4.6 HAZARDS & HAZARDOUS MATERIALS

Based on the analysis in the Initial Study (see Appendix A of this Draft EIR) it was determined that operation of the proposed project would not result in significant environmental impacts related to release and transport of hazardous materials, be located on a hazardous materials site,[1] cause an airport-related hazard, obstruct an emergency plan, or expose people to wildland fires. Therefore, this chapter only includes an evaluation of potential consequences associated with construction of the proposed project that are related to the transport and disposal of hazardous materials, and hazardous materials in proximity to schools. This chapter also describes the environmental setting, including regulatory framework and existing conditions, and identifies mitigation measures, if required, that would avoid or reduce significant impacts.

Some of the information in this chapter was derived from a *Limited*[2] *Environmental Site Characterization (ESC)* dated January 28, 2016, prepared by Langan Treadwell Rollo. A copy of this report is included in Appendix F, Limited Environmental Site Characterization, of this Draft EIR. A third-party peer review of this report was completed by PlaceWorks.

4.6.1 ENVIRONMENTAL SETTING

4.6.1.1 REGULATORY FRAMEWORK

Hazardous materials refer generally to hazardous substances, hazardous waste, and other materials that exhibit corrosive, poisonous, flammable, and/or reactive properties and have the potential to harm human health and/or the environment. Hazardous materials are used in products (e.g., household cleaners, industrial solvents, paint, pesticides) and in the manufacturing of products (e.g., electronics, newspapers, plastic products). Hazardous materials can include petroleum, natural gas, synthetic gas, acutely toxic chemicals, and other toxic chemicals that are used in agriculture, commercial, and industrial uses; businesses; hospitals; and households. Accidental releases of hazardous materials have a variety of causes, including highway incidents, warehouse fires, train derailments, shipping accidents, and industrial incidents.

The term "hazardous materials," as used in this chapter, includes all materials defined in the California Health and Safety Code:

> "A material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released

[1] California Department of Toxic Substances Control EnviroStor Database, https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=21267+Stevens+Creek+Boulevard, accessed July 2019; PIERS Environmental Services, 2015. Phase 1 Environmental Site Assessment, 21255-21275 Stevens Creek Boulevard, Cupertino, CA, dated September 18, 2015; EBI Consulting, 2007, Phase 1 Environmental Site Assessment, The Oaks Shopping Center, Cupertino, California, dated March 14, 2007.

[2] The term "limited" is not defined by the American Society for Testing and Materials. The term in this context indicates that site investigation is not under the oversight of a regulatory agency and was implemented primarily for due diligence purposes based on site history and future land use plans.

> into the workplace or the environment. 'Hazardous materials' include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the unified program agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment."[3]

The term includes chemicals regulated by the United States Department of Transportation (USDOT), the United States Environmental Protection Agency (USEPA), the California Department of Toxic Substances Control (DTSC), the California Governor's Office of Emergency Services (CalOES), and other agencies as hazardous materials, hazardous wastes, or hazardous substances. "Hazardous waste" is any hazardous material that has been discarded, except those materials specifically excluded by regulation. Hazardous materials that have been intentionally disposed of or inadvertently released fall within the definition of "discarded" materials and can result in the creation of hazardous waste. Hazardous wastes are broadly characterized by their ignitability, toxicity, corrosivity, reactivity, radioactivity, or bioactivity. Federal and State hazardous waste definitions are similar but contain enough distinctions that separate classifications are in place for federal Resource Conservation and Recovery Act (RCRA) hazardous wastes and State non-RCRA hazardous wastes. Hazardous wastes require special handling and disposal because of their potential to impact public health and the environment. Some materials are designated "acutely" or "extremely" hazardous under relevant statutes and regulations.

Hazardous materials and wastes can pose a significant actual or potential hazard to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Many federal, State, and local programs that regulate the use, storage, and transportation of hazardous materials and hazardous waste are in place to prevent these unwanted consequences. These regulatory programs are designed to reduce the danger that hazardous substances may pose to people and businesses under normal daily circumstances and as a result of emergencies and disasters.

Federal

The following federal agencies oversee hazards and hazardous materials concerns.

United States Environmental Protection Agency

The USEPA laws and regulations ensure the safe production, handling, disposal, and transportation of hazardous materials. Laws and regulations established by the USEPA are enforced in Santa Clara County by the California Environmental Protection Agency (CalEPA).

United States Department of Transportation

The USDOT has the regulatory responsibility for the safe transportation of hazardous materials between states and to foreign countries. The USDOT regulations govern all means of transportation, except for those packages shipped by mail, which are covered by United States Postal Service regulations. The federal Resource Conservation and Recovery Act of 1976 imposes additional standards for the transport of hazardous wastes.

[3] California Health and Safety Code Section 25501(n)(1).

Occupational Safety and Health Administration

The Occupational Safety and Health Administration (OSHA) oversees the administration of the Occupational Safety and Health Act, which requires specific training for hazardous materials handlers, provision of information to employees who may be exposed to hazardous materials, and acquisition of material safety data sheets from materials manufacturers. The material safety data sheets describe the risks, as well as proper handling and procedures, related to particular hazardous materials. Employee training must include response and remediation procedures for hazardous materials releases and exposures.

State

California Health and Safety Code and Code of Regulations

California Health and Safety Code Chapter 6.95 and California Code of Regulations, Title 19, Section 2729 set out the minimum requirements for business emergency plans and chemical inventory reporting. These regulations require businesses to provide emergency response plans and procedures, training program information, and a hazardous material chemical inventory disclosing hazardous materials stored, used, or handled on-site. A business which uses hazardous materials or a mixture containing hazardous materials must establish and implement a business plan if the hazardous material is handled in certain quantities.

California Environmental Protection Agency

One of the primary agencies that regulates hazardous materials is the CalEPA. The State, through CalEPA, is authorized by the USEPA to enforce and implement certain federal hazardous materials laws and regulations. The California DTSC, a department of the CalEPA, protects California and Californians from exposure to hazardous waste, primarily under the authority of the RCRA and the California Health and Safety Code.[4] The DTSC requirements include the need for written programs and response plans, such as Hazardous Materials Business Plans. The DTSC programs include dealing with aftermath clean-ups of improper hazardous waste management, evaluation of samples taken from sites, enforcement of regulations regarding use, storage, and disposal of hazardous materials, and encouragement of pollution prevention.

California Division of Occupational Safety and Health

Like OSHA at the federal level, the California Division of Occupational Safety and Health (CalOSHA) is the responsible State-level agency for ensuring workplace safety. The CalOSHA assumes primary responsibility for the adoption and enforcement of standards regarding workplace safety and safety practices. In the event that a site is contaminated, a Site Safety Plan must be crafted and implemented to protect the safety of workers. Site Safety Plans establish policies, practices, and procedures to prevent the exposure of workers and members of the public to hazardous materials originating from the contaminated site or building.

[4]Hazardous Substance Account, Chapter 6.5 (Section 25100 et seq.) and the Hazardous Waste Control Law, Chapter 6.8 (Section 25300 et seq.) of the Health and Safety Code.

California Department of Transportation and California Highway Patrol

Two State agencies have primary responsibility for enforcing federal and State regulations and responding to hazardous materials transportation emergencies: the California Highway Patrol (CHP) and the California Department of Transportation (Caltrans). Caltrans manages more than 50,000 miles of California's highway and freeway lanes, provides intercity rail services, permits more than 400 public-use airports and special-use hospital heliports, and works with local agencies. Caltrans is also the first responder for hazardous material spills and releases that occur on highway and freeway lanes and intercity rail services.

The CHP enforces hazardous materials and hazardous waste labeling and packing regulations designed to prevent leakage and spills of materials in transit and to provide detailed information to cleanup crews in the event of an accident. Vehicle and equipment inspection, shipment preparation, container identification, and shipping documentation are all part of the responsibility of the CHP, which conducts regular inspections of licensed transporters to assure regulatory compliance. In addition, the State of California regulates the transportation of hazardous waste originating or passing through the State.

Common carriers are licensed by the CHP, pursuant to the California Vehicle Code, Section 32000. This section requires licensing every motor (common) carrier who transports, for a fee, in excess of 500 pounds of hazardous materials at one time and every carrier, if not for hire, who carries more than 1,000 pounds of hazardous material of the type requiring placards. Common carriers conduct a large portion of the business in the delivery of hazardous materials.

Regional

San Francisco Bay Regional Water Quality Control Board

The Porter-Cologne Water Quality Act[5] established the State Water Resources Control Board (SWRCB) and divided the State into nine regional basins, each under the jurisdiction of a Regional Water Quality Control Board (RWQCB). The Regional Water Quality Control Board for the San Francisco Bay Region (Region 2) is the Regional Water Quality Control Board (San Francisco Bay RWQCB) that regulates water quality in Cupertino. The San Francisco Bay RWQCB has the authority to require groundwater investigations when the quality of groundwater or surface waters of the state is threatened, and to require remedial actions, if necessary.

Local

Cupertino General Plan

The Cupertino General Plan (Community Vision 2015-2040), includes a policy that is relevant to the safe handling of hazardous materials and applicable to the proposed project. The policy is identified in Chapter 7, Health and Safety, of the General Plan and listed in Table 4.6-1.

[5] California Water Code Sections 13000 *et seq*.

TABLE 4.6-1 GENERAL PLAN POLICY RELEVANT TO HAZARDS AND HAZARDOUS MATERIALS

Policy Number	Policy
Chapter 7, Health and Safety (HS)	
Policy HS-6.1	**Hazardous Materials Storage and Disposal.** Require the proper storage and disposal of hazardous materials to prevent leakage, potential explosions, fire or the release of harmful fumes. Maintain information channels to the residential and business communities about the illegality and danger of dumping hazardous material and waste in the storm drain system or in creeks.

Source: Cupertino General Plan (Community Vision 2015-2040).

4.6.1.2 EXISTING CONDITIONS

The 8.1-acre project site is currently developed with a one-story shopping center (The Oaks Shopping Center) consisting of five occupied buildings with retail stores and restaurants, which was built between 1973 and 1976. The closest school, De Anza College, a community college, is located approximately 140 feet to the south, directly across from the project site. The nearest daycares are Cupertino Child Care located 0.30 miles to the northeast; Village Little Preschool Center located 0.35 miles to the east; and Buzy Tots Childcare and Preschool located approximately 0.25 miles to the southeast. There are no other existing or proposed schools or daycares within 0.25 miles of the project site.

As previously stated, a Limited ESC was prepared for the project site (see Appendix F of this Draft EIR). The purposed of the ESC was to conduct soil sampling and analysis to assess the potential for soil contamination resulting from past and/or present site activities and nearby off-site operations. Because the proposed project will require the export of 69,000 cubic yards of cut to accommodate the one-level subterranean parking garage below Residential-Retail Building 1, the objective of the ESC was to preliminarily characterize the soil to assist in the off haul of excavated material from the site. A total of twelve soil samples were submitted to a state-certified laboratory. The testing was performed to satisfy soil profiling scenarios generally accepted by landfills. The soil samples were analyzed for some or all of the following: total petroleum hydrocarbons as gasoline (TPHg), diesel (TPHd), and motor oil (TPHmo), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), organochlorine pesticides (OCPs) and polychlorinated biphenyls (PCBs), California assessment metals (CAM) 17 metals, and leaking underground fuel tank (LUFT) 5 metals. The ESC did not find any elevated concentrations of hazardous waste exceeding federal or State levels, and no contaminated or hazardous materials were encountered.

4.6.2 THRESHOLDS OF SIGNIFICANCE

An Initial Study was prepared for the proposed project (see Appendix A of this Draft EIR). Based on the analysis contained in the Initial Study and comments received during the scoping process, it was determined that development of the proposed project would not result in significant environmental impacts related to the following significance standards and, therefore, are not discussed in this chapter.

- Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

- Be located on a site which is included on a list of hazardous material sites compiled pursuant to Government Code section 65962.5 and, as a result, create a significant hazard to the public or the environment.
- For a project within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard for people living or working in the project area.
- Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
- Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires.

Based on the Initial Study and comments received during the scoping process it was determined that the proposed project could result in a potentially significant impact related to hazards and hazardous materials if it would:

1. Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials.
2. Emit hazardous emissions or handle hazardous materials, substances or waste within 0.25 miles of an existing or proposed school.

4.6.3 IMPACT DISCUSSION

HAZ-1	**The proposed project would not create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials during construction.**

Project Construction

Construction activities would include the use of materials such as fuels, lubricants, and greases in construction equipment and coatings used in construction. However, the materials used would not be in such quantities or stored in such a manner as to pose a significant safety hazard. These activities would also be short-term or one time in nature and would cease upon completion of the proposed project's construction phase. The use, storage, transport, and disposal of construction-related hazardous materials would be required to conform to existing laws and regulations. Compliance with applicable laws and regulations governing the use, storage, transportation, and disposal of hazardous materials would ensure that all potentially hazardous materials are used and handled in an appropriate manner to minimize the potential for safety impacts.

As described in Section 4.6.1.2, Existing Conditions, because the proposed project will require the export of 69,000 cubic yards of soil to accommodate the one-level subterranean parking garage below Residential-Retail Building 1, the objective of the soil testing conducted on the project site was to preliminarily characterize the soil to assist in the off haul and disposal of excavated material from the site. Based on the analytical results from the ESC, none of the soils at the project site that are proposed to be

excavated for off-site disposal contain elevated concentrations exceeding federal or State hazardous waste levels. Therefore, soils removed from the site during excavation activities would be disposed of at a landfill as unrestricted waste and impacts would be less than significant.

Significance Without Mitigation: Less than significant.

HAZ-2	**The proposed project would not emit hazardous emissions or handle hazardous materials, substances or waste within 0.25 miles of an existing or proposed school.**

De Anza College is located directly south of Stevens Creek Boulevard, within 140 feet of the project site. In addition, one pre-school is located within 0.25-miles of the project site. As described under impact discussion HAZ-1, impacts related to potentially contaminated soils would be less than significant. Also see Chapter 4.1, Air Quality, impact discussion AQ-3, which concludes that the potential for impacts to sensitive receptors due the release of hazardous materials during construction would be less than significant. Therefore, the proposed project would not emit hazardous emissions or handle hazardous materials, substances, or waste within 0.25 miles of an existing or proposed school, and impacts would be *less than significant*.

Significance Without Mitigation: Less than significant.

4.6.4 CUMULATIVE IMPACTS

HAZ-3	**The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to hazards and hazardous materials.**

As described under impact discussion HAZ-1, activities associated with grading, excavation, and the hauling and disposal of soils during the construction phase of the proposed project would not create a significant hazard to the public or the environment through the transport or disposal of hazardous materials. Because impacts associated with the transport of hazardous materials during construction, are, by their nature, focused on specific sites or areas, the significant-but-mitigable impact on the project site associated with the excavation, hauling, and disposal of potentially contaminated soils would not contribute to a cumulative increase in hazards in the city. Therefore, the potential for cumulative impacts associated with safety and hazards during construction or handling of hazardous materials in close proximity to schools would be *less than significant*.

Significance With Mitigation: Less than significant.

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