the north façade of the roof top bar/restaurant. The comment does not

¹ Personal Communication, Dana Lodico, PE, INCE Bd. Cert., Illingworth & Rodkin – October 22, 2019

provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.56: The windows of the Hotel De Anza have not been replaced for many years and can be opened. The noise and shading generate by the proposed project would result in fewer rooms being booked and would be financially devastating. This financial ruin could eliminate the ability of the hotel to survive – no matter who owns it. This devastating conclusion would eliminate the ability of the building to continue to be a hotel – its only use since it was constructed.

This would affect the historic use of the Hotel De Anza as a hotel, which contributes to the historic integrity and physical characteristics that convey its historical significance and justify its inclusion in the California Registers of Historic Resources. This is a significant impact under CEQA that was not analyzed or even mentioned in either the Initial Study or SEIR. The SEIR is therefore inadequate under CEQA.

Response H.56: Refer to Response H.47 regarding operation and economic viability of the De Anza Hotel.

Comment H.57: Transportation

The proposed project includes up to 272 hotel rooms along with restaurants and bars without including any on-site parking. The traffic analysis (Appendix G1) states that “the project proposes a valet drop-off/pick-up area and one loading area driveway along Almaden Boulevard.” (page 3 and Figure 4), yet the project description also includes drop-off/pick-up space for three vehicles on W. Santa Clara Street. The local traffic operations analysis (the LTA) therefore does not include an evaluation of the additional three loading spaces on W. Santa Clara, nor do the project plans. This results in a significant omission related to traffic operations, as described below.

Response H.57: As described in the LTA, the Draft SEIR, and Council Policy 5-1, Response F.1, and Response H.2, the local transportation assessment (LTA) is an operational assessment provided for informational purposes and is not intended or used for the assessment of traffic related impacts under CEQA. The LTA does provide necessary information to address impacts to bicycle, pedestrian, and transit facilities. Traffic impacts under CEQA are addressed using Vehicle Miles Traveled, consistent with state law.

The LTA, based on the original proposal of two valet parking spaces, an additional valet parking analysis, and peer review of the valet parking requirements determined that approximately 10 valet parking spaces would be required as discussed on page 137 of the Initial Study in relation to traffic hazards. The project cannot accommodate 10 valet spaces, but it was determined that having an adequate number of valet attendants would allow for a reduction in valet spaces. Based on this analysis, the City and project applicant considered three additional valet parking spaces on Santa Clara Street and a condition of project approval to provide 10 parking attendants. The City completed additional review of the five valet parking spaces (City of San José Public Works Memo), which is included in Appendix G1 of the Draft SEIR along with the

LTA, Valet Area Analysis, and Valet Area Analysis Peer Review. The final Valet Operations Memo is provided in Appendix G2. All these reports are provided to show the evolution of the valet parking plan for the project.

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.58: Impacts to pedestrians and bicyclists on W. Santa Clara Street has not been completed as part of the analysis required by the Downtown Strategy 2040. In fact, the three loading zones on W. Santa Clara Street are not included in the traffic operations study, nor are they on the project plans. Pity the bicyclist riding westbound on W. Santa Clara Street in a supposed bike lane between the parked vehicles and vehicular traffic along the major thoroughfare only to get struck by either a car driving off after pick-up or drop-off or by a car door.

In addition, the evaluation of the individual and combined operation of all the loading areas and the loading dock in the busy AM and PM peak hours has not been completed. Therefore, the Initial Study and SEIR are inadequate and must be revised to include these potentially significant project-level impacts.

Response H.58: The Local Transportation Analysis (LTA) describes the bike facilities located in the vicinity of the project site which supports multimodal access to the project site. Class II bicycle facilities are provided on Santa Clara Street west of Notre Dame Avenue, the extent of San Fernando Street, Park Avenue west of South Market Street, and Almaden Boulevard south of West St. John Street. First Street and Second Street, south of St. John Street, are designated Class III bike paths and provide sharrow or shared lane markings, St. John Street east of Autumn Street and San Carlos Street east of Woz Way are also designated Class III bikeways and provide sharrow or shared lane markings. Additionally, Guadalupe River Park Trail, a Class I pedestrian and bicycle trail, is accessible west of West Santa Clara Street and North Almaden Boulevard. It is speculative to assume accidents of the

The operation, site plan, and circulation of the project are required to be reviewed by staff for compliance to City's standards and policies. Any conditions necessary to meet City requirements would be made conditions of approval. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.59: It is evident that the entire block of N. Almaden Blvd. from Santa Clara Street to Carlisle Street, in front of the Axis Tower pedestrian and vehicle entrances (as well as the Comerica Building entrances), will be adversely affected. This will be exacerbated if N. Almaden Blvd. is converted to a two-way street. An operational study of safety and access impacts to residents of Axis given this proposed unsafe condition is required, under both one-way and a two-way street scenario. This was not included in the Initial Study or the SEIR, rendering them inadequate.

Response H.59: Refer to Response H.4 regarding any future roadway improvements to the North Almaden Boulevard. Sidewalks are provided along the project frontages along West Santa Clara street and Almaden Boulevard for pedestrian connectivity and pedestrian signal heads are available at the intersections of West Santa Clara Street with Almaden Boulevard and Notre Dame Avenue. As part of the project conditions of approval, the project is required to provide appropriate visible and/or audible warning signals at the loading space driveway to alert pedestrians and bicyclists of vehicles exiting the driveway. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.60: Section 20.90.420 of Title 20 of the Municipal Code state that off-street loading spaces “must be not less than 10 feet wide, 30 feet long, and 15 feet high exclusive of driveways for ingress and egress and maneuvering areas”. It is not clear from the documents provided as to whether the areas shown on the most recent plans meet these important requirements. In addition, the operations of how the proposed loading dock and vehicle loading zones proposed on N. Almaden Blvd. would interact with the existing Axis driveway on the south side of the Axis Tower is not provided. This driveway is used for access to the underground Axis parking lot and is also a delivery loading zone for the Axis Tower.

Response H.60: The project is subject to the City’s review for consistency with policies and codes pertaining to design and operations. The latest plan set is included in this document for reference. At the time of Draft SEIR completion, the design of the project was reviewed for operational purposes under the LTA and the project has included the recommendations of warning signals for loading space. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.61: The omission of the valet spaces on W. Santa Clara Street also results in there being no discussion in the traffic analysis of how operations of the special curb zones in front of the Hotel De Anza will interact with the valet zone west of their location. In addition, there was no analysis of how VTA transit on W. Santa Clara Street will be affected by the three new vehicles parked within a few feet of an existing VTA bus stop at the northwest corner of the intersection with N. Almaden Avenue. This analysis must be revised and included in the SEIR – not just the Initial Study.

Response H.61: Refer to Response H.60. As part of the LTA (Appendix G1 of the SEIR), valet parking was analyzed and concluded to be adequate for operation of the project. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.62: The garbage dumpsters for Axis are located in this area, as shown below. The addition of garbage dumpsters from the hotel, which are recommended to be wheeled out to the loading dock entrance on trash pick-up days, would render the loading dock unusable on garbage pick-up days. What the report fails to mention is that garbage and recycling pick-ups occur 5 days a week!

The Axis typically has between 2 and 8 large containers being collected Monday through Friday each week. Before pick-up, each of those containers must be wheeled from the Axis driveway into the street, then backed up to the curb. The process is reversed following pick-up. It is difficult to imagine that a hotel with 272 rooms, 2 restaurants and 2 bars will have less garbage and recycling than the Axis Tower. In addition, the Comerica building also wheels its garbage and recycling containers out on N. Almaden Blvd., across from the project site. (See Appendix, Photos 1 through 6.) The impacts associated with the Axis and Comerica building garbage/recycling dumpsters (including wheeling the garbage/recycling bins out into the street, the “parking” of garbage/recycling collection bins awaiting collection, and collection truck pick-up activities) were not analyzed in the SEIR, the Initial Study or the traffic operations report, which is a serious flaw.

Response H.62: Consistent with the recommendations in the LTA (Appendix G1 of the SEIR), a condition to restrict truck access to the loading spaces during garbage pick-up days to provide space for waste bins at the loading dock entrance would be part of the project. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.63: Even if the hotel dumpsters do not interfere with the hotel loading area, it is completely unrealistic to think that the one loading space will adequately serve the 272-room hotel, including the 2 restaurants and 2 bars. The loading zone for the Comerica building (which only has offices) is busy all day long, often with 2 or 3 trucks, delivery vehicles, service vehicles or Uber/Lyft drivers parked at any one time. When they run out of space there, they park in the metered spaces, or sometimes try to park in the Axis Tower driveway/service area. (See Appendix, Photos 7 through 10.)

The Axis service parking area is also busy all day long, with a wide variety of cleaners, delivery vans, plumbers, electricians, mail trucks, pool cleaners, landscapers, etc. all parking in that area, all of which are necessary for the normal day-to-day operation of the Axis Tower. That area is also often utilized by utility crews who have no other practical place to park, although their public utility easement does not extend to the driveway. (See Appendix, Photo 11.) Nothing in the traffic operations plan, the Initial Study or the SEIR adequately addresses the reality of the types, numbers, and frequency of vehicles that will need to park close to the hotel in order to properly operate the hotel. The Axis will not allow hotel parking in their driveway or service parking area.

Response H.63: As the part of the LTA (Appendix G1 of the Draft SEIR), loading operations were reviewed and concluded to be adequate for the project and would not create adverse effects to the environment. Axis loading operations and the prohibited use of Axis driveway or service parking area for the project are acknowledged. The comment does not provide new information that would change the project’s impact or

provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.64: The traffic operations report (LTA) states on page 12 the “Appropriate visible and/or audible warning signals should be provided at the loading space driveway to alert pedestrians and bicyclists of vehicles exiting the driveway.” This mitigation measure is not included in the Initial Study or SEIR; therefore, the project would result in significant impacts to pedestrian and bicycle safety. This is a violation of CEQA, the City’s General Plan, and the Downtown Strategy EIR.

Response H.64: As stated in Response B.2, pursuant to the City Council Policy 5-1, as the project is located within the Downtown Core and is not located within an area that has the potential to exceed acceptable VMT levels and would not require additional VMT analysis. As part of the project review, the project has completed a Local Transportation Analysis (LTA) for informational purposes pertaining to circulation operations of the project. The LTA (Appendix G1 of the Draft SEIR) states that “Appropriate visible and/or audible warning signals should be provided at the loading space driveway to alert pedestrians and bicyclists of vehicles exiting the driveway” and it is not consider a mitigation measure under CEQA. This is an operational issue of the project. The City can, as a condition of approval, require a warning signal for the loading zone driveway. As disclosed in the Department of Public Works Transportation Operations Analysis memorandum in Appendix G1, this is a condition of approval for the project. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.65: The traffic analysis in the Initial Study concludes that the project is not inconsistent with General Plan policies. Two policies that are directly relevant are the following from the General Plan:

- TR-1.5: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.
- TR1.6: Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.

The evaluation of traffic impacts and the safety of pedestrians and bicyclists should have been included in the SEIR with a robust and detailed evaluation of these impacts. The topic should have been analyzed at a project-level as required by the Downtown Strategy 2040 and its FEIR. For these reasons and those described above, the project is not consistent with General Plan policies.

Response H.65: As previously stated in Response B.2 and H.64 above, pursuant to City Council Policy 5-1 and state law, traffic impacts were addressed consistent with CEQA in the Downtown Strategy 2040 FEIR under VMT.

The project and the LTA were required to be review by Department of Transportation and Department of Public Works. Based on the professional analysis contained in the LTA and during plan review, the project would operate in a manner consistent with City requirements and conditions, as recommended by the departments, would be incorporated into the final permit. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.66: The project does not include any on-site parking and 41 parking spaces are expected to be provided at the public San Pedro Garage on N. San Pedro Street; however, the traffic operations report states that the “City will require that the project secure a 10-year lease for a minimum of 116 parking spaces at designated off-site parking facilities within walking distance of the project site.” This is not part of the project description. The traffic operations report assumed 330 rooms rather than the proposed 272, and led to a requirement of 116 spaces. At 272 rooms, a comparable ratio for parking would require 96 spaces, which are not part of the project description.

In addition, the project descriptions of the Initial Study and SEIR include a statement that parking would be provided at the City-owned garage “via a valet service and a parking agreement with the City of San Jose of up to 30 years.” So, in addition to not providing the required parking, it is unclear how long the agreement will be in place. The use of the term “up to” means the City can require the parking be provided for even less than 10 years. This is a violation of CEQA, General Plan policies, and the Downtown Strategy EIR.

Response H.66: Parking is not a CEQA issue, but an operational issue and the discussion in the Initial Study is provided for informational purposes.

As explained on page 139 of the Initial Study, based on the City of San José Downtown Zoning Regulations (Municipal Code 20.70.100), the project is required to provide 0.35 off-street parking spaces per hotel room which equates to 96 required spaces. Since the completion of the LTA, a TDM plan has been proposed as part of the project. Pursuant to the City Municipal Code, the project is allowed a 50 percent reduction in parking with a TDM plan and an additional 15 percent reduction per the downtown parking reduction allowance. With these allowed reductions, the required parking spaces would be reduced to 41 spaces. The project would provide the 41 required off-street guest parking spaces in the existing City-owned San Pedro Market Garage through a Parking Agreement with the City for up 10 years with two renewals for a total of approximately 30 years.

The project would meet the City’s requirements of 41 spaces. The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. City staff to explain the terms of the Parking Agreement.

Comment H.67: There is also no inclusion of what the TDM measures would be for the project, yet these measures are relied upon to reduce traffic operational impacts to a less than significant level.

There is also no description of how many employees will be working at the hotel at any one time, and where those employees would park. This must be included in the project description now so that the public and decision makers have the information needed to make an informed decision.

Response H.67: As discussed on page 138 of the Initial Study, “Since the completion of the transportation analysis, the project has proposed a TDM plan that is under review for the purposes of the parking reduction requirements. The proposed TDM plan includes some of the same measures as the recommendations in the LTA including free VTA SmartPass for employees and an on-site TDM coordinator. The project also proposes employee parking incentives and annual monitoring of the plan.”

As the TDM is for a parking reduction pursuant to the City Municipal Code, the comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. The TDM plan has been included in this First Amendment as part of the attachments for informational purposes.

Comment H.68: The vehicle queuing analysis demonstrates that the eastbound left-turn lane onto Notre Dame Avenue from W. Santa Clara Street would be longer in the AM and PM peak hours as a result of the proposed project. This potentially could have significant negative impacts on the Hotel De Anza and their valet operations. In addition, it should be noted that the Hotel De Anza has 12-15 loading/valet parking spaces for their 100 rooms! The proposed project is apparently getting away with only 5, which will create significant impacts to vehicle and truck operations and pedestrian and bicyclist safety.

Response H.68: As previously stated in Response B.2, F.1, and H.2, H.64, and H.65 above, pursuant to City Council Policy 5-1 and state law, traffic impacts were addressed consistent with CEQA in the Downtown Strategy 2040 FEIR under VMT.

The queuing analysis shows that the project is expected to increase the queue for the eastbound left-turn movement by only two vehicles during the AM and PM peak hours. Providing additional queue and storage capacity for the movement is not feasible since the existing eastbound left-turn lane already extends to the upstream intersection at Almaden Boulevard and Santa Clara Street. Additionally, installing a third eastbound lane at the west leg of the Almaden Boulevard/Santa Clara Street intersection would require shortening of an upstream left-turn pocket along with narrowing of sidewalks and/or removal of the bike lanes which does not support connectivity for alternative modes of transportation within the Downtown/General Plan. Furthermore, the project’s proximity to major transit services and bicycle facilities along Santa Clara Street and Almaden Boulevard will provide for and encourage the use of multi-modal travel options and reduce the use of single-occupant automobile travel.

Comment H.69: In addition, the existing loading zone on W. Santa Clara Street in front of the Hotel De Anza is utilized by tour buses and is not used as a passenger pick-up/drop-off area. (See

Appendix Photo 12.) It is assumed that the rest of the curb to N. Almaden Boulevard is painted red for a reason. Now the proposed project intends to replace the red curb with valet loading spaces which will create a traffic operations disaster and because the traffic operations study does not include these spaces on W. Santa Clara Street, there is no project-level operational analysis as required by the Downtown Strategy EIR.

Response H.69: Refer to Response H.60 and H.61.

Comment H.70: The traffic operations report states in its conclusions on page 19 that because the loading zone areas are on public streets (and it is assumed this is the case for W. Santa Clara Street, although no analysis was provided), the area will not be restricted to the use of only the hotel and may not be available for valet use at all times! Metered parking that is often occupied is located on the rest of the street. This only exemplifies the issues described throughout this letter and makes the case that the project cannot be implemented without resulting in significant operational impacts.

Response H.70: The LTA conclusion that the public right-of-way use is available for all public and is not restricted to specific projects is valid. In addition, the City can revoke or change public right-of-way parking/loading uses based on planned roadway network changes that support General Plan goals. The project has been reviewed by staff and conditions has been made as part of the project to ensure consistency with City's codes and policies. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.71: On page 136 of the Initial Study under "Site Access", there is a statement that "Since the completion of the transportation analysis, supplementary analysis was completed for additional valet parking. The project proposes a total of five valet parking spaces (two on Almaden Boulevard and three on Santa Clara Street). The additional valet spaces along Santa Clara Street would result in a change in trip assignment outlined in the LTA, but the additional trips on Santa Clara Street would be minimal and would not change the conclusions of the LTA." This information is not included in the traffic report (LTA) and there is no analysis of the three additional loading spaces; therefore, there is no indication that this project modification would not result in operational impacts, including impacts to transit. As described throughout this section, traffic operations will be different and much worse than what was analyzed in the LTA and it and the Initial Study must be revised and traffic must be included in the SEIR.

Response H.71: Prior to the completion of the Draft SEIR, the project proposed two valet spaces. As indicated in Appendix G1 of the Draft SEIR, Kimley-Horn and Associates, Inc., prepared a Valet Analysis (dated May 2, 2019) and determined additional spaces are ideal. The City required Hexagon Transportation Consultants, Inc. to provide a review of Kimley-Horn's assessment for concurrence (dated July 22, 2019). As a result of Hexagon's review, it was concluded that 10 valet spaces are optimal instead of five spaces as identified in Kimley-Horn's analysis. As the project cannot accommodate 10 spaces, five were proposed with adequate staff (Refer to Response H.74). The City then reconfirmed with the Transportation Engineer to understand the potential effects, if any, of the new proposed valet spaces on Santa Clara Street. The conclusion was that the additional valet parking would change the

trip patterns, but not substantially. The Draft SEIR will be revised to reference the supplemental valet analysis and conclusions of the analysis for Santa Clara Street. See Section 5.0 of this document for the proposed text amendment.

Comment H.72: The conclusions of the traffic operations report also includes the installation of lane delineators at the bike lane buffer along N. Almaden Boulevard, yet this is not included as a mitigation measure in the Initial Study and is only mentioned in the final paragraph of the Site Access section of the Initial Study. This important safety measure must be included as a mitigation measure and without it, impacts are significant. Including it as a mitigation measure will guarantee that it ends up in the MMRP for the project. In addition, the traffic operations report did not include the loading spaces on W. Santa Clara Street, so there is no assessment of impacts to this recommended bike lane buffer.

Response H.72: This is to restrict the vehicles in the valet parking area on Almaden Boulevard from making a diagonal movement (crossing the southbound thru lane, and bike lane) to go to the southbound right-turn lane. This is part of the conditions as disclosed in the Public Works Department transportation memo in Appendix G1 of the Draft SEIR. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.73: The Truck Access section of the Initial Study (page 137) describes the on-site loading space included in the project. This section does not explicitly state that this loading space is for trucks. With the chaos that is surely to occur as a result of the project, no other loading should occur in this short driveway.

Response H.73: As providing the one loading zone would meet the City's requirement for this development, the restriction request from the commenter is acknowledged. As part of the Site Plan of the project (provided as an attachment to this document), the loading zone is called out on Sheet A101. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.74: Valet Operations

Valet operations are a subset of Transportation, but such operations are so significant that they will affect almost every aspect of the Transportation analysis.

This section of the Initial Study states that the project requires 10 valet spaces based on the traffic operations report which assumed just two. Valet staff numbers are therefore increased to accommodate the fact that the project does not include enough loading spaces. Page 137 of the Initial Study states "Based on the LTA, additional valet parking analysis, and peer review for the valet parking requirements, it was estimated that approximate[ly] 10 valet spaces may be required. As the project may not be able to accommodate that many valet parking spaces, however, it was determined that adequate valet staff (three to four) allow for a reduction of valet spaces. Apparently, this

conclusion was based on personal communication with the traffic engineer (footnote 47) who completed the LTA. No discussion or analysis is provided to show how or why the consultant changed their conclusion. This must be discussed in the LTA, Initial Study, and SEIR.

Response H.74: Prior to the completion of the Draft SEIR, the project proposed two valet spaces. As indicated in Appendix G1 of the Draft SEIR, Kimley-Horn and Associates, Inc., prepared a Valet Analysis (dated May 2, 2019) and determined additional spaces are ideal. The City required Hexagon Transportation Consultants, Inc. to provide a review of Kimley-Horn’s assessment for concurrence (dated on July 22, 2019). As a result of Hexagon’s review, it was concluded that 10 valet spaces is optimal instead of five spaces as identified in Kimley-Horn’s analysis. However, the conclusion of Hexagon’s review states, “It is likely that the required number of valet spaces could be reduced if adequate valet staff and valet dwell time restrictions were implemented in the valet space area.”

Therefore, as the commenter has indicated, the Initial Study disclosed that as ten spaces are not feasible for the project, five were proposed. In order to assess the operational issue of five spaces, and pursuant to the review for “adequate valet staff,” the number of staff needed was explored. A communication with the traffic engineer concluded that the LTA analysis in Appendix G1 recommends three to four valet staff be present during the peak arrival and departure periods of the hotel (page 10 of the LTA in Appendix G1). The communication email has been included for reference in this document.

Furthermore, additional valet analysis was completed (Appendix G2 of the Draft SEIR). As the analysis was completed based on expert’s opinion and experience, the valet parking was deemed sufficient and meets City’s requirements.

The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.75: Other rules that are not identified as mitigation measures for this impact include not allowing vehicles to be retrieved in advance of guest being present at the valet area and excluding ride-hailing companies (Uber/Lyft, and, we assume, taxis, etc.) from utilizing the loading zones. How will these two measures that are being depended on to reduce the need for loading zones be enforced? They won’t be included in the MMRP for the project, so the entities responsible for enforcement of these measures have not been identified. This must be corrected. Will the ride-hailing companies exclude utilizing these spaces on their apps? How will those individual drivers be alerted to the fact that they can’t park there?

Experience shows that ride-hailing drivers usually don’t know the areas in which they are driving well and have no issues with double-parking, blocking traffic, parking in metered spaces without paying the meters, or using red zones to stop and either dropping off or picking up their rides. This will not only be a nightmare for traffic in the area, residents of the Axis Tower, and patrons of the Hotel De Anza, but it will be unsafe for pedestrians and bicyclists on both N. Almaden Boulevard

and W. Santa Clara Street. These significant impacts must be analyzed in the traffic operations report, Initial Study, and included in the SEIR.

Response H.75: As previously stated throughout this document, pursuant to City Council Policy 5-1 and state law, traffic impacts were addressed consistent with CEQA in the Downtown Strategy 2040 FEIR under VMT. There are no mitigation measures pertaining to transportation as the project is in compliance with City Council Policy 5-1.

The operation, site plan, and circulation of the project are required to be reviewed by staff for compliance to City's standards and policies. Any conditions necessary to meet City requirements would be made conditions of approval. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.76: It should also be noted that the Valet Operations memo prepared by Kimley-Horn on May 2, 2019 and included in Appendix G also does not include an analysis of vehicle loading spaces on W. Santa Clara Street. The only analysis that includes these spaces is the supplemental valet report also prepared by Kimley-Horn dated August 8, 2019 (Appendix G2). This analysis states that an additional loading space could be accommodated at the proposed truck access driveway. As previously mentioned, this should not be allowed so that trucks will not be backing up into the street with all the other traffic/parking that is not being accommodated.

Response H.76: As previously stated throughout this document, pursuant to City Council Policy 5-1 and state law, traffic impacts were addressed consistent with CEQA in the Downtown Strategy 2040 FEIR under VMT.

The operation, site plan, and circulation of the project are required to be reviewed by staff for compliance to City standards and policies. Any conditions necessary to meet City requirements would be made conditions of approval. The commenter's request for restrictions to the loading spaces is acknowledged. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.77: The drive routes to the garage from N. Almaden Boulevard and Santa Clara Street are shown traveling west on W. Santa Clara Street to Autumn Street and up to Julian Street. The report is correct that during events at SAP Center, Autumn Street is usually closed and traffic is very heavy. However, the report does not take into account the AM and PM peak hour traffic at many of the intersections that would be utilized to drive to the garage. For example, the intersection of Julian Street and the southbound on-ramp to SR-87 is so backed up in the PM peak hour, lanes of Julian Street are often blocked. There is no way driving this route could take three minutes.

As another example, when SAP Center has events, the PM peak hour traffic is so heavy that

southbound cars on N. Almaden Blvd. sometimes stack up all the way to W. St. John street, and the intersection at N. Almaden Blvd. and Santa Clara Street becomes a log jam of cars and pedestrians dangerously intersecting with each other. (See Appendix, Photos 13 through 15.) Since the SAP Center has about 150 events per year, many during weekdays, this will have a material effect on the valet operations. However, this intersection was not discussed in either the LTA or the valet operations analysis (and therefore not in the Initial Study or the SEIR).

Response H.77: As previously stated throughout this document, pursuant to City Council Policy 5-1 and state law, traffic impacts were addressed consistent with CEQA in the Downtown Strategy 2040 FEIR under VMT.

Queuing analyses are only utilized for left turn lanes. As there is no left turn allowed at the W. St. John/N. Almaden Boulevard intersection, no queuing analysis could be prepared. However, as mentioned above, consistent with Council Policy 5-1 and state law, level of service is no longer a metric San José utilizes to assess transportation impacts under CEQA.

The commenter's request for restrictions to the loading spaces are acknowledged. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.78: The supplemental valet report also states that "up to" 10 valet attendants would be required during both the AM and PM peak hours (page 5). It is unclear whether this means that 10 will be required, or some number less than 10. This is further confused by the fact that the Initial Study states that 3-4 valet staff will be adequate for five loading spaces. This is in direct conflict with the supplemental valet report. The Initial Study must be revised - especially since staff will have to drive to and run back from a parking structure that is almost ¼-mile away during the AM and PM peak hour in Downtown San Jose. The Initial Study conflicts with the conclusions of the traffic operations report (LTA), valet study, and its supplemental report. The document must be revised to reflect the conclusions of the Initial Study and a project-level traffic analysis must be included in the SEIR.

Response H.78: Refer to Responses H. 71 and H.74 for background information on valet parking and staffing requirements. While the traffic consultant concluded that three to four valet attendants would be sufficient for five valet parking spaces, the project proposes up to 10 valet attendants during both the AM and PM peak hours at maximum hotel occupancy (Appendix G2 of the Draft SEIR). The total number of valet attendants at any given time would be dependent on demand. This information is also provided in the project description on page 9 of the Initial Study and page 6 of the Draft SEIR.

Comment H.79: The Kimley Horn parking operations analysis refers to a draft City ordinance dating back to the days of Mayor Gonzales, that purportedly would establish Chapter 11.36 of the San Jose Municipal Code to provide regulations for on-street valet parking zones. That ordinance was never adopted, and is not pending as claimed. Rather, the relevant Ordinance is Chaptered in Part 4 of Title

11 of the municipal Code. Those Chapters provide that the Director of Planning may issue an on-street valet parking zone permit only if certain conditions are met, and only if the parking operations plan includes certain specified information. The valet operations analysis prepared by Kimley Horn is devoid of any discussion regarding the requirements of the actual Ordinance, and is missing most of the information that would be required before the Director could issue an on-street valet parking zone permit.

Response H.79: The commenter is correct in that the code referenced in the valet operational study has not been approved. However, the existing LTA was completed according to the existing City code and ordinance. As previously stated in Response H.70, the public right-of-way is available for all public and is not restricted to specific projects. In addition, the City can revoke or change public right-of-way parking/loading uses based on planned roadway network changes that support General Plan goals. The project has been reviewed by staff and conditions has been made as part of the project to ensure consistency with City's codes and policies.

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment H.80: Finally, nothing in any of the reviewed documents indicates how the City will enforce the requirement that the hotel have any specific number of valet attendants. What documents can the City enter into with the applicant, that will require the hotel operator to staff the valet operation as promised? What will be the consequences to the operator and/or the applicant/owner if the requirements are not met? Assessing a fine or revoking the valet parking zone permit certainly will not solve the problem (and the City certainly isn't going to step in to provide valet attendants if needed), but what enforcement alternatives does the City have? If the City has no practical legal mechanism for enforcing such an important mitigation measure, then it should not be counted as a mitigation measure.

Response H.80: The condition for appropriate staffing is part of the Site Development Permit. Any violation of conditions are subject to Code Enforcement and permits can be revoked if conditions are violated.

Comment H.81: Mandatory Findings of Significance

Under the discussion of Impact MFS-1, it is stated that "The Project would have a significant land use impact from increased shading as discussed in the Supplemental EIR". This subject was not discussed in the Focused SEIR for the project – but, it should have been! Shading impacts to the Axis Tower, Hotel De Anza, and the Guadalupe River Park will be significant and damaging to residents and wildlife. This impact should have been included in the SEIR as this section seems to state.

Response H.81: The analysis in the Initial Study (Section 4.11) shows that the project would not have a shading impact. The text under MFS-1 is an error and will be revised. Refer to the text amendments in this Final EIR for the corrected language. Furthermore, refer to Response H.46.

The text revision to this section does not result additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. Therefore, the conclusion of the Initial Study, Draft SEIR, and associated appendices remains unchanged.

Comment H.82: Under the discussion of Impact MFS-3, it is states that “The project proposes to redevelop an infill location in downtown San José and it is anticipated that short-term effects resulting from construction would be substantially off-set by meeting the long-term environmental goals (such as increased building energy efficiency) for this downtown site.” The project is not the redevelopment of an existing structure. Nothing is located on the site and developing the site with the proposed project definitely results in more than just significant environmental effects related to construction. The project DOES have the potential to active short-term environmental goals to the disadvantage of long-term environmental goals. The statement is therefore false and results in inadequate review in accordance with the CEQA Guidelines.

Response H.82: The commenter is correct that the project would not replace existing development. Refer to the text amendments in this Final EIR for the corrected language. The text revision to this section does not require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. Therefore, the conclusion of the Initial Study, Draft SEIR, and associated appendices remains unchanged.

I. Hoge Fenton Attorneys (dated 10.02.19)

Comment I.1: This comment letter prepared on behalf of ML San José Holding, LLC, the owner of the Hotel De Anza at 233 W. Santa Clara Street in Downtown San José (“Comment Letter”). This Comment Letter contains the substantial contributions of Jodi Starbird of Starbird Consulting. The Hotel De Anza and the approximately 700 residents of the Axis Residential Tower (“Axis Tower”) at 38 N. Almaden Boulevard collectively engaged Ms. Starbird.

Timeline of Previous Comments

The Axis Homeowners Association submitted two letters dated January 25, 2019 and February 14, 2019. We prepared a letter dated October 31, 2018 on behalf of the owners of Hotel De Anza.

The Axis Homeowners Association and the owners of the Hotel De Anza submitted letters regarding the project as part of the environmental review for the Downtown Strategy EIR certified in December 2018. Those letters, the NOP letters, and all other correspondence between the two affected entities and the City of San Jose are hereby incorporated by reference into this Comment Letter. Copies are attached. Therefore, any future legal action will draw upon all letters and correspondence submitted.

Response I.1: This comment is an introduction and background information that summarizes comment letters that has been submitted during the CEQA review process. No specific details, comments or questions pertaining to CEQA analysis are presented and therefore, does not require additional responses.

Comment I.2: I. The Land Use Analysis falls to provide adequate mitigation measures from significant impacts that will put the project in conflict with a future BART station and will cause the Hotel De Anza to lose millions of dollars.

Eventual BART Station

In the City's letter to the applicant dated October 1, 2018, the City states that the project may be in conflict with a future underground BART station to be constructed near the project. The impact of this known construction is not described in any section of either the Initial Study or SEIR. The final report must analyze the impact of BART.

Response I.2: The letter’s intent is to indicate the potential to coordinate and consider the future BART project. The project, during the development period, has been coordinated with the Valley Transportation Authority (VTA) regarding the development of the proposed project. As previously stated in Responses B.4 and B.6, the project would coordinate with the appropriate entity during the construction phases.

Comment I.3: Shading

The shading of the Hotel De Anza by the project will affect Hotel De Anza's ability to rent rooms on its west side. There are approximately 45 rooms that would be virtually unbookable. These 45 rooms have 56 windows that open. Guests will be unable to use these windows during construction and the shadowing will negatively impact guest experience. Furthermore, it is unlikely that these windows will survive the noise and vibration of construction nor provide sufficient sound deadening once the

project is occupied. Hotel De Anza estimates that with an average room rate of \$230.00 per night and an 80% occupancy rate, the project will directly cause a loss of \$8,280 per night or approximately \$3,000,000 per year post construction. During construction the loss of revenue is estimated to be much higher (\$5.5M or essentially 80% of the hotels current room revenue), as the noise/ construction would impact the entire hotel. Hotel De Anza is a union hotel and carries union operating cost. The financial loss during construction and post construction would be devastating and essentially erode the entire hotel's profit and its value. The hotel would be forced to shut down. To render existing hotel rooms in the Downtown as un-bookable is not consistent with the goals of the Downtown Strategy 2040. Further, if Hotel De Anza is forced to close it would compromise the historic designation of the building. The loss of \$3,000,000 of revenue annual translates into the loss of operational value in the Hotel De Anza. Such a loss of value would also endanger the Hotel De Anza's ability to finance improvements thereby further compromising its historic designation.

The SEIR analysis is not complete because these significant issues were not analyzed.

Response I.3: As previously discussed in H.16, H.46, and H.47, the project does not result in shading impacts to resources that are deemed as thresholds under the Downtown Strategy 2040 FEIR. Furthermore, economic issues are not the purview of CEQA.

Consistent with the mitigation measures identified in the Cultural Resources and Noise sections of the Draft SEIR, physical damage to the De Anza Hotel resulting directly from construction activities on the project site would be repaired consistent with the Secretary of the Interior's Standards. The current condition of the windows in the De Anza Hotel is an existing condition and not a condition resulting from the project. As required by CEQA, the project must address noise generated by the project and any associated impacts on the surrounding environment which is based on ambient exterior noise levels. Under CEQA, the project cannot be accountable for the existing condition of the windows in the De Anza Hotel.

Comment I.4: II. The Initial Study fails to mitigate several significant transportation and circulation impacts caused by the project.

Lack of Parking

The proposed project includes up to 272 hotel rooms along with restaurants and bars without including any on-site parking. Instead of on-site parking, the project expects 41 parking spaces to be provided at the city-owned San Pedro Garage on N. San Pedro Street. The traffic operations report states that the "City will require that the project secure a 10-year lease for a minimum of 116 parking spaces at designated off-site parking facilities within walking distance of the project site." There is no discussion of what will occur after that 10-year period.

The project descriptions of the Initial Study and SEIR include a statement that parking would be provided at the City-owned garage "via a valet service and a parking agreement with the City of San Jose of up to 30 years." This statement blatantly contradicts the previous statement regarding a 10-year lease. This is a violation of CEQA, General Plan policies, and the Downtown Strategy EIR.

Finally, there is also no description of where employees would park. This must be included in the project description now so that the public and decision makers have the information needed to make an informed decision.

Response I.4: As stated in Response H.66 above, based on the City of San José Downtown Zoning Regulations (Municipal Code 20.70.100), the project is required to provide 0.35 off-street parking space per hotel room which equates to 96 required spaces. Since the completion of the LTA, a TDM plan has been proposed as part of the project. Pursuant to the City Municipal Code, an allowance of 50 percent reduction in parking with a TDM plan and an additional 15 percent reduction per the downtown parking reduction allowance. With these allowed reductions, the required parking spaces would be reduced to 41 spaces. The project would provide the 41 required off-street guest parking spaces in the existing City-owned San Pedro Market Garage through a Parking Agreement with the City for up 10 years with two renewals for a total of approximately 30 years. Refer to Responses H.66 and H.67 for more responses to project required parking. The parking agreement is also available as part of this document.

Comment I.5: Circulation

The completion of the project will bring hundreds more daily visitors to the intersection of the project, but the circulation issues associated with this impact are not analyzed at all. There was no analysis of how VTA transit on W. Santa Clara Street will be affected by the three new vehicles parked within a few feet of an existing VTA bus stop. This analysis must be revised and included in the SEIR - not just the Initial Study.

The traffic analysis (Appendix G1) states that "the project proposes a valet drop-off/pick-up area and one loading area driveway along Almaden Boulevard." (page 3 and Figure 4). In contradiction, the project description also includes drop-off/pick-up space for three vehicles on W. Santa Clara Street. The operations analysis therefore, does not include an evaluation of the additional three loading spaces on W. Santa Clara, nor do the project plans. This results in a significant omission related to traffic operations.

The traffic operations report states in its conclusion on page 19 that because the loading zone areas are on public streets, the area will not be restricted to the use of only the hotel and may not be available for valet use at all times. This only exemplifies that the project is not implementable without resulting in significant operational impacts on circulation within Downtown San Jose.

The drive routes to the garage from N. Almaden Boulevard and Santa Clara Street are shown traveling west on W. Santa Clara Street to Autumn Street and then to Julian Street. The report correctly observes that during events at SAP Center, Autumn Street is usually closed and traffic is very heavy. However, the report does not take into account the AM and PM peak hour traffic at many of the intersections that would be used to drive to the garage. For example, the intersection of Julian Street and the southbound on-ramp to SR-87 is so backed up in the PM peak hour, lanes of Julian Street are often blocked. It seems inconceivable that driving this route could take the stated three minutes.

Response I.5: As previously stated throughout responses in this document, the City no longer uses level of service at individual intersections as the metric to address traffic impacts from new development projects. Consistent with Senate Bill 743, the City uses vehicle miles traveled (VMT) as the metric to assess traffic impacts under the California Environmental Quality Act (City Council Policy 5-1). As a result, there would have been no specific intersection analyses in the vicinity of the project site in the Downtown Strategy 2040 Final EIR. Pursuant to the City Council Policy 5-1, the project is located within the Downtown Core and is not located within an area that has the potential to exceed acceptable VMT levels and would not require additional VMT analysis. The threshold of significance to address transportation impacts is VMT, consistent with state law, gridlock traffic and intersection congestion are not deemed significant impacts under CEQA.

As part of the project review, the project has completed a Local Transportation Analysis (LTA) for informational purposes. The LTA has been reviewed the City and the design and operations of the proposed project conforms with existing codes and policies. Refer to Responses H.57, H.61, H.70, and H.77 for vehicular circulation.

The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment I.6: Refuse Service

The garbage dumpsters for the Axis Tower are located in the area shown below. The addition of garbage dumpsters from the project, which are recommended to be wheeled out to the street on trash pick-up days, would render this area unusable for vehicle drop-off/pick-up spaces on N. Almaden Boulevard.

The Axis Tower typically has between 2 and 8 large containers being collected Monday through Friday each week. Before pick-up, each of those containers must be wheeled from the Axis Tower driveway into the street, then backed up to the curb. The process is reversed following pick-up. It is difficult to imagine that a hotel with 272 rooms, 2 restaurants and 2 bars will have less garbage and recycling than the Axis Tower. In addition, the Comerica building also wheels its garbage and recycling containers out on N. Almaden Blvd., across from the project site. The impacts associated with the Axis Tower and Comerica building garbage/recycling dumpsters (including wheeling the garbage/recycling bins out into the street, the "parking" of garbage/recycling collection bins awaiting collection, and collection truck pick-up activities) were not analyzed In the SEIR, the Initial Study or the traffic operations report, which Is a serious flaw.

Even if the hotel dumpsters do not interfere with the hotel loading area. It is completely unrealistic to think that the one loading space will adequately serve the 272-room hotel, including the 2 restaurants and 2 bars. The loading zone for the Comerica building (which only has offices) is busy all day long, often with 2 or 3 trucks, delivery vehicles, service vehicles and Uber/Lyft drivers. When they run out of space there, they park in the metered spaces, or sometimes try to park in the Axis Tower driveway/service area.

Response I.6: Refer to Responses H.62 and H.63.

Comment I.7: Bicycle and Pedestrians

There are tremendous safety issues for bicyclists and pedestrians near the project. The following two policies from the General Plan that are directly relevant:

TR-1.5: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.

TR1.6: Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.

The evaluation of traffic impacts and the safety of pedestrians and bicyclists should have been analyzed at a project-level as required by the Downtown Strategy 2040 and its FEIR. They were not. For these reasons alone, the project is not consistent with General Plan policies.

Response I.7: Refer to Response H.58, H.59, and H.65.

Comment I.8: Secondly, impacts to pedestrians and bicyclists on W. Santa Clara Street has not been completed as part of the analysis required by the Downtown Strategy 2040. In fact, the three loading zones on W. Santa Clara Street are not included in the traffic operations study, nor are they on the project plans. Pity the bicyclist riding westbound on W. Santa Clara Street in a bike lane between the parked vehicles and vehicular traffic along the major thoroughfare only to get struck by either a car driving off after pick-up or drop-off or by a car door.

As shown below, it is evident that the project will significantly impact the entire block of N. Almaden Blvd. from Santa Clara Street to Carlisle Street, in front of the Axis Tower pedestrian and vehicle entrances (as well as the Comerica building entrances). This will be exacerbated if N. Almaden Blvd. is converted to a two-way street. An operational study of safety and access impacts to residents of the Axis Tower given this proposed unsafe condition is required, under both one-way and two-way street scenarios. This was not included in the Initial Study or the SEIR, rendering them inadequate.

Response I.8: Refer to Response H.58, H.59, and H.65.

Comment I.9: Loading Zones

Section 20.90.420 of Title 20 of the Municipal Code state that off-street loading spaces “must be not less than 10 feet wide, 30 feet long, and 15 feet high exclusive of driveways for ingress and egress and maneuvering areas”. The areas shown on the most recent plans do not appear to meet these requirements.

An evaluation of the individual and combined operation of all the loading areas and the loading dock in the busy AM and PM peak hours has not been completed. In addition, operations of how the proposed loading dock and vehicle loading zones proposed on N. Almaden Blvd. would interact with the existing the (sic) Axis Tower driveway on the south side of the Axis Tower is not provided. This

driveway is used for access to the underground the (sic) Axis Tower parking lot and is also a delivery loading zone for the residential tower.

Response I.9: Refer to Response H.60.

Comment I.10: Valet

The proposed project's intensive and novel use of valet services deserves a separate analysis under the transportation analysis. There are numerous concerns with the proposed valet operations. On page 136 of the Initial Study under "Site Access", there is a statement that "since completion of the transportation analysis, supplementary analysis was completed for additional valet parking. The project proposes a total of five valet parking spaces (two on Almaden Boulevard and three on Santa Clara Street). The additional valet spaces along Santa Clara Street would result in a change in trip assignment outlined in the LTA, but the additional trips on Santa Clara Street would be minimal and would not change the conclusions of the LTA." This information is not included in the traffic report (LTA) and there is no analysis of the tree additional loading spaces; therefore, there is no indication that this project modification would not result in operational impacts, including impacts to transit. As we have described throughout this section, traffic operations will be far different and much worse than what was analyzed in the LTA and the SEIR and the Initial Study must be revised and traffic must be included in the SEIR. Further, on page 137 of the Initial Study, it states "Based on the LTA, additional valet parking analysis, and peer review for the valet parking requirements, it was estimated that approximately 10 valet spaces may be required. As the project may not be able to accommodate that many valet parking spaces, however, it was determined that adequate valet staff (three to four) allow for a reduction of the valet spaces. Apparently, this conclusion was based on a personal communication with the traffic engineer (footnote 47) who completed the LTA. No discussion or analysis is provided to show how or why the consultant changed their conclusion. This must be discussed in the LTA, Initial Study, and SEIR.

Response I.10: Refer to Responses H.71 and H.74.

Comment I.11: The existing loading zone on W. Santa Clara Street in front of the Hotel De Anza is utilized by tour buses and is not used as a passenger pick-up/drop-off area. It is assumed that the rest of the curb to N. Almaden Boulevard is painted to prevent further congestion, yet the project intends to replace the red curb with valet loading spaces. These valet (sic) loading spaces will create a traffic disaster because the constant valet flow will cause additional congestions on an already congested corridor.

Response I.11: Refer to Response H.69.

Comment I.12: The conclusions of the traffic operations report also includes the installation of lane delineators at the bike lane buffer along N. Almaden Boulevard, yet this is not included as a mitigation measure in the Initial Study and is only mentioned in the final paragraph of the Site Access section of the Initial Study. This important safety measure must be included as a mitigation measure and without it, impacts are significant. Including it as a mitigation measure will guarantee that it ends up in the MMRP for the project. In addition, the traffic operations report did not include the loading spaces on W. Santa Clara Street, so there is no assessment of impacts to this recommended bike lane buffer.

Response I.12: Refer to Response H.72.

Comment I.13: As previously discussed in this Comment Letter, the supplemental valet report also states that up to 10 valet attendants would be required as previously discussed, during both the AM and PM peak hours (page 5). This is not reflected in the Initial Study which states that 3-4 valet staff will be adequate for five loading spaces. This is in direct conflict with the supplemental valet report. The Initial Study must be revised - especially since valet staff will have to drive to and run back from a parking structure that is almost 1/4-mile away during the AM and PM peak hour in Downtown San José. The Initial Study conflicts with the conclusions of the traffic operations report (LTA), valet study, and its supplemental report. The document must be revised to reflect the conclusions of the Initial Study and a project-level traffic analysis must be included in the SEIR.

Response I.13: Refer to Response H.78.

Comment I.14: The Kimley Horn parking operations analysis refers to a draft City ordinance dating back to the days of Mayor Gonzales, that purportedly would establish Chapter 11.36 of the San José Municipal Code to provide regulations for on-street valet parking zones. That ordinance was never adopted and is not pending as claimed. Rather, the relevant ordinance is Chaptered in part 4 of Title 11 of the Municipal Code. Those chapters provide that the Director of Planning may issue an on-street valet parking zone permit only if certain conditions are met, and only if the parking operations plan includes certain information. The valet operations analysis prepared by Kimley Horn is devoid of any discussion regarding the requirements of the actual ordinance, and is missing most of the information that would be required before the Director could issue an on-street valet parking zone permit.

Response I.14: Refer to Response H.79.

Comment I.15: Finally, nothing proposed in any of the reviewed documents indicates how the City will enforce the requirement that the hotel have any specific number of valet attendants. What documents can the City enter into with the applicant, that will require the hotel operator to staff the valet operation as promised? What will be the consequences to the operator and/or the applicant/owner if the requirements are not met? Assessing a fine or revoking the valet parking zone permit certainly will not solve the problem (and the City certainly can't step in to provide valet attendants if needed), but what enforcement alternatives does the City have? If the City has no practical legal mechanism for enforcing such an important mitigation measure, then it should not be counted as a mitigation measure.

Response I.15: Refer to Response H.80.

Comment I.16: Ride Share

The SEIR and Initial Study fail to identify mitigation measures for the transportation impact from the prohibition of ride share companies (Uber/Lyft, etc.). Currently, ride share services are prohibited from utilizing the loading zones. Yet the analysis fails to provide how this prohibition will be enforced. The project fails to identify the entity responsible for enforcement of this measure. This must be corrected. Will the ride-hailing companies exclude utilizing these spaces on their apps? How will those individual drivers be alerted to the fact that they can't park there?

Experience shows that ride share drivers are generally unfamiliar of the area in which they are driving and have no issues with double-parking, blocking traffic, parking in metered spaces without paying the meters, or using red zones to stop and either dropping of or picking up their rides. This will not only be a nightmare for traffic in the area, residents of the Axis Tower, and patrons of the Hotel De Anza, but it will be unsafe for pedestrians and bicyclists on both N. Almaden Boulevard and W. Santa Clara Street. These significant Impacts must be analyzed in the traffic operations report, Initial Study, and included in the SEIR.

Response I.16: Refer to Response H.75.

Comment I.17: Truck Access

The truck access section of the Initial Study (page 137) describes the on-site loading space included in the project. This section does not explicitly state that this loading space is for trucks. With the chaos that is surely to occur as a result of the project, no other loading should occur in this short driveway.

Response I.17: Refer to Response H.73.

Comment I.18: Two-Way N. Almaden

Perhaps most troubling is the fact that the Project Description does not include the fact that N. Almaden Boulevard may be altered in the future to be a two-way street rather than a one-way street, even though the Department of Public Works comment memorandum dated 8/12/19 devotes three paragraphs to this topic. The memorandum also specifies, as one of the project conditions, that "The project will provide voluntary contribution in the amount of \$250,000 to be used toward the future Almaden Boulevard couplet conversion and installing bike detection improvements..."

Changing from a one-way to a two-way street could significantly increase congestion, queuing problems and other issues, and should have been studied as part of the traffic operations analysis/Local Transportation Analysis ("LTA") prepared by Hexagon Transportation Consultants. The LTA failed to analyze this (and many other factors affecting local traffic operations as described below), and therefore the LTA should be revised and recirculated for comment.

Response I.18: Refer to Response H.4.

Comment I.19: III. Noise and vibration from the project will cause significant impacts on the adjacent properties that cannot be mitigated.

Significant construction-related and long-term noise will be generated by the project; however, the noise section of the Initial Study does not reflect this. Page 109 of the Initial Study states that "Similar to the site development evaluated In the Downtown Strategy 2040 FEIR and the General Plan FEIR (as amended), the proposed project would result in less than significant noise and vibration Impacts, as described below." The reference to "as described below" then states that the project would result in noise In excess of City and other applicable agency's standards. This Is a conflicting statement that highlights the lack of proper analysis of this Impact.

As stated on page 6 of the Noise Assessment (Appendix F), the adjacent land uses are sensitive receptors; therefore. Impacts must be carefully determined and mitigation must result in reduced noise levels. Standard Permit Conditions on page 112 of the Initial Study Include construction from 7

AM to 7 PM. This is an excessively long day for residents and hotel patrons to withstand construction noise - especially when it is right outside their windows and balconies. In fact, the Air Quality Assessment (Appendix B) modeled air quality emissions for the time period of 7 AM to 4 PM. We collectively request this reduced construction period and that no construction occur on weekends or holidays observed by the City of San Jose. As previously described, the construction of the project will severely reduce the Hotel De Anza's room count and will affect its economic viability.

Response I.19: Refer to Response H.49.

Comment I.20: Unclear Mitigation Strategies

The Standard Permit Conditions also require the construction of “solid plywood fences around construction sites adjacent to operational businesses, residences, or other noise-sensitive land use.” How will this be accomplished for a 19-story structure? If this cannot be implemented, then these measures are not feasible which would result in a significant unavoidable impact.

In addition, with the small size of the project site, how will noise-generating equipment be located far away from the adjoining sensitive land uses and enclosed in noise barriers while construction occurs. Again, if these conditions cannot be implemented effectively, they are not mitigation under CEQA – whether impacts are temporary or not.

Response I.20: Refer to Response H.50.

Comment I.21: Long-Term Impacts

Noise impacts are also not evaluated in terms of effects on the Hotel De Anza, particularly during construction. Two years of construction with losses upwards of \$5,500,000 per year would be financially devastating and inconsistent with the Downtown Strategy 2040 and Envision San José 2040 General Plan goals. In addition to a loss of revenue from room reservations, guests who stay at the hotel will be unable to use their balconies. Hotel De Anza will also lose significant event revenue because of the adjacent noise during and after construction.

Response I.21: Refer to Responses H.43 and H.52.

Comment I.22: The discussion of noise to be generated by the hotel’s rooftop bar is not adequate in either the Initial Study or Appendix F. Neither document has a rooftop plan to show the configuration or true location and information regarding the bar is only provided in the noise report and not in either the Initial Study or SEIR. The noise report states:

“The rooftop bar would have a maximum occupancy of 135 people, with hours of operation from 4:00 pm to 12:00pm. The venue does not propose any live music. An open terrace is proposed along the western portion of the rooftop, wrapping around to the south. The eastern portion of the bar/restaurant would be enclosed and would not be anticipated to generate noise that is audible outside of the building structure. The restaurant structure on the eastern portion of the rooftop would also provide substantial acoustical shielding from rooftop terrace activities to receptors to the east (De Anza Hotel).”

This information should have been in the project description of both environmental documents. It is also confusing. What is on the eastern portion of the roof – a restaurant or a bar? While the eastern portion may be enclosed, noise would emanate from the open areas – especially when the Hotel De Anza would only be 11-13 feet away horizontally. The penthouse hotel room on the top floor of the Hotel De Anza has an open patio that must also be shielded from noise generated at the top of the proposed hotel. The western portion of the bar must also be enclosed to avoid noise impacts to residents of the Axis Tower units and their balconies which will be much closer to the bar. In addition, the privacy impacts to Axis Tower residents and Hotel De Anza guests, and safety impacts to patrons drinking at 225 feet at an open-air bar are not described.

Response I.22: Refer to Responses H.11 (privacy), H.54 (project description) and H.55 (noise and enclosure).

It should be noted that General Plan Policy EC-1.1 states that “The City’s acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institution land uses. The acceptable exterior noise level is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways.”

The project site is located in the downtown core, along a major roadway, and within the flight path of the Mineta San José International Airport. Therefore, the De Anza Hotel is also within the downtown core, along a major roadway, and within the flight path of the Mineta San José International Airport. The Axis Tower is not directly along Santa Clara Street, but the southernmost units currently experience traffic noise from Santa Clara Street as there is no structure between the Axis Tower and the roadway to attenuate the noise. The Axis Tower is also within the downtown core and the airport’s flight path.

The noise assessment concluded that operational noise would not increase the overall ambient noise levels currently experienced by the De Anza Hotel and Axis Tower. While construction noise would occur, standard permit conditions are included to reduce the impact to less than significant. For these reasons, and because City policy excludes residential and institutional land uses from the 60 dBA exterior noise standard in the downtown core, there is no significant impact.

The comment does not provide new information that would change the project’s impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment I.23: The report and analysis depend on an ambient noise level of 65 dBA. This may be the noise level at ground level, but at 225 feet at the top of the structure, it can only be expected that noise would be less. In addition, the noise modeled to be generated by the bar appear to be much closer in characteristics to a restaurant, not an open bar where much, even if not live, would permeate. Again, we request that this bar be enclosed with no windows on the northern side of the building.

Response I.23: Refer to Response H.55.

Comment I.24: Incomplete Historic Resources Assessment

The Historic Resource Assessment requires that the Historical Resources Protection Plan (HRRP) include a reconnaissance and discussion of other historic structures in the project vicinity. This evaluation is missing from the mitigation measures in the SEIR and should be included to understand the context and far-reaching impacts of damage to the Hotel De Anza.

Response I.24: Refer to Response H.53

Comment I.25: IV. The impact of the project on cultural resources is incomplete.

The impacts to the Hotel De Anza as a result of the proposed project relies upon a Historic Resources Project Assessment and a supplement to that assessment prepared by Archives & Architecture. It appears that the supplemental report was prepared after the project was somewhat redesigned. The proposed hotel does not reflect a “stepped back” [sic] as shown in the photos below. Since the Axis Tower was required to provide a setback, it is unclear why the project is receiving different treatment.

Design Failures

As stated in the supplemental NOP letter submitted by the Axis Homeowners Association, the peer review by Skidmore, Owings & Merrill (SOM) dated November 16, 2018 suggests a number of significant revisions. It continues to appear that the applicant has not addressed these comments and the City is ignoring that fact. The City must be sure that the project conforms to its own design requirements and incorporates the design recommendations from the peer review. In addition, they must apply their own regulations consistently especially for impacts to precious and diminishing cultural resources.

Response I.25: Refer to Response H.20.

Comment I.26: Incomplete Project Level Review

The Historic Resource Assessment (Appendix C) does not meet any requirements of CEQA Section 15064.5. It appears to only be a minimal analysis of whether the project is consistent with the City’s Historic Design Review Guidelines. Project-level environmental review for impacts to the Hotel De Anza is required to ensure that the proposed project does not materially alter in an adverse manner those physical characteristics of the resource that convey its historic significance. For example, physical impacts associated with construction-generated noise and dust are not evaluated.

Response I.26: Refer to Response H.21.

Comment I.27: The analysis provided is subjective and not substantiated in fact. For example, the analysis makes a determination that exterior materials of the project would be compatible with the Hotel De Anza without those materials being known. Such a conclusion is inadequate for a CEQA analysis.

Response I.27: Refer to Response H.22.

Comment I.28: The report includes the following statement: “The perceived overall massing of the neighboring buildings appears to be visually balanced. The wider, deeper, and shorter, visually heavier, symmetrical, stucco-façade De Anza Hotel would be visually balanced in massing with a narrower, shallower, taller, glass-curtained wall building that includes cutaway corners and an open-air penthouse.” There is nothing in the project plans, including the rendering in the Initial Study, that prove this point.

Response I.28: Refer to Response H.26.

Comment I.29: Also, the SEIR states (on page 30) that “The detailing meets the intent, but not the letter, of the guideline that a new building be “broken down” in scale to be compatible with nearby historic resources.” There is no substantiation as to the intent, and we do not agree that the detailing meets the intent. The SOM sketch below shows that we believe is the intent when the guideline uses the term “broken down”.

Response I.29: Refer to Response H.23.

Comment I.30: The lot patterns are described and a determination is made that because the proposed project would be approximately 11-13 feet from the historic Hotel De Anza (not shown on any plans), the project is incompatible with the guidelines. Without substantive information from project plans (not “estimations” by the consultant), this cannot be proven. And while the fire escapes and Diving Lady mural may not be removed, they will not be seen either.

Response I.30: Refer to Response H.24.

Comment I.31: The consultant states that it believes the Hotel De Anza design somehow intended for another building to be built adjacent to the west side of the structure. There is no evidence of this assertion. If that were the case, why are there up to 56 windows and the required fire escapes on that side of the structure? There has never been a structure of any kind on that side of the building save a gas station and a parking lot.

Response I.31: Refer to Response H.25.

Comment I.32: The conclusion of the report as to whether the massing of the proposed structure is compatible with the historic Hotel De Anza building is especially subjective. The project plans do not clearly show the degree to which the proposed “reverse corner slice” would push the proposed building away from the Hotel De Anza. Even assuming this were the case, it would only push it away at the corner – not along the entire western side of the historic hotel.

Response I.32: Refer to Response H.26.

Comment I.33: These are all examples of how the conclusions of this section are speculative and not substantiated. Therefore, the proposed project is not consistent with the City’s historic guidelines. The Hotel De Anza is a unique and valuable community asset that must be respected. We therefore ask for a peer review of the Historic Resources Assessment and it appears that the consultant would not object to such. Please include this peer review in the Final SEIR.

Response I.33: Refer to Responses H.20 through H.28.

Comment I.34: V. The analysis does not provide for a bird safe design.

Neither the Initial Study nor the SEIR include a description of how the project's design takes into account the City's policies related to Bird Safe Design Building Standards. The proposed building is located within 500 feet of the Guadalupe River (not 600 feet as stated on page 101 of the Initial Study) and Los Gatos Creek, which are regarded as important wildlife corridors. The proposed building has apparently not been evaluated for bird safe design as there is no project-level discussion provided; therefore, the project is not consistent with GP policies ER-5.1 and -5.2.

Response I.34: Refer to Response H.43.

Comment I.35: Supplemental Environmental Impact Report

The SEIR prepared for the project is a Focused SEIR tiering from the Downtown Strategy 2040 EIR certified by the City Council in December 2018. An Initial Study was also prepared to supposedly confirm that the proposed project would not result in greater or different environmental impacts than the Downtown Strategy. As stated in the Summary of the SEIR, areas of controversy include increased expected mass transit systems, traffic, insufficient parking, height and massing, interface with the Hotel De Anza (a historic resource) and potential impacts of the proposed hotel, and impacts to subsurface cultural resources.

Section 15063(c)(3)(A) of the CEQA Guidelines states that one of the purposes of an Initial Study is to assist in the preparation of an EIR, if one is required, by focusing the EIR on the effects determined to be significant. The proposed project would result in many significant impacts consistent with the Downtown Strategy; however, the impacts of most concern to the surrounding community were omitted from detailed specific analysis in the SEIR. The Downtown Strategy and Envision San José 2040 General Plan EIRs provide program-level environmental review; therefore, the project-level environmental review should have been completely included in the SEIR.

Response I.35: It is unclear what the commenter means by "increased expected mass transit systems" as an area of controversy, and no explanation is provided. Transit was not an area of controversy raised in public scoping and is not explained by the commenter. No further response is possible.

Comment I.36: Traffic, parking, noise, air quality, aesthetics and greenhouse gas emissions – all topics of the utmost importance to the neighbors and issues for which the Downtown Strategy EIR determined would require project-level review. These issues/concerns were not given the level of analysis and impacts and mitigation measures are not identified in the Initial Study to the level required for an EIR.

As stated in Section 15146 of the CEQA Guidelines, "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Constructing a 19-story, 225-foot tall structure on an 8,000 square foot lot adjacent to existing high-rise development and busy streets can only be described as highly technical. The project description and analysis in the SEIR must, as CEQA requires, be as detailed and comprehensive for environmental impacts to be adequately addressed.

City Planning staff had represented to the neighbors that a new Supplemental EIR would be prepared for the project that included at least construction-related and long-term traffic operations, and air quality and noise analyses. This did not occur and the level of review in the Initial Study is inadequate for these significant project-level impacts.

As stated in CEQA Section 15063(a)(3), "an Initial Study is neither intended nor required to include the level of detail included in an EIR." The Downtown Strategy EIR was a program-level environmental document that did not provide project-level review. The SEIR was supposed to provide this and it did not. This is a violation of CEQA.

By eliminating these topics from the SEIR, areas of controversy were not addressed and the level to which the alternatives and cumulative analyses were prepared is inadequate and disappointing. The residents of the Axis Tower and visitors to the Hotel De Anza will be subjected to months of construction impacts and years of privacy loss, gridlocked traffic, and noise from the adjacent hotel. These impacts should have been analyzed in depth in the SEIR as required by CEQA Guidelines Section 15064. Because the SEIR only analyzed one issue, a full description of environmentally superior feasible alternatives is not provided, as described below.

Response I.36: Refer to Response H.11

It should be noted that identifying an issue as an area of controversy does not, in and of itself, equate to an impact under CEQA. It only identifies issues raised during the public scoping process.

Comment I.37: The alternatives analysis is inadequate because SEIR fails to discuss why a 6-story building is no longer preferable.

The 22-story Axis Tower was constructed in 2008 with 329 units, most of which are owner-occupied. The original environmental document for the Axis Tower project was the 47 Notre Dame Supplemental EIR (Axis SEIR), which tiered off the original Downtown Strategy 2000 Program EIR. Page 4 of the Axis SEIR provides: "The southwest corner of the site, adjacent to the De Anza Hotel, will be developed with a six-story residential/retail building (referred to as Phase II) with two levels of below grade parking that are open to and accessed through the Phase I underground parking area. The Phase II building will be comprised of approximately 35 condominium units and 8,000 square feet of retail."

As stated on page 18 of the Axis SEIR, "To minimize the overall visual impact of the residential tower on the De Anza Hotel, the tower is proposed to be located with the greatest possible setback from the hotel on the project site at the northwest corner of the block." In fact, the Axis Tower building itself is also stepped back from the hotel as shown in photos included below. The 6-story Phase II building would not have been taller than the De Anza Hotel and would not block views of the hotel's iconic rooftop neon sign. In other words, it would not have contributed significantly to the impact of the Axis Tower structure, as described in the Axis SEIR.

Based on this information in the previous EIR for the site, we requested that the alternatives section of the EIR include an analysis of construction of the 6-story building on the site, as previously promised by the project applicant while the units at Axis were being purchased. The Axis project and

SEIR included a 6-story structure on the project site and the applicant gave prospective buyers reassurances that the project evaluated in the SEIR would be the project constructed. The proposed project shows a clear intent to mislead the buyers of the Axis Tower units.

Response I.37: Refer to Response H.12.

Comment I.38: The SEIR states in Section 1.13.2.2 that a six-story building (Reduced Massing and Scale Alternative) would still impact the Hotel De Anza to the same extent as the proposed 19-story structure and would not avoid the less than significant impacts to the hotel. This is patently false because the shading, traffic, circulation, parking, impacts would all be significantly less. It also states that all construction impacts would be reduced, which is obviously true since the construction timeframe would be substantially less. However, to state that all of these impacts are acceptable because the impact is less than significant ignores the possibility of avoiding the impact altogether. Avoiding the impacts is also an option.

Instead of a hotel, if an office building was proposed, drop-off and pick-up would not be required and it would be more conducive to the use of transit than a hotel use. A shorter building would not significantly affect the views, shading, or privacy of residents of the Axis Tower and Hotel De Anza guests, yet none of these reduced impacts are mentioned. Just because the impact would not be completely avoided, does not mean that the reduced height and massing alternative is not environmentally superior.

Section 15126.6(c) of the CEQA Guidelines states that "Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are (I) failure to meet most of the basic project objectives, (II) Infeasibility, or (III) inability to avoid significant environmental impacts. As stated in the SEIR, the 6-story alternative meets many of the objectives the proposed project cannot and is generally consistent with General Plan (GP) policies.

This alternative is certainly feasible and can be considered the highest and best use of the site. Evidence of this can be seen in the AC Hotel right across the street! This alternative would significantly REDUCE and in some instances, AVOID, all of the impacts of the proposed project and must be considered the environmentally preferable option if development on this site is to occur at all. This alternative must not be so easily dismissed and as CEQA requires, "must be discussed in a manner to foster meaningful public participation and Informed decision making." (Section 15126.6(f)) The EIR Alternatives discussion in the SEIR does neither and is thus, in violation of CEQA.

The SEIR also evaluated an office use alternative. This section does not evaluate a 6-story office building. This alternative would be the environmentally preferred alternative, yet this option is viable and feasible. A reduced-sized office use would result in less traffic and parking issues and would not result in significant impacts to the privacy loss and noise as the proposed project. This alternative should have been included in the project. Also, to state that noise generated by an office versus a hotel would be "comparable" is not true and this statement was not substantiated in the noise analysis. An office space would not have a rooftop bar and would not have occupants after typically, 7 PM. Its noise generation would definitely be less.

Response I.38: Refer to Response H.12, H.13, H.14, H.16, H.17, and H.19.

Comment I.39: Mandatory Findings of Significance

Under the discussion of Impact MFS-1, it is stated that "The project would have a significant land use impact from increased shading as discussed in the Supplemental EIR". This subject is not discussed in the Focused SEIR for the project – but, it should have been. Shading impacts to the Axis Tower, Hotel De Anza, and the Guadalupe River Park will be significant and damaging to residents and wildlife. This impact should have been included in the SEIR as this section seems to state.

Response I.39: Refer to Response H.81.

Comment I.40: Under the discussion of Impact MFS-3, it is stated that "The project proposes to redevelop an infill location in downtown San Jose and it is anticipated that short-term effects resulting from construction would be substantially off-set by meeting the long-term environmental goals (such as increased building energy efficiency) for this downtown site." The project is not the redevelopment of an existing structure. The site is vacant and has been for decades and developing the site with the proposed project definitely results in more than just significant environmental effects related to construction. The project DOES have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals. The statement is therefore false and results in inadequate review in accordance with the CEQA Guidelines.

Response I.40: Refer to Response H.82.

Comment I.41: Conclusion

The Hotel De Anza requests that the City respond to each comment and provide additional analysis as merited.

Response I.41: Refer to Responses I.1 through I.40.

J. San José Downtown Association (dated 10.03.19)

Comment J.1: The San José Downtown Association (SJDA) provides the following feedback regarding the proposed hotel located at 8 N. Almaden Blvd.

Circulation

SJDA's Downtown Design Committee previously commented on this project in a design review letter addressed to Planning Project Manager Nizar Slim dated October 18, 2018. While the parking situation has been updated since then with a plan to utilize spaces in the nearby City-owned garage, we have concerns about how the project will impact circulation at this prominent downtown corner (see Figure 1).

The current plan calls for five street parking spaces on Santa Clara Street and Almaden Avenue that will be converted to pick up and drop off. We feel that these spaces, even when utilizing valet service and modern curb management techniques, are insufficient to handle the traffic flow on Santa Clara Street from a 272-room hotel without disrupting traffic and negatively impacting circulation on downtown's main street. The City should require the hotel to provide at least 12 spaces, the same amount as the smaller Hotel DeAnza has for the same purpose. This corner is already impacted with traffic from events at the SAP Center, bus routes, commercial loading, and the now ubiquitous ridesharing and delivery services – to say nothing of commute traffic, scooters, pedestrians, and bikes. A comprehensive review of street capacity for access and circulation should provide data with projection of future uses to determine if Santa Clara/Almaden Avenue can successfully function with such as intensification of use. Also the utilization of public space for private use should be examined.

Response J.1: The project completed a Local Transportation Analysis (LTA) which examined the circulation and operation of the project as it related to transportation. As stated in Responses H.3, H.10, H.74, and H.78, the project was originally evaluated for two valet spaces, then three additional valet spaces were added. The operation of the valet parking is deemed sufficient with three or four staff during peak hours. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment J.2: Operations

There are many questions about how the hotel would deal with trash, deliveries, catering and recycling given its location on the corner of two busy streets. This extremely tight lot leaves very few options for back-of-house functions such as deliveries and trash management. Given the small lot size, and proximity to The Axis and Hotel DeAnza, we are having a hard time imagining a hotel of this size working in this location without on-site facilities and physical spaces to accommodate demand generated by this project. Santa Clara Street and/or Almaden Avenue are not appropriate locations for "back of house" functions.

While we acknowledge a need for more hotel rooms and in general welcome development in downtown San José, we feel that concrete solutions to the issues raised by this committee and other stakeholders need to be addressed before this project is approved.

Response J.2: Refer to Responses H.62 and H.63.

K. Preservation Action Council of San José (dated 10.03.19)

Comment K.1: Preservation Action Council continues to have very serious concerns regarding the proposed Almaden Corner Hotel and its impacts to the De Anza Hotel.

To date you have already received comments from Axis Homeowners Association, the De Anza Hotel and Hoge Fenton. We concur with the points made to the City of San José regarding the adequacy of the SEIR for this project, including insufficient alternatives analysis. We believe the SEIR contains many errors, mis-representations, and omissions. We concur with the points made to the City of San José regarding the adequacy of the SEIR for this project, including insufficient alternatives analysis. We believe the SEIR contains many errors, mis-representations, and omissions.

We would like to emphasize again that the Hotel De Anza is listed on the National Register of Historic Places, the highest recognition afforded to historic resources in our nation. As such the Secretary of Interior Standards for Historic Rehabilitation clearly apply on this project. In the section of the Standards entitled *New Exterior Additions to Historic Buildings and Related New Construction*, and I quote, it is RECOMMENDED “that new construction is secondary to the historic building and does not detract from its significance.”, and in a densely built downtown district, that “the infill structure must be compatible with the size and scale of the historic building”. Further, it is NOT RECOMMENDED to construct a new building “on an adjacent site that is much larger than the historic building.”

Response K.1: It must be understood that there is no proposal to modify, add to, or demolish any portion of the De Anza Hotel or to perform any work within the parcel where the De Anza Hotel is located. The De Anza Hotel is on a separate, individual parcel from the project site and the project would not directly alter or modify any physical component of the De Anza Hotel.

The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings states on page 1 that “The Secretary of the Interior’s Standards for the Treatment of Historic Properties are regulatory only for projects receiving Historic Preservation Fund grant assistance and other federally-assisted projects. Otherwise, these Guidelines are intended to provide general guidance for work on any historic structure. (<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>)

The Secretary of the Interior Standards state that “Rehabilitation is defined as the process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historic, cultural, or architectural values.” The focus of these standards is construction on a site with a historic structure. This is further confirmed by the National Parks Service (NPS) U.S. Department of the Interior Preservation Brief 14 (https://www.nps.gov/tps/how-to-preserve/revisingPB14_pg2.htm and <https://www.nps.gov/tps/how-to-preserve/briefs/14-exterior-additions.htm>) which states, “Although often asked about “infill” construction, the NPS does not have specific guidance because this is technically not a rehabilitation issue.” As is discussed in Brief 14, the Rehabilitation Standards are focused on additions to historic buildings.

The commenter references the Secretary of the Interior Standards by stating that it is recommended “that new construction is secondary to the historic building and does not detract from its significance.” This recommendation does not reference off-site new construction and is not applicable.

The commenter references the Secretary of the Interior Standards by stating that in a densely built downtown district, that “the infill structure must be compatible with the size and scale of the historic building”. Neither the De Anza Hotel nor the project site are located within a historic district. As a result, this is not applicable.

The commenter quotes the Secretary of the Interior Standards by stating that it is not recommended to construct a new building “on an adjacent site that is much larger than the historic building.” While this can be interpreted to refer to a separate parcel from the historic property, the City’s Historic Design Guidelines are modeled after the Secretary of the Interior Standards and the project was found to be consistent with the City’s guidelines. Hence, in order to determine the impact of the proposed project to the De Anza Hotel, these guidelines were utilized to inform the analysis of the seven aspects of historic integrity, as indicated by the National Register and State of California’s definition of authenticity of a resource. The historic assessment also determined that the historic integrity of the De Anza Hotel would not be impacted by the project.

Refer to Responses H.20 to H.28 for additional details on City’s review and CEQA determination as it pertain to the cultural and historic resources.

Comment K.2: The proposed hotel tower clearly violates the Secretary of Interior’s Standards in this regard. While minor changes in the design supposedly make impacts “less than significant”, these assertions are speculative, and we fail to see how this can be substantiated in fact, especially in light of the Standards quoted above. As well, the City has required other projects constructed near historic structures to comply with Secretary of Interior Standards and the City’s Historic Preservation Ordinance.

Response K.2: For projects which do not directly modify, add to, or demolish any portion of a historic structure, the City’s Historic Preservation Ordinance (City Code Chapter 13.48) does not require an analysis pursuant to the Secretary of the Interior Standards.

The professional opinion of a qualified historic consultant, as well as the City’s professional staff (including the Historic Preservation Officer), evaluating proposed project plans is considered substantial evidence under CEQA. An integrity analysis was completed as part of the Draft SEIR and it was concluded that the proposed project would result in less than significant impact the historic integrity of the De Anza Hotel.

L. City of San José Historic Landmarks Commission (dated 10.03.19)

Comment L.1: I am writing to you as the Chair and empowered representative of the City of San José's Historic Landmarks Commission (HLC), with the HLC's comments regarding the historic resource analysis in the EIR for the above-referenced project. The proposed Almaden Corner Hotel is immediately adjacent to the De Anza Hotel, a designated City Landmark Structure, which was placed on the National Register of Historic Places on January 21, 1982.

Per the Historic Preservation ordinance, the HLC is the City's designated advisory body for the preservation of the City's historic built environment. Towards that end, the HLC provides project design comments and recommendations through full Commission meetings, and the smaller Design Review Committee (DRC). The Almaden Corner Hotel Project was discussed with the DRC on June 20th, 2018, and came before the HLC on April 3rd, 2019. As part of each of these discussions, numerous concerns regarding the incompatibility of the proposed design with the Art Deco Hotel De Anza were enumerated, including, but not limited to, the disproportionate scale, choice of materials, and nominal attempt to acknowledge the massing of the historic structure.

The consensus of the Commission is that the comments and concerns provided previously by the DRC and HLC were not addressed by the design revisions. Some of the most glaring incompatibilities have been exacerbated in the current design. This dismissal of the repeated input of the City's historic advisory body should therefore be a part of the EIR's historic resource analysis.

Our additional comments include, but are not limited to, the following:

- Per the Executive Summary, "the currently proposed Almaden Corner Project is generally compatible with the design of the adjacent historic property. The revised design does not appear to adversely impact the historic integrity of design, setting, feeling, and association of the De Anza Hotel." The historic resource analysis then enumerates the ways in which the design is incompatible with the City of San Jose Downtown Historic Design Guidelines. The Executive Summary should be revised.

Response L.1: The executive summary in the Draft SEIR is correct. Based on the totality of the analysis, the project was found to be consistent with the City's Historic Design Guidelines and the integrity criteria as indicted by the National Register and State of California definition of authenticity of a resource. As mentioned in the Draft SEIR, the project would result in a less than significant impact pertaining to adverse changes in significance of a historical resource pursuant to the CEQA Guidelines Section 15064.5.

Comment L.2: Per the Design Guidelines, "Building masses should not dwarf immediately adjacent historic buildings." From its first iteration, the proposed 19-story structure has dwarfed the 10-story stepped massing of the De Anza Hotel, with little to no attempt at mitigating this sizable, undeniable impact.

Response L.2: Refer to Response H.20 and K.1.

Comment L.3: Per the Design Guidelines, “Add new infill construction that respects the massing and detailing of historic buildings on the street. New building masses adjacent to lower historic resources should step down in height...” This point has been consistently reiterated by the DRC and HLC; to date, no attempt has been made to address the sheer 9-story disparity between the two projects. This is a direct, unmitigated impact upon the setting and feeling of the De Anza Hotel.

Response L.3: Refer to Response H.20 through H.23 for impacts to cultural resources pertaining to design. The design and construction of the proposed project has also undergone review by the City for CEQA compliance. Pursuant to the analysis in the Draft SEIR, the analysis conducted by the City’s historic consultant was completed consistent with City standards and the findings were confirmed by City staff and the City’s Historic Preservation Officer. While the commenter may have a different opinion than those disclosed in the Draft SEIR and request additional redesign to further comply with previous comments, the professional judgement of a qualified historic consultant evaluating proposed project plans is considered substantial evidence under CEQA (Guidelines Section 15384). Therefore, under CEQA, the comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment L.4: Per the EIR, “the detailing meets the intent, but not the letter, of the guideline that a new building be ‘broken down’ in scale to be compatible with nearby historic resources.” The detailing has changed with every iteration, with only a nominal nod to the basic tenets of Art Deco design and massing. We cannot agree with the EIR’s assessment. The intent of the guideline is that the building be broken down in scale; not that detailing be arbitrarily applied to try and mitigate the otherwise unresponsive massing of the proposal. There are no diagonal shapes or chamfered cuts in the Hotel De Anza, yet the Almaden Corner Hotel is rife with them. The upper floors of the building should be stepped back, articulating the massing in relation to the Hotel De Anza.

Response L.4: Refer to Response L.3.

Comment L.5: Per the Design Guidelines, “Add new building materials that match the historic materials of masonry, terra cotta, limestone, stucco... New materials should be compatible with historic materials in scale, proportion, design, color, finish, texture and durability.” The intent of the Design Guidelines is not that said building materials be used as incremental mullions and elements to break up the mass of otherwise nominally articulated glass curtain walls. The materials in the Almaden Corner Hotel are clearly not compatible.

Response L.5: Refer to Response L.3.

Comment L.6: The original environmental document for the adjacent Axis Tower project, the 47 Notre Dame Supplemental EIR (Axis SEIR), identified the Almaden Corner Hotel project site as ‘Phase II’, a 6-story residential and retail building. This reduced height proposal would be more in keeping with the adjacent De Anza Hotel, and should be specifically enumerated as a previously submitted alternate for the project site.

Response L.6: Refer to Response H.12. While the previous Axis SEIR assessed a six-story, mixed-use building on the current project site, no site permit was issued. Therefore, pursuant to City’s policy and protocols, any private applicant has due process to pursue developments that would be consistent with City’s policies and goals. All proposed projects are subject to City’s review, including CEQA review. The comment does not change the analysis of the project. Under CEQA, the comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in this Draft SEIR and associated appendices. Also refer to Response L.3 for discussion of the existing project and CEQA compliance pertaining to historic and cultural resources. .

Comment L.7: The historic resource analysis consistently uses the phrase “generally compatible”. The project shows multiple nominal, if mostly unsuccessful, attempts to address the Design Guidelines. The analysis downplays the more substantive negative impacts the proposal has upon the De Anza Hotel, and the myriad ways in which the choice of materials, massing, and detailing consciously ignores the adjacent historic precedent.

Response L.7: Refer to Response L.3.

Comment L.8: The Design Guidelines state that projects should “Add new corner development that is compatible with and respectful of historic corner development and relationships, in terms of scale, massing, materials, texture and color.” The analysis correctly posits that the De Anza Hotel does not include corner towers, diagonals, or the like, only to describe the glazed diagonal corner of the Almaden Corner Hotel as somehow being an appropriate response. The central main entrance of the historic resource and the corner diagonal of the proposed development could not be less compatible, and the diagonal corner shows no respect of the scale, massing, materials, texture, or color of the De Anza Hotel’s entrance.

Response L.8: Refer to Response L.3.

Comment L.9: The City has, in the past, required other projects constructed near historic resources to comply with both the Secretary of Interior Standards and the City’s Historic Preservation Ordinance. The proposed hotel tower, as submitted, fails in both regards. A project on this iconic of a corner, immediately adjacent to one of San Jose’s highest profile historic landmark structures, should be held to the highest standard. At present, the design proposal and historic resource analysis instead seek out the lowest common denominator, indicating the least amount of effort possible to nominally relate to the iconic De Anza Hotel.

Response L.9: Refer to Responses K.1.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Almaden Corner Hotel Draft SEIR dated August 2019. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

Appendix A, Section 4.9.3,
Page 85:

The following language shall be ADDED to mitigation measure HAZ-2.1:

The project applicant shall perform a soil, soil gas and groundwater investigation to determine if the former gas station, auto repair uses and nearby contaminated sites have impacted the project site. A subsurface utility locator shall also be retained to determine if the underground tanks from the historic gas station are still present. Results of the investigation shall be submitted to the City's Director or Director's Designee and the Municipal Compliance Officer of the Environmental Services Department and shall be incorporated in the Soil and Groundwater Management Plan (Plan) as stated below.

Appendix A, Section 4.13.3,
Page 144:

The numbering of the mitigation measures shall be REVISED as follows:

~~MM NOI-2.1~~
~~MM NOI-2.2~~
~~MM NOI-2.3~~

Appendix A, Section 4.17.2,
Page 137

The second paragraph under the heading Valet Drop-off/Pick-up Zone Operations will be REVISED as follows:

Based on the estimated trip generation of 272 rooms, a maximum of 69 inbound trips would need to be served at the valet drop-off/pick-up zone during the peak hours, or approximately one to two vehicles every minute. The number of vehicles that can be served at the valet drop-off/pick-up zone would depend on the proposed valet parking operations.

The project originally proposed two valet spaces. Since the completion of the LTA, the project proposed three additional valet spaces on East Santa Clara Street. Based on the LTA, additional valet parking analysis, and peer review for the valet parking requirements, it was estimated that approximate 10 valet spaces may be required. As the project may not be able to accommodate that many valet parking spaces, however, it was determined that adequate valet staff (three to four) allow for a reduction of valet spaces.⁴⁷ In addition, vehicles would not be retrieved in advance of guests being present at the valet area. Given the limited storage space for valet operations along Almaden Boulevard and Santa Clara Street, the valet area shall not be used for transportation network companies, such as Uber, Lyft, etc. while waiting for customers. Furthermore, it has been

confirmed that the additional valet parking would not result in substantial change the trip patterns.⁴⁷

Appendix A, Section 4.21.2,
Page 137

Footnote 47 will be REVISED as follows:

Communication with Robert Del Rio, Hexagon Transportation Consultants, Inc. on July 12, 2019 and August 6, 2019 via phone call and email.

Appendix A, Section 4.21.1,
Page 153:

The third paragraph under Impact MFS-1 shall be REVISED as follows:

The project would not have a significant land use impact from increased shading as discussed in the Supplemental EIR.

Appendix A, Section 4.21.1,
Page 154:

The second paragraph under Impact MFS-3 shall be REVISED as follows:

Construction of the proposed project would not result in the conversion of a greenfield site to urban uses or otherwise commit resources in a wasteful or inefficient manner. The project proposes to redevelop an infill location in downtown San José and it is anticipated that short-term effects resulting from construction would be substantially off-set by meeting the long-term environmental goals (~~such as increased building energy efficiency~~) for this downtown site. The operational phase would consume energy for multiple purposes including building heating and cooling, lighting, and electronics. Energy, in the form of fossil fuels, would be used to fuel vehicles traveling to and from the project site. The project would result in an increase in demand upon nonrenewable resources; however, the project is required to comply with the City's Private Sector Green Building Policy. The proposed building would be designed to achieve minimum LEED certification consistent with San José Council Policy 6-32. LEED certification entails consideration and incorporation of a variety of design features to reduce energy use and conserve water, including community design and planning, site design, landscape design, building envelope performance, and material selections. Lastly, the project would place a hotel within the downtown core in proximity to housing, jobs, services, and transit consistent with the City's long-range planning and environmental goals.

Appendix H1, Response O.9

As shown by the project plans, the flow through planter to the north side of the project property is of approximately 178 square feet. ~~The project is proposing a lot line adjustment to extend the property line to the chain link fence to the northern property, giving more area between the planter and the northern (proposed) property line.~~ The project is currently under review by the City for stormwater compliance, including access for maintenance by way of vehicles and/or pedestrian access for vegetated areas. Without the lot line adjustment, the plans show

areas for foot access to the planter area. Furthermore, the maintenance of the planters would not result in a significant impact under the EIR as the project is proposed.