



MEMORANDUM

To: Deepti Jain, Environmental Programs Manager

From: Alex Jewell, Project Manager

Date: June 12, 2023

Subject: *CEQA Consistency Analysis for Cupertino Service of 15,000 Tons of Mixed Solid Waste at Sunnyvale SMaRT Station*

Introduction

The purpose of this memorandum is to document that the City of Sunnyvale Material Recovery and Transfer (SMaRT) Station contracting with the City of Cupertino for 15,000 tons of Mixed Solid Waste (MSW) on an annual basis would not result in a significant change to impacts previously analyzed in prior environmental documents certified by the City of Sunnyvale (City). Changes or additions to the description of a project that occur after certification of an EIR may require additional analysis, if those changes are substantial and involve new significant environmental effects or a substantial increase in the severity of previously identified effects. (See California Environmental Quality Act (CEQA) Guidelines, § 15162, subd. (a).)

The EIR prepared for the SMaRT Station, and certified by the City Council in 1990, states that, “It is proposed that additional capacity be used to serve an extended service area of limited wastes from Cupertino, Los Altos, Los Altos Hills, Santa Clara, and Stanford.” As such, providing service to Cupertino is consistent with the service area analyzed in the EIR for the SMaRT Station and for which mitigation has been adopted.

Background

The Sunnyvale City Council (Council) adopted the Zero Waste Plan in April 2013. In doing so, the Council directed staff to, “market SMaRT Station capacity beyond the current tri-city consortium (Sunnyvale, Mountain View, and Palo Alto)” and to “create renewed partnerships that are centered on the SMaRT Station and take advantage of economies of scale, which are significant in waste processing facilities.” Council specifically recommended that staff “continue to explore with other jurisdictions their interest in committing to a SMaRT Station-based Zero Waste goal as well as transfer and disposal services.”

The City of Cupertino’s Zero Waste Plan has an overall goal of reaching and maintaining 80 percent waste diversion by 2025. The Plan specifically targets route collected landfilled waste through a materials recovery facility (MRF) to increase diversion before final disposal. If this

material is brought to SMaRT Station for processing, it will help Cupertino achieve this goal. The alignment of such goals with the City of Sunnyvale provides value to this partnership.

Considering the sorting and diversion capabilities of the SMaRT Station and the future improvements being contemplated, Cupertino is interested in potentially processing 15,000 tons per year of MSW at the SMaRT Station. The current demand of the cities of Mountain View and Sunnyvale is approximately 144,000 tons per year while the SMaRT Station has a total capacity of 391,500 tons per year. No physical changes the SMaRT Station site or existing buildings are required to accommodate the proposed MSW from the City of Cupertino. No changes to the current operations of the SMaRT Station are required or proposed. Therefore, there is adequate capacity to accommodate Cupertino’s anticipated demand of 15,000 tons per year MSW. The current capacity of the SMaRT Station is summarized in *Table 1: Current SMaRT Station Capacity*.

Table 1: Current SMaRT Station Capacity

	Tons Per day	Tons Per Year (261 working days)
Permitted processing capacity	1,500	391,500
Actual tons received from Sunnyvale and Mountain View	550	143,550
Expected Cupertino MSW tons	57.5	15,000
Extra Capacity	950	247,950
Palo Alto Tons processed (1992-2021)	91.95	24,000
Tons (Cupertino +Mountain View+ Sunnyvale)	550+57.5 = 607.5	158,557.5
Capacity remaining (Cupertino + Mountain View+ Sunnyvale)	892.5	232,942.5

CEQA Considerations

State CEQA Guidelines Section 15162 state that, “When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- Substantial changes are proposed in the project which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes with respect to the circumstances under which the project is undertaken which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of EIR certification, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the EIR,
 - B. The project will result in impacts substantially more severe than those disclosed in the EIR,
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measure or alternative, or
 - D. Mitigation measures or alternatives that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

Based on the analysis and evaluation provided in this Consistency Analysis, no new significant impacts would occur as a result of providing service to the City of Cupertino for up to 15,000 tons of MSW per year. Nor would there be any substantial increase in the severity of any previously-identified significant environmental impact. Lastly, there is no new information of substantial importance that shows the mitigation measures or alternatives that were previously found not to be feasible or that are considerably different from those analyzed in the 1990 Final EIR would substantially reduce one or more significant effects on the environment. Therefore, none of the conditions described in Section 15162 of the CEQA Guidelines has occurred.

Analysis of Potential Environmental Effects

This Consistency Analysis is based on the SMaRT Station project Environmental Impact Report (EIR) that was originally published in June 1990. The Final EIR for the project was certified by the City of Sunnyvale in September 1990 (State Clearinghouse #89022812). After the FEIR was certified, three Addendums to the document were prepared and approved, one in 1992, one in 2016, and one 2023. The Addendums were prepared to account for minor changes to the SMaRT Station project. The following is a lists the previously prepared environmental documents.

- Final Environmental Impact Report (certified September 1990, State Clearinghouse Number 89022812 (1990 Final EIR); and,
- Addendum to the 1990 Final EIR, approved July 1992 (1992 Addendum).
- Addendum to the 1990 Final EIR, approved December 2016 (2016 Addendum)
- Addendum to the 1990 Final EIR, February 2023 (2023 Addendum); under review

Aesthetics

The Final EIR certified in 1990 identified significant and unavoidable impacts on aesthetic views from recreational areas to the north of the SMaRT Station site. Mitigation measures were included to construct a screening wall and plant trees along the northern boundary of the project area to screen views of people using the recreational facilities north of the project site. However, the potential impacts remained significant with the implementation of the adopted mitigation measures. The screen wall and vegetation remain in place and impacts are no greater today than those previously disclosed. It should be noted that the updated project does not change any perimeter berms or vegetative screening measures that were implemented as part of the original project and have been in place since they were installed and/or planted.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to aesthetics remain valid and no further analysis is required.

Agricultural and Forestry Resources

The Final EIR certified in 1990 identified significant and unavoidable impacts on aesthetic views from recreational areas to the north of the SMaRT Station site. Mitigation measures were included to construct a screening wall and plant trees along the northern boundary of the project area to screen views of people using the recreational facilities north of the project site. However, the potential impacts remained significant with the implementation of the adopted mitigation measures. The screen wall and vegetation remain in place and impacts are no greater today than those previously disclosed. It should be noted that the updated project does not change any perimeter berms or vegetative screening measures that were implemented as part of the original project and have been in place since they were installed and/or planted.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to agricultural resources remain valid and no further analysis is required.

Air Quality

Air quality-related impacts were addressed in the 1990 Final EIR at pages IV-87 through IV-93. The analysis identified that all air quality-related topics would be less than significant with the exception of construction-related impacts associated with short-term dust emissions and the potential to release hazardous landfill gas during excavation activities. The 1990 Final EIR identified mitigation to reduce the potential to release hazardous landfill gas during excavation activities to a less than significant level. Mitigation was also identified to reduce short-term dust emissions, yet not to a level below significance. Short-term dust emissions were determined to be significant and unavoidable.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to air quality remain valid and no further analysis is required.

Biological Resources

The 1990 Final EIR and subsequent environmental documentation found that the SMaRT Station would not have impacts to biological resources. This was because the SMaRT Station site was heavily disturbed as a result of previous landfill operations and continued SMaRT Station operations at the site would not disturb on-site resources. The 1990 Final EIR included mitigation measures to address indirect impacts on wildlife in the area.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to biological resources remain valid and no further analysis is required.

Cultural Resources

The 1990 Final EIR and subsequent environmental document found that the SMaRT Station project would not result in impacts to cultural resources because the SMaRT Station site was heavily disturbed as a result of previous landfill and continued SMaRT Station operations at the site. The updated SMaRT Station project would not result in the expansion of the site footprint or extend the service boundary that would result in disturbance to any off-site area. Physical changes to the existing SMaRT Station site would include replacement of outdated machinery and equipment with modern machinery and equipment, creation of a pit area for SSO/food scraps, and installation of solar panels. Minor ground disturbance and pad leveling would be needed but all work would occur within the site boundaries and areas that have been heavily disturbed and modified over the last 20 years. The updated SMaRT Station project would serve existing uses within the City's of Sunnyvale and Mountain View and would not require or permit any physical changes to properties or existing structures within the service area.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to cultural resources remain valid and no further analysis is required.

Energy

The 1990 Final EIR did not evaluate the effects of energy resources. At the time of approval of the 1990 Final EIR, impacts related to energy were not an element of the State CEQA Guidelines. On December 28, 2018, amendments to the State CEQA Guidelines took effect which set forth requirements for the analysis of Energy under CEQA. The Final EIR was already certified; therefore, the determination of whether energy needs to be analyzed for the proposed project is governed by the law on supplemental or subsequent EIRs (PRC § 21166 and CEQA Guidelines §§15162 and 15163). Energy resources are not required to be analyzed under those standards unless it constitutes "new information of substantial importance, which was not known and could not have been known at the time" the 1990 Final Plan EIR was approved (State CEQA Guidelines §15162(a)(3)).

The issue of energy is not new information that was not known or could not have been known at the time of the certification of the 1990 Final EIR. For example, the California Energy Code was created by the California Building Standards Commission in 1978 in response to a legislative mandate to reduce California's energy consumption. Therefore, while energy impacts were known at the time of adoption of the 1990 Final EIR, an evaluation was not required as part of the CEQA process. Therefore, under CEQA standards, it is not new information that requires analysis in a subsequent environmental document.

With regard to CEQA, providing service to the City of Cupertino would not result in any new impacts, or increase the severity of the previously identified impacts, with respect to energy. Therefore, preparation of a subsequent environmental analysis is not warranted.

Geology and Soils

The 1990 Final EIR identified potential impacts as a result of geologic hazards and unstable soils. Mitigation measures were identified for implementation during the construction of the SMaRT Station facility and operations areas. The impacts also were considered as part of subsequent environmental documents, however, mitigation pertained to building of structures and earthwork in relation to construction of the SMaRT Station. All measures were implemented as part of the development process and were not applicable upon completion of construction.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to geology and soils remain valid and no further analysis is required.

Greenhouse Gas Emissions

Discussions of greenhouse gasses were not required at the time the Final EIR was prepared. Since that time, however, revisions to the CEQA checklist that included additional environmental categories of review became effective. More detail is provided below.

The 1990 Final EIR does not evaluate the effects of greenhouse gas (GHG) emission generation. At the time of certification of the Final EIR, the issue of contribution of GHG emissions to climate change was a prominent issue of concern. On March 18, 2010, amendments to the State CEQA

Guidelines took effect which set forth requirements for the analysis of GHG emissions under CEQA. Since the SMaRT Station EIR has already been approved, the determination of whether GHG emissions and climate change needs to be analyzed for this specific development is governed by the law on supplemental or subsequent EIRs (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163). GHG emissions and climate change are not required to be analyzed under those standards unless it constitutes “new information of substantial importance, which was not known and could not have been known at the time” the 1990 Final EIR was certified (CEQA Guidelines Section 15162(a)(3)).

The issue of GHG emissions and climate change impacts is not new information that was not known or could not have been known at the time of the approval of the SMaRT Station Final EIR. While the issue of climate change and GHG emissions was discussed and known prior to the 1990 Final EIR certification an evaluation of was not required as part of the CEQA process. Thus, although the regulation of GHG emissions to reduce climate change impacts was extensively debated and analyzed throughout the early 1990s, CEQA did not require discussions or disclosures.

With regard to CEQA Section 21166 and State CEQA Guidelines Section 15162(a), providing service to the City of Cupertino would not result in any new impacts, or increase the severity of the previously identified impacts, with respect to greenhouse gas emissions. Therefore, preparation of a subsequent environmental analysis is not warranted.

Hazards and Hazardous Materials

The 1990 Final EIR and subsequent environmental documentation did not identify any significant impacts as a result of handling hazardous or toxic materials at the SMaRT Station. The SMaRT Station currently does not accept, handle, or process hazardous or toxic wastes from either public or private sources.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to hazards and hazardous materials remain valid and no further analysis is required.

Hydrology and Water Quality

The 1990 Final EIR and subsequent environmental documentation did not identify any significant impacts on water quality or from flooding at the SMaRT Station. The 1990 Final EIR concluded that the risks from flooding as a result of a 100-year high tide or tsunami were sufficiently low that no mitigation was required. The current FEMA flood map (06085C0045H) on the City of Sunnyvale Flood zone viewer shows the project site as outside the existing flood hazard areas. Previous potential impacts to water quality were addressed in the Final EIR through the management of groundwater that could be encountered during the original construction activities and mitigation that required treatment and disposal of the groundwater in accordance with Regional Water Quality Control Board (RWQCB) standards.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to hydrology and water quality remain valid and no further analysis is required.

Land Use and Planning

The 1990 Final EIR does not identify or evaluate any significant conflicts with land use or other planning documents as a result of developing the SMaRT Station.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to land use and planning remain valid and no further analysis is required.

Mineral Resources

The 1990 Final EIR does not evaluate the effects of mineral resources. The version of the City of Sunnyvale General Plan that was in effect at the time the original EIR was written as well as the current General Plan written in 2011, do not identify any regionally or locally important mineral resources on the updated project site. The project site is located in a Mineral Resource Zone (MRZ) 1, which indicates adequate information indicates no significant mineral deposits exist.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station.

Noise

Noise resulting from on-site traffic at the SMaRT Station, off-site traffic, and transferring materials and disposal operations of the adjacent Kirby Landfill were determined to be less than significant in the 1990 Final EIR. Subsequent findings in later environmental documentation was consistent with these findings. The 1990 Final EIR, however, determined that significant noise impacts would occur to users of the levee trails north of the updated project site as well as future visitors of a planned park. The noise source effecting the levee trails and planned park was identified as SMaRT Station operations and such operational noise was determined to be significant and unavoidable.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to noise remain valid and no further analysis is required.

Population and Housing

The 1990 Final EIR does not evaluate the effects on population and housing. The addition of the City of Cupertino would not require any physical improvements to the SMaRT Station site. The project would not result in the construction of any new additional housing units or habitable structures, and does not include any use or service that would indirectly increase population as it would maintain the peak daily tonnage limit of 1,500 and does not include any physical development or substantial changes in the operations of the existing facility.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station.

Public Services

The 1990 Final EIR did not identify any significant impacts on public services that would occur from implementation or operation of the SMaRT Station.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to public services remain valid and no further analysis is required.

Recreation

The 1990 Final EIR and subsequent environmental documentation did not identify any significant impacts on recreation that would result from implementation of the SMaRT Station project.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5

tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to recreation remain valid and no further analysis is

Transportation

The 1990 EIR for the SMaRT Station was prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines in effect at that time. The 1990 Final EIR concluded that the SMaRT Station would not have significant traffic impacts because the projected number of traffic trips would not have a significant adverse impact on the level of service operations at the study intersections or significantly increase traffic volumes on roadways within the study area. Nonetheless, mitigation measures were proposed that would further reduce traffic impacts.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to transportation remain valid and no further analysis is required.

Since certification of the Final EIR, the issue of vehicle miles traveled (VMT) has become a more prominent issue of concern as evidenced by passage of SB 743 in 2013. Previously, CEQA analysis was conducted using a level of service (LOS) measurement that evaluated traffic delay. As specified under SB 743 and implemented under Section 15064.3 of the State CEQA Guidelines (effective December 28, 2018), VMT is the required metric to be used for identifying CEQA impacts and mitigation. In December 2018, the Office of Planning and Research (OPR) published a Technical Advisory on Evaluating Transportation Impacts, including guidance for VMT analysis. The Office of Administrative Law approved the updated CEQA Guidelines and lead agencies were given until July 1, 2020, to implement the updated guidelines for VMT analysis.

The determination of whether VMT needs to be analyzed for this project is governed by the law on supplemental or subsequent EIRs (Public Resources Code section 21166 and CEQA Guidelines, Sections 15162 and 15163). VMT is not required to be analyzed under those standards unless it constitutes "new information of substantial importance, which was not known and could not have been known at the time the previous EIRs were certified as complete" (CEQA Guidelines Sec. 15162 (a) (3)).

VMT impacts were not analyzed in the prior environmental documentation; however, these impacts are not new information that was not known or could not have been known at the time these previous EIRs were certified. The issue of VMT as a metric for analyzing traffic was widely known prior to the certification of these EIRs.

Therefore, the impact of VMT was known at the time of the certification of the Final EIR. Under CEQA standards, it is not new information that requires analysis in a supplemental EIR or Negative Declaration. No supplemental environmental analysis of the project's impacts on this issue is required under CEQA.

Tribal Cultural Resources

The Final EIR for the SMaRT Station was prepared for the project was prepared before Assembly Bill 52 (AB 52) and the tribal notification process was a requirement and was in the CEQA Guidelines and Checklist. On July 1, 2015, AB 52 amended CEQA to require that: 1) a lead agency provide notice to any California Native American tribes that have requested notice of projects proposed by the lead agency; and 2) for any tribe that responded to the notice within 30 days of receipt with a request for consultation, the lead agency must consult with the tribe. Accordingly, AB 52 applies to projects with a Notice of Preparation (NOP) or notice of a Negative Declaration (ND) or Mitigated Negative Declaration (MND) issued on or after July 1, 2015.

The project is consistent with the analysis in the 1990 Final EIR and does not require the preparation of a new MND or EIR and therefore AB52 does not apply.

Utilities and Service Systems

The 1990 Final EIR and subsequent environmental documentation did not identify any significant impacts on utilities and services that would occur from implementation or continued operations of the SMaRT Station or within the service area.

The City of Cupertino was considered as part of the Extended Service area in the original EIR. The SMaRT station would continue to operate below its permitted tonnage with the addition 57.5 tons daily or 15,000 tons annually of MSW from the City of Cupertino. No physical improvements to the SMaRT Station site are proposed nor required. The updated project would not require changes to the mitigation measures presented in the 1990 Final EIR and no additional measures

are needed because there are no previously undisclosed impacts that would occur under the updated project.

No new or more significant impacts, previously unidentified significant impacts on-site or off-site, and no cumulative impacts not previously disclosed in the certified EIR for the SMaRT Station. Thus, the previous findings related to public services remain valid and no further analysis is required.

Wildfire

The 1990 Final EIR and other subsequent environmental documentation did not evaluate the effects of wildfires. At the time of approval of the 1990 Final EIR, although wildfire was a known danger, impacts related to wildfire was not an issue of concern in terms of CEQA and was not included to the environmental checklist. On December 28, 2018, amendments to the State CEQA Guidelines took effect which set forth requirements for the analysis of wildfires under CEQA. The Final EIR was already certified; therefore, the determination of whether wildfires needs to be analyzed for this project is governed by the law on supplemental or subsequent EIRs (PRC § 21166 and CEQA Guidelines §§15162 and 15163). Wildfire impacts are not required to be analyzed under those standards unless it constitutes “new information of substantial importance, which was not known and could not have been known at the time” the 1990 Final Plan EIR was approved (State CEQA Guidelines §15162(a)(3)).

The issue of wildfires is not new information that was not known or could not have been known at the time of the certification of the 1990 Final EIR. For example, prior to the adoption of the amended CEQA guidelines on December 28, 2018, the prior CEQA guidelines required evaluation to determine if a project would expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires. Therefore, wildfire impacts were known at the time of adoption of the 1990 Final EIR and therefore, under CEQA standards, it is not new information that requires analysis in a supplemental EIR or negative declaration.

With regard to CEQA Section 21166 and CEQA Guidelines Section 15162(a), providing service to the City of Cupertino would not result in any new impacts, or increase the severity of the previously identified impacts, with respect to wildfires. Therefore, preparation of a subsequent environmental analysis is not warranted.

Conclusion

The proposed service to the City of Cupertino for the proposed 15,000 tons of MSW annually are within the scope of the 1990 Final EIR analysis and will not cause any new significant environmental impacts, substantially increase previously identified impacts, nor require any new or modified mitigation that project proponents decline to implement.

With implementation of the previously adopted mitigation measures noted above, the Proposed Project is consistent with the following:

(1) NO substantial changes are proposed in the project which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) NO substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information which was not known and could not have been known with the exercise of reasonable diligence at the time the 2015 Final EIR was certified, does NOT show any of the following:

(A) The project will have one or more significant effects not discussed in the previously certified EIR;

(B) Significant effects previously examined will be substantially more severe than shown in the previously certified EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the certified EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Based on the foregoing, it is concluded that the analyses conducted, and the conclusions reached in the certified EIR adopted in September 1990 remain valid. The addition of 15,000 tons of MSW annually would not cause new significant impacts not identified in the 1990 Final EIR, and no new mitigation measures would be necessary to reduce significant impacts but that project proponents decline to adopt. No changes have occurred with respect to circumstances surrounding the SMARt Station that would cause significant environmental impacts to which the project would contribute considerably, and no new information has become available that shows that the project would cause significant environmental impacts. Therefore, no supplemental or further environmental review is required.

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