CITY OF MILPITAS

1355 California Circle Project
Draft Environmental Impact Report

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Prepared for:
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July 2023

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EXECUTIVE SUMMARY

INTRODUCTION

The 1355 California Circle Project Environmental Impact Report (EIR) has been prepared to evaluate the potential environmental impacts associated with implementation of the 1355 California Circle Project (referred herein as the "Project"). This Draft EIR has been prepared in conformance with the California Environmental Quality Act (CEQA) Statute (California Public Resources Code Section 21000 et seq.), *State CEQA Guidelines* (Title 14, California Code of Regulations, Chapter 3, Section 15000 et seq.), and the rules, regulations, and procedures for implementation of CEQA as adopted by the City of Milpitas. It is intended to serve as an informational document for public agency decision makers and the general public on the objectives and components of the Project, significant environmental impacts that may be associated with the construction and operation of the Project, and appropriate feasible mitigation measures and alternatives that may be implemented to reduce or eliminate these significant impacts. The City of Milpitas is the lead agency under CEQA and is responsible for preparing the 1355 California Circle Project EIR (State Clearinghouse No. 2022110251). The City, as the lead agency, will review and consider the 1355 California Circle Project EIR in its decision to approve, conditionally approve, revise, or deny the Project.

The City of Milpitas, which has the principal responsibility for processing and making a decision on the Project, and other public agencies (i.e., responsible and trustee agencies) that may use the EIR in their decision-making or permitting processes will consider the information in this Draft EIR along with comments and responses that are generated during the CEQA process. Responsible and trustee agencies, if available, are identified in **Section 2.0, Project Description**. In addition, the EIR is the primary reference document in the formulation and implementation of a Mitigation Monitoring and Reporting Program for the Project.

In accordance with CEQA, public agencies are required to make findings for each environmental impact of the project identified in the EIR. If the lead agency and responsible and trustee agencies decide that the benefits of the Project outweigh any identified unmitigated significant environmental effects, they will be required to adopt a statement of overriding considerations supporting their actions.

The actions involved in the implementation of the Project are described in **Section 2.0, Project Description**. Other agencies that may have discretionary approval over the Project, or components thereof, are also described in **Section 2.0**.

ES.1 PROJECT LOCATION

ES.1.1 Project Site Setting

The City of Milpitas (herein referenced as the City) is an incorporated municipality in the northeastern portion of Santa Clara County. The City is centrally located between Interstate 880 (I-880) to the east, Piedmont Road to the west, Scott Creek Road to the north, and Montague Expressway to the south. Surrounding cities include the City of Fremont to the north, and the City of San Jose to the south.

The Project Site is a 6.69-acre property located at 1355 California Circle, within the northwestern portion of the City. The Project Site is bound between California Circle to the east and I-880 to the west. The Project Site is also bound by commercial and industrial uses to the north, multi-family residential uses and a religious assembly use (BAPS Temple) to the east, a vacant industrial parcel to the south, and I-880 to the west. A storm drain channel is also located immediately west, between the Project Site and I-880.

ES.2 PROJECT DESCRIPTION

The Project involves the development of 131 townhomes and a 75-unit apartment complex. The Project would provide a total of 206 multi-family housing units.

The Project would construct five (5) three-storied townhome buildings containing seven units per building for a total of 35 dwelling units. All 35 dwelling units would be offered as "market rate" for sale units, ranging would range in size between 1,534 and 1,850 square feet. The seven-plex townhomes would have a total gross floor area of 16,954 square feet. These townhomes would utilize four different floor plans that consist of three and four-bedroom units, each varying in size and garage type.

The Project would also construct eight (8) four-storied townhome buildings containing twelve units per building for a total of 96 dwelling units. All 96 dwelling units would be offered as "market rate" for sale units, ranging in size from 1,518 to 2,175 square feet. The townhomes would have a total gross floor area of 28,677 square feet. Additionally, the twelve-plex townhomes would utilize seven different plans that consist of predominantly three-bedroom units with either two or three bathrooms. A portion of these units have an option to create a fourth bedroom loft.

Each townhome would be provided with either two-car tandem parking spaces or side-by-side garages. Each townhome building would range between three and four stories and would have a maximum height of 39 feet (for seven-plex townhomes) and 51 feet (for twelve-plex townhomes). The townhome portion of the Project Site would include internal private streets as a means of on-site vehicular circulation. Outdoor recreational amenities would include an outdoor recreational area and two walking paseos.

The Project would also construct a 66,844 square foot apartment complex composed of 75 housing units. All 75 apartment units would be offered at "below market rate" (BMR) rental prices, and it is anticipated that 20 units would be offered at the City's established "low-income rental rate", while the remaining 55 units would be offered at a "moderate rental rate" (MRR) rental prices. The units would consist of several studios, one bedroom, and two-bedroom units that range in size between 411 to 840 square feet. The seven-story apartment complex would have a parking structure that would provide 60 covered parking spaces, and the on-site surface parking lot would provide an additional 30 residential parking spaces for a total of 90 parking spaces. Outdoor recreational amenities would include two outdoor terraces for residential use.

ES.3 SCOPE OF THE EIR

This Draft EIR addresses the potential environmental effects of the proposed 1355 California Circle Project and alternatives to the Project. The scope of the Draft EIR includes issues identified by the City of Milpitas during scoping discussion with the City, as well as environmental issues raised by agencies and the general public in response to the scoping process and Notice of Preparation, as described below.

ES.3.1 Scoping Process

In compliance with the *State CEQA Guidelines*, the City of Milpitas has taken steps to maximize opportunities to participate in the environmental process. A Notice of Preparation (NOP) was distributed on November 14, 2022, to federal, state, regional, and local government agencies and other interested parties to solicit comments and inform the public of the Project. The Project was described, potential environmental effects associated with project implementation were identified, and agencies and the public were invited to review and comment on the Notice of Preparation. The NOP review and comment period closed on December 14, 2022; although letters received later were accepted and evaluated as part of the preparation of this Draft EIR. A scoping meeting to collect oral comments on the scope of the EIR was held virtually by the Planning Department on November 30, 2022, at 6:00 p.m.

The following environmental issues were identified through the scoping process as being potential impacts associated with implementation of the 1355 California Circle Project and are addressed in this Draft EIR:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural and Tribal Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services and Recreation
- Transportation and Circulation
- Utilities and Service Systems

Specific impact topics were identified for each of these environmental issues and are discussed in this Draft EIR with respect to existing conditions, potential impacts, the significance of these potential impacts, and proposed mitigation for significant impacts.

Other sections required by CEQA include a discussion of growth inducement, cumulative impacts, significant irreversible environmental changes, and significant environmental effects that cannot be avoided. A discussion of alternatives to the Project is also presented in this Draft EIR.

ES.3.2 Areas of Controversy Known to the Lead Agency

This Draft EIR addresses the areas of environmental controversy and environmental issues to be resolved which are known to the City of Milpitas or were raised by agencies and the public during the scoping process. The City identified many of these during preparation of the Notice of Preparation. It should be noted that not all of these issues are related to the environmental effects of the Project. The following summarizes the primary areas of controversy that have been identified and where they are addressed in this Draft EIR: Hydrology (see **Section 4.9, Hydrology and Water Quality**), Geologic Hazards - Liquefaction Hazards (see **Section 4.6, Geology and Soils**), and Vehicle Miles Traveled (see **Section 4.15, Transportation and Traffic**).

ES.3.3 Issues to be Resolved

The issues to be resolved by the City of Milpitas include a decision on the alternatives, which include the Project, and whether or how to mitigate the environmental effects of the Project. The City will need to determine if the type and intensity of development proposed for the 1355 California Circle Project Site is appropriate for the site.

ES.4 SIGNIFICANT ENVIRONMENTAL IMPACTS AND MITIGATION PROGRAM

ES.4.1 Summary Table

Table ES-1 summarizes each potentially significant environmental effect of the Project, the recommended mitigation measures, or alternatives that would reduce or avoid the effect and the level of significance after mitigation. The reader is referred to the full text of this Draft EIR for a detailed description of the environmental effects of the Project and feasible mitigation measures.

ES.4.2 Potential Impacts Not Found To Be Significant

In accordance with *State CEQA Guidelines* Section 15128, this Draft EIR identifies the possible significant effects that were determined not to be significant and are, therefore, not discussed in detail. Through the

preparation of the Initial Study, the City of Milpitas determined that an EIR was required to evaluate the potentially significant environmental effects of the Project. The following statements identify the items that were checked "No Impact" or "Less than Significant" on the Initial Study checklist and were not considered significant or applicable to the Project, and, therefore, are not addressed in this Draft EIR:

ES.5 MITIGATION MONITORING

State law and the City of Milpitas CEQA procedures require the preparation of a mitigation monitoring and reporting program designed to ensure that mitigation measures adopted as conditions of approval to mitigate or avoid significant environmental effects are carried out. Mitigation measures identified within this Draft EIR have been described in sufficient detail to provide the necessary information to identify the party (or parties) responsible for carrying out mitigation, when it is to be implemented, and how the mitigation is to be monitored. A mitigation monitoring program will be considered by the City of Milpitas with the Final EIR.

Table ES-1
Summary of Impacts and Mitigation Measures

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Aesthetics			
Would the Project have a substantial adverse effect on a scenic vista?	Potentially Significant Impact.	No feasible mitigation measures are available.	Significant and unavoidable impact.
Would the Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	No Impact.	No mitigation measures are required.	No impact.
In non-urbanized areas, would the Project substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	Less than Significant Impact.	No mitigation measures are required.	Less than significant.
Would the Project create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Air Quality			
Would the Project conflict with or obstruct implementation of the applicable air quality plan?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	Less than Significant Impact.	While Air Quality impacts are less than significant, M**itigation Measure MM AQ-1** was included as required by the BAAQMD to implement the BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions: **MM AQ-1:** The following BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions shall be implemented: • All exposed surfaces (e.g., parking areas, staging areas, soil	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
		piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site. • Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel. • Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.	
Would the Project expose sensitive receptors to substantial pollutant concentrations?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Biological Resources			
Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulation, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	Potentially Significant Impact.	**MM BIO-1:** In the event that ground-disturbing activities or removal of any trees, shrubs, or any other potential nesting habitat that are associated with the Project are scheduled to occur within the avian nesting season (from January 1 through August 31), a qualified biologist retained by the City shall conduct a pre-construction clearance survey for nesting birds within three days prior to any ground disturbing activities. The biologist conducting the clearance survey shall document the negative results if no active bird nests are observed on the Project Site during the clearance survey with a brief letter report indicating that no impacts to active bird nests would occur before construction can proceed. If an active bird nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a 100-foot buffer around the active nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist. Any activities requiring the removal of a tree with an active bird nest shall halt until nesting activity seasons, which would be determined by the qualified biologist. The biologist shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Results of the pre-construction survey and any subsequent monitoring shall be provided to the City of Milpitas, California Department of Fish and Wildlife, and other appropriate agencies. This requirement shall be indicated on the site improvement plan and specifications for verification by the City of Milpitas prior to the initiation of construction activities.	Less than Significant Impact with Mitigation Incorporated.
Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	No Impact.	No mitigation measures are required.	No Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	No Impact.	No mitigation measures are required.	No Impact.
Would the Project interfere substantially with the movement of any native resident or migratory fish or animal species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites?	Potentially significant impact.	Refer to **Mitigation Measure MM BIO-1**.	Less than Significant Impact with Mitigation Incorporated.
Would the Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	Less than significant impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	No Impact.	No mitigation measures are required.	No Impact.
Cultural, Tribal Cultural Resources			
Would the Project cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?	No Impact.	No mitigation measures are required.	No Impact.
Would the Project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	Potentially Significant Impact.	**MM CUL-1:** The Project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area shall be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of archaeological testing for California Register of Historical Resources (CRHR) eligibility. Results of the archaeological testing shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the Project, additional work may be warranted, such as data recovery	Less than Significant Impact with Mitigation Incorporated.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
		excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.	
Would the Project disturb any human remains, including those interred outside of formal cemeteries?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is: i) Listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code Section 5020.1(k), or ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	Potentially Significant Impact.	See **Mitigation Measure CUL-1.**	Less than Significant Impact with Mitigation Incorporated.
Energy			
Would the Project result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	Less than Significant Impact.	No mitigation measures required.	Less than Significant Impact.
Would the Project conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	Less than Significant Impact.	No mitigation measures required.	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Geology and Soils			
Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving the rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would implementation of the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking.	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including landslides?	No Impact.	No mitigation measures are required.	No Impact.
Would the Project result in substantial soil erosion or the loss of topsoil?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	No Impact.	No mitigation measures are required.	No Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Would the Project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	Potentially Significant Impact.	**MM GEO-1:** In the event a potentially significant paleontological resource is encountered during ground-disturbing activities, work within 100 feet of the discovery shall halt and a professional paleontologist who meets the qualification standards of the Society of Vertebrate Paleontology shall be retained by the Project Applicant immediately to evaluate the significance of the discovery. The City of Milpitas Planning Department shall be notified immediately. If the resource is found to be significant, the professional paleontologist shall systematically remove it from the site for laboratory preparation. Following laboratory preparation, the resource would be identified, cataloged, and inventoried in anticipation of curation. All collected and prepared resources would be curated and stored in an accredited repository.	Less than Significant Impact with Mitigation Incorporated.
Greenhouse Gas Emissions			
Would the Project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? Would the Project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gas emissions?	Less than Significant Impact.	While GHG impacts are less than significant, **Mitigation Measure MM GHG-1** was included to demonstrate the Project's compliance with the Milpitas 2022 CAP Update and BAAQMD threshold "B". **MM GHG-1:** Prior to the issuance of a building permit, the Project Applicant shall demonstrate compliance with relevant and applicable measures of the CAP Update by preparing and implementing a project-specific consistency review checklist. The City shall review this consistency review checklist as part of the Project plan review. The consistency review checklist shall outline feasible, effective and applicable measures that will be required for the Project. Applicable and effective measures in reducing Project GHG emissions include, but are not limited to, the following: • Utilize the latest energy-efficient construction equipment, when feasible; • Install Energy Star appliances; • Install on-site renewable energy, such as solar panels; • Provide on-site electric vehicle charging stations and associated infrastructure; and • Install water-efficient irrigation systems capable of using	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
		reclaimed water, when available.	
Hazards and Hazardous Materials			
Would the Project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project 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?	Potentially Significant Impact.	**MM-HAZ-1:** Prior to issuance of a grading permit, a Soil Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience to establish appropriate management practices for handling impacted soil, soil vapor and ground water if encountered during construction activities. These documents shall include the following: • Site control procedures to control the flow of personnel, vehicles and materials in and out of the Site. • Measures to minimize dust generation, storm water runoff and tracking of soil off- Site. • If excavation de-watering is required, protocols to evaluate water quality and discharge/disposal alternatives shall be described. • Protocols for soil removal and subsequent subsurface soil sampling and evaluation. • Protocols for conducting earthwork activities in areas where impacted soil, soil vapor and/or ground water are present or suspected. Worker training requirements, health and safety measures and soil handing procedures should be described. • Protocols to be implemented if buried structures, wells, debris, or unidentified areas of impacted soil are encountered during construction activities. • Protocols to evaluate the quality of soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be determined. • Procedures to evaluate and document the quality of any soil imported to the Site. • Soil containing chemicals exceeding residential (unrestricted	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
		use) screening levels or typical background concentrations of metals should not be accepted. • Methods to monitor excavations for the potential presence of volatile chemical vapors	
Would the Project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school?	No Impact.	No mitigation measures are required.	No Impact.
Would the Project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment?	No Impact.	No mitigation measures are required.	No Impact.
For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the Project result in a safety hazard or excessive noise for people residing or working in the Project area?	No Impact.	No mitigation is required.	No Impact.
Would the Project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project expose people or structures to a significant risk of loss, injury, or death involving wildland fires?	No Impact.	No mitigation measures are required.	No Impact
Hydrology and Water Quality			
Would the Project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces,	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
in a manner which would: i) result in substantial erosion or siltation on- or off-site; ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site; iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or iv) impede or redirect flood flows?			
In flood hazard, tsunami, or seiche zones, would the Project risk release of pollutants due to Project inundation?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Land Use and Planning			
Would the Project physically divide an established community?	No Impact.	No mitigation measures are required.	No Impact.
Would the Project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Noise			
Would the Project generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project generate excessive groundborne vibration or groundborne noise levels?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
For a project located within the vicinity of a private airstrip or 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, would the Project expose people residing or working in the project area to excessive noise levels?	No Impact.	No mitigation measures are required.	No Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Population and Housing			
Would the Project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through the extension of roads or other infrastructure)?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	No Impact.	No mitigation measures are required.	No Impact.
Public Services and Recreation			
Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered fire protection facilities, need for new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered police protection facilities, need for new or physically altered police protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered school facilities, need for new or physically altered school facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives of the school district?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered library facilities, need for new or physically altered library facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Transportation			
Would the Project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	Potentially Significant Impact	**MM TRA-1:** Prior to project construction initiation, the respective Applicants shall prepare a Traffic Management Plan (TMP) for approval by the City Traffic Engineer. The TMP shall specify that one direction of travel in each direction on adjacent roadways must always be maintained during project construction activities. If full lane closures are required and one direction of travel in each direction cannot be maintained, the TMP shall identify planned detours. The TMP shall include measures such as construction signage, limitations on timing for lane closures to avoid peak hours, temporary striping plans, and use of construction flag person(s) to direct traffic during heavy equipment use. The TMP shall include signage, lane closures, flag persons, etc., and shall specify that one lane of travel in each direction shall be maintained along City rights-of-way. Bicycle lanes and pedestrian sidewalks shall remain open and accessible, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity. Lastly the TMP shall detail plans that the Applicant would take to ensure that the Project Site would provide adequate emergency access. The TMP shall be incorporated into project specifications for verification prior to final plan approval.	Less than Significant Impact with Mitigation Incorporated.
Would the Project conflict or be inconsistent with *State CEQA Guidelines* section 15064.3(b)?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project substantially increase hazards due to geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.

Project Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance After Mitigation
Would the Project result in inadequate emergency access?	Potentially Significant Impact.	Refer to Mitigation Measure **MM TRA-1.**	Less than Significant Impact with Mitigation Incorporated.
Utilities and Service Systems			
Would the Project require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.
Would the Project comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	Less than Significant Impact.	No mitigation measures are required.	Less than Significant Impact.

Sources: Impact Sciences, Inc., June 2023

ES.6 ALTERNATIVES TO THE PROJECT

As required by Section 15126.6 of the *CEQA Guidelines*, a range of reasonable alternatives to the Project that would attain most of the basic project objectives but would avoid or substantially lessen any of its significant environmental effects must be examined. Project alternatives aim to identify and disclose ways to mitigate or avoid significant environmental effects that may result from the Project. Impacts found to be significant and unavoidable in **Section 3.0, Environmental Impact Analysis**, include adverse effects on a scenic vista. Impacts found to be potentially significant but able to be reduced to less than significant with the imposition of proposed mitigation include habitat modifications, movement of native animal species, archaeological resources, tribal resources, paleontological resources, transportation regulations, and emergency access.

The alternatives considered are summarized below. Project alternatives are further discussed in **Section 5.0**, **Alternatives**.

Alternative 1 – No Project

Section 15126(2)(4) of the *State CEQA Guidelines* requires evaluation of the No Project Alternative. As described in the *State CEQA Guidelines*, the purpose of describing and analyzing the No Project Alternative is to allow decision makers to compare the impacts of approving the Project with the impacts of not approving the Project. However, "No Project" does not necessarily mean that development will be prohibited. The No Project Alternative includes "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."[1]

For purposes of this EIR, the No Project Alternative (Alternative 1) assumes the development of the proposed seven plex and twelve plex townhomes and apartment complex would not occur. The existing 90,000 square foot industrial office building, surface parking lot, and landscaping would remain, and no physical changes would be implemented.

Alternative 2 – Specific Plan Alternative

The Specific Plan Alternative (Alternative 2) would include the adoption and implementation of a California Circle Specific Plan bound by the I-880/California Circle on-and-off ramp, Dixon Landing Road, Lower Penitencia Creek, Fairview Avenue, and Cadillac Court (Plan Area),[2] which includes the

1 *State CEQA Guidelines* § 15126.6[e][2]

2 The California Circle Plan Area is the California Specific Plan Overlay, defined in the City's 2040 General Plan as the area is located along California Circle, east of the I-880 corridor, and west of the Penitencia Creek corridor.

Project Site. The Specific Plan would serve both planning and regulatory functions, including land use regulations, circulation patterns, building and streetscape design standards, and development standards. Alternative 2 assumes that the Project could be implemented as a development project under the Specific Plan.

All future development within the Plan Area (including the Project) would be subject to compliance with the Specific Plan regulations, as well as all other applicable City regulations. The Specific Plan would be developed in accordance with the policy objectives outlined in Action LU-2b of the City's 2040 General Plan:[3]

- Support opportunities for future development to provide hi-tech jobs, industries, and educational opportunities;
- Foster a competitive and desirable district by establishing a sense of place and ensuring that development provides amenities and is connected to nearby community assets;
- Act as an incubator for innovation and technology by encouraging developments that offer flexible and shared workspaces, facilitate collaboration, and provide infrastructure for advanced technologies;
- Identify funding mechanisms and incentives for infrastructure improvements (including fiber optic and Wi-Fi improvements) that may be desirable for high tech uses;
- Provide opportunities for increased building intensities within the overlay district;
- Continue to support smaller startups and allow for more intensive uses that encourage new firms and high tech uses to locate in this area.

Alternative 2 would accommodate mixed use developments with opportunities for residential development. Individual development projects under the Specific Plan would also be subject to recent local and State affordable housing requirements. Existing and new commercial and industrial uses along the I-880 frontage would be supported, and ensure land use compatibility between the residential, commercial and industrial buildout within the Specific Plan Area. Additionally, the Specific Plan would identify and implement circulation and street improvements as needed within the Plan Area and the vicinity of the Project Site. The Specific Plan would be reviewed by the City of Milpitas Planning Commission and adopted by the City Council.

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3 The policy objectives are outlined in **Action LU-2b** of the City's 2040 General Plan.

Environmentally Superior Alternative

CEQA requires identification of the environmentally superior alternative among the options studied. In general, the environmentally superior alternative is the alternative that would be expected to generate the fewest adverse impacts. If the No Project Alternative is identified as environmentally superior, then another environmentally superior alternative shall be identified among the other alternatives.

The Specific Plan Alternative (Alternative 2) would result in similar environmental impacts to the allowed uses and future development footprint at the Project Site. However, the adoption of a Specific Plan would include specific land use policies, design guidelines, and development standards for future development that would preserve the public views of the City's scenic resources and hillsides within the Plan Area. Implementation of the Project would result in significant and unavoidable impacts to these scenic resources. Thus, the Specific Plan Alternative would be selected as the environmentally superior alternative.

ES.7 REVIEW OF THE DRAFT EIR

The 1355 California Circle Project Draft EIR has been distributed to responsible and trustee agencies, other affected agencies, surrounding cities, and other interested parties in accordance with *State CEQA Guidelines* Section 15086. The Notice of Completion for the Draft EIR was also distributed as required by CEQA. During the 45-day public review period, the Draft EIR, including the technical appendices, is available for review at the City of Milpitas Planning Department at Milpitas City Hall, located at 455 East Calaveras Boulevard, Milpitas, CA 95035, and on the City's website at www.milpitas.gov.

Written comments on the Draft EIR should be addressed to:

Lillian VanHua, AICP, Senior Planner
City of Milpitas, Planning Department
455 East Calaveras Boulevard
Milpitas, California 95035

Upon completion of the 45-day public review period, written responses to all significant environmental issues raised will be prepared and made available for review at least 10 days prior to consideration of the Final EIR before the Milpitas City Council. These environmental comments and their responses will be included as part of the Final EIR for consideration by decision makers for the Project.

1.0 INTRODUCTION

1.1 PURPOSE

This introduction is intended to provide the reader with general information regarding (1) the purpose of the environmental impact report (EIR), (2) standards for EIR adequacy, (3) an introduction to the format and content of this project level EIR for the 1355 California Circle Project (herein referenced as the Project), and (4) the EIR processing requirements for the Project. Environmental documents can be confusing; this section is provided to help educate the reader regarding the intent, format, and content of this Draft EIR so that it can be more easily understood.

1.2 PROJECT BACKGROUND AND PLANNING PROCESS

The 6.69-acre Project Site is located in the City of Milpitas, in the northeastern portion of Santa Clara Valley. The Project Site is bordered by industrial uses, a local roadway (California Circle), residential uses, a vacant lot, a storm channel, and Interstate 880 (I-880). Local roadway access to the Project Site is provided by California Circle, and freeway access to the Project Site is provided by I-880.

1.2.1 Project Summary

The Project Site involves the demolition of the existing industrial office building, and the construction of a multi-family housing development. This housing development includes five (5) seven-plex townhomes, eight (8) twelve-plex townhomes, and an apartment building. The Project would provide a total of 206 multi-family housing units:

- Seven-Plex Townhomes: 35 dwelling units.
- Twelve-Plex Townhomes: 96 dwelling units.
- Apartment Building: 75 dwelling units

The proposed seven-plex and twelve-plex townhomes would be located next to each other and would encompass the majority of the Project Site. The proposed seven-plex and twelve-plex townhomes are predominantly three-bedrooms with two to three and a half bathrooms. The twelve-plex townhome units would also include a loft option. Parking spaces designated to each townhome would range between two to three spaces per unit with a total of 262 spaces for the townhomes and 90 spaces for the apartment building.

The proposed apartment building would be located within the northeastern corner of the Project Site. The unit mix for the apartment building would range between studios to two-bedroom units with the majority

of the units including one-bathroom. Parking spaces for the apartment would include between one to two spaces per unit. The proposed apartment building would assist the City in meeting its state-mandated Regional Housing Needs Assessment (RHNA) goals by offering all units at a "below market rental rate", with 20 of the 75 apartment units offered at a low-income rental rate.[1] The Project would also include ornamental landscaping and amenities for the apartment building, as well as two terraces. The Project includes the installation of all utility services (i.e., water lines, sewer lines, power lines, etc.) for the townhome community. The Project would also include a variety of ornamental landscaping and trees on site. Further, the Project would include two recreational areas within the townhome community: one in the form of a playground, and the other in form of paseos between the townhome buildings.

1.3 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

The purpose of this EIR is to assess the environmental effects of implementing the Project, as described above. All projects within the State of California are required to undergo an environmental review to determine the environmental impacts associated with implementation of the project in accordance with CEQA. CEQA was enacted in 1970 by the California legislature to disclose to decision makers and the public, the significant environmental effects of proposed activities, as well as ways to avoid or reduce the environmental effects by requiring implementation of feasible alternatives or mitigation measures. CEQA applies to all California governmental agencies at all levels, including local agencies, regional agencies, state agencies, boards, commissions, and special districts.

The EIR is ultimately intended as an informational document and by itself does not determine whether the Project will be approved. The EIR aids in the decision-making process by disclosing the potential significant and adverse impacts. In conformance with CEQA, California Public Resources Code, Section 21000, this EIR provides objective information addressing the environmental consequences of the Project and identifies the means of reducing or avoiding its significant impacts where feasible.

The *State CEQA Guidelines* help define the role and expectations of this EIR as follows:

- **Information Document**. An EIR is an informational document that will inform decision-makers as well as members of the public of the significant environmental effects of a project, identify feasible ways to minimize or avoid these effects, and describe a set of reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information contained in the administrative record (Section 15121(a)).

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1 Low Income is defined by the California Housing and Community Development Department as 50-80% of the Area Median Income. In 2022, the AMI for a family of 4 for Santa Clara County was $168,500. Therefore, a family of 4 would qualify as low income if they had a total household income between $84,250 and $131,750.

- **Degree of Specificity**. An EIR for an individual development project will be more detailed in the specific effects of the project than an EIR on the adoption of a community plan or zoning ordinance because the effects of the individual development can be predicted with greater accuracy. An EIR on a project such as the adoption of a community plan and/or zoning ordinance should focus on the secondary effects that can be expected to follow from the adoption but need not be as detailed as the analysis on the specific construction project that might follow (Section 15146).

- **Standards of Adequacy**. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed plan need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure (Section 15151).

The *State CEQA Guidelines*, Section 15382, defines a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant."

This EIR is to serve as an informational document for the public, and decision makers of the City. The EIR process will culminate with City Council hearings to consider certification of a Final EIR and consideration of the Project.

1.4 LEAD AGENCY, AUTHORIZATION, AND FOCUS

The lead agency for the Project is the City of Milpitas. The Planning Department is responsible for preparing the EIR for the review and consideration of the City Council, as the final decision-maker for the Project. The address for the Planning Department is:

City of Milpitas
Planning Department
455 E. Calaveras Boulevard
Milpitas, California 95035

The *State CEQA Guidelines* define "lead," "responsible," and "trustee" agencies. The determination that the City of Milpitas is the "lead agency" is made in accordance with *State CEQA Guidelines* sections 15051 and

15367, which define the lead agency as the public agency that has the principal responsibility for carrying out or approving a project. This Draft EIR reflects the independent judgment of the City regarding the potential environmental impacts and the level of significance of the impacts both before and after the mitigation measures proposed to reduce the impacts.

The City determined that an EIR is needed to evaluate potentially significant effects that could result from the implementation of the Project. An Initial Study was not prepared for the Project since it was determined from the outset that an EIR would be required (*State CEQA Guidelines* Section 15060(d)).

The City is required to consider the information in the Draft EIR, along with any other relevant information, in making its decision on the Project. Although the Draft EIR does not determine the ultimate decision that will be made regarding implementation of the Project, CEQA requires the City to consider the information in the Draft EIR and make findings regarding each significant effect in the Draft EIR. Once certified, the Final EIR will serve as the environmental document for the Project and will be used as a basis for decisions related to the future development of the Project.

A "responsible agency" refers to a public agency other than the lead agency that has discretionary approval over a project. A "trustee agency" refers to a state agency having jurisdiction by law over natural resources affected by a project. There are no responsible or trustee agencies associated with the Project.

1.5 TYPE OF ENVIRONMENTAL REVIEW

This environmental document has been prepared as a "EIR" as defined by Section 15362 of the *State CEQA Guidelines.* This type of EIR examines the environmental impacts of a specific development project and should focus primarily on the changes in the environment that would result from development of the Project. The EIR examines all stages of the Project, including planning, construction, and operation.

1.6 ENVIRONMENTAL REVIEW PROCESS

The environmental review process for an EIR, as required under CEQA, is summarized below. The steps are presented in sequential order.

1. **Notice of Preparation (NOP) Distributed**. Immediately after deciding that an EIR is required, the lead agency files an NOP soliciting input on the EIR scope to "responsible," "trustee," and involved federal agencies; to the State Clearinghouse, if one or more state agencies is a responsible or trustee agency; and to parties previously requesting notice in writing. A scoping meeting to solicit public input on the issues to be assessed in the EIR, while not always required, may be conducted by the lead agency.

2. **Draft Project Environmental Impact Report (Draft EIR) Prepared**. The Draft EIR must contain a (1) table of contents or index, (2) summary, (3) project description, (4) environmental setting, (5) environmental impacts (direct, indirect, cumulative, growth-inducing and unavoidable impacts), (6) alternatives, (7) mitigation measures, (8) irreversible changes, and (9) organizations and persons consulted.

3. **Public Notice and Review**. The lead agency must prepare a Notice of Availability (NOA) of an EIR. The Notice must be posted in the County Clerk's office for 30 days (Public Resources Code Section 21092.3) and sent to anyone requesting it. Additionally, public notice of Draft EIR availability must be given through at least one of the following procedures: (1) publication in a newspaper of general circulation, (2) posting on and off the project site, and (3) direct mailing to owners and occupants of contiguous properties. The lead agency must consult with and request comments on the Draft EIR from responsible and trustee agencies, and adjacent cities and counties. The minimum public review period for a Draft EIR is 30 days. When a Draft EIR is sent to the State Clearinghouse for review, the public review period must be 45 days, unless a shorter period is approved by the State Clearinghouse (Public Resources Code 21091). Distribution of the Draft EIR may be required through the State Clearinghouse.

4. **Notice of Completion.** The lead agency must file a Notice of Completion with the State Clearinghouse as soon as it completes a Draft EIR.

5. **Final EIR.** A Final EIR must include (1) the Draft EIR or a revision thereof, (2) copies of comments received during public review, (3) list of persons and entities commenting, and (4) responses to comments.

6. **Certification of Final EIR.** 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 (3) the decision-making body reviewed and considered the information in the Final EIR. A Notice of Determination must be filed with the County Clerk within five days of the certification of the Final EIR.

7. **Lead Agency Project Decision.** The lead agency may (1) disapprove a project because of its significant environmental effects; (2) require changes to a project to reduce or avoid significant environmental effects; or (3) approve a project despite its significant environmental effects, if the proper findings and statement of overriding considerations are adopted.

8. **Findings / Statement of Overriding Considerations.** For each significant impact of the project identified in the EIR, the lead or responsible agency must find, based on substantial evidence, that either (1) the project has been changed to avoid or substantially reduce the magnitude of the impact;

(2) changes to the project are within another agency's jurisdiction and such changes have or should be adopted; or (3) specific economic, social, or other considerations make the mitigation measures or project alternatives infeasible. If an agency approves a project with unavoidable significant environmental effects, it must prepare a written Statement of Overriding Considerations that sets forth the specific social, economic, or other reasons supporting the agency's decision.

9. **Mitigation Monitoring and Reporting Program (MMRP).** When an agency makes findings on significant effects identified in the EIR, it must adopt a reporting or monitoring program for mitigation measures that were adopted or made conditions of project approval to mitigate significant effects.

10. **Notice of Determination.** An agency must file a Notice of Determination after deciding to approve a project for which an EIR is prepared. A local agency must file the Notice with the County Clerk. The Notice must be posted for 30 days and sent to anyone previously requesting notice. Posting of the Notice starts a 30-day statute of limitations on CEQA challenges.

Notice of Preparation

In compliance with CEQA, the City of Milpitas completed a multi-step process to determine the appropriate scope of issues to be examined in this Draft EIR. Pursuant to *CEQA Guidelines* Section 15082, a NOP was prepared by the City and distributed on October 28, 2022 to the State Clearinghouse in the Office of Planning and Research, notifying the general public, responsible and trustee agencies, as well as interested parties that an EIR will be prepared for the proposed Project. The NOP was circulated for a 30-day review period that began on November 11, 2022, and ended on December 14, 2022. A Public Scoping Meeting was held on November 30, 2022. Written comments were received from agencies and from interested parties during the review period. Refer to **Appendix 1.0-1, CEQA Notices,** to this EIR for a copy of the NOP and refer to **Appendix 1.0-2, Comment Letters,** to this EIR for comments submitted to the City in response to the NOP. The NOP was available for review on the City's website. The City received a total of four (4) written comments and did not receive any verbal comments regarding the scope and content of the EIR. Information, data, and observations addressing comments from these comments are included throughout this Draft EIR where relevant.

Public Participation

One of the primary objectives of CEQA is to enhance public participation in the planning process. Community members are encouraged to participate in the environmental review process, request to be notified of meetings and release of documents, monitor newspapers for formal announcements, and submit substantive comments at every possible opportunity afforded by the lead agency. The environmental

review process provides various opportunities for the public to participate through scoping, public review of CEQA documents, and public hearings.

The public is invited to provide comments and concerns regarding the accuracy of this Draft EIR and the CEQA process. The comment period is indicated on the cover of this EIR. The Draft EIR will be circulated for review and comment by the public and other interested parties, agencies, and organizations for 45 calendar days. The Draft EIR is available on the City of Milpitas website at:

Project Website: https://www.milpitas.gov/295/planning

Hard copies of the Draft EIR will also be available at:

- Milpitas City Hall - 455 East Calaveras Boulevard, Milpitas, CA 95035

Written comments may be submitted via:

1. **Mail:** ATTN: Lillian VanHua, AICP, Senior Planner
   City of Milpitas, Planning Department
   455 East Calaveras Boulevard
   Milpitas, California 95035

2. **E-mail:** lvanhua@milpitas.gov

Pursuant to *State CEQA Guidelines* Section 15088, the City will prepare written responses to any comments that raise significant environmental issues received during the noticed comment period and include those responses in the Final EIR. The public will also be provided opportunities to present oral and written comments at future hearings and meetings on the Project to City Planning Commission and the City Council. The City may but is not required to provide written responses to comments submitted after the circulation period for the Draft EIR.

1.7 AREAS OF CONTROVERSY / ISSUES TO BE RESOLVED

Potential areas of controversy and issues to be resolved by the City's decision-makers may include those environmental issue areas where the potential for an unavoidable and significant impact has been identified. Based on the NOP comment letters (summarized in **Appendix 1.0-1**, of this Draft EIR)**,** issues known to be of concern in the community and therefore, potential areas of controversy, include: Hydrology (see **Section 4.9, Hydrology and Water Quality**), Geologic Hazards - Liquefaction Hazards (see **Section 4.6, Geology and Soils**), and Vehicle Miles Traveled (see **Section 4.15, Transportation and Traffic**).

1.8 FINAL EIR AND EIR CERTIFICATION

Following the close of the public review period on the Draft EIR, the City will prepare and publish a Final EIR, which will contain a summary of all written and recorded oral comments on this EIR received during the public review period for the Draft EIR and written responses to those comments that raise environmental concerns, along with copies of the letters received, and any necessary revisions to the EIR. The Draft EIR, comments on the EIR and a list of persons, organizations, and public agencies that commented on the Draft EIR, response to comments, and any revisions to the Draft EIR will constitute the Final EIR. The Final EIR will be available for public review prior to consideration of certification of the document by the decision-makers. The City Council, in an advertised public meeting(s), will consider the documents and then, if found adequate, certify the Final EIR as completed in compliance with CEQA and the *State CEQA Guidelines*.

1.9 ORGANIZATION OF THE EIR

The EIR is organized into the following chapters so the reader can easily obtain information about the Project and their specific issues:

- **Executive Summary**: This section provides a summary of the Project's potential environmental impacts that would result from implementation of the Project, proposed mitigation measures where applicable, and the level of significance of the impact before and after mitigation.

- **Chapter 1.0, Introduction**: This chapter contains an overview of the purpose and focus of the Draft EIR, a discussion of the intended use of this Draft EIR, a description of the organization of the Draft EIR, and a discussion of the public review process and potential areas of controversy.

- **Chapter 2.0, Project Description**: This chapter describes the Project, including project location, project background, project objectives and components, and a description of the proposed changes to existing plans and zoning.

- **Chapter 3.0, Environmental Impact Analysis**: This chapter is the primary focus of this Draft EIR. Each environmental issue is considered in a separate section, which contains a discussion of the environmental settings, the regulatory setting, the methodology and the thresholds of significance. Each section also includes the analyses of environmental impacts of the Project, mitigation measures, conclusions regarding the level of significance after mitigation, and cumulative impacts for each of the following environmental topics and environmental issues:

  - **Section 3.1, Aesthetics:** Changes to views, scenic resources, and visual quality

- **Section 3.2, Air Quality:** Changes in pollutants affecting air quality
- **Section 3.3, Biology:** Changes to habitats affecting sensitive species
- **Section 3.4, Cultural Resources and Tribal Cultural Resources:** Changes to historic resources and impacts to archaeological or paleontological resource and human remains and impacts to cultural resources potentially related to one of more Native American tribes
- **Section 3.5, Energy:** Wasteful or inefficient use of energy resources
- **Section 3.6, Greenhouse Gas Emissions:** Changes to greenhouse gas emissions and conformance to applicable greenhouse has plans, policy, and regulations
- **Section 3.7, Geology and Soil:** Changes in risk of geologic hazards (i.e., strong seismic ground shaking, seismic-related ground failure, and landslides), soil erosion, soil instability, and impacts to paleontological resources
- **Section 3.8, Hazards and Hazardous Materials:** Changes in the risk of exposure to hazardous materials, or proximity to wildland fire hazards
- **Section 3.9, Hydrology and Water Quality:** Changes in water quality, drainage patterns and the amount of stormwater runoff
- **Section 3.10, Land Use and Planning:** Changes to land use and zoning
- **Section 3.11, Noise and Vibration:** Changes in noise and vibration levels due to construction, traffic, and proposed uses
- **Section 3.12, Population and Housing:** Changes in population, jobs/housing balance, and the displacement of a substantial number of housing units or persons
- **Section 3.13, Public Services and Recreation:** Impacts related to the construction of new or expanded public facilities (i.e., fire protection and schools)
- **Section 3.14, Transportation and Traffic:** Changes in transportation conditions and vehicles miles traveled, review of emergency access, potential hazardous design features, and potential conflict with alternative transportation (e.g., bicycles and public transportation)
- **Section 3.15, Utilities and Service Systems:** Impacts related to the increased need for utilities and infrastructure improvements and the construction of new or expanded facilities

- **Chapter 4.0, Effects Not Found to be Significant:** This chapter summarizes those impact categories that were determined to be less than significant and did not need further analysis in the EIR.

- **Chapter 5.0, Alternatives:** This chapter provides analysis of a range of reasonable alternatives to the proposed Project in accordance with *State CEQA Guidelines* Section 15126(f). The range of alternatives considered is based on their ability to feasibly attain most of the project objectives and avoid or substantially lessen any of the significant effects of the proposed Project:

  – **Alternative 1:** No Project

  – **Alternative 2:** Specific Plan Alternative

- **Chapter 6.0, Other CEQA Considerations:** This chapter provides a summary of significant and unavoidable impacts of the Project and a discussion of potential growth inducing effects.

- **Chapter 7.0, List of Preparers**: This chapter lists the individuals involved in preparing the EIR and organizations and persons consulted.

1.10 CEQA FINDINGS FOR PROJECT APPROVAL

Where a certified EIR identifies significant environmental effects, *State CEQA Guidelines* Sections 15091 and 15092 require the adoption of findings prior to approval of a project. Prior to approval of a project, one of three findings must be made, as required by PRC Section 21081 and *State CEQA Guidelines* Section 15091:

- Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

- If the City approves the Project, despite significant impacts identified in the Final EIR that cannot be feasibly mitigated, the City must state in writing the reasons for its actions, under *State CEQA Guidelines* Section 15093. Those findings, called a Statement of Overriding Considerations, must be prepared to substantiate the City's decision to accept the unavoidable significant environmental effects of the

Project when balanced against the benefits afforded by the Project, and must be supported by substantial evidence in the record.

1.11 MITIGATION MONITORING OR REPORTING PROGRAM

At the time of project approval, CEQA and the *State CEQA Guidelines* require lead agencies to adopt a mitigation monitoring or reporting program for monitoring the revisions it has required in the project and the measures it has imposed to mitigate or avoid significant effects on the environment (*State CEQA Guidelines* Section 21081.6; *State CEQA Guidelines* Section 15097). This Draft EIR contains mitigation measures that if found feasible will be included in the Mitigation Monitoring or Reporting Program for the Project.

2.0 PROJECT DESCRIPTION

INTRODUCTION

This section of the draft environmental impact report (EIR) describes the existing 1355 California Circle Project Site and surroundings, and evaluates the Project Site's regional location, and land uses surrounding the Project. Additionally, this section includes a statement of the objectives sought by the proposed project and a general description of the Project's technical, economic, and environmental characteristics. As described in §15124 of the State California Environmental Quality Act (CEQA) Guidelines, the Project Description in a EIR is required to contain the following information: (1) the location of the Project; (2) a statement of project objectives; (3) a general description of the Project's technical, economic, and environmental characteristics; and (4) a statement briefly describing the intended uses of the EIR. The State CEQA Guidelines state that a Project Description need not be exhaustive but should provide the level of detail needed for the evaluation and review of potential environmental impacts.

The Project Description is the starting point for all environmental analysis required by the State CEQA Guidelines. Section 15146 of the State CEQA Guidelines states that the degree of specificity required in a EIR will correspond to the degree of specificity involved in the underlying activity, which is described in the EIR. The following Project Description serves as the basis for the environmental analysis contained in this EIR.

2.1 PROJECT LOCATION

2.1.1 Project Location

The City of Milpitas (City) is an incorporated municipality located within the northeastern portion of Santa Clara County; refer to **Figure 2.0-1**, **Regional Vicinity**. The City is generally bound by a portion of Coyote Creek to the west, Piedmont Road and open hillsides to the east, Scott Creek Road and the City of Fremont to the north, and Montague Expressway and the City of San Jose to the south. The Newby Island regional landfill and San Francisco Bay are located to the northwest..

The Project Site is located at 1355 California Circle between Interstate 880 (I-880) and California Circle. The 6.69-acre Project Site is located in the northwestern portion of the City. The Project Site is bound by commercial and industrial uses to the north, multi-family residential uses and a religious assembly use (BAPS Temple) to the east, a vacant industrial parcel to the south, and I-880 to the west; refer to **Figure 2.0-2**, **Site Vicinity**. A City owned storm drain channel is also located immediately west, between the Project Site and I-880.

SOURCE: Esri, 2022

FIGURE **2.0-1**

IMPACT SCIENCES

Regional Vicinity

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SOURCE: Esri, 2022

FIGURE **2.0-2**

IMPACT SCIENCES

Site Vicinity

1451.001•09/22

2.1.2 General Plan Land Use Designation and Zoning

According to the *City of Milpitas General Plan 2040* (herein referenced as the *General Plan*) adopted in March 2021, the Project Site is currently designated as a Neighborhood Commercial Mixed Use (NCMU). The Project Site is currently zoned Industrial Park (MP) in accordance with the City of Milpitas Code of Ordinances (herein referenced as the Municipal Code).

The City is currently preparing a comprehensive update to the Zoning Ordinance to bring the Municipal Code into conformance with the updated *General Plan*, and proposed amendments to the Zoning Map at California Circle would rezone adjacent parcels to the north and south from the Industrial Park (MP) Zoning District to the Mixed Use (MXD) Zoning District. The proposed MXD zoning is consistent with the NCMU General Plan land use designation.

2.1.3 Surrounding Land Uses

The Project area includes the Project Site and areas immediately adjacent. Land uses surrounding the Project Site include commercial, industrial, religious assembly, and multi-family residential uses, as well as a vacant industrial parcel. The surrounding land uses are described in further detail as follows:

- **North**: A two-story industrial warehouse is currently located north of the Project Site. The Site is designated as NCMU by the *General Plan* and is zoned Industrial Park (MP). Commercial uses are located further north adjacent to the northbound offramp from I-880 to California Circle.

- **East**: Existing multi-family residential uses, religious assembly use, and an industrial warehouse are located east of the Project Site. These sites are designated as High Density Residential (HDR) and NCMU by the *General Plan*, and zoned Multi-Family Residential (R2) and Industrial Park (MP), respectively.

- **South**: An undeveloped, vacant parcel is currently located south of the Project Site. The parcel was previously approved for a hotel development. This parcel is designated as NCMU by the *General Plan* and zoned Industrial Park (MP).

- **West**: A storm drain channel and I-880 are located west of the Project Site. As a channel and interstate highway, these uses have no land use designations and are not zoned. Beyond the I-880 includes parcels that are used as Permanent Open Space and zoned Park Open Space.

2.2 EXISTING CONDITIONS

The Project Site is within the northeastern portion of the Santa Clara Valley, a broad alluvial plane between the Santa Cruz Mountains and the Diablo Range. The Project Site is over two miles east of the San Francisco Bay and is 12 feet above the mean sea level. The Project Site is currently occupied with a vacant, two-story, 90,000 square-foot, industrial office building that is surrounded by a paved surface parking lot. The perimeter of the Project Site is currently surrounded with a chain-link fence. Access to the Project Site is provided via two driveways in the northeast and southeast corners of California Circle. Sidewalks are located along the eastern edge of the Project Site adjacent to California Circle. Ornamental landscaping in the form of grass medians and approximately 49 trees are located around the perimeter of the existing building and Project Site. A 35-inch-wide storm drain channel with a depth of 15 feet is located to the south of the Project Site.

2.3 PROJECT HISTORY AND BACKGROUND

The Project Site has historically been a mix of undeveloped land and agricultural uses. Until the early 1980's, the Project Site was predominantly undeveloped, except for the small-scale agricultural uses between 1959 and 1963. Additionally, a golf course was constructed on and adjacent to the Project Site in the late 1970s but was demolished in the early 1980s. The Project Site was redeveloped between 1982 – 1986 as a 90,000 square foot building. By 2010, the building was occupied and utilized by the LTX-Credence Corporation, an electronics company. LTX Credence Corporation and XCERRA Corporation, a manufacturer for automatic test equipment both occupied the building between 2014 and 2016. However, both companies vacated the Project Site in 2016. Beginning September of 2021, the southwestern corner of the Project Site has been utilized for the storage of fleet vehicles, trucks, and other various items.[1] However, the existing building on-site is currently vacant.

2.4 OBJECTIVES OF THE PROPOSED PROJECT

The California Environmental Quality Act (CEQA) requires that an environmental impact report (EIR) include a statement of the objectives sought by a proposed project (Section 15124(b) of the *State CEQA Guidelines*). The Project objectives are outlined below:

- Increase affordable housing opportunities, including housing designated for teachers, and help meet the City's Regional Housing Needs Allocation (RHNA);
- Redevelop underutilized and vacated land; and

1 Google Earth, 2022.

- Implement sustainable building practices to showcase energy efficiency and low water use.

2.5 PROJECT DESCRIPTION

The Project is comprised of five (5) seven-plex townhomes, eight (8) twelve-plex townhomes, and an apartment building. The Project would provide a total of 206 multi-family housing units:

- Seven-Plex Townhomes: 35 dwelling units.
- Twelve-Plex Townhomes: 96 dwelling units.
- Apartment Building: 75 dwelling units

2.6 REVIEWS AND APPROVALS

To be approved and developed, the Project requires approval of the following actions by the City of Milpitas:

- General Plan Text Amendment to remove any language that requires the preparation or adoption of a specific plan for the California Circle area (General Plan Policy LU-2B); and Reclassify the Zoning Designation from Industrial Park (MP) to Mixed-Use (MXD); and
- Establish a Planned-Unit Development (PUD)
- Site Development Permit
- Conditional Use Permit
- Tentative Map
- Tree Removal Permit
- Density Bonus Permit
- Exception to the Affordable Housing Ordinance

The state or local agencies that may rely upon the information contained in this EIR when considering approval of permits may include, but are not limited to, the following:

- Bay Area Air Quality Management District (point source emissions permits)
- San Francisco Regional Water Quality Control Board (National Pollutant Discharge Elimination System [NPDES] Permit)

- State Water Resources Control Board (General Construction Activity Stormwater Permit)

2.6.1 Development Standards and Building Characteristics

Current General Plan and Zoning Standards

Based on the *General Plan* Land Use Map, the Project Site is currently designated as the Neighborhood Commercial Mixed Use (NCMU) within a Specific Plan Overlay. The NCMU land use designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. Multifamily dwelling units may be allowed at a rate of 1 unit per 1,500 square feet of new or rehabilitated neighborhood-serving retail and commercial services. According to the City's Zoning Map, the Project Site is zoned Industrial Park, which is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air. Implementation of the Project would require a zone change via a Zoning Map Amendment from Industrial Park to Mixed Use (MXD), with a Planned Unit Development (PUD), and a General Plan Text Amendment to remove General Plan Policy LU-2B.

Townhomes

The proposed seven-plex and twelve-plex townhomes would be located next to each other and would encompass the majority of the Project Site. The number of parking spaces per unit is discussed in detail in **Section 2.5.2, Site Access, Circulation, and Parking,** below.

Seven-Plex Townhomes

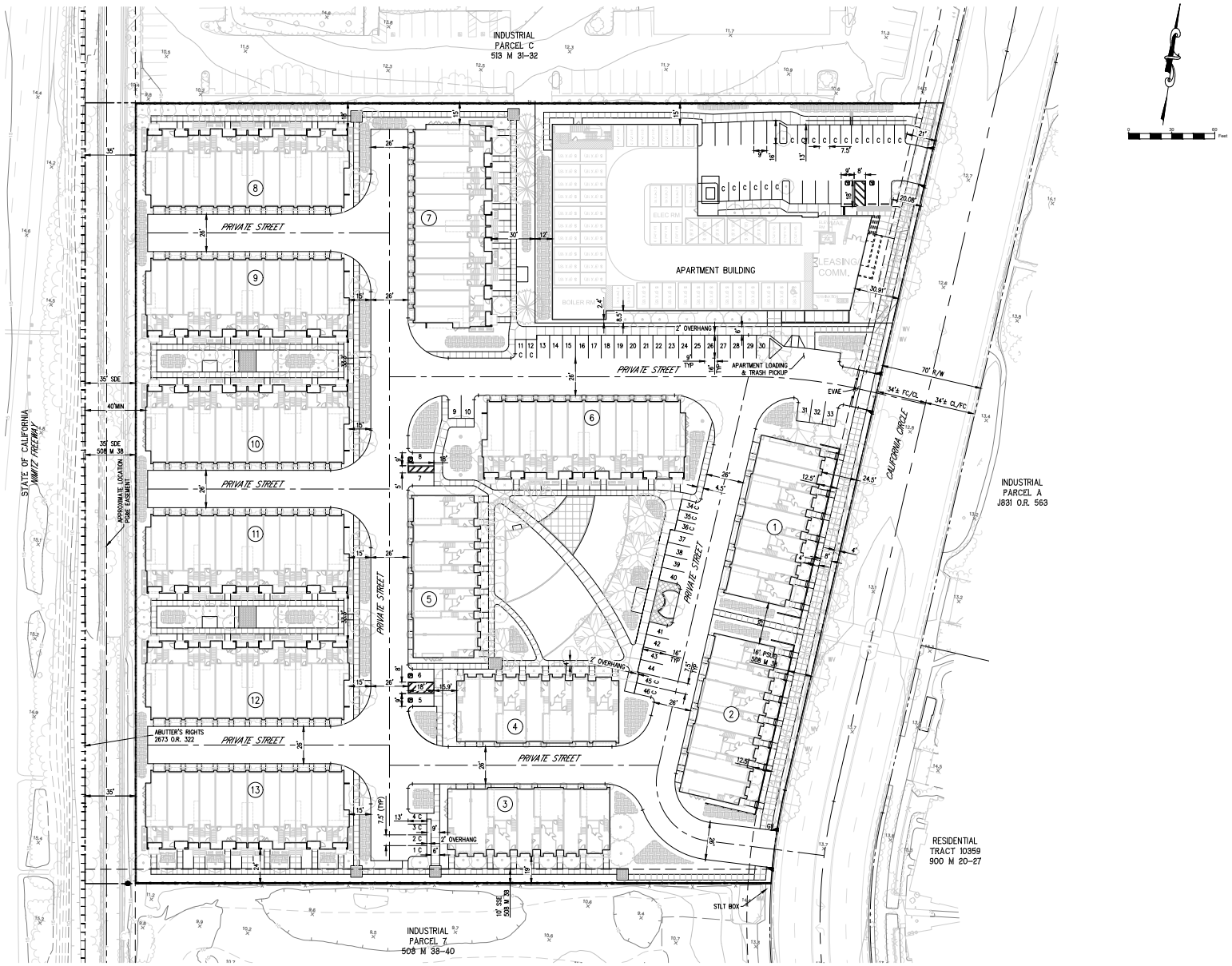
The Project would construct five three-storied townhome buildings containing seven units per building for a total of 35 dwelling units. All 35 dwelling units would be offered as "market rate" for sale units, ranging in size between 1,534 and 1,850 square feet; refer to **Table 2.0-1**, **Proposed Townhome Development Summary**. As shown in **Figure 2.0-3**, **Conceptual Site Plan**, the seven-plex townhomes would encompass building numbers 1 through 5. Buildings 1 and 2 would have frontage onto California Circle. The seven-plex townhomes would have a total gross floor area of 16,954 square feet. These townhomes would utilize four different floor plans that consist of three and four-bedroom units, each varying in size and garage type.

Twelve-Plex Townhomes

The Project would also construct eight four-storied townhome buildings containing twelve units per building for a total of 96 dwelling units. All 96 dwelling units would be offered as "market rate" for sale

units, ranging in size from 1,518 to 2,175 square feet; refer to **Table 2.0-1**, **Proposed Townhome Development Summary**. As shown in **Figure 2.0-3**, **Conceptual Site Plan**, the twelve-plex townhomes would encompass building numbers 6 through 13. The townhomes would have a total gross floor area of 28,677 square feet. Additionally, the twelve-plex townhomes would utilize seven different plans that consist of predominantly three-bedroom units with either two or three bathrooms. A portion of these units have an option to create a fourth bedroom loft.

The twelve-plex townhomes would range in size between 1,518 and 2,175 square feet; refer to **Table 2.0-1**, **Proposed Townhome Development Summary**. As shown in **Figure 2.0-4**, **Townhome Site Plan**, approximately 14 units of the twelve-plex townhomes are adaptable multi-story dwelling units on an accessible route that complies with the California Building Code (CBC).



SOURCE: Civil Engineering Associates, 2023.

FIGURE **2.0-3**

IMPACT SCIENCES

Conceptual Site Plan

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Table 2.0-1
Proposed Townhome Development Summary

Plan	Number of Bedrooms/Bathrooms	Number of Proposed Units per Building	Total Conditioned Square Footage	Deck Total
Seven-Plex Townhomes				
Plan 1	3 Bedroom, 3 Bathroom	3	1,534	73
Plan 1x	3 Bedroom, 3 Bathroom	1	1,548	70
Plan 2	3 Bedroom, 3.5 Bathroom	2	1,850	64
Plan 2x	3 Bedroom, 3.5 Bathroom	1	1,765	151
Twelve-Plex Townhomes				
Plan 2	3 Bedroom, 2 Bathroom	2	1,518	201
Plan 3	3 Bedroom, 2 Bathroom	2	1,685	203
Plan 5	3 Bedroom, 3 Bathroom	2	1,595	115
Plan 6	3 Bedroom, 3 Bathroom	2	1,756	170
Plan 7	3 Bedroom, 3 Bathroom	2	1,949	116
Plan 8	3 Bedroom, 3 Bathroom, Loft	1	2,175	148
Plan 8x	3 Bedroom, 3 Bathroom, Loft	1	2,175	148

Source: Pulte Group, Sheet A0.1, 2023

Apartment Complex

In addition, the Project would develop a six-story apartment complex and associated parking facilities at the northeastern corner of the Project Site; refer to **Figure 2.0-5**, **Apartment Site Plan**. The proposed apartment building would be located within the northeastern corner of the Project Site. Plans for the apartment building would range between studios to two-bedroom units. The proposed apartment complex would provide 75 units that would be offered at "below market rate" (BMR) rental prices. It is anticipated that, of the 75 BMR units, a minimum of 20 units would be offered at the City's established "low-income rental rate", while the remaining 55 units would be offered at a "moderate rental rate" (MRR) rental prices. The proposed apartment complex would have a gross floor area of approximately 66,844 square feet, and a floor area ratio of 1.63. The ground floor, level R0, would be reserved for 60 covered parking spaces, an apartment leasing office, and maintenance rooms. Starting at the second floor of the building, levels R1 through R5 would consist of several studio, one bedroom, and two-bedroom units that range in size between 411 to 840 square feet; refer to **Table 2.0-2, Proposed Apartment Complex Site Development Summary**.

Table 2.0-2
Proposed Apartment Complex Site Development Summary

Plan	Number of Bedrooms/Bathrooms	Number of Proposed Units (75 Total)	Total Conditioned Square Footage
S1	Studio, 1 Bathroom	16	411
A 1	1 Bedroom, 1 Bathroom	23	554
A1-A	1 Bedroom, 1 Bathroom	8	604
A2	1 Bedroom, 1 Bathroom	9	612
B1-A	2 Bedroom, 1 Bathroom	19	840

Source: Pulte Group, Sheets A3.1 and A7.0, 2023.

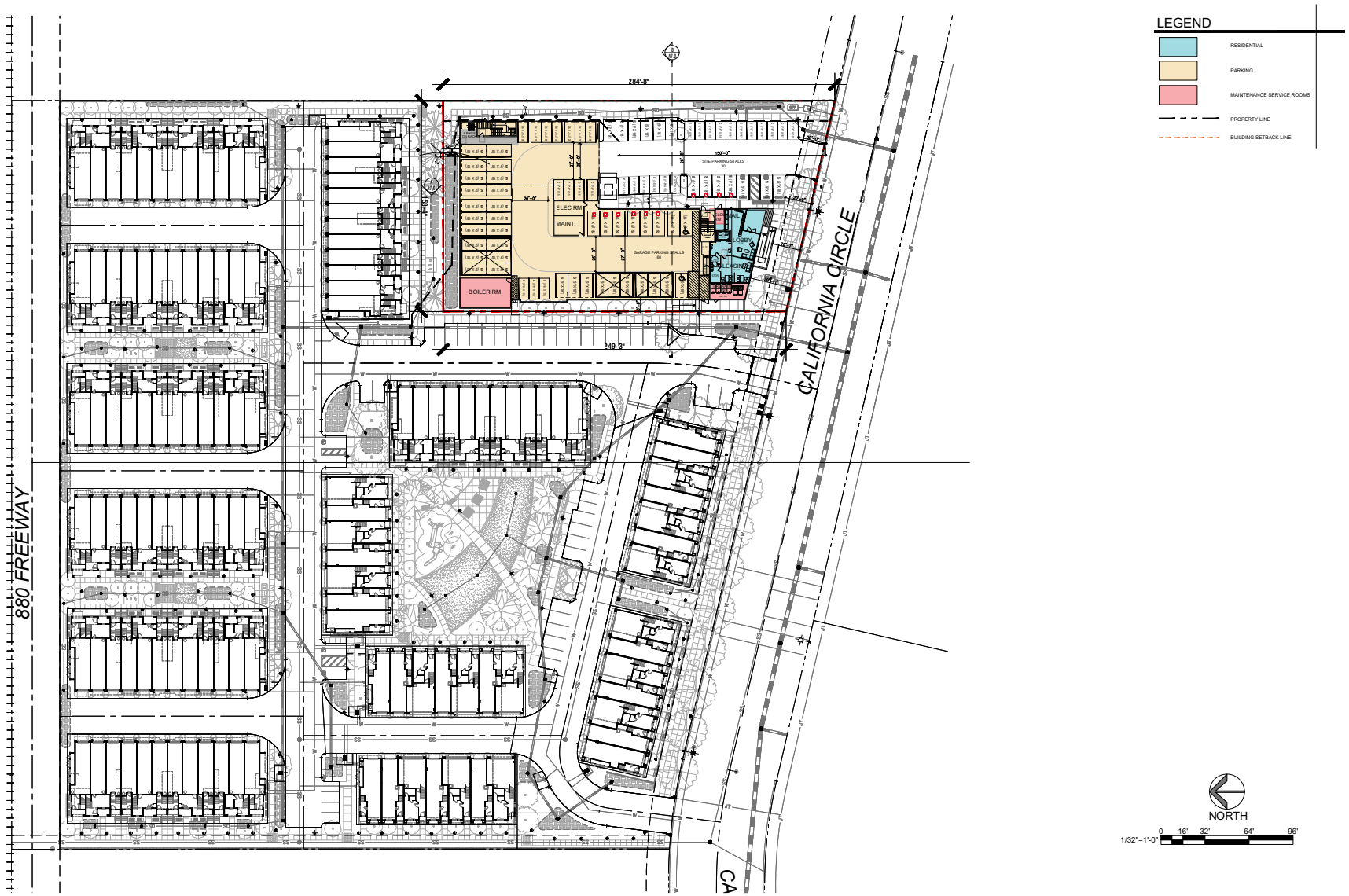
SOURCE: WHA, 2023.

FIGURE **2.0-4**

Townhome Site Plan

IMPACT SCIENCES

1451.001•06/2023



SOURCE: AO Architects, June 2023.

FIGURE **2.0-5**

Apartment Site Plan

IMPACT SCIENCES

1451.001•06/2023

2.6.2 Site Access, Circulation, and Parking

Townhomes

Vehicular access to the proposed townhomes would be provided via two driveways; the existing driveway on the southeastern end of the Project Site, along California Circle, will be maintained and the existing northeastern driveway will be moved south towards the middle of the Project Site. Internal private streets would be constructed on-site to provide access to each townhome and associated surface parking spaces. The proposed private streets would also serve as vehicular circulation on-site. As shown in **Figure 2.0-6**, **Fire Department Access Plan**, internal circulation would be able to accommodate fire trucks owned by the City. For pedestrian access and circulation, the Project would include internal sidewalks and curbs along each private street. Patterned walkways would also be included in various areas of the Project Site, including within the proposed courtyard located between townhome buildings 4, 5, and 6, as well as along the proposed paseos located in the western portion of the Project Site, between the proposed townhome buildings 1 and 2, 9 and 10, as well as 11 and 12.

A total of 262 private parking spaces would be provided for the townhomes. Depending on the floor plan, each proposed townhome would include attached two-car tandem or side-by-side garages. **Table 2.0-3**, **Proposed Townhome Parking Detail**, identifies the number of parking spaces and garage type that is assigned to each floor plan for each townhome building type, and the square footage of each garage type. As shown, the Project would meet the required number of parking spaces as outlined in the City's Municipal Code. Additionally, the Project would include approximately 46 surface level, uncovered, guest parking spaces for the townhomes (11 compact and 35 standard spaces).

Table 2.0-3
Proposed Townhome Parking Detail

Plan	Garage Type	Number of Parking Spaces/Unit Required[2]	Number of Parking Spaces/Unit Provided	Total Number of Parking Spaces Provided
Seven Plex				
Plan 1 and 1X	Compact Two-Car Tandem	2	2	40
Plan 2 and 2X	Two-Car S X S	2	2	30
			Seven Plex Parking Total	70
Twelve Plex				
Plan 2	Compact Two-Car Tandem	3	3	32
Plan 3	Compact Two-Car Tandem	3	3	32

Plan	Garage Type	Number of Parking Spaces/Unit Required[2]	Number of Parking Spaces/Unit Provided	Total Number of Parking Spaces Provided
Plan 5	Compact Two-Car Tandem	3	3	32
Plan 6	Compact Two-Car Tandem	3	3	32
Plan 7	Compact Two-Car Tandem	3	3	32
Plan 8	Compact Two-Car Tandem	3	3	16
Plan 8x	Compact Two-Car Tandem	3	3	16
			Twelve Plex Parking Total	192
			Total	**262**
Guest Parking				46

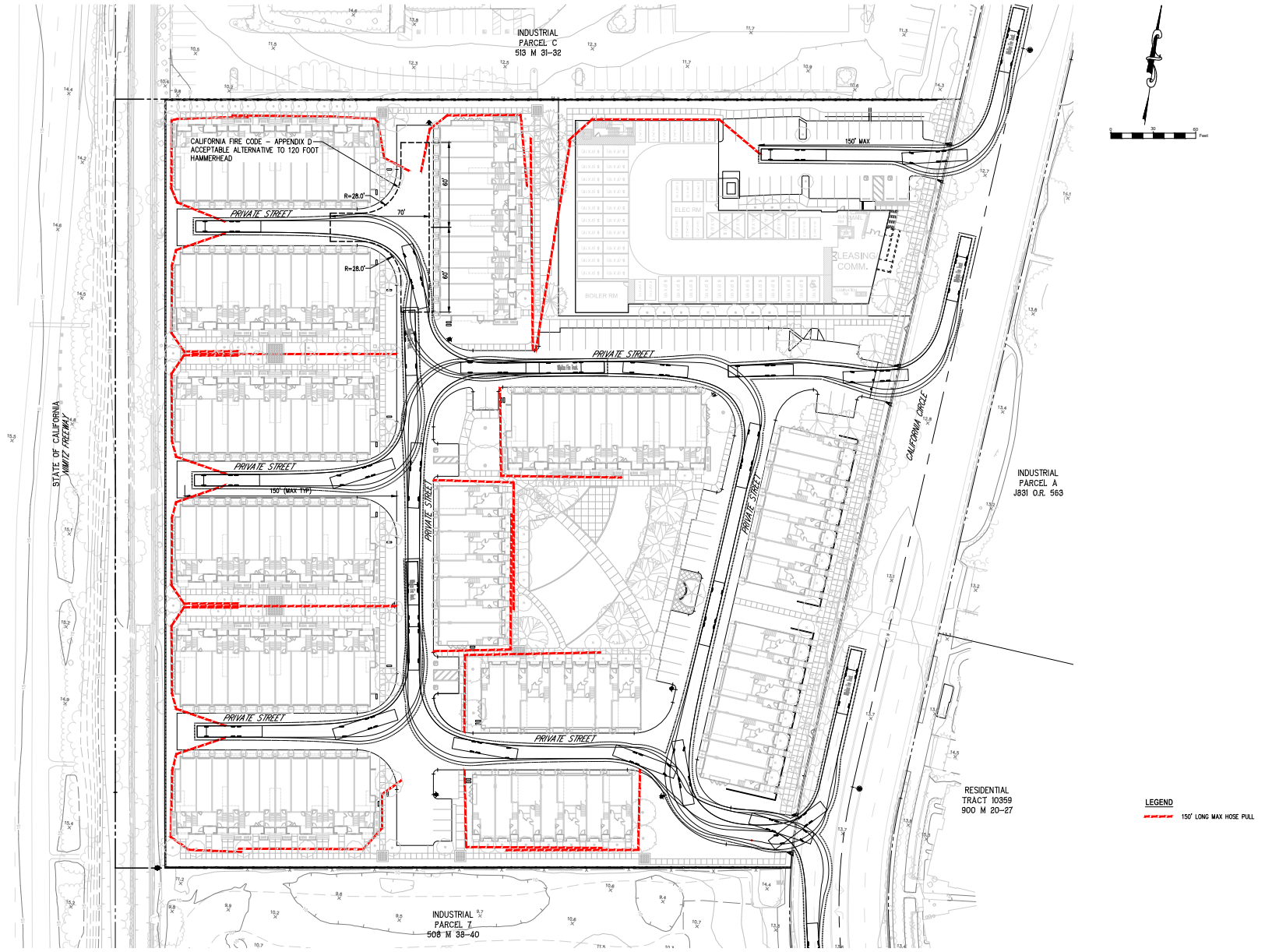
Notes:
1. sq. ft=square feet
2. As required under Section XI-10-53 (Design Standards) of the City of Milpitas Municipal Code
3. The Project qualifies for the State Density Bonus which allows for a parking requirement reduction
Source: Pulte Group, Sheet C3, 2023.

Trash pickup will be facilitated by the two townhome driveways. Two allocated refuse bins per lot would be provided throughout townhome site for each of the townhome buildings. The apartment complex trash pickup shall be provided on the townhome site. The driveway widths on the townhome site are adequate to accommodate onsite circulation for standard Milpitas refuse trucks (25 yards).

Apartment Complex

Vehicular access to the proposed apartment complex would be provided via one new driveway located on the northeastern corner of the Project Site, along California Circle. A 150-foot-long driving aisle would be provided at the ground level of the apartment complex for vehicular circulation through the apartment's proposed surface parking lot and access to the proposed apartment parking structure. The apartment parking structure would provide a separate, internal circulation for vehicles to enter, park, and/or exit. The proposed driveway and vehicular circulation would be able to accommodate large-scale fire trucks owned by the Milpitas Fire Department; refer to **Figure 2.0-6**, **Fire Department Access Plan.**

Parking spaces would be provided for residents in the form of standard-sized spaces and compact-sized spaced. As shown in **Table 2.0-4**, **Proposed Apartment Complex Parking Detail**, the proposed parking structure would provide a total of 60 residential parking spaces, and the on-site surface parking lot would provide an additional 30 residential parking spaces for a total of 90 spaces. Ten spaces would be utilized as electric vehicle (EV) charging stations. The proposed apartment complex would have an overall parking density of 1.2 stalls per dwelling unit. No additional guest parking would be provided onsite.



SOURCE: Civil Engineering Associates, 2023.

FIGURE **2.0-6**

IMPACT SCIENCES

Fire Department Access Plan

1451.001•06/2023

Table 2.0-4
Proposed Apartment Complex Parking Detail

Parking Provided	Standard Residential Spaces	Compact Residential Spaces	Total
Proposed Parking Structure	46	14	**60**
On-Site Parking	13	17	**30**
Total Stalls Provided	**59**	**31**	**90**

Source: Pulte Group, Sheet A3.1, 2023.

2.6.3 Landscaping and Amenities

The Project would plant shrubs, plantings, and street trees along the eastern perimeter of the Project Site. Water efficient ground coverings would be implemented within the perimeter of the Project Site, along the pedestrian walkways, and along the perimeter of both the townhomes and apartment complexes. Additionally, the Project would remove a total of 49 existing trees (including 9 street trees within the public right-of-way) reported to be in poor condition (see **Appendix 3.3-1, Arborist Report**). Of these 49 existing trees, 27 are City Ordinance-sized protected trees. Based on the City's Tree Protection and Heritage Tree Program, a ratio of 2:1 for replacement trees is required for the removal of protected trees. The Project will exceed the replacement tree requirement and plant 269 new trees of various species. A wooden fence approximately six feet in height would be installed along the northern and southern perimeters of the Project Site, and an eight-foot tall soundwall would be installed on the western perimeter of the Project Site to serve as a sound barrier between the Project and I-880.

Townhomes

The Project would plant a variety of drought-tolerant ornamental landscaping, plant flowering, and trees throughout the site. As shown in **Figure 2.0-7a, b, and c, Townhome Landscape Concept Plan (Sheet 1 through Sheet 3)**, the Project would plant groundcover and shrubs along the perimeter of the townhome buildings. A variety of tree species, such as the *Acer Rubrum*, *Lagerstroemia x `Muskogee`*, and the *Prunus Caroliniana* would also be planted along the perimeters of each townhome building. Shrubs would range between a variety of species, including the *Acacia Cognata*, *Arctostaphylos D.*, *Euonymus Japonicus*, and the *Lavatera Maritima*. The Project would also plant ornamental landscaping along the adjacent walkways and sidewalks. Bioretention plants would be planted along the proposed stormwater drainage system.

The townhome site would also include an outdoor recreational area between townhome buildings 4, 5, and 6 for residential use. As shown in **Figure 2.0-8**, **Proposed Outdoor Recreational Area**, the outdoor

recreational area would include a variety of amenities for residents; including an outdoor playground, two turf areas, picnic tables with a sail structure providing shade, a bench, and bike racks. A pedestrian walkway would cut through the center of the recreational area. Planting areas would occur throughout the area, and trees such as the *Acer Rubrum*, *Lagerstroemia x `Muskogee`* and *Quercus Agrifolia* would be planted within the area. As stated, the Project would include paseos between townhome buildings 1 and 2, 9 and 10, as well as 11 and 12, and along the northwester border of the Project Site. As shown in **Figure 2.0-9**, **Proposed Paseos**, featured amenities would include benches and bike racks. Soundwalls and a six-inch-high wooden fence would occur along the northeastern corner along the Project Site. Planting areas and trees would occur throughout each paseo, including *Pistacia Chinensis* and *Lagerstroemia*. Pedestrian walkways and an entrance arc would be included for residential use and access to the proposed townhomes.

The proposed exterior lighting fixtures on-site would utilize sustainable light emitting diode (LED) lighting, with "Back Light Optical Control" (BLOC). Project lighting would be installed in the form of bollard lighting fixtures to illuminate the pathways, paseos, and townhomes. New post top lighting fixtures would also be installed within the proposed outdoor recreational area to illuminate its proposed amenities and walkway. Lastly, wall-packed lighting would be mounted at each townhome for additional visibility on-site.

PRELIMINARY LEGEND

1. CONCRETE WALK, TYP.
2. SCORE LINE, TYP.
3. ENHANCED SCORED CONCRETE PAVING
4. CONCRETE DRIVEWAY
5. SOUND WALL
6. RETAINING WALL WITH 6' HIGH WOOD FENCE
7. LOW RETAINING WALL,TYP.
8. CONCRETE STEPS, TYP.
9. WOOD A.C. UNIT SCREEN, TYP.
10. DIRECTORY / MAP SIGN
11. MAILBOX ENCLOSURE WITH TRELLIS
12. PASEO ENTRYWAY TRELLIS
13. SHADE SAIL STRUCTURE
14. CURVED SEAT WALL WITH STONE VENEER
15. PLAYGROUND WITH RUBBERIZED SURFACE
16. TRASH AND RECYCLING RECEPTACLES
17. (5) 6' LONG BENCH WITH BACK
18. (3) PICNIC TABLE
19. PLANTING AREA, TYP.
20. TURF AREA, TYP.
21. BIO-RETENTION AREA, TYP.
22. PAVING, LOW-GROWING GROUNDCOVER, OR TURF AT LADDER PADS, TYP.
23. (14) BIKE RACK
24. CALIFORNIA CIRCLE R.O.W. LANDSCAPE PLANTING & STREET TREES PER CITY STANDARDS
25. BOLLARD LIGHTS PER LIGHTING CONSULTANT
26. POST TOP LIGHTS PER LIGHTING CONSULTANT

TREE LEGEND

TREES	BOTANICAL NAME	COMMON NAME	CONT	WUCOLS IV	QTY
	ACER RUBRUM `ARMSTRONG`	ARMSTRONG RED MAPLE	24"BOX	MOD	10
	DODONAEA VISCOSA `PURPUREA`	STANDARD HOPSEED BUSH	15 GAL	LOW	35
	LAGERSTROEMIA X `MUSKOGEE`	LAVENDER CRAPE MYRTLE	24"BOX	LOW	39
	LAGERSTROEMIA X `NATCHEZ`	CRAPE MYRTLE	24"BOX	LOW	42
	LAGERSTROEMIA X `TUSCARORA`	CRAPE MYRTLE CORAL PINK	24"BOX	LOW	30
	LAURUS NOBILIS `SARATOGA`	SWEET BAY	36"BOX	LOW	4
	LOPHOSTEMON CONFERTUS	BRISBANE BOX	15 GAL	MOD	5
	PINUS CANARIENSIS	CANARY ISLAND PINE	15 GAL	LOW	4
	PISTACIA CHINENSIS 'KEITH DAVEY'	KEITH DAVEY CHINESE PISTACHE	24"BOX	LOW	13*
	PRUNUS CAROLINIANA `BRIGHT `N TIGHT`	STANDARD CAROLINA LAUREL	15 GAL	LOW	57
	QUERCUS AGRIFOLIA	COAST LIVE OAK	24"BOX	V. LOW	7
	RHAPHIOLEPIS INDICA `MAJESTIC BEAUTY`	STANDARD INDIAN HAWTHORNE	15 GAL	LOW	33
	ULMUS PARVIFOLIA `DRAKE`	DRAKE ELM	24"BOX	LOW	3
	*OFFSITE TREES	TOTAL PROPOSED ONSITE TREES			269

SOURCE: vanderToolen Associates, 2023.

FIGURE **2.0-7a**

IMPACT SCIENCES

Townhome Landscape Concept Plan (Sheet 1)

PARK & OPEN SPACE BENCH

PICNIC TABLES WITH WASTE RECEPTACLES

CURVED SEATWALL WITH STONE VENEER

PASEO ENTRYWAY TRELLIS

ENHANCED SCORING

MAILBOX ENCLOSURE WITH TRELLIS

SHADE STRUCTURE OVER PICNIC AREA

SHRUB PLANTING

TURF FOR RECREATIONAL ACTIVITIES

PLAY EQUIPMENT

WOOD FENCE ON RETAINING WALL

SOUND WALL

SOURCE: vanderToolen Associates, 2023.

FIGURE **2.0-7b**

IMPACT SCIENCES

Townhome Landscape Concept Plan (Sheet 2)

TREE PALETTE

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
ACER RUBRUM 'ARMSTRONG'	ARMSTRONG RED MAPLE	24"BOX	MOD	15' o.c.
DODONAEA V. 'PURPUREA'	STANDARD HOPSEED BUSH	15 GAL	LOW	6' o.c.
LAGERSTROEMIA X 'MUSKOGEE'	LAVENDER CRAPE MYRTLE	24"BOX	LOW	15' o.c.
LAGERSTROEMIA X 'NATCHEZ'	CRAPE MYRTLE	24"BOX	LOW	15' o.c.
LAGERSTROEMIA X 'TUSCARORA'	CRAPE MYRTLE CORAL PINK	24"BOX	LOW	15' o.c.
LAURUS NOBILIS 'SARATOGA'	SWEET BAY	36"BOX	LOW	25' o.c.
LOPHOSTEMON CONFERTUS	BRISBANE BOX	15 GAL	MOD	25' o.c.
PINUS CANARIENSIS	CANARY ISLAND PINE	15 GAL	LOW	25' o.c.
PISTACIA CHINENSIS 'KEITH DAVEY'	KEITH DAVEY CHINESE PISTACHE	24"BOX	LOW	30' o.c.
PRUNUS CAROLINIANA 'BRIGHT 'N TIGHT'	STANDARD CAROLINA LAUREL	15 GAL	LOW	6' o.c.
QUERCUS AGRIFOLIA	COAST LIVE OAK	24"BOX	V. LOW	35' o.c.
RHAPHIOLEPIS INDICA 'MAJESTIC BEAUTY'	STANDARD INDIAN HAWTHORNE	15 GAL	LOW	6' o.c.
ULMUS PARVIFOLIA 'DRAKE'	DRAKE ELM	24"BOX	LOW	35' o.c.

ACER RUBRUM 'ARMSTRONG'

DODONAEA V. 'PURPUREA'

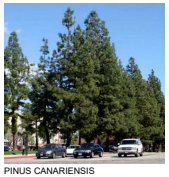
LAGERSTROEMIA X 'MUSKOGEE'

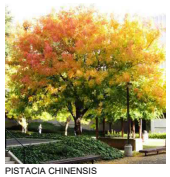
LAGERSTROEMIA X 'NATCHEZ'

LAGERSTROEMIA X 'TUSCARORA'

LAURUS NOBILIS 'SARATOGA'

LOPHOSTOMON CONFERTUS


PINUS CANARIENSIS


PISTACIA CHINENSIS

PRUNUS C. 'BRIGHT 'N TIGHT'

QUERCUS AGRIFOLIA

RHAPHIOLEPIS I. 'MAJESTIC BEAUTY'

ULMUS PARVIFOLIA 'DRAKE'

SHRUB PALETTE

SHRUBS

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
ACACIA COGNATA 'COUSIN ITT'	RIVER WATTLE	5 GAL	LOW	36" o.c.
ARCTOSTAPHYLOS D. 'HOWARD MCMINN'	HOWARD MCMINN MANZANITA	5 GAL	LOW	60" o.c.
CALLISTEMON CITRINUS 'LITTLE JOHN'	DWARF BOTTLE BRUSH	5 GAL	LOW	36" o.c.
CARPENTERIA CALIFORNICA	BUSH ANEMONE	5 GAL	LOW	48" o.c.
CEANOTHUS MARITIMUS 'VALLEY VIOLET'	MARITIME CEANOTHUS	5 GAL	LOW	36" o.c.
CEANOTHUS RIGIDUS 'SNOWBALL'	CEANOTHUS SNOWBALL	5 GAL	LOW	72" o.c.
DODONAEA VISCOSA 'PURPUREA'	PURPLE LEAFED HOPSEED BUSH	15 GAL	LOW	72" o.c.
EUONYMUS JAPONICUS 'GREENSPIRE'	GREENSPIRE UPRIGHT EUONYMUS	1 GAL	LOW	24" o.c.
GALVEZIA SPECIOSA 'BOCA ROSA'	ISLAND SNAPDRAGON	5 GAL	LOW	36" o.c.
GREVILLEA X 'NOELLII'	GREVILLEA	15 GAL	LOW	48" o.c.
HELIANTHEMUM N. 'HENFIELD BRILLIANT'	HENFIELD BRILLIANT ROCK ROSE	1 GAL	LOW	24" o.c.
JUNIPERUS CHINENSIS 'SEA GREEN'	SEA GREEN JUNIPER	5 GAL	LOW	48" o.c.
LAVATERA MARITIMA	TREE MALLLOW	5 GAL	LOW	48" o.c.
LEUCOPHYLLUM FRUTESCENS 'COMPACTA'	COMPACT TEXAS RANGER	5 GAL	LOW	48" o.c.
LOROPETALUM C. 'PURPLE DIAMOND'	FRINGE FLOWER	5 GAL	LOW	48" o.c.
PHORMIUM TENAX 'FIREBIRD'	FIRE BIRD FLAX	5 GAL	LOW	48" o.c.
PHORMIUM X 'BLACK ADDER'	NEW ZEALAND FLAX	5 GAL	LOW	36" o.c.
PITTOSPORUM TOBIRA 'VARIEGATA'	VARIEGATED MOCK ORANGE	5 GAL	LOW	48" o.c.
RHAMNUS CALIFORNICA 'EVE CASE'	CALIFORNIA COFFEEBERRY	5 GAL	LOW	72" o.c.
ROSA CALIFORNICA	CALIFORNIA WILD ROSE	5 GAL	LOW	60" o.c.
SALVIA CLEVELANDII 'WINIFRED GILLMAN'	CLEVELAND SAGE	5 GAL	LOW	36" o.c.
SALVIA GREGGII 'PINK'	PINK AUTUMN SAGE	5 GAL	LOW	36" o.c.
SALVIA LEUCANTHA	MEXICAN BUSH SAGE	15 GAL	LOW	48" o.c.
SALVIA MICROPHYLLA 'HOT LIPS'	BABY SAGE	5 GAL	LOW	48" o.c.
TEUCRIUM FRUTICANS 'COMPACTA'	BUSH GERMANDER	5 GAL	LOW	36" o.c.
VIBURNUM DAVIDII	DAVID VIBURNUM	5 GAL	MOD	36" o.c.

ACACIA C. 'COUSIN ITT'

ACHILLEA M. 'TERRA COTTA'

ARCTOSTAPHYLOS 'HOWARD MCMINN'

BOUTELOUA G. 'BLONDE AMBITION'

CALLISTEMON C. 'LITTLE JOHN'

CARPENTERIA CALIFORNICA

CEANOTHUS M. 'VALLEY VIOLET'

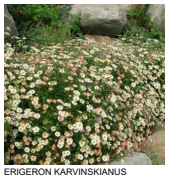
CHONDROPETALUM TECTORUM

GRASSES

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
CALAMAGROSTIS X A. 'KARL FOERSTER'	FEATHER REED GRASS	5 GAL	LOW	24" o.c.
CAREX TESTACEA 'PRAIRIE FIRE'	PRAIRIE FIRE SEDGE	1 GAL	MOD	24" o.c.
HELICTOTRICHON SEMPERVIRENS	BLUE OAT GRASS	1 GAL	LOW	36" o.c.
LEYMUS CONDENSATUS 'CANYON PRINCE'	NATIVE BLUE RYE	1 GAL	LOW	48" o.c.
LOMANDRA HYSTRIX 'TROPIC BELLE'	TROPIC BELLE MAT RUSH	1 GAL	LOW	30" o.c.
LOMANDRA LONGIFOLIA 'LIME TUFF'	LIME TUFF DWARF MAT RUSH	1 GAL	LOW	24" o.c.

DESCHAMPSIA CESPITOSA

DIETES VEGATA


ERIGERON KARVINSKIANUS

ERIOGONUM GRANDE RUBESCENS

GREVILLEA X 'NOELLII'

HELICTOTRICHON SEMPERVIRENS

JUNIPERUS C. 'SEA GREEN'

LAVATERA MARITIMA

PERENNIALS

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
ACHILLEA MILLEFOLIUM 'TERRA COTTA'	TERRA COTTA YARROW	1 GAL	LOW	24" o.c.
DIETES VEGETA	AFRICAN IRIS	1 GAL	LOW	36" o.c.
ERIGERON KARVINSKIANUS	FLEABANE	1 GAL	LOW	36" o.c.
ERIOGONUM GRANDE RUBESCENS	RED BUCKWHEAT	1 GAL	LOW	24" o.c.
LIMONIUM PEREZII	STATICE	1 GAL	LOW	24" o.c.
MIMULUS X 'JELLY BEAN ORANGE'	ORANGE MONKEYFLOWER	1 GAL	LOW	12" o.c.
NANDINA DOMESTICA 'LEMON LIME'	LEMON LIME NANDINA	1 GAL	LOW	36" o.c.
NEPETA X FAASSENII 'SELECT BLUE'	CATMINT	1 GAL	LOW	24" o.c.
PENSTEMON H. 'MARGARITA BOP'	BEARD TONGUE	1 GAL	LOW	18" o.c.
SALVIA MICROPHYLLA 'BERZERKELEY'	BERZERKELEY SAGE	1 GAL	LOW	36" o.c.
SCAEVOLA AEMULA 'MAUVE CLUSTERS'	FAN FLOWER	1 GAL	LOW	36" o.c.
VERBENA LILACINA 'DE LA MINA'	LILAC VERBENA	1 GAL	LOW	30" o.c.
ZAUSCHNERIA C. 'SCHIEFFLIN'S CHOICE'	CALIFORNIA FUCHSIA	1 GAL	LOW	36" o.c.

BIORETENTION BASIN PLANTING

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
CAREX TUMULICOLA	BERKELEY SEDGE	1 GAL	LOW	24" o.c.
CHONDROPETALUM TECTORUM	CAPE RUSH	5 GAL	LOW	36" o.c.
JUNCUS PATENS	CALIFORNIA GRAY RUSH	1 GAL	LOW	18" o.c.
LIPPIA NODIFLORA	KURAPIA	PLUGS	LOW	24" o.c.

BIORETENTION BANK/UPLAND PLANTING

BOTANICAL NAME	COMMON NAME	SIZE	WUCOLS IV	SPACING
ARCTOSTAPHYLOS D. 'HOWARD MCMINN'	HOWARD MCMINN MANZANITA	5 GAL	LOW	60" o.c.
BOUTELOUA GRACILIS 'BLONDE AMBITION'	BLUE GRAMA	1 GAL	LOW	18" o.c.
DESCHAMPSIA CESPITOSA	TUFTED HAIR GRASS	1 GAL	LOW	24" o.c.
ERIOGONUM LATIFOLIUM	COAST BUCKWHEAT	1 GAL	LOW	18" o.c.
FESTUCA IDAHOENSIS 'STONY CREEK'	IDAHO FESCUE	1 GAL	V. LOW	24" o.c.
MIMULUS AURANTIACUS	STICKY MONKEY FLOWER	5 GAL	V. LOW	36" o.c.
MUHLENBERGIA RIGENS	DEER GRASS	5 GAL	LOW	36" o.c.
SALVIA SONOMENSIS	CREEPING SAGE	1 GAL	LOW	36" o.c.
SEDUM X 'AUTUMN JOY'	AUTUMN JOY SEDUM	1 GAL	LOW	18" o.c.

LIMONIUM PEREZII

MIMULUS X 'JELLY BEAN ORANGE'

MUHLENBERGIA RIGENS

PENSTEMON H. 'MARGARITA BOP'

PHORMIUM TENAX 'FIREBIRD'

SALVIA LEUCANTHA

SCAEVOLA A. 'MAUVE CLUSTERS'

VERBENA L. 'DE LA MINA'

SOURCE: vanderToolen Associates, 2023.

FIGURE **2.0-7c**

IMPACT SCIENCES

Townhome Landscape Concept Plan (Sheet 3)

PRELIMINARY LEGEND

1. CONCRETE WALK, TYP.
2. SCORE LINE, TYP.
3. ENHANCED SCORED CONCRETE PAVING
4. WOOD A.C. UNIT SCREEN, TYP.
5. DIRECTORY / MAP SIGN
6. MAILBOX ENCLOSURE WITH TRELLIS
7. SHADE SAIL STRUCTURE
8. CURVED SEAT WALL WITH STONE VENEER
9. PLAYGROUND WITH RUBBERIZED SURFACE
10. TRASH AND RECYCLING RECEPTACLES
11. 6' LONG BENCH WITH BACK
12. (3) PICNIC TABLE
13. PLANTING AREA, TYP.
14. TURF AREA, TYP.
15. BIO-RETENTION AREA, TYP.
16. PAVING, LOW-GROWING GROUNDCOVER, OR TURF AT LADDER PADS, TYP.
17. BIKE RACK
18. BOLLARD LIGHTS PER LIGHTING CONSULTANT
19. POST TOP LIGHTS PER LIGHTING CONSULTANT

SOURCE: vanderToolen Associates, 2023.

FIGURE **2.0-8**

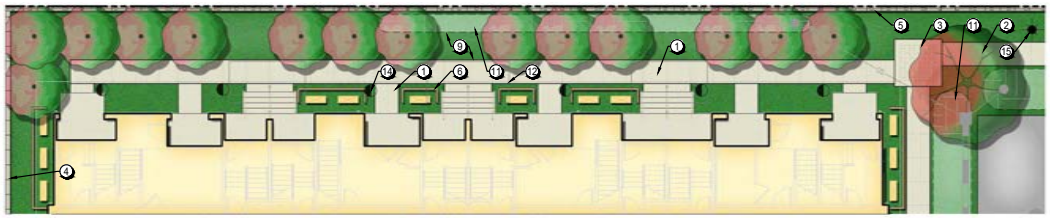
IMPACT SCIENCES

Proposed Outdoor Recreational Area

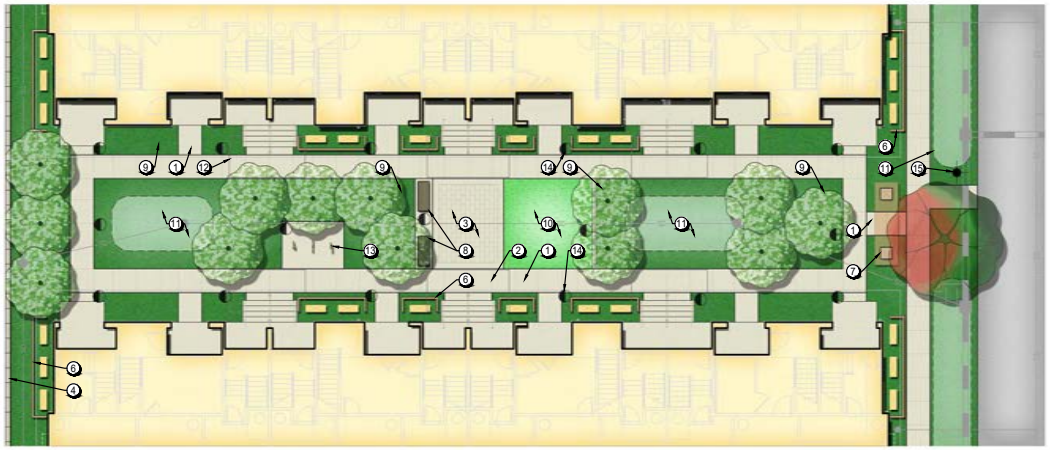
PASEO ENTRYWAY TRELLIS

TYPICAL PASEO

BIKE RACKS



END PASEOS



CENTRAL PASEOS

PRELIMINARY LEGEND

1. CONCRETE WALK, TYP.
2. SCORE LINE, TYP.
3. ENHANCED SCORED CONCRETE PAVING
4. SOUND WALL
5. RETAINING WALL WITH 6' HIGH WOOD FENCE
6. WOOD A.C. UNIT SCREEN, TYP.
7. PASEO ENTRYWAY TRELLIS
8. 6' LONG BENCH WITH BACK
9. PLANTING AREA, TYP.
10. TURF AREA, TYP.
11. BIO-RETENTION AREA, TYP.
12. PAVING, LOW-GROWING GROUNDCOVER, OR TURF AT LADDER PADS, TYP.
13. BIKE RACK
14. BOLLARD LIGHTS PER LIGHTING CONSULTANT
15. POST TOP LIGHTS PER LIGHTING CONSULTANT

SOURCE: vanderToolen Associates, 2023

FIGURE **2.0-9**

Proposed Paseos

IMPACT SCIENCES

Apartment Complex

The Project would provide ornamental landscaping and amenities for the proposed apartment complex. As shown in **Figure 2.0-10, Apartment Landscape Concept Plan**, the Project would include two terraces for residential use: the Entertainment Terrace and the Club Terrace. On-site landscaping for each terrace would include raised ornamental planting, shrubs, potted plants, arbutus trees, and olive trees. As shown in **Figure 2.0-11**, **Entertainment Terrace Concept Plan**, amenities provided within the Entertainment Terrace would include seating areas. fireside lounges, umbrellas, bench seating, and a moveable game table. As shown in **Figure 2.0-12**, **Club Terrace Concept Plan**, the amenities provided within the Club Terrace would include a grilling station, seating areas, fireside lounges, and a mountain lounge that would provide residents with distant views of the Mission Hills.

New bollard lighting fixtures would be installed along the western perimeter of the apartment complex to illuminate the proposed Entertainment Terrace as well as the northern perimeter of the apartment complex. Additionally, new post top lighting fixtures would also be installed within the northwestern portion of the Project Site to illuminate the proposed surface parking spaces for the apartment complex and the entrance to the apartment leasing office.

2.6.4 Utilities

Utilities will be installed in compliance with the Land Development Department and Public Works Department Conditions of Approval.

Townhomes

Water

The Project would install new eight-inch underground water lateral connections to each townhome building along the proposed internal private streets that traverse the site. The proposed water main would interconnect and subsequently connect to an existing City-owned water main located off-site along California Circle.

Sanitary Sewer

The Project would install 8-inch underground sewer main line along the proposed internal private streets near the center of the project site. The sewer laterals from the sewer main would connect to each townhome. Multiple manholes would be installed along the proposed private streets and would serve as a point of access to a sewer system. The proposed wastewater lateral connecter would connect to an existing offsite 24-inch sewer lateral located along California Circle.

Drainage

The Project proposes to construct an on-site storm drain system with underground storm drain connections, bio-treatment systems, and the existing storm drain channel located along the western permitter of the Project Site. Stormwater runoff would be captured on-site through dome-shaped grates that would drain into the bio-treatment basins. Upon stormwater treatment, storm water would then flow via an 18-inch storm drain line to the City's storm drain system to connect to a 36-inch-wide public storm drain: one located underground along California Circle.

Dry Utilities

The Project would connect to the existing underground telecommunication and electric utility lines located on the west side. No gas connections are proposed for the project.

Apartment Complex

Water

The Project would install two underground water lateral connections. One for domestic water and one for the sprinkler system. These water connections would connect to the existing water main located off-site along California Circle.

Sanitary Sewer

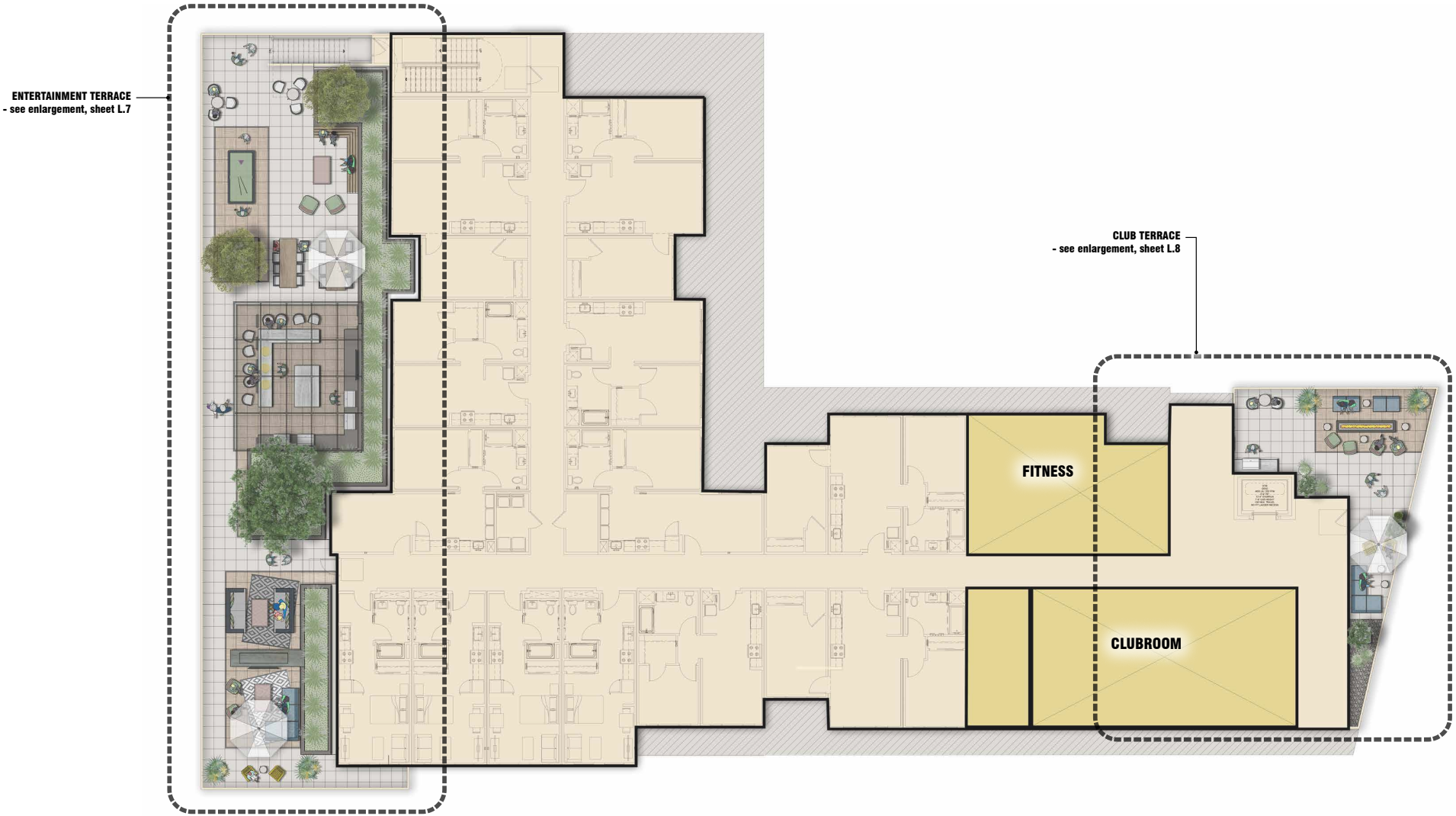
The Project would install one underground sewer lateral connection for the proposed apartment complex. This connection would connect to the existing 18-inch sewer main located along California Circle.

Drainage

As part of the proposed storm drain system, stormwater runoff from the apartment complex would be captured and routed into a new bio-treatment basin located west of the apartment complex. From there, runoff would be drained into a the existing 36 inch storm drain system within California Circle.

Dry Utilities

The Project would connect to the existing underground telecommunication and electric utility lines located west of the Project Site. No gas connections are proposed for the site.



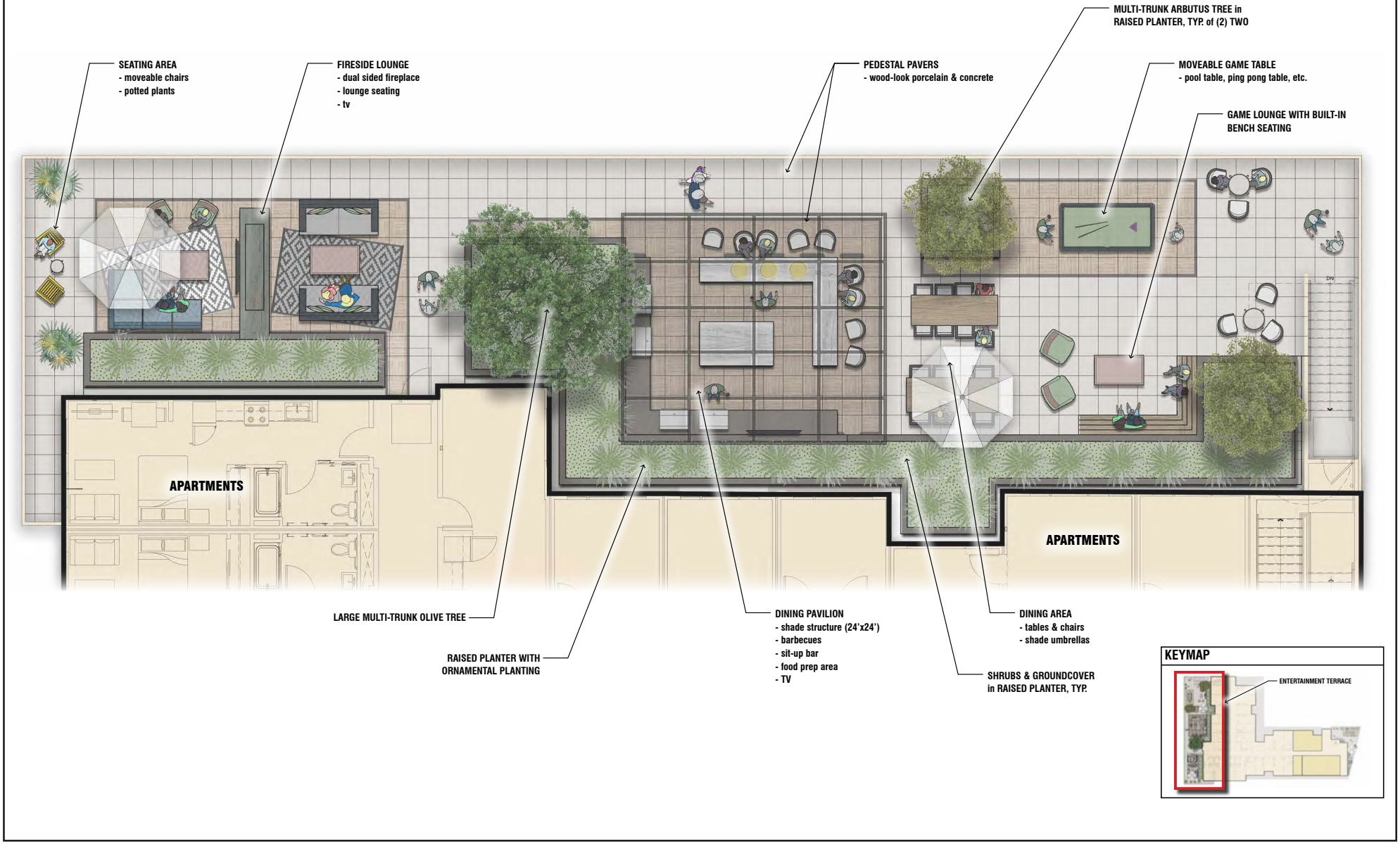
SOURCE: Canyon Park Studio, 2023

FIGURE **2.0-10**

IMPACT SCIENCES

Apartment Landscape Concept Plan

1451.001•06/2023



SOURCE: Canyon Park Studio, 2023.

FIGURE **2.0-11**

IMPACT SCIENCES

Entertainment Terrace Concept Plan

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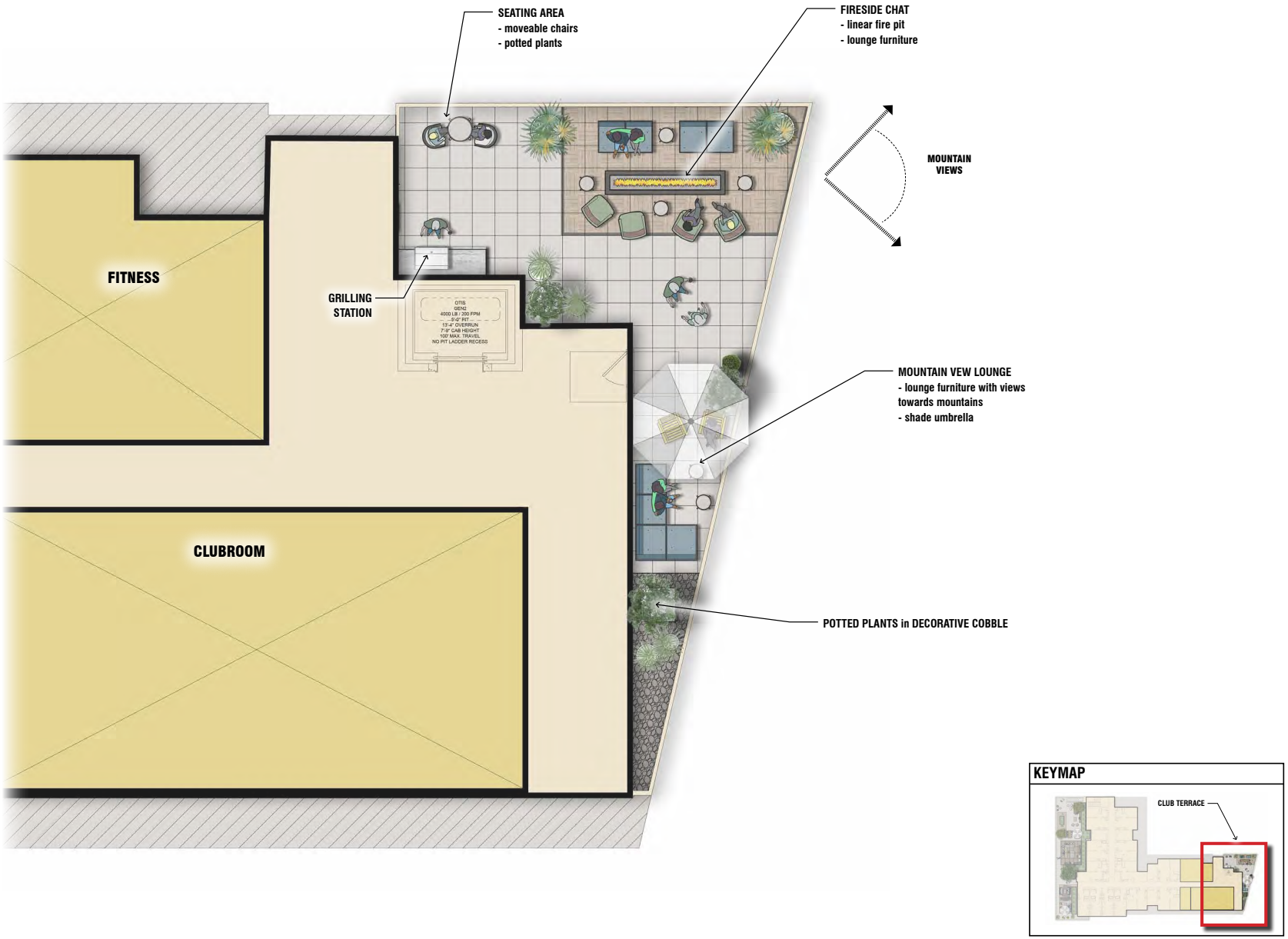

SOURCE: Canyon Park Studio, 2023.

FIGURE **2.0-12**

IMPACT SCIENCES

Club Terrace Concept Plan

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2.6.5 Architectural and Building Material Elements

Townhomes

Seven-Plex Townhomes

Building elevations for the proposed seven-plex are shown in **Figure 2.0-13a**, **Seven Plex Townhome Building Elevations 1,** and **Figure 2.0-13b**, **Seven Plex Townhome Building Elevations 2**. As detailed, the proposed townhome buildings would have a maximum building height of 39 feet and six inches. Architectural features would include parapets, canopies, and metal railings surrounding the patios. Lighting features would be mounted at the front of each townhome. Exterior colors of the townhome buildings would include a palette of white, beige, teal, and various shades of gray. Additional exterior building features would include vinyl windows and decorative sign of the unit's address with internal lighting.

Twelve-Plex Townhomes

Building elevations for the proposed twelve-plex townhome buildings are shown in **Figure 2.0-14a**, **Twelve-Plex Building Elevations 1,** and **Figure 2.0-14b**, **Twelve-Plex Building Elevations 2**. As detailed, the proposed townhome buildings would have a maximum building height of 51 feet. Architectural features would be limited to entrance steps and patios with metal railings. Exterior building colors would include a variety of neutral earth tones, such as copper red and a palette of different gray shades. The exterior building elements would include beach pebble and vinyl tile, while an asphalt shingle would be used as roof material.

Apartment Complex

Building elevations for the proposed apartment complex are shown in **Figure 2.0-15a**, **Apartment Complex Building Elevations 1,** through **Figure 2.0-15c**, **Apartment Complex Building Elevations 3**. As detailed, the proposed apartment complex would have a maximum building height of 83 feet. The proposed garage structure would feature a metal garage door and include metal mesh screen systems for air circulation. The proposed leasing office at the front of the apartment complex would include entrance steps and an entrance ramp with rail beams. A metal door would be included for access to the garage structure. Vinyl windows and balconies with metal railings and glass panels would be included for apartment units. The exterior color scheme for the apartment building would include colors that complement the proposed townhome buildings, such as high reflective white, stucco, black, gray, and smokey blue.

2.6.6 General Plan Text Amendment

The Project Applicant is seeking a *General Plan* text amendment to strike out specific language that requires the "preparation or adoption of a Specific Plan for the California Circle area" from the *General Plan*.

PROJECT SITE KEY MAP

Material Legend:

1. Roof: Flat with Parapet
2. Stucco Body 1
3. Stucco Body 2
4. Stucco Accent & Siding
5. Accent Metal Railing
6. Stucco Canopy
7. Vinyl Window
8. Unit Address & Decorative Light Fixture
9. Entry Door
10. Sectional Garage Door
11. Utility Cabinet Doors

Building 400 | 7 Plex - Front Elevation

SOURCE: WHA, 2023.

FIGURE **2.0-13a**

IMPACT SCIENCES

Seven-Plex Building Elevations 1

Left

Right

Material Legend:

1. Roof: Flat with Parapet
2. Stucco Body 1
3. Stucco Body 2
4. Stucco Accent & Siding
5. Accent Metal Railing
6. Stucco Canopy
7. Vinyl Window
8. Unit Address & Decorative Light Fixture
9. Entry Door
10. Sectional Garage Door
11. Utility Cabinet Doors

Building 400 | 7 Plex - Exterior Elevations

SOURCE: WHA, 2023.

FIGURE **2.0-13b**

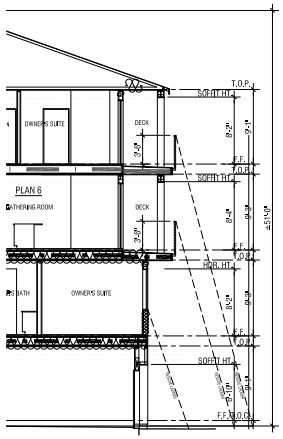
IMPACT SCIENCES

Seven-Plex Building Elevations 2

Buildings 200 | 12 Plex - Front Elevation

Material Legend:

1. Roof
2. Stucco Body 1
3. Stucco Body 2
4. Stucco Body 3
5. Stucco 4 & Railing
6. Tile Veneer
7. Vinyl Window
8. Unit Address & Decorative Light Fixture
9. Entry Door
10. Sectional Garage Door



Typical Ladder Access Pad Diagram

Note: Ladder Access Pads Are Not Shown On Alley Side - Alley Will Be Paved

SOURCE: WHA, 2023.

FIGURE **2.0-14a**

IMPACT SCIENCES

Twelve-Plex Building Elevations 1

Left

Right

Material Legend:

1. Roof
2. Stucco Body 1
3. Stucco Body 2
4. Stucco Body 3
5. Stucco 4 & Railing
6. Tile Veneer
7. Vinyl Window
8. Unit Address & Decorative Light Fixture
9. Entry Door
10. Sectional Garage Door

Buildings 200 | 12 Plex - Front Elevation

SOURCE: WHA, 2023.

FIGURE **2.0-14b**

IMPACT SCIENCES

Twelve-Plex Building Elevations 2

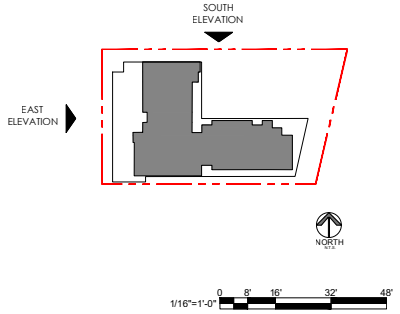
EAST ELEVATION

SOUTH ELEVATION

MATERIAL LEGEND

1. Exterior Plaster 16/20
2. Exterior Plaster Smooth Finish
3. Wood Framed Canopy
4. Glass Panel Metal Railings
5. Metal Mesh Screen System
6. Vinyl Windows
7. Stone Veneer
8. Aluminum Storefront System
9. Metal Door
10. Metal Garage Door

KEY MAP



SOURCE: AO Architects, June 2023.

FIGURE **2.0-15a**

IMPACT SCIENCES

Apartment Complex Building Elevations 1

1451.001•06/2023

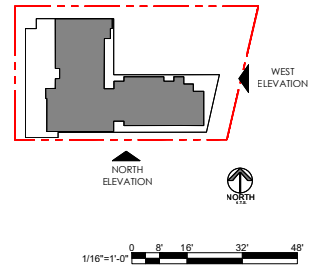
WEST ELEVATION

NORTH ELEVATION

MATERIAL LEGEND

1. Exterior Plaster 16/20
2. Exterior Plaster Smooth Finish
3. Wood Framed Canopy
4. Glass Panel Metal Railings
5. Metal Mesh Screen System
6. Vinyl Windows
7. Stone Veneer
8. Aluminum Storefront System
9. Metal Door
10. Metal Garage Door

KEY MAP



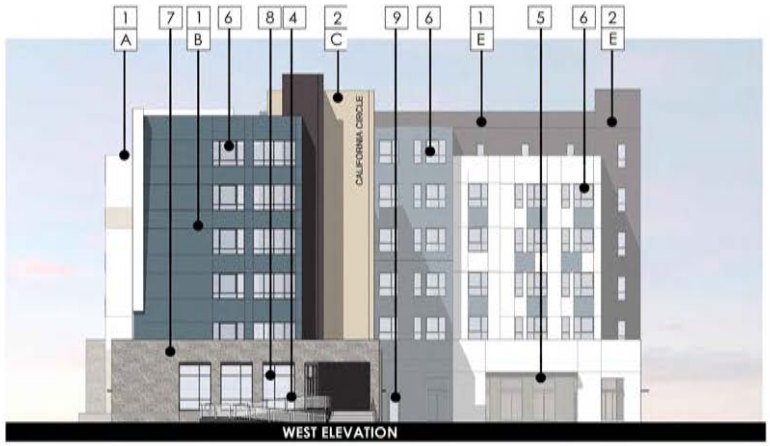
SOURCE: AO Architects, June 2023

FIGURE **2.0-15b**

IMPACT SCIENCES

Apartment Complex Building Elevations 2

1451.001•06/2023



SCHEME 1

A
SHERWIN WILLIAMS (OR EQUAL)
HIGH REFLECTIVE WHITE SW 7757

B
SHERWIN WILLIAMS (OR EQUAL)
SMOKY BLUE SW7604

C
SHERWIN WILLIAMS (OR EQUAL)
STUCCO SW7569

D
SHERWIN WILLIAMS (ALTERNATIVE TO 'A')
ONLINE SW7072

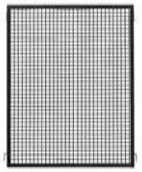
E
SHERWIN WILLIAMS (OR EQUAL)
DARKROOM SW7083

1 EXTERIOR PLASTER WALL W/ SCORED LINES -TO MATCH PAINT SPECS

2 EXTERIOR PLASTER SMOOTH -TO MATCH PAINT SPECS

3 WOOD CANOPY -TO MATCH PAINT SPECS

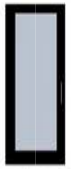
4 METAL RAILING W/ GLASS PANEL


5 METAL MESH SCREEN SYSTEM

6 VINYL WINDOW -COLOR TO MATCH PAINT SPEC G

7 STONE VENEER CORONADO STONE, SILVER ASH

8 ALUMINUM STOREFRONT SYSTEM


9 METAL DOOR

10 METAL GARAGE DOOR

1/8"=1'-0" 0 4' 8' 16' 24'

SOURCE: AO Architects, June 2023.

FIGURE **2.0-15c**

Apartment Complex Building Elevations 3

IMPACT SCIENCES

1451.001•06/2023

2.6.7 Zoning Map Amendment

The proposed zone change would replace the Project Site's current Industrial Park (MP) Zoning District with a Mixed-Use (MXD) Zoning District consistent with the NCMU General Plan land use designation. According to Chapter 10 (Zoning) of the City of Milpitas Municipal Code, the purpose and intent of MXD zones is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. It is intended that the residential and commercial uses allowed in the MXD district would provide for an "around-the-clock-environment" with urban open areas that serve multiple purposes and can be used for special events. In addition, the MXD district also allows for 100 percent residential projects.

2.6.8 Planned Unit Development

The Project would establish a Planned Unit Development (PUD). According to Section 54 (General Provisions) of the City of Milpitas Municipal Code, the PUD allows for diversification in the relationships of various buildings, structures, and open spaces in planned building groups and the allowable heights of said buildings and structures. The PUD would provide accommodations for the Project to exceed the height limits, scale, and setback requirements for MXD zones.

2.7 CONSTRUCTION AND PHASING

Construction is expected to be completed in two phases, over a period of 28 months. Phase 1 would involve the demolition of the existing structure on-site (one month), the grading of the entire site (one month) and building construction (12 months) of the proposed seven-plex and twelve-plex townhomes. Paving (two months) and architectural coating/painting (one month) are assumed to overlap with the final months of the building construction phase for Phase 1. Phase 2 would include the building construction (24 months) of the proposed apartment complex. Architectural coating/painting (two months) is assumed to overlap with the final months of the building construction phase for Phase 2 to provide a worst-case scenario. Per the Milpitas Municipal Code Section V-213-3 (b) construction activities are limited to the hours of 7:00 am to 7:00 pm each day. Construction is not permitted outside of these hours or on holidays.

2.8 INTENDED USES OF THE EIR

This Project-level EIR, as defined in Section 15000 et seq. of the *State CEQA Guidelines*, will serve as the primary source of environmental information for the actions and approvals associated with the 1355 California Circle Project. In accordance with Section 21002.1 of CEQA, the purpose of this EIR is to provide the City, serving as the lead agency, information on: the potentially significant environmental impacts that would result from implementation of the Project; the Project Alternatives; and mitigation measures, which

may reduce or avoid any significant effects. This EIR will also be used as an informational document by other public agencies, in connection with any approvals or permits necessary for construction and operation of the Project.

The Project-level EIR is intended for use by the City as lead agency and by responsible agencies as needed. This Project-level EIR evaluates the potential project-level impacts of the 1355 California Circle Project. As stated in Section 15161 of the *State CEQA Guidelines*, a Project-level EIR reviews the changes in the environment that would result from a development associated with the Project. It is the intent of this EIR to evaluate the environmental impacts of the Project, therefore enabling the City, responsible agencies, and interested parties to make informed decisions with respect to the requested entitlements. The anticipated discretionary approvals (in addition to ministerial actions such as demolition permit, grading permit, building permits, certificates of occupancy, etc.) required for this Project are further detailed in **Section 2.6**, **Reviews and Approvals**.

2.9 REFERENCES

Google Earth, 2022.

3.0 ENVIRONMENTAL IMPACT ANALYSIS

INTRODUCTION

This section of the Environmental Impact Report (EIR) evaluates the potential of the proposed 1355 California Circle Project (Project) to result in significant impacts to the environment. This section provides a full scope of environmental analysis in conformance with the California Environmental Quality Act Guidelines (CEQA Guidelines).

3.0.1 SCOPE OF THE ENVIRONMENTAL IMPACT ANALYSIS

In accordance with Section 15126 of the *State CEQA Guideline*s, **Chapter 3.0** of this EIR provides an analysis of the direct, indirect, project and cumulative, environmental effects of future development that complies with the Project with respect to existing conditions at the time the Notice of Preparation (NOP) was published (**Appendix 1.0-1**). The determination of whether an impact is significant has been made based on the physical conditions established at the time the NOP was published (*State CEQA Guidelines*, Section 15125(a)). The 1355 California Circle Project is evaluated in the EIR at the Project level in accordance with *State CEQA Guidelines*, Section 15161.

The following environmental resources are assessed in this chapter in accordance with Appendix G of the *State CEQA Guidelines*:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources and Tribal Cultural Resources
- Energy
- Greenhouse Gas Emissions
- Geology/Soils
- Utilities and Services Systems
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise and Vibration
- Population and Housing
- Public Services and Recreation
- Transportation and Traffic

The following effects were determined to not be significant; a brief discussion is provided in **Section 5.0, Effects Found Not to be Significant**:

- Agricultural Resources
- Mineral Resources
- Wildfire

Approach to Environmental Analysis

Section 3.1 through **Section 3.16** of this Draft EIR contain discussions of the environmental setting, regulatory framework, and potential impacts related to construction and operation of the Project. The environmental evaluation includes a project-level analysis and a cumulative analysis. Feasible mitigation measures are recommended, as available, for impacts that were identified as potentially significant. The analysis further evaluates the level of impact after the implementation of mitigation measures.

The project analysis evaluates the construction and operation of 206 residential dwelling units in the form of five seven-plex townhome buildings, eight twelve-plex townhome buildings, and a 75-unit apartment building. A detailed discussion of the design features is included in **Chapter 2.0, Project Description**.

The cumulative analysis was prepared in accordance with Section 15130 of the *State CEQA Guidelines* that requires an EIR to discuss cumulative impacts of a project when the incremental effects of a project are cumulatively considerable. Cumulative impacts are defined as an impact that is created as a result of the combination of the Project evaluated in this EIR together with other projects causing related impacts. Cumulatively considerable means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. According to Section 15130(b) of the *State CEQA Guidelines*, elements considered necessary to provide an adequate discussion of cumulative impacts of a project include either:

(1) list of past, present, and probable future projects producing related or cumulative impacts; or

(2) a summary of projection contained in an adopted General Plan or related planning document which is designed to evaluate regional or area-wide conditions.

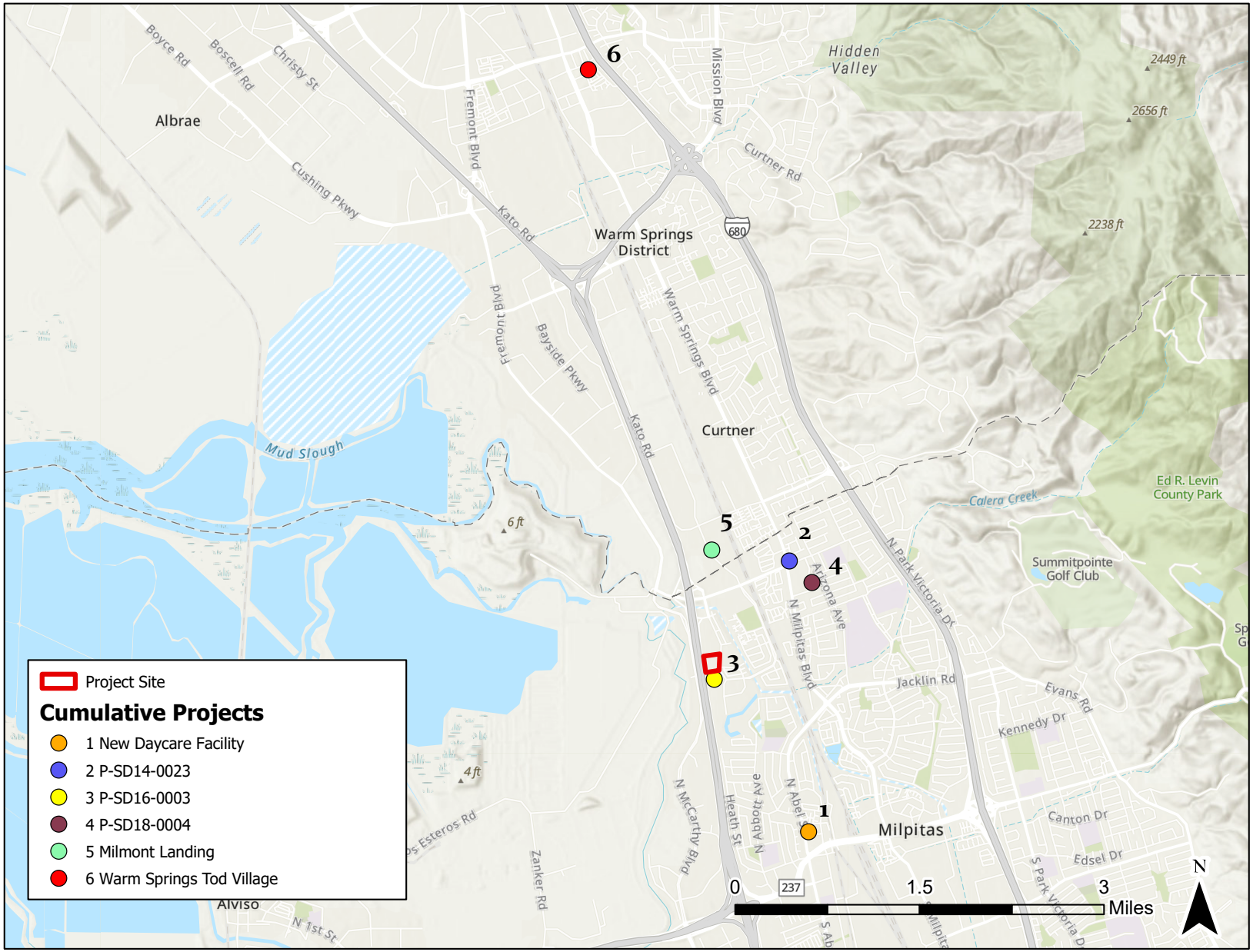
The cumulative analysis discussed in this EIR is provided within each section in **Chapter 3.0, Environmental Impact Analysis**. The geographic context for the cumulative analysis is specified for each environmental issue addressed in each section. Unless otherwise identified in the environmental issues addressed in this chapter, a summary of projections contained in the Association of Bay Area Governments/Metropolitan Transportation Commission's Plan Bay Area Projections 2040 (Plan 2040) were used to assess potential environmental effects. These forecasts provide the anticipated planned population, housing and employment growth in the region. **Table 3.0-1, Cumulative Growth Projections for the City of Milpitas and County of Santa Clara**, includes the forecast for the City of Milpitas and County of Santa Clara.

Table 3.0-1
Cumulative Growth Projections for the City of Milpitas and County of Santa Clara

Jurisdiction	Population	Housing
City of Milpitas	103,970	30,430
County of Santa Clara	2,495,105	860,810

Source:
Association of Bay Area Governments, Projections 2040, http://projections.planbayarea.org/, accessed October 12, 2022.
ABAG/MTC. Plan Bay Area, Projections 2040 Available online at: http://mtcmedia.s3.amazonaws.com/files/Projections_2040-ABAG-MTC-web.pdf, accessed October 6, 2022.
Note: Forecast numbers are for year 2040, these forecasts are used to define the cumulative context of the project and do not represent any one project in particular.

The cumulative analysis included an evaluation of the combined effects of Plan 2040 along with future growth in accordance with the projections provided in **Table 3.0-1**. In addition, if the combined cumulative effect is significant then a discussion of the Project's contribution to the significant cumulative effect is provided. If the Project's contribution is determined to be less than cumulatively considerable then the Project would have a less than significant cumulative impact. Although not required, the cumulative analysis also evaluated the Project's contribution to a less than significant cumulative effect. This evaluation was supplemented by a list of related projects located within a one-mile radius of the Project Site, based on data from the Cities of Milpitas and Fremont. A total of 6 related projects were identified within these jurisdictions (see **Table 3.0-2**, **Related Projects,** and **Figure 3.0-1**, **Cumulative Projects**).



SOURCE: Esri, 2023

FIGURE **3.0-1**

Cumulative Projects

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1451.001•06/2023

Table Number 3.0-2
Related Projects

Project Name/Number	Location	Description
City of Milpitas		
P-SD16-0003	1301 California Circle	A 22,602 square foot five-story, 67 foot tall, Element Hotel with 194 guest rooms located in the southern corner of the 3.34-acre lot.
P-SD14-0023	1880 N Milpitas Blvd	A 10,217 square foot multifamily residential development. Three units would be constructed.
P-SD18-0004	1724 Sunnyhills Court	The development of an additional 44 residential units within an existing 171-unit multi-family residential complex, demolish and reconstruct a leasing/community building, construct 87 additional parking spaces, and complete associated site improvements including a new driveway to connect an existing drive aisle to a new fire access road on a 12.66-acre site.
New Daycare Facility	164 N Abel Street	Operation of preschool and daycare facility (Montessori School) for up to 200 children, ages 18 months through six years, and to allow exterior modifications to an existing 12,196-square foot commercial building, including minor façade, parking lot, landscape improvements, and a new outdoor playground, on a 1.398-acre lot
City of Fremont		
Milmont Landing	49000 Milmont Drive	Lot Combination and a Ministerial Design Review permit to demolish the existing buildings at 49000 - 49090 Milmont Landing, combine the three lots into one lot, and construct a new 265,598 square foot industrial shell building in the Bayside Industrial Community Plan Are
Warm Springs Tod Village	44960 Warm Springs Boulevard	Development of a 310,330 square foot office building, 184 townhomes (remaining), 9,848 square feet of retail space, and associated structures

Source:
1 *City of Milpitas. Milpitas Planning Project Pipeline. Available online at: https://milpitas-gis-milpitas.hub.arcgis.com/apps/24fe9a09abcc4639913968f21309e510/explore, accessed June 20, 2023.*
2 *City of Fremont. Development Activity WebTable. Available online at: https://www.fremont.gov/home/showpublisheddocument/7161/637931458870700000*, accessed June 20, 2023.

Organization of Environmental Issue Area

Implementation of the Project will result in demolition, construction and operational activities. The potential environmental issues associated with each environmental analysis topic that is addressed in **Chapter 3.0** contain the following components.

Environmental Setting

This section identifies and describes the existing physical environmental conditions of the Project Site and vicinity associated with each of the impact sections. According to Section 15125(a) of the *CEQA Guidelines*, an EIR must include a description of the existing physical environmental conditions in the vicinity of the proposed project to provide the "baseline condition" against which project-related impacts are compared.

Normally, the baseline condition is the physical condition that exists when the NOP is published. The NOP for the Project was published in October 2022, which is considered the baseline for the analysis contained in this EIR.

Regulatory Framework

The Regulatory Framework provides an understanding of the regulatory environment that exists prior to the implementation of the Project. The regulatory framework that was used in this EIR included federal, state, regional, and local regulations and policies applicable to the Project.

Impacts and Mitigation Measures

This section describes environmental changes to the existing physical conditions that may occur if the Project is implemented and evaluates these changes with respect to the significance criteria. This section also includes a project-level impact analysis and a cumulative impact analysis. Mitigation measures are identified, if determined feasible, for significant impacts and cumulative impacts where the Project's contribution was determined to be cumulatively considerable. The mitigation measures are feasible actions that can avoid, minimize, or reduce an environmental impact. This section also includes a significance determination after mitigation that describes the level of impact remaining after mitigation measures are implemented.

Significance Criteria

Significance criteria have been developed for each environmental resource in accordance with Appendix G of the *State CEQA Guidelines*. The criteria are defined at the beginning of each impact analysis section. Impacts are categorized as follows:

- **Significant and Unavoidable** – Significant and unavoidable impacts occur when an impact exceeds the defined threshold of significance and there are no feasible mitigation measures that can eliminate or reduce the impact to less than significant levels;

- **Potentially Significant –** Potentially Significant impacts apply to an impact that may exceed the defined threshold of significance. Potentially significant impacts can sometimes be reduced to a less than significant level through the implementation of feasible mitigation measures. If feasible mitigation measures are not available or would not reduce the magnitude of the impact below the threshold of significance, the impact would be significant and unavoidable;

- **Less than Significant** – Less than Significant impacts apply where the project creates an impact that does not exceed the defined threshold of significance. CEQA does not require mitigation measures for less than significant impacts; or

- **No Impact** – No Impact applies where an environmental issue is evaluated, and it is determined that the project would have no effect or impact in that category. A finding of No Impact needs to be adequately supported by information that shows the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone).

References

Sources relied upon for each environmental topic analyzed in this document are provided at the end of each section.

3.1 AESTHETICS

INTRODUCTION

This section describes the existing visual resources within the City, identifies the regulatory framework with respect to regulations that address visual resources, and evaluates the significance of the potential changes to visual resources that could result from implementation of the 1355 California Circle Project. In addition, to reduce impacts, mitigation measures are included when applicable.

3.1.1 ENVIRONMENTAL SETTING

3.1.1.1 Definition of Terms

To provide context for the analysis presented below, a discussion of general definitions is necessary. Terms to be discussed include "viewsheds" and "visual quality," both key factors in addressing impacts to aesthetics and views. The environmental setting also generally describes those resources that are regionally significant and lists the designated scenic highways, byways, and vista points.

The aesthetic value of an area is a measure of its visual character and quality, combined with the viewer response to the area. The scenic quality component can best be described as the overall impression that an individual viewer retains after driving through, walking though, or flying over an area. Viewer response is a combination of viewer exposure and viewer sensitivity. Viewer exposure is a function of the number of viewers, the number of views seen, the distance of the viewers, and the viewing duration. Viewer sensitivity relates to the extent of the public's concern for certain viewsheds. These terms and criteria are described in detail below.

Viewshed: A viewshed is a geographic area composed of land, water, biotic and/or cultural elements that may be seen from one or more viewpoints and has inherent scenic qualities and/or aesthetic value as determined by those who view it. The extent of a viewshed can be limited by a number of intervening elements, including trees and other vegetation, built structures, or topography such as hills and mountains.

Visual Quality: Visual quality refers to the character of the landscape, which generally gives visual value to a setting. It is useful to think of scenic resources in terms of "typical views" seen throughout an area, because scenic resources are rarely encountered in isolation. A typical view may include several types of scenic resources, including both natural and man-made elements. It is also important to distinguish between public and private views. Private views are views seen from privately owned land and are typically viewed by individual viewers, including views from private residences.

Public views are experienced by the collective public. These include views of significant landscape features, as seen from public viewing spaces, not privately-owned properties. CEQA (Public Resources Code § 21000 et seq.) case law has established that, in general, protection of public views is emphasized. For example, in *Association for Protection Etc. Values v. City of Ukiah* (1991) 2 Cal. App. 4th 720, 734, the court determined the following:

> *we must differentiate between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general. As recognized by the court in Topanga Beach Renters Assn. v. Department of General Services (1976) 58 Cal.App.3d 188 [129 Cal.Rptr. 739]: "[A]ll government activity has some direct or indirect adverse effect on some persons. The issue is not whether [the project] will adversely affect particular persons but whether [the project] will adversely affect the environment of persons in general.*

Therefore, for this analysis, only public views are considered in analyzing the visual impacts of the Project Site.

3.1.1.2 Regional and Local Setting

The City of Milpitas (City) is an incorporated municipality located in the northern portion of Santa Clara County, between Fremont and San Jose. The City is located on a flat plain between the Mission Hills (to the east) and the San Francisco baylands (to the west). The Mission Hills and Monument Peak, located northeast of the Project Site approximately 6.48 and 3.60 miles, respectively, form a distinctive scenic backdrop to the City and is an important element to the City's identity and character. Mount Diablo is also a distinctive backdrop located approximately 29.73 miles northeast of the Project Site.

The City is predominately developed with residential, commercial, and institutional uses. The uses primarily consist of suburban neighborhoods, shopping centers, offices, and schools. Minor exceptions to this characteristic include the open hillsides located along the eastern border of the City's boundaries. As stated in **Section 2.0, Project Description**, the majority of the City is bound by two interstate highways: I-680 and I-880. Additionally, light rail lines operated by the Valley Transportation Authority (VTA) traverse the center of the City. The Project Site is located in a heavily developed and urbanized area with primarily industrial uses and one area of multi-family residential uses.

Views and Scenic Resources

As discussed in **Section 2.0, Project Description**, the Project Site is currently developed with an approximately 90,000 square-foot, two-story (approximately 23 foot high) industrial office building, associated surface parking, and ornamental landscaping; refer to **Figure 2.0-7a, Townhome Landscape Concept Plan (Sheet 1)**, through **Figure 2.0-7c**, **Townhome Landscape Concept Plan (Sheet 3)**, and

Figure 2.0-10, Apartment Landscape Concept Plan. Public views facing the northern side of the Project Site include partially obstructed views of the main entrance to the existing industrial office building. The northern surface parking lot and multiple landscaping islands are also visible to viewers. The eastern portion of the Project Site provides direct views of the existing industrial office building, ornamental landscaping, and associated surface parking. However, these views are partially obstructed by the existing trees within the City's right-of-way. The southern portion of the Project Site includes direct views of the southwestern corner of the existing building and paved surface parking spaces with associated landscaping that includes grass and trees. Views of the existing chain-link fence and the southeastern driveway are also provided. The southern end of the Project Site also provides views of the existing overhead electric utility lines and storage bins on-site.

According to the *City of Milpitas General Plan Environment Impact Report* (November 2, 2020), scenic resources within the City could be both natural and man-made including hillsides, ridges, visually significant vegetation, and other elements that are critical in shaping the City's scenic identity. Due to its location, views from the Project Site only allow for partial views of the open hillsides and Mission Peak located east of the Project Site. Existing off-site trees and structures obstruct any views of the City's open hillsides and the San Francisco Bay.

Scenic Highways

The California State Scenic Highway System is a list of scenic highways (mainly state highways) or scenic parkways which have been designated or proposed by the state of California. The scenic highway designation serves to protect California's scenic beauty as well as its scenic resources. The closest state-designated scenic highway to the Project Site is Interstate 680 (I-680), beginning at post mark 6.4 and ending at post mark (PM) R6.4 in the City of Fremont and ending at PM R16.8 in the census-designated Sunol community.[1] I-680 (beginning at PM M0.0 and ending in PM 14.4 in Milpitas) is also considered eligible to be a state scenic highway, is located approximately 1.30 miles northeast of the Project Site.[2] This segment is located approximately 1.40 miles northeast of the Project Site.

Visual Character

The concept of visual character is not explicitly defined in the *State CEQA Guidelines*. In this aesthetics discussion, potential visual character impacts are assessed based on industry-accepted definitions of

1 California Department of Transportation (Caltrans), California State Scenic Highways. Available online at: https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa, accessed September 26, 2022.

2 Ibid.

visual character. Visual character can be defined in terms of the overall impression formed by the relationship between perceived visual elements of the existing built, urban environment. Visual character is the existing features or elements that contribute to the valued image of a neighborhood, community, or localized area. Features that contribute to visual character may include, but are not limited to:

- Height and mass of proposed buildings compared to existing development;
- Structures of architectural or historical significance, or visual prominence;
- Public plazas, art, or gardens;
- Landscaping and street trees; or
- Other features of recognized value to the aesthetic or visual character of an area.

As stated in the City's *General Plan*, the Project Site is designated Neighborhood Commercial Mixed Use (NCMU) within a proposed future Specific Plan Overlay. The proposed Project includes a General Plan text amendment to remove this overlay, as directed by the Milpitas City Council.

The visual character of the Project Site is dominated by the I-880 freeway to the west and a mixture of industrial uses, multi-family residential uses, and undeveloped land to the north, south, and east. The surrounding styles and architecture of buildings vary between the industrial and residential uses. Massing also varies between the surrounding buildings. However, the heights of the surrounding buildings are similar to the height of the existing on-site structures.

Light and Glare

Lighting effects are associated with the use of artificial light during the evening and nighttime hours. There are two primary sources of light: light emanating from building interiors passing through windows, and light from exterior sources (i.e., street lighting, building illumination, security lighting, parking lot lighting, and landscape lighting). Light introduction can be a nuisance to adjacent residential areas, diminish the view of the clear night sky, and if uncontrolled, can cause disturbances. Uses such as residences are considered light sensitive since occupants have expectations of privacy during evening hours and may be subject to disturbance by bright light sources. Residential uses to the south of the Project Site represent the closest light-sensitive uses to the project. Light spillover is typically defined as the presence of unwanted light on properties adjacent to the property being illuminated. With respect to lighting, the degree of illumination may vary widely depending on the amount of light generated, height of the light source, presence of barriers or obstructions, type of light source, and weather conditions.

Glare is primarily a daytime occurrence caused by the reflection of sunlight or artificial light by highly polished surfaces such as window glass or reflective materials and, to a lesser degree, from broad expanses of light-colored surfaces. Perceived glare is the unwanted and potentially objectionable sensation as observed by a person as they look directly into the light source of a luminaire. Daytime glare generation is common in urban areas and is typically associated with buildings with exterior facades largely or entirely comprised of highly reflective glass. Glare can also be produced during evening and nighttime hours by the reflection of artificial light sources such as automobile headlights. Glare-sensitive uses include residences, transportation corridors, and aircraft landing corridors.

The Project Site is developed with an existing industrial office building and is adjacent to existing urban development to the north, south, and east. Thus, various sources of light and glare are present in the Project area. On-site lighting associated with the existing industrial office building includes parking lot lighting, building illumination, and security lighting. Light generated by car headlights and lighting associated with the I-880 freeway to the west and California Circle to the east further influence lighting in the Project Area. Adjacent sources of reflective materials, lighting, and electronic signage for adjacent to I-880 westbound also exists. Currently daytime glare on-site is limited to the glass windows on the existing industrial building. In the Project area, existing glare sources include vehicle headlights along the I-880 Freeway, surrounding roadways, and neighboring parking lots, as well as exterior security lighting in the area. Reflective materials and lighting from surrounding developments also contribute to nighttime glare.

3.1.2 REGULATORY FRAMEWORK

3.1.2.1 State

California Scenic Highways and Historic Parkways Program

The California Scenic Highways and Historic Parkways Program was created in 1963 to preserve and protect highway corridors located in areas of outstanding natural beauty from changes that would diminish the aesthetic value of the adjacent lands. The State of California Department of Transportation (Caltrans) maintains its State Scenic Highways and Historic Parkways Program, through which segments of the State highway system are designated as being of particular scenic value or interest. A highway may be designated scenic depending upon how much of the natural landscape can be seen by travelers, the scenic quality of the landscape, and the extent to which development intrudes upon the traveler's enjoyment of the view. Interstates, state highways, byways, and parkways are eligible for designation or for recognition as eligible for designation. The program is governed by the regulations found in the California Streets and Highways Code, Section 260 et seq.

California Streets and Highway Code Section 261 requires local government agencies to take the following actions to protect the scenic appearance of the scenic corridor:

- Regulate land use and density of development.
- Provide detailed land and site planning.
- Prohibit off-site outdoor advertising and control of on-site outdoor advertising.
- Pay careful attention to and control of earthmoving and landscaping.
- Scrutinize the design and appearance of structures and equipment.

California Streets and Highway Code Section 263 allows the California State Legislature the authority to identify highways as eligible for designation as a scenic highway. The government with jurisdiction over land abutting a highway considered to be scenic is required to adopt a "scenic corridor protection program" that restricts development, outdoor advertising, and earthmoving activities along the affected segment or corridor (Corridor Protection Program). Caltrans must also indicate that the highway segment meets established criteria in order for the roadway or segment to be designated as scenic.

California Code of Regulations Title 24 Part 6

The California Energy Code (Cal. Code Regs., tit. 24 § 6) creates standards in an effort to reduce energy consumption. The type of luminaries and the allowable wattage of certain outdoor lighting applications are regulated.

Senate Bill 743

On September 2013, the Governor signed into law Senate Bill (SB) 743, which instituted changes to the CEQA when evaluating environmental impacts to projects located in areas served by transit. While the thrust of SB 743 addressed a major overhaul on how transportation impacts are evaluated under CEQA, it also limited the extent to which aesthetics and parking are defined as impacts under CEQA. Specifically, Section 21099 (d)(1) of the Public Resources Code (PRC) states that a project's aesthetic and parking impacts shall not be considered a significant impact on the environment if:

1. The project is a residential, mixed-use residential, or employment center project, and
2. The project is located on an infill site within a transit priority area.

"Transit priority area" means an area within one-half mile of a major transit stop that is existing or planned. Section 21064.3 of the PRC defines a "major transit stop" as a site containing an existing rail

transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

3.1.2.2 Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* (General Plan) includes the goals, policies, and standards for aesthetics in the City as set forth in the Community Design Element.

The *General Plan* Community Design Element is intended to address the built and natural environment. This includes the image and character of Milpitas' many unique neighborhoods and districts; the quality of buildings, streets, and public spaces; and the community's historical attributes. The City's Community Design Element focuses on the built character, order, and sense of place of the City.

The City's Community Design Element includes the following relevant goals and policies:

Goal CD-2: Ensure project designs reinforce a sense of place, display design excellence, and are cohesive and sensitive to the surrounding build environment and natural landscape.

Policy CD 2-1: Use the project review process to encourage creative, high quality, innovative, and distinctive architectural and site designs that help create unique, vibrant places.

Policy CD 2-2: Continue to develop and implement design standards and guidelines for residential, non-residential, and infrastructure development, both in the private and public realms, consistent with state law, to provide design and site planning approaches, landscaping, site grading and similar architectural and site planning criteria that will add design excellence, visual quality and interest to the community.

Policy CD 2-7: Include design elements during the development review process that address security, aesthetics and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular, bicycle, and pedestrian facilities and other standards set forth in local, state, and federal regulations.

Goal CD-3: Maintain and enhance the character and distinct identities of Milpitas' residential neighborhoods and commercial, mixed-use, and employment districts and centers.

Policy CD 3-1: Strengthen the positive qualities of the City's neighborhoods, districts, and centers.

Policy CD 3-2: Support the development and preservation of unique neighborhoods, districts, and centers that exhibit a special sense of place and quality of design.

Policy CD 3-3: Ensure that new development and redevelopment reinforces desirable elements of its neighborhood, district, or center, including architectural style, scale, and setback patterns.

Policy CD 3-5: Ensure that new residential development and substantial additions are designed to maintain and support the existing character and development pattern of the surrounding neighborhood, especially in historic neighborhoods and neighborhoods with consistent design characteristics.

Policy CD 3-9: For commercial, multi-family, mixed-use, and employment generating projects, encourage site designs and development patterns that connect adjoining sites and function as a single center.

Policy CD 3-10: Design multi-family residential, mixed use, commercial, and employment-generating development in neighborhoods, districts, and centers to:

- Include open space and/or recreational amenities to provide visual relief from development, form pedestrian and bicyclist linkages to adjacent uses and other portions of the neighborhood, district, or center, and serve as buffers between uses, where necessary;
- Locate building access points along sidewalks, pedestrian areas, and bicycle routes, and include amenities that encourage pedestrian activity;
- Create a human-scale ground-floor environment that includes public open areas that separate pedestrian space from auto traffic, or where these intersect, give special regard to pedestrian safety; and
- Provide comfortable pedestrian amenities, such as quality seating areas, lighting, and wide, shaded paths, along with specialized and engaging

design features, such as interesting fountains or public art to draw and maintain people's attention.

Goal CD-4: Enhance the existing character and strengthen the identity and unique qualities of Milpitas' districts.

Policy CD 4-2: Incorporate identifiable and consistent design themes through architecture, landscaping, public realm improvements, historic references and signage within special districts.

Milpitas Municipal Code

Chapter 10 of the Milpitas Municipal Code (Municipal Code), also known as the Zoning Law of the City of Milpitas, implements the land use policies of the *General Plan*. The Zoning Law includes specific development standards and land use requirements, including those that relate to visual quality, such as building height, lot coverage, setbacks, accessory structures, signage, lighting, and access. Such features are identified as applicable for each zone.

Chapter 10, Section 3 (Zoning Districts) of the Municipal Code establishes procedures for review of development in the City. In November 2022, the City adopted Objective Design Standards (ODS) to apply to all developments submitted after adoption. The intent of the ODS is to address Senate Bill 330 by allowing flexibility in design but requiring key elements that support the pedestrian experience, create human-scaled buildings, and preserve the character of Milpitas' neighborhoods. While the Project application was submitted prior to the adoption of the ODS, compliance with the ODS, were feasible, is recommended. In addition, the Project includes a Planned Unit Development (PUD) which allows for the inclusion of other development standards.

3.1.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to visual resources are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant adverse impacts to visual resources, if any of the following could occur:

- Have a substantial adverse effect on a scenic vista.
- Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.

- In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings. (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

- Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

3.1.4 METHODOLOGY

This impact discussion evaluates impacts from inside and outside the Project Site where the visual resources identified in Section 3.1.1, Environmental Setting, may be affected by the Project.

The visual impacts from a project include both the objective visual resource change created by the project and the subjective viewer response to that change. Distance from the project, frequency of view, length of view, viewer activity, viewer perception, and viewing conditions contribute to the assessment of a visual impact. The physical limits and changes of the views and the quantity of viewers are objective. Viewer perception is subjective.

The perception of different viewer groups to the visual environment and its elements varies based on viewer activity and awareness. Activities such as commuting in heavy traffic can distract an observer from many aspects of the visual environment. Conversely, pleasure driving or relaxing in a scenic environment can encourage an observer to look at the view more closely and at greater length, thus increasing the observer's attention to detail. Sensitivity is also determined by how much the viewer has at stake in the viewshed. Typically, people who own property in an area are more sensitive to change than those just passing through.

The assessment of aesthetic impacts is subjective by nature. Aesthetics generally refer to the identification of visual resources and the quality of what can be seen, as well as an overall visual perception of the environment. The significance determination for the aesthetics analysis is based on consideration of whether any resource exist within or near the project site; and if a resource exists, (1) whether it can be viewed from public areas within or near the project site and (2) if project implementation would either hinder views of the resource or result in its visual degradation. Should resources not currently exist, implementation of the project would not result in impacts.

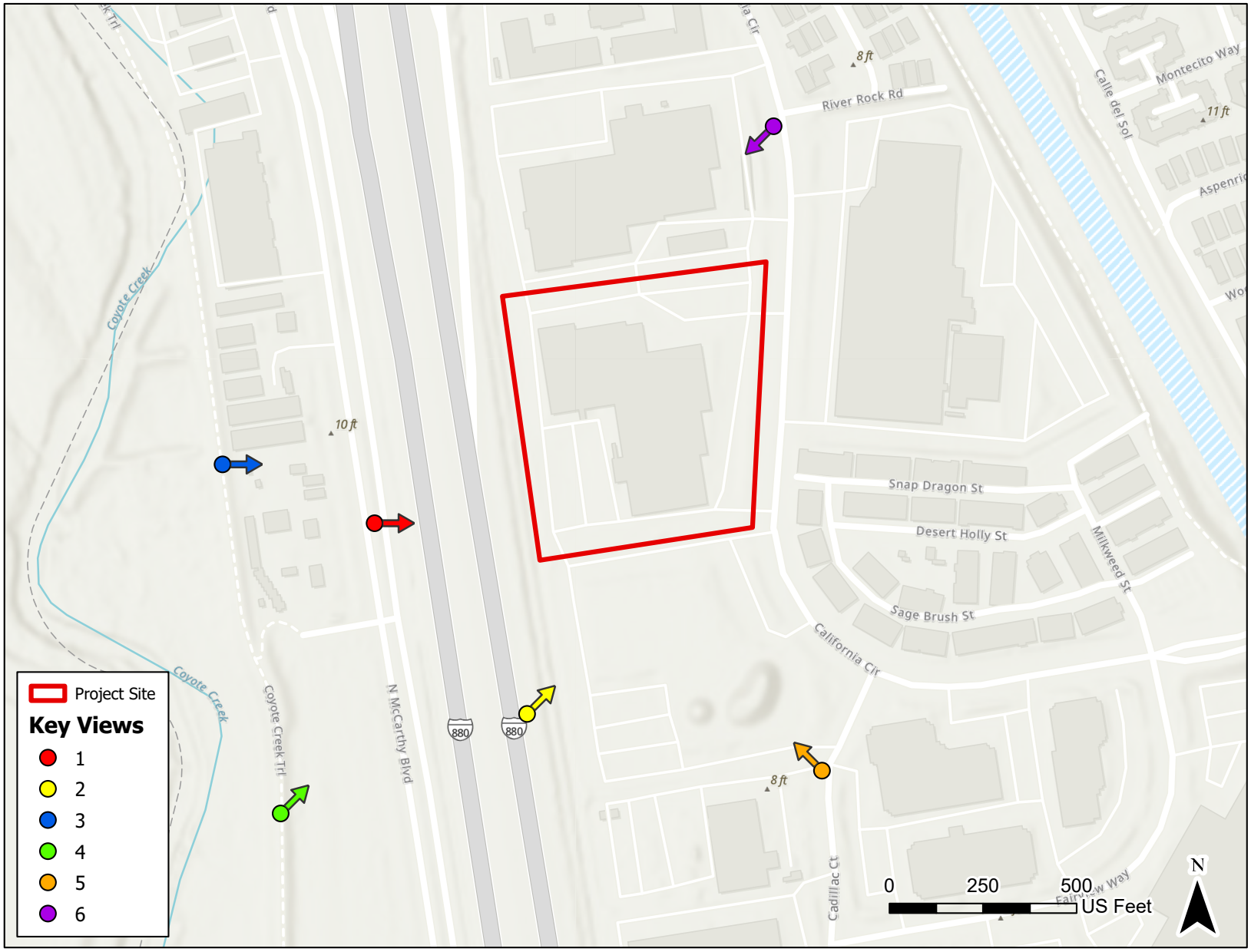
3.1.5 ENVIRONMENTAL IMPACTS

Impact AES-1 Would the Project have a substantial adverse effect on a scenic vista?

The Project Site is developed with an industrial office building and surface parking lot and is not a designated scenic vista. However, public views of the eastern open hillsides and Mission Peak as well as the Project Site are provided to bicyclists and pedestrians travelling north along the Coyote Creek Trail, and motorists travelling north along I-880 and south along McCarthy Boulevard. In order to depict potential impacts to public views of the open hillsides and Mission Peak, conceptual building height diagrams were prepared for the following key views; refer to **Figure 3.1-1**, **Key View Locations Map**.

- **Key View 1**: Key View 1 is located along the southbound lane of McCarthy Boulevard, looking southwest at the Project Site. As depicted in **Figure 3.1-2**, **Key View 1**, public views of the eastern open hillsides and the Project Site are present from this Key View. However, these public views are heavily obstructed with intervening structures and trees. The Project would allow for multi-family residential housing to be developed at a maximum building height no taller than 78 feet (six stories). As **Figure 3.1-2** demonstrates the proposed development would completely block the public views of the existing open hillsides. Specifically, Project implementation would block the open hillsides from the viewpoint of motorists, bicyclists, and pedestrians travelling along McCarthy Boulevard. Impacts would be significant and unavoidable in this regard.

- **Key View 2**: Key View 2 is located along the northbound lanes of I-880 looking northeast at the Project Site. As depicted in **Figure 3.1-3**, **Key View 2**, public views of the eastern hillsides, Mission Peak, and the Project Site are provided from this key view. However, these existing views are partially obstructed, due to intervening trees, power poles and lines, and the existing industrial office building on-site. Although the Project would obstruct the existing public views of both vistas, the Project would not result in a substantial additional view blockage compared to the existing conditions. Thus, visual impacts would be less than significant.



SOURCE: Esri, 2023

FIGURE **3.1-1**

IMPACT SCIENCES

Key View Locations Map

1451.001•06/2023

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-2**

Key View 1

IMPACT SCIENCES

1451.001•2/23

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-3**

Key View 2

IMPACT SCIENCES

1451.001•2/23

- **Key View 3**: Key View 3 is located along the northbound lanes of Coyote Creek Trail, looking east of the Project Site. As depicted in **Figure 3.1-4**, **Key View 3**, public views of the open eastern hillsides and its ridgelines as well as the Project Site are available to pedestrians and bicyclists from this Key View. However, these views are partially obstructed, due to intervening trees, power poles and lines, and the existing industrial office building on-site. The Project would introduce multiple townhomes that would be developed at a maximum height no taller than 51 feet, and an apartment complex at a maximum height no taller than 78 feet. Nevertheless, Project implementation would further obstruct these existing views, and visual impacts would be significant and unavoidable.

- **Key View 4:** Similar to Key View 3, Key View 4 is located along the northbound lanes of Coyote Creek Trail, looking east of the Project Site. As depicted in **Figure 3.1-5**, **Key View 4**, public views of the open eastern hillsides and its ridgelines are available to pedestrians and bicyclists from this Key View. These public views of the open eastern hillsides and its ridgelines are available to pedestrians and bicyclists from this Key View. However, these views are partially obstructed, due to existing intervening trees, structures, and power poles. As shown in **Figure 3.1-5**, **Key View 4,** although the proposed development would partially obstruct public views of the open hillsides, the Project would not result in a substantial additional blockage of views compared to the existing conditions. Public views of the open hills would remain readily available from this viewpoint. Thus, impacts would be less than significant.

In conclusion, the Project would develop multiple structures at a maximum building height that is greater than the existing building structures on-site. Accordingly, this increase in height would result in significant view blockages of public scenic resources (i.e., the eastern open hillsides) from public viewpoints, specifically for bicyclists travelling northbound along Coyote Creek Trail, and motorists travelling southbound along McCarthy Boulevard. As such, the Project would result in substantial adverse effects to scenic vistas, and the impact would be significant and unavoidable.

Level of Significance Before Mitigation

Significant and unavoidable impact.

Mitigation Measures

No feasible mitigation measures are available.

Level of Significance After Mitigation

Significant and unavoidable impact.

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-4**

IMPACT SCIENCES

Key View 3

1451.001•2/23

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-5**

IMPACT SCIENCES

Key View 4

1451.001•2/23

Impact AES-2 Would the Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

As discussed above, the closest designated scenic highway and eligible scenic highway is PM R6.4 to PM R16.8 and PM M0.0 and PM 14.4 of I-680, respectively. Due to the distance, topography, and intervening landscape, trees, and structures, between the highway and the Project Site, the Project Site is not within or visible from any existing designated (or eligible) scenic highways. Thus, the Project would not result in impacts to a scenic resource within a state scenic highway.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact.

Impact AES-3 In non-urbanized areas, would the Project substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the project is in an urbanized area, would the Project conflict with applicable zoning and other regulations governing scenic quality?

The Project Site is currently developed with a vacant industrial office building, associated surface parking, and ornamental landscaping and is surrounded by urbanized uses to the immediate north, east and west. Key Views 5 and 6 further illustrates the Project area under existing and proposed conditions. Each key view is further discussed below:

- **Key View 5:** Key View 5 is located at the intersection of California Circle and Cadillac Court, looking northwest at the Project Site. As depicted in **Figure 3.1-6**, **Key View 5**, current public views include the Project Site, the vacant property located south of the site, as well as partial views of the multi-family residences to the east and overhead freeway signs of I-880. Public streetlights, trees and overhead utility lines that surround the Project Site are also visible from this viewpoint. As depicted

in **Figure 3.1-6**, the Project Site would introduce multiple new structures within the surrounding area that are different in height and massing compared to surrounding structures. However, the building materials used for both the proposed townhomes and apartment complex would be similar in architectural style as surrounding residential uses. Further, the proposed trees and ornamental landscaping on-site would be compatible with the existing landscape in surrounding areas. Nevertheless, the Project would complement the visual character and quality of the area, rather than degrade it.

- **Key View 6**: Key View 6 is located along California Circle, looking south at the Project Site. As depicted in **Figure 3.1-7**, **Key View 6**, views parking structures north of the Project Site, partial views of the Project Site, partial views of the multi-family residences to the east, and distant views of an apartment complex south of the Project Site are visible from this viewpoint. Views of the existing street trees and the traffic light are also provided. As depicted in **Figure 3.1-7**, **Key View 6,** the proposed apartment complex would be visible and the proposed townhomes would be partially visible from this viewpoint. The Project would introduce multiple new buildings at greater heights from this viewpoint. However, its proposed building materials would be compatible with the existing multi-family structures east and the hotel located south of the Project. Specifically, the proposed building materials (i.e., smooth plaster and stone) and colors (i.e., muted neutral and neutral toned colors) of the apartment complex and townhomes would be compatible with the existing hotel located south of the Project Site. Thus, the Project would not degrade the existing visual character or quality of public views of the area.

As concluded by Key View 5 and Key View 6, although the Project would change the visual character of the site, it's implementation would not degrade the existing visual character or quality of public views of the site or its surroundings. The following discussion analyzes the Project's potential to conflict with applicable zoning and other regulations governing scenic quality.

Construction

Construction activities associated with the Project would involve the demolition of the existing on-site industrial office building, associated surface parking, and ornamental landscaping for construction of the Project. Approximately 49 existing on-site trees, 27 are City Ordinance-sized protected trees, would be removed during the Project's construction phase and be replaced with 269 trees. Construction staging and parking areas would be within the boundaries of the Project Site. The Project's construction-related visual impacts are considered temporary and would cease upon construction completion. Various controls would be implemented during construction to ensure the Project does not conflict with applicable zoning or regulations. For example, construction and demolition activities would require

compliance with the General Construction Permit Water Quality Order 2009-0009-DWQ (as amended by Order No. 2010-0014-DWQ and 2012-006-DWQ), which requires the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP would require implementation of various construction Best Management Practices (BMPs) which would minimize visual impacts. Further, all grading and earthwork activities would be conducted in accordance with an approved construction grading plan and grading permit issued by the City. As a result, construction-related impacts concerning the Project's potential to conflict with applicable zoning or other regulations governing scenic quality would be less than significant.

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-6**

IMPACT SCIENCES

Key View 5

1451.001•2/23

Existing Condition

Proposed Condition

SOURCE: City of Milpitas, 2022

FIGURE **3.1-7**

Key View 6

IMPACT SCIENCES

1451.001•2/23

Operations

As discussed in **Section 2.0**, **Project Description**, the Project includes the development of five buildings containing seven-plex townhomes, eight buildings containing 12-plex townhomes, and a 75-unit apartment complex. As such, these proposed developments must be consistent with the applicable *General Plan* policies and design standards that are imposed by the City. The analysis below evaluates the Project's consistency with the City's applicable *General Plan* policies and development standards.

General Plan

The existing developed character of the Project Site and surrounding area includes industrial, religious assembly, multi-family residential, -and commercial uses within proximity to single-family residential uses. **Table 3.1-1**, **Milpitas General Plan Policies,** analyzes the Project's consistency with applicable goals and policies in the *General Plan* Land Use and Community Elements that relate to scenic quality. Refer to **Section 3.10, Land Use and Planning,** for a discussion regarding the Project's consistency with other applicable *General Plan* goals and policies.

Table 3.1-1
Project Consistency with City of Milpitas General Plan 2040

General Plan Policy	Project Consistency
Land Use Element	
Goal LU-5: Ensure that new development is compatible with existing development in order to maintain a high quality of life for residents, while supporting successful business operations.	
Policy LU 5-1: Require new development and redevelopment to be compatible, complementary and, where appropriate, well integrated with existing residential areas. Integrate new large-scale development projects into the fabric of the existing community rather than allowing projects to be insular and self-contained, walled off, or physically divided from surrounding uses. Improve connectivity between neighborhoods and services with new development. Tie circulation systems and open spaces into existing streets and open spaces. Reduce unnecessary barriers and improve connections between neighborhoods and services by retrofitting existing development over time as area improvements or redevelopment occurs.	**Consistent.** As discussed above, the proposed building materials and colors of the Project would be compatible with the existing hotel located south of the Project Site. The Project would not install soundwalls, gates, or any barrier of entry along the eastern perimeter of the Project Site and would operate as accessible residential developments. The Project would not alter or deteriorate the existing pedestrian facilities that connect the residents and individuals within the Project Area (i.e., sidewalks and designated bike paths). Rather, the Project would improve the aesthetic qualities of these facilities by planting ornamental landscaping along adjacent walkways and sidewalks.
Community Design Element	
Goal CD-1: Strengthen Milpitas' identity and sense of place by reinforcing the community's distinctive, high-quality community form, natural landscape, and character.	
Policy CD 1-1: Require development projects to: a.) Preserve positive characteristics and unique features of the site; and b.) Incorporate a context-sensitive design approach that	**Consistent.** The proposed Project's multi-family housing units would be similar in use compared to surrounding residential uses (i.e., the existing multi-family residential uses [townhomes] located east of the Project Site). As shown in **Figure 2.0-13a** through **Figure 2.0-14c**, the proposed seven-plex and twelve-plex

General Plan Policy	Project Consistency
considers the scale and existing and desired character of adjacent uses and the surrounding neighborhood or district.	homes would be designed with a similar architectural style compared to the surrounding residential uses. Although the Project would introduce an apartment complex building that differs in residential density use, the proposed apartment building would be constructed with similar building materials as surrounding residential uses.
Policy CD 1-6: Emphasize landscaping as a fundamental design component, retaining mature landscaping when appropriate, to reinforce a sense of the natural environment and to maintain an established appearance.	**Consistent.** The proposed townhomes and apartment complex would implement landscape designs that would promote connectivity for residents and enhance the overall appearance of the Project Site. As discussed in **Section 2.0, Project Description**, landscape designs for the proposed townhomes would include trees, plantings, and shrubs within various areas of the townhome sites. This includes landscaping that would surround the proposed amenities (i.e., playground, paseos). The proposed apartment complex would follow a similar suit and include ornamental landscaping and trees that surround the proposed apartment building and the proposed amenity areas (i.e., the proposed Entertainment Terrace and Club Terrace).
Policy CD 1-10: Minimize the visual impacts of public and private communication, service, and utility facilities by requiring the provider to incorporate sensitive site design techniques, including, but not limited to the placement of facilities in less conspicuous locations, the undergrounding of facilities wherever possible, and the screening of facilities.	**Consistent.** Proposed water and sewer lines for the Project Site would be installed underground. The Project would implement a new stormwater drainage system on-site that would consist of underground storm drainage connections, bio-treatment basins, and curbs would be designed in a fashion that is consistent with City standards.

Source. City of Milpitas General Plan 2040.

As shown in **Table 3.1-1**, the Project would be consistent with all applicable *General Plan* policies pertaining to scenic quality. Therefore, impacts would be less than significant in this regard.

Municipal Code

As discussed in **Section 2.0**, **Project Description**, the Project Site is currently designated as Neighborhood Commercial Mixed Use (NCMU) in the City's General Plan. To be consistent with the requirements of this land use designation, the Project proposes to mplement a zone change that would change the Project Site's current Industrial Park zoning district with Mixed-Use (MXD), with a PUD. **Table 3.1-2**, **Municipal Code Consistency Analysis Governing Scenic Quality**, provides a consistency analysis of the Project to applicable development standards in the Municipal Code governing scenic quality. Refer to **Section 3.10**, **Land Use and Planning**, for a discussion concerning the Project's consistency with other applicable zoning requirements.

Table 3.1-2
Municipal Code Consistency Analysis Governing Scenic Quality

Relevant Section	Project Consistency
Section XI-10-54.10 - Fences and Walls. Standards for Fences and Walls on the Valley Floor. 1. Height Limitations. Fences and walls shall not exceed six (6) feet in height at the rear and side yards, and forty-two (42) inches in height at the front yard.	**Inconsistent.** The Project would install wooden fences in the northern and southern perimeters of the Project Site that would be six feet in height each. meet this height requirement. However, the Project would also install a soundwall along the western perimeter of the Project Site that would be eight feet in height.
Section XI-10-6.04 - Mixed Use Zone General Development Standards.	**Consistent.** As discussed, in **Section 3.10**, **Land Use and Planning**, the Project would require a zone change via a Zone Map Amendment from its existing Industrial Park to Mixed Use (MXD), with a Planned Unit Development (PUD). The proposed apartment complex would be inconsistent with the maximum building height and density for an MXD zone. However, since the proposed apartment complex is an affordable housing development, the Project would qualify for a state density bonus, thus enabling them to exceed the height limit.

Source. City of Milpitas Code of Ordinances. November 11, 2022.

As shown in **Table 3.1-2**, the Project would be consistent with the City's development standards pertaining to fencing. However, the Project would be inconsistent with the City's height limitations for walls. Additionally, development standards for MXD zones that pertain to scenic quality. Specifically, proposed seven-plex townhomes and the apartment complex would be inconsistent with the maximum building height and development density for MXD zones; refer to **Section 3.10**, **Land Use and Planning,** for further details. Implementation of a PUD would allow for the development of multi-family residential buildings that are diverse in height and size.[3] Thus, contingent upon approval from the Milpitas City Council, as well as the City's approval for a state density bonus, the proposed building heights for the Project would remain consistent with the City's Zoning Ordinance, and impacts would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

[3] City of Milpitas Municipal Code. Section XI-10-54.07 Planned Unit Development. Available online at https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIZOPLAN_CH10ZO_S54GEPR_XI-10-54.07PLUNDE. Accessed November 11, 2022.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact AES-4 Would the Project create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?

Generally, an impact may occur if lighting as part of the Project, exceeds adopted thresholds for light and glare, including exterior lighting or light spillover, or if the Project creates a substantial new source of light or glare. Light-sensitive uses within the Project boundaries include multi-family residential uses located east of the Project Site.

Construction

Construction activities associated with the Project could involve temporary glare impacts as a result of construction equipment and materials. However, pursuant to Section V-213-3 (Unlawful to Create or Permit Disturbing Noise) of the City's Municipal Code, construction activities would be limited to occur between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and weekends, and no constructions activities would occur on holidays. Short-term construction activities would cease at 7:00 p.m. and, as such, lighting-related impacts would be less than significant.

Operation

Project implementation would increase lighting at the Project Site compared to existing conditions. The Project would introduce several post top lights, bollard lights, address lights, and mounted wall lighting fixtures to the Project Site. Additionally, the Project would install approximately three new street light fixtures in the eastern perimeter of the Project Site, along California Circle. Nevertheless, new sources of light would emanate from residential interior and exterior sources.

The proposed lighting under the Project would generally be similar to the existing surrounding multi-family residential uses east of the Project Site. Exterior lighting fixtures on-site would utilize sustainable light emitting diode (LED) lighting, with "Back Light Optical Control" (BLOC) shield optics to reduce backlight and glare while maintaining the original design aesthetics of the luminaire. Pursuant to Section

XI-10-57.17 (Lighting) of the Milpitas Municipal Code, exterior on-site lighting fixtures must use minimum wattage to and would be shielded as not to be directly visible from off-site. Furthermore, the proposed new streetlights would adhere to the City's Design Guidelines for streetlights. Nevertheless, the proposed light design and adherence to local regulations and design guidelines would reduce impacts related to light and glare to less than significant levels.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than significant impact.

3.1.6 CUMULATIVE IMPACTS

Cumulative development of the Project and other proximal projects must identify the scenic resources and scenic vistas identified within its jurisdiction and determine if there are any viewsheds with public views of these resources and the development. As described above, there are no existing scenic vistas within or near the Project area. Thus, a scenic vista resource does not exist, and cumulative development in the Project vicinity would result in no impact on a scenic vista or scenic highway. As discussed above, public views of both the Project Site and the open hillsides located east of the City are provided from McCarthy Boulevard (Key View 1), I-880 (Key View 2), and the Coyote Creek Trail (Key View 3). Due to the proposed height of the development, the Project would significantly obstruct public views of the hillsides from Key Views 2 and 3 and would completely block any view of the hillsides from Key View 1. Therefore, Project implementation would result in significant and unavoidable cumulative impacts to scenic vistas.

Cumulative projects would be required to show consistency with applicable local development and design standards, including local zoning requirements. All cumulative projects would also be subject to the applicable local development guidelines. In addition, with the City's adoption of Objective Design Standards, multi-family housing and mixed-use projects will ensure high quality design and facilitate efficient delivery of new residential units. As discussed, the Project would be consistent with certain development standards for MXD development. However, the Project would implement a PUD as part of

the proposed zone change for the site, which would allow for inconsistencies between the City's current development standards for MXD zones. As such, cumulative impacts would be less than significant.

3.1.7 REFERENCES

California Department of Transportation (Caltrans), California State Scenic Highways. Available online: https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa, accessed November 22, 2022.

City of Milpitas. *2040 General Plan*. March 2021. Available online at: https://www.milpitas.gov/wp-content/uploads/2021/05/Milpitas-General-Plan-Final_Online-Version.pdf, accessed November 20, 2022.

City of Milpitas. *Environmental Impact Report for the Milpitas General Plan Update*. November 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed November 20, 2022.

3.2 AIR QUALITY

INTRODUCTION

This section describes the ambient air quality of the local and regional area and provides a comparison of existing air quality to applicable state and federal pollutant standards. In addition, sources of air emissions in the vicinity of the Project Site are identified and discussed. This section also identifies the plans and policies developed in efforts to improve air quality. Finally, this section evaluates potential air quality impacts associated with construction and operation of the Project. Sources used in this discussion include the Bay Area Air Quality Management District (BAAQMD) Air Quality Guidelines and air quality data from the California Air Resources Board (CARB). Air emission calculations estimated for the Project are contained within ***Appendix 3.2, Air Quality Data,*** *of this Environmental Impact Report (EIR).*

3.2.1 ENVIRONMENTAL SETTING

3.2.1.1 San Francisco Area Air Basin Characteristics

The City of Milpitas (City) is located within the San Francisco Bay Area Air Basin (SFBAAB), the SFBAAB encompasses all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties, the southern portion of Sonoma, and the southwestern portion of Solano County. Air quality in this area is determined by such natural factors as topography, meteorology, and climate, in addition to the presence of existing air pollution sources and ambient conditions.[1]

Climate

The climate is dominated by the strength and location of a semi-permanent, subtropical high-pressure cell. During the summer, the Pacific high-pressure cell is centered over the northeastern Pacific Ocean resulting in stable meteorological conditions and a steady northwesterly wind flow. Upwelling of cold ocean water from below to the surface because of the northwesterly flow produces a band of cold water off the California coast. The cool and moisture-laden air approaching the coast from the Pacific Ocean is further cooled by the presence of the cold-water band resulting in condensation and the presence of fog and stratus clouds along the Northern California coast.

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1 Bay Area Air Quality Management District. *CEQA Air Quality Guidelines.* 2017. Available online at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed March 31, 2023.

In the winter, the Pacific high-pressure cell weakens and shifts southward resulting in wind flow offshore, the absence of upwelling, and the occurrence of storms. Weak inversions coupled with moderate winds result in a low air pollution potential.

Topography

The topography of the SFBAAB is characterized by complex terrain, consisting of coastal mountain ranges, inland valleys and bays. This complex terrain, especially the higher elevations, distorts the normal wind flow patterns in the SFBAAB. The greatest distortion occurs when low-level inversions are present and the air beneath the inversion flow independently of air above the inversion, a condition that is common in the summertime.

Wind Patterns

During the summer, winds flowing from the northwest are drawn inland through the Golden Gate and over the lower portions of the San Francisco Peninsula. Immediately south of Mount Tamalpais, the northwesterly winds accelerate considerably and come more directly from the west as they stream through the Golden Gate. This channeling of wind through the Golden Gate produces a jet that sweeps eastward and splits off to the northwest toward Richmond and to the southwest toward San Jose when it meets the East Bay hills.

In the winter, the SFBAAB frequently experiences stormy conditions with moderate to strong winds, as well as periods of stagnation with very light winds. Winter stagnation episodes are characterized by drainage flows in coastal valleys. Drainage is a reversal of the usual daytime air-flow patterns; air moves from the Central Valley towards the coast and back down toward the Bay from the smaller valleys within the SFBAAB.

Temperature

Summertime temperatures in the SFBAAB are determined in large part by the effect of differential heating between land and water surfaces. Because land tends to heat up and cool off more quickly than water, a large-scale gradient (differential) in temperature is often created between the coast and the Central Valley, and small-scale local gradients are often produced along the shorelines of the ocean and bays. The temperature gradient near the ocean is also exaggerated, especially in summer, because of the upwelling of cold ocean bottom water along the coast. On summer afternoons the temperatures at the coast can be 35ºF cooler than temperatures 15 to 20 miles inland. At night, this contrast usually decreases to less than 10ºF.

In the winter, the relationship of minimum and maximum temperatures is reversed. During the daytime the temperature contrast between the coast and inland areas is small, whereas at night the variation in temperature is large.

Precipitation

The SFBAAB is characterized by moderately wet winters and dry summers. Winter rains account for about 75% of the average annual rainfall. The amount of annual precipitation can vary greatly from one part of the SFBAAB to another even within short distances. In general, total annual rainfall can reach 40 inches in the mountains, but it is often less than 16 inches in sheltered valleys.

During rainy periods, ventilation (rapid horizontal movement of air and injection of cleaner air) and vertical mixing are usually high, and this pollution levels tend to be low. However, frequent dry periods do occur during the winter when mixing and ventilation are low and pollutant levels build up.

3.2.1.2 Regional Air Quality Setting

Air Pollutants of Concern

Criteria air pollutants are defined as pollutants for which the federal and state governments have established ambient air quality standards for outdoor concentrations. The federal and state standards have been set at levels above which concentrations could be harmful to human health and welfare. These standards are designed to protect the most sensitive persons such as children, pregnant women, and the elderly, from illness or discomfort. Criteria air pollutants include ozone (O_3), nitrogen dioxide (NO_2), carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter 2.5 microns or less in diameter (PM2.5), particulate matter ten microns or less in diameter (PM10), and lead (Pb). Note that reactive organic gases (ROGs), which are also known as reactive organic compounds (ROCs) or volatile organic compounds (VOCs), and nitrogen oxides (NOx) are not classified as criteria pollutants. However, ROGs and NOx are widely emitted from land development projects and participate in photochemical reactions in the atmosphere to form O_3; therefore, NOx and ROGs are relevant to the Project and are of concern in the air basin. As such, they are discussed below along with the criteria pollutants. Sources and health effects commonly associated with criteria pollutants are summarized in **Table 3.2-1, Criteria Pollutants Summary of Common Sources and Effects**.

Table 3.2-1
Criteria Pollutants Summary of Common Sources and Effects

Pollutant	Major Man-Made Sources	Human Health & Welfare Effects
Carbon Monoxide (CO)	An odorless, colorless gas formed when carbon in fuels is not burned completely; a component of motor vehicle exhaust.	Reduces the ability of blood to deliver oxygen to vital tissues, affecting the cardiovascular and nervous system. Impairs vision, causes dizziness, and can lead to unconsciousness or death.
Nitrogen Dioxide (NO_2)	A reddish-brown gas formed during fuel combustion for motor vehicles and industrial sources. Sources include moto vehicles, electric utilities, and other sources that burn fuel.	Respiratory irritant; aggravates lung and heart problems. Precursor to ozone and acid rain. Contributes to global warming and nutrient overloading which deteriorates water quality. Causes brown discoloration of the atmosphere.
Ozone (O_3)	Formed by a chemical reaction between volatile organic compounds (VOC) and nitrous oxides (NOx) in the presence of sunlight. VOCs are also commonly referred to as reactive organic gases (ROGs). Common sources of these precursor pollutants include motor vehicle exhaust, industrial emissions, gasoline storage and transport, solvents, paints, and landfills.	Irritates and causes inflammation of the mucous membranes and lung airways; causes wheezing, coughing, and pain when inhaling deeply; decreases lung capacity; aggravates lung and heart problems. Damages plants; reduces crop yield. Damages rubber, some textiles, and dyes.
Particulate Matter (PM10 & PM2.5)	Produced by power plants, steel mills, chemical plants, unpaved roads and parking lots, wood-burning stoves and fireplaces, automobiles, and others.	Increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease. Impairs visibility (haze).
Sulfur Dioxide (SO_2)	A colorless, nonflammable gas formed when fuel containing sulfur is burned; when gasoline is extracted from ore. Examples are petroleum refineries, cement manufacturing, metal processing facilities, locomotives, and ships.	Respiratory irritant; aggravates lung and heart problems. In the presence of moisture and oxygen, sulfur dioxide converts to sulfuric acid which can damage marble, iron, and steel. Damages crops and natural vegetation. Impairs visibility. Precursor to acid rain.

Source: California Air Pollution Control Officers Association. Health Effects. Available online at: http://www.capcoa.org/health-effects/

Ambient Air Quality

Ambient air quality in Milpitas can be inferred from ambient air quality measurements conducted at nearby air quality monitoring stations. Existing ambient air quality and historical trends and projections in the vicinity of Milpitas are documented by measurements made by the Bay Area Air Quality Management District (BAAQMD), the air pollution regulatory agency in the SFBAAB regions maintains air quality monitoring stations which process ambient air quality measurements.

The purpose of the monitoring station is to measure ambient concentrations of pollutants and determine whether ambient air quality meets the National Ambient Air Quality Standards (NAAQS) and the California Ambient Air Quality Standards (CAAQS). Ozone and particulate matter (PM10 and PM2.5) are

pollutants of particular concern in the SFBAAB. The monitoring station located closest to the Project Site and most representative of air quality near the Project Site is the San Jose-Jackson Street Station located approximately 7.0 miles to the south. Ambient air emission concentrations vary due to localized variations in emissions sources and climate and should be considered "generally" representative of ambient concentrations in the Project Site vicinity. The San Jose-Jackson Street station monitors O_3, PM2.5, PM10, and NO_2, see **Table 3.2-2, San José-Jackson Street Air Monitoring Station Ambient Pollutant Concentrations**.

Table 3.2-2
San José-Jackson Street Air Monitoring Station Ambient Pollutant Concentrations

Pollutant	Standards[1]	Year		
		2019	2020	2021
Ozone (O_3)				
Maximum 1-hour concentration monitored (ppm)		0.095	0.106	0.098
Maximum 8-hour concentration monitored (ppm)		0.081	0.085	0.084
Number of days exceeding state 1-hour standard	0.09 ppm	1	1	3
Number of days exceeding federal/state 8-hour standard	0.070 ppm	2	2	4
Nitrogen Dioxide (NO_2)				
Maximum 1-hour concentration monitored (ppm)		0.059	0.052	0.048
Annual average concentration monitored (ppm)		0.010	0.009	0.008
Number of days exceeding state 1-hour standard	0.18 ppm	0	0	0
Respirable Particulate Matter (PM10)				
Maximum 24-hour concentration monitored (μg/m³)		75.4	134.9	42.8
Annual average concentration monitored (μg/m³)		18.4	24.6	***19.6***
Number of samples exceeding state standard	50 μg/m³	4	10	0
Number of samples exceeding federal standard	150 μg/m³	0	0	0
Fine Particulate Matter (PM2.5)				
Maximum 24-hour concentration monitored (μg/m³)		27.6	120.5	38.1
Annual average concentration monitored (μg/m³)		9.0	11.5	8.8
Number of samples exceeding federal standard	35 μg/m³	0	12	1

Source: California Air Resources Board. Air Quality Data Statistics. Available at: https://www.arb.ca.gov/adam
[1] *Parts by volume per million of air (ppm), micrograms per cubic meter of air (μg/m³), or annual arithmetic mean (aam).*

The attainment status for the SFBAAB region is included in **Table 3.2-3, Attainment Status of the San Francisco Bay Area Air Basin**. Areas that meet ambient air quality standards are classified as attainment areas, while areas that do not meet these standards are classified as nonattainment areas. The SFBAAB region is designated as a nonattainment area for federal ozone and are designated as nonattainment for state ozone, PM10, and PM2.5 standards.

Table 3.2-3
Attainment Status of the San Francisco Bay Area Air Basin

Pollutant	State	Federal
Ozone (O_3)	Non-Attainment	Non-attainment
Particulate Matter (PM_{10})	Non-Attainment	Unclassified
Particulate Matter ($PM_{2.5}$)	Non-Attainment	Attainment
Carbon Monoxide (CO)	Attainment	Attainment
Nitrogen Dioxide (NO_2)	Attainment	Attainment
Sulfur Dioxide (SO_2)	Attainment	Attainment
Lead	Attainment	Attainment

Source: BAAQMD. 2017. Air Quality Standards and Attainment Status. Available online at: http://www.baaqmd.gov/about-air-quality/research-and-data/air-quality-standards-and-attainment-status#ten.

Toxic Air Contaminants

In addition to the criteria pollutants discussed above, toxic air contaminants (TACs) are another group of pollutants of concern. TACs are considered either carcinogenic or noncarcinogenic based on the nature of the health effects associated with exposure to the pollutant. For regulatory purposes, carcinogenic TACs are assumed to have no safe threshold below which health impacts would not occur, and cancer risk is expressed as excess cancer cases per one million exposed individuals. Noncarcinogenic TACs differ in that there is generally assumed to be a safe level of exposure below which no negative health impact is believed to occur. These levels are determined on a pollutant-by-pollutant basis.

There are many different types of TACs, with varying degrees of toxicity. Sources of TACs include industrial processes, such as petroleum refining and chrome-plating operations; commercial operations, such as gasoline stations and dry cleaners; and motor vehicle exhaust. Public exposure to TACs can result from emissions from normal operations, as well as from accidental releases of hazardous materials during upset conditions. The health effects associated with TACs are quite diverse and generally are assessed locally, rather than regionally. TACs can cause long-term health effects such as cancer, birth defects, neurological damage, asthma, bronchitis, or genetic damage, or short-term acute affects such as eye watering, respiratory irritation (a cough), running nose, throat pain, and headaches.[2]

To date, the California Air Resources Board (CARB) has designated 244 compounds as TACs. Additionally, CARB has implemented control measures for several compounds that pose high risks and show potential

2 Bay Area Air Quality Management District. *CEQA Air Quality Guidelines*. 2017. Available online at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed March 31, 2023.

for effective control. Most of the estimated health risks from TACs can be attributed to a relatively few compounds.[3]

CARB identified diesel particulate matter (DPM) as a TAC. DPM differs from other TACs in that it is not a single substance but rather a complex mixture of hundreds of substances, including 40 cancer-causing substances. Diesel exhaust is a complex mixture of particulates and gases produced when an engine burns diesel fuel. DPM is a concern because it causes lung cancer; many compounds found in diesel exhaust are carcinogenic. DPM includes the particle-phase constituents in diesel exhaust. The chemical composition and particle sizes of DPM very between different engine types (heavy-duty, light-duty), engine operating conditions (idle, accelerate, decelerate), fuel formulations (high/low sulfur fuel), and the year of the engine. Some short-term (acute) effects of diesel exhaust include eye, nose, throat, and lung irritation, and diesel exhaust can cause coughs, headaches, light-headedness, and nausea. DPM poses the greatest health risk among the TACs. Almost all diesel exhaust particle mass is 10 microns or less in diameter. Because of their extremely small size, these particles can be inhaled and eventually trapped in the bronchial and alveolar regions of the lung.

3.2.1.3 Project Site Setting

Sensitive Receptors

Some land uses are considered more sensitive to air pollution than others due to the types of population groups or activities involved. Sensitive population groups include children, the elderly, the acutely ill, and the chronically ill, especially those with cardiovascular diseases.[4]

Residential areas are considered sensitive receptors to air pollutants because residents (including children and the elderly) tend to be at home for extended periods of time, resulting in sustained exposure to any pollutants present. Children are considered more susceptible to health effects of air pollution due to their immature immune systems and developing organs.[5] As such, schools are also considered sensitive receptors, as children are present for extended durations and engage in regular outdoor activities. Recreational land uses are considered moderately sensitive to air pollution. Although exposure periods are

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3 California Air Resources Board. *"CARB Identified Toxic Air Contaminants."* Available online at: https://ww2.arb.ca.gov/resources/documents/carb-identified-toxic-air-contaminants, accessed March 31, 2023

4 California Air Resources Board. *Sensitive Receptor Assessment*. Available online at: https://ww2.arb.ca.gov/capp-resource-center/community-assessment/sensitive-receptor-assessment, accessed March 31, 2023

5 Office of Environmental Health Hazard Assessment and The American Lung Association of California. "Air Pollution and Children's Health." Available online at: https://oehha.ca.gov/air/air-pollution-and-childrens-health-fact-sheet-oehha-and-american-lung-association , accessed March 31, 2023.

generally short, exercise places a high demand on respiratory functions, which can be impaired by air pollution. In addition, noticeable air pollution can detract from the enjoyment of recreation.

Based on a review of the existing land uses in the Project vicinity, the closest sensitive receptors include (1) residences to the east (approximately 100 feet) and (2) residences to the northeast (approximately 370 feet).

3.2.2 REGULATORY FRAMEWORK

3.2.2.1 Federal Regulations

Clean Air Act

The Clean Air Act (CAA) of 1970 and the CAA Amendments of 1971 required the U.S. Environmental Protection Agency (U.S. EPA) to establish NAAQS, with states retaining the option to adopt more stringent standards or to include other specific pollutants. On April 2, 2007, the Supreme Court found that carbon dioxide is an air pollutant covered by the CAA; however, no NAAQS have been established for carbon dioxide.

These standards are the levels of air quality considered safe, with an adequate margin of safety, to protect the public health and welfare. They are designed to protect those "sensitive receptors" most susceptible to further respiratory distress such as asthmatics, the elderly, very young children, people already weakened by other disease or illness, and persons engaged in strenuous work or exercise. Healthy adults can tolerate occasional exposure to air pollutant concentrations considerably above these minimum standards before adverse effects are observed.

The U.S. EPA has classified air basins (or portions thereof) as being in attainment, nonattainment, or unclassified for each criteria air pollutant, based on whether or not the NAAQS have been achieved. If an area is designated unclassified, it is because inadequate air quality data were available as a basis for a nonattainment or attainment designations. **Table 3.2-3, Attainment Status of the San Francisco Bay Area Air Basin,** lists the federal attainment statuses of the criteria pollutants for the SFBAAB.

National Emissions Standards for Hazardous Air Pollutants Program

Under federal law, 187 substances are currently listed as hazardous air pollutants (HAPs). Major sources of specific HAPs are subject to the requirements of the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) program. The U.S. EPA is establishing regulatory schemes for specific source categories and requires implementation of the Maximum Achievable Control Technologies (MACT) for major sources of HAPs in each source category. State law has established the framework for California's TAC identification and control program, which is generally more stringent than the federal program and

is aimed at HAPs that are a problem is California. The state has formally identified 244 substances as TACs and is adopting appropriate control measures for each. Once adopted at the state level, each air district will be required to adopt a measure that is equally or more stringent.

National Ambient Air Quality Standards

The federal CAA required the U.S. EPA to establish NAAQS. The NAAQS set primary standards and secondary standards for specific air pollutants**.** Primary standards define limits for the intention of protecting public health, which include sensitive populations such as asthmatics, children, and the elderly. Secondary Standards define limits to protect public welfare to include protection against decreased visibility, damage to animals, crops, vegetation, and buildings. A summary of the federal ambient air quality standards is shown in **Table 3.2-4, National Ambient Air Quality Standards**.

Table 3.2-4
National Ambient Air Quality Standards

Pollutant		Primary/Secondary	Averaging Time	Level
Carbon Monoxide		Primary	8 hours	9 ppm
			1 hour	35 ppm
Lead		Primary and secondary	Rolling 3-month average	0.15 μg/m^3
Nitrogen dioxide		Primary	1 hour	100 ppb
		Primary and secondary	Annual	0.053 ppm
Ozone		Primary and secondary	8 hours	0.070 ppm
Particulate Matter	PM2.5	Primary	Annual	12 μg/m^3
		Secondary	Annual	15 μg/m^3
		Primary and secondary	24 hours	35 μg/m^3
	PM10	Primary and secondary	24 hours	150 μg/m^3
Sulfur dioxide		Primary	1 hour	75 ppb
		Secondary	3 hours	0.5 ppm

Source: California Air Resources Board. May 2016. Ambient Air Quality Standards. Available online at: https://www.arb.ca.gov/research/aaqs/aaqs2.pdf.

3.2.2.2 State Regulations

California Clean Air Act of 1988

The California CAA of 1988 (CCAA) allows states to adopt ambient air quality standards and other regulations if they are at least as stringent as federal standards. CARB, a part of the California Environmental Protection Agency (Cal EPA), is responsible for the coordination and administration of both

federal and state air pollution control programs within California, including setting the CAAQS. The CCAA, amended in 1992, requires all air quality management districts (AQMDs) in the state to achieve and maintain the CAAQS. The CAAQS are generally stricter than national standards for the same pollutants and has also established state standards for sulfates, hydrogen sulfide, vinyl chloride, and visibility-reducing particles, for which there are no national standards. CARB also conducts research, compiles emission inventories, develops suggested control measures, and provides oversight of local programs. CARB also has primary responsibility for the development of California's State Implementation Plan (SIP), for which it works closely with the federal government and the local air districts.

California Ambient Air Quality Standards

The federal CAA permits states to adopt additional or more protective air quality standards if needed. California has set standards for certain pollutants, such as particulate matter and ozone, which are more protective of public health than respective federal standards. California has also set standards for some pollutants that are not addressed by federal standards. The state standards for ambient air quality are summarized in **Table 3.2-5, California Ambient Air Quality Standards**.

Table 3.2-5
California Ambient Air Quality Standards

Pollutant		Averaging Time	Level
Carbon monoxide		8 hours	9 ppm
		1 hour	20 ppm
Lead		30-day average	1.5 μg/m^3
Nitrogen dioxide		1 hour	0.180 ppm
		Annual	0.030 ppm
Ozone		8 hours	0.070 ppm
		1 hour	0.09 ppm
Particulate matter	PM2.5	Annual	12 μg/m^3
	PM10	24 hours	50 μg/m^3
		Annual	20 μg/m^3
Sulfur dioxide		1 hour	0.25 ppm
		24 hours	0.04 ppm
Sulfates		24 hours	25 μg/m^3
Hydrogen sulfide		1 hour	0.03 ppm
Vinyl chloride		24 hours	0.01 ppm

Source: California Air Resources Board. May 2016. Ambient Air Quality Standards. Available online at: https://www.arb.ca.gov/research/aaqs/aaqs2.pdf.

California State Implementation Plan

The federal CAA (and its subsequent amendments) requires each state to prepare an air quality control plan referred to as a SIP. The SIP is a living document that is periodically modified to reflect the latest emissions inventories, plans, and rules and regulations of air basins as reported by the agencies with jurisdiction over them. The CAA Amendments dictate that states containing areas violating the NAAQS revise their SIPs to include extra control measures to reduce air pollution. The SIP includes strategies and control measures to attain the NAAQS by deadlines established by the CAA. The U.S. EPA has the responsibility to review all SIPs to determine if they conform to the requirements of the CAA.

State law makes CARB the lead agency for all purposes related to the SIP. Local air districts and other agencies prepare SIP elements and submit them to CARB for review and approval. CARB then forwards SIP revisions to the U.S. EPA for approval and publication in the Federal Register. The 2017 Clean Air Plan, "Spare the Air, Cool the Climate," is the SIP for SFBAAB. The 2017 Clean Air Plan is a regional blueprint for achieving air quality standards and healthful air in the SFBAAB. The 2017 Clean Air Plan focuses on two closely related goals: protecting public health and protecting the climate. Consistent with the greenhouse gas (GHG) reduction targets adopted by the state of California, the plan lays the groundwork for a long-term effort to reduce Bay Area GHG emissions 40% below 1990 levels by 2030 and 80% below 1990 levels by 2050. The 2017 plan also addressed a multi-pollutant strategy to simultaneously reduce emissions and ambient concentrations of ozone, fine particulate matter, toxic air contaminants, as well as GHG's. The control strategy focuses on the following priorities: reduce emissions of criteria air pollutants and TACs from all key sectors; reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases; decrease demand for fossil fuels (gasoline, diesel, and natural gas); and decarbonize the energy system.[6]

California Air Toxics "Hot Spots" Information and Assessment Act (AB 2588)

The California Air Toxics Program is supplemented by the Air Toxics "Hot Spots" program, which became law (AB 2588, Statutes of 1987) in 1987. In 1992, the AB 2588 program was amended by Senate Bill 1731 to require facilities that pose a significant health risk to the community to perform a risk reduction audit and reduce their emissions through implementation of a risk management plan. Under this program, which is required under the Air Toxics "Hot Spots" Information and Assessment Act (Section 44363 of the California

6 BAAQMD. *Clean Air Plan 2017*. Available online at: https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en, accessed March 31, 2023.

Health and Safety Code), facilities are required to report their air toxics emissions, assess health risks, and notify nearby residents and workers of significant risks when present.

Typically, land development projects generate diesel emissions from construction vehicles during the construction phase, as well as some diesel emissions from small trucks during the operational phase. Diesel exhaust is mainly composed of particulate matter and gases, which contain potential cancer-causing substances. Emissions from diesel engines currently include over 40 substances that are listed by the U.S. EPA as hazardous air pollutants and by CARB as TACs. On August 27, 1998, CARB identified particulate matter in diesel exhaust as a TAC, based on data linking diesel particulate emissions to increased risks of lung cancer and respiratory disease.[7]

In March 2015, the Office of Environmental Health Hazard Assessment (OEHHA) adopted "The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments" in accordance with the Health and Safety Code, Section 44300. The Final Guidance Manual incorporates the scientific basis from three earlier developed Technical Support Documents to assess risk from exposure to facility emissions. The 2015 OEHHA Final Guidance has key changes including greater age sensitivity for children, decreased exposure durations, and higher breathing rate profiles. Because cancer risk could be up to three times greater using this new guidance, it may result in greater mitigation requirements, more agency backlog, and increased difficulty in getting air permits.

3.2.2.3 Regional

Bay Area Air Quality Management District

BAAQMD is the primary agency responsible for assuring that the NAAQS and CAAQS are attained and maintained in the Bay Area. BAAQMD's jurisdiction includes all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Santa Clara counties, and the southern portions of Solano and Sonoma counties. The Air District's responsibilities in improving air quality in the region include: preparing plans for attaining and maintaining air quality standards; adopting and enforcing rules and regulations; issuing permits for stationary sources of air pollutants; inspecting stationary sources and responding to citizen complaints; monitors air quality and meteorological conditions; awarding grants to reduce mobile emissions; implementing public outreach campaigns; and assisting local governments in address climate change.

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7 Diesel exhaust is included within pollutants subject to the hotspot program. Please refer to OEHHA's *Air Toxics Hot Spot Program Risk Assessment Guideline*s. Available online at: https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0, , accessed March 31, 2023.

The BAAQMD recommends that all proposed projects implement the following Basic Best Management Practices for Construction-Related Fugitive Dust Emissions:[8]

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

3. All visible mud or dirt track-out onto adjacent roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

4. All vehicle speeds on unpaved roads shall be limited to 15 mph.

5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

6. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.

7. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.

8. Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.

9. Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.

3.2.2.4 Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* (General Plan) is a planning document that defines a long-term vision for the City over the next 20 years. The City of Milpitas updated and adopted its current *General Plan* in March 2021.

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8 Bay Area Air Quality Management District. *BAAQMD CEQA Guidelines, see Table 5-2*. 2022. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

Applicable goals and policies related to air quality from the *General Plan* are listed below:

Goal CON-7: Implement a proactive approach to maintain and improve air quality within Milpitas and the region.

Policy CON 7-1: Ensure that land use and transportation plans support air quality goals through a logical development pattern that focuses growth in and around existing urbanized areas, locates new housing near places of employment, encourages alternative modes of transportation, supports efficient parking strategies, reduces vehicle miles traveled, and requires projects to mitigate significant air quality impacts.

Policy CON 7-2: Minimize exposure of the public to toxic or harmful air emissions and odors through requiring an adequate buffer or setback distance between residential and other sensitive land uses and land uses that typically generate air pollutants, toxic air contaminants, or obnoxious fumes or odors, including but not limited to industrial, manufacturing, and processing facilities, high-volume roadways, and industrial rail lines. New sensitive receptors, such as residences (including residential care and assisted living facilities for the elderly), childcare centers, schools, playgrounds, churches, and medical facilities shall be located away from existing point sources of air pollution such that excessive levels of exposure do not result in unacceptable health risks. Compliance shall be verified through the preparation of a Health Risk Assessment when deemed necessary by the Planning Director.

Policy CON 7-3: Require projects which generate high levels of air pollutants, such as heavy industrial, manufacturing facilities and hazardous waste handling operations, to incorporate air quality mitigations in their design to reduce impacts to the greatest extent feasible.

Policy CON 7-4: Require projects to adhere to the requirements of the BAAQMD.

Policy CON 7-5: Use the City's development review process and the California Environmental Quality Act (CEQA) to evaluate and mitigate the local and cumulative effects of new development on air quality.

Policy CON 7-6: Coordinate with CARB and the BAAQMD to properly measure air quality emission sources and enforce the standards of the Clean Air Act.

Policy CON 7-7: Comply with regional, state, and federal standards and programs for control of all airborne pollutants and noxious odors, regardless of source.

Policy CON 7-8: Consider the health risks associated with Toxic Air Contaminants (TACs) when reviewing development applications.

Policy CON 7-9: Coordinate with Santa Clara County and nearby cities to implement regional GHG reduction plans and to consolidate efforts to reduce GHGs throughout the county as appropriate.

Policy CON 7-10: Implement policies and action from the Land Use and Circulation Elements to provide mixed-use developments, locate high-density uses near transit facilities, provide neighborhood-serving retail uses convenient to residential neighborhoods, and other Transportation Demand Management (TDM) programs that would reduce vehicle trips and vehicle miles traveled, thus reducing air-pollutant emissions.

Policy CON 7-11: Encourage improvements and design features that reduce vehicle delay such as bus turnouts, and synchronized traffic signals for new development to reduce excessive vehicle emissions caused by idling.

Policy CON 7-12: Encourage and prioritize infrastructure investments and improvements that promote safe walking, bicycling and increased transit ridership.

Policy CON 7-13: Implement energy policies and actions that have co-benefits of reduced air pollution and greenhouse gases by increasing energy efficiency, conservation, and the use of renewable resources.

3.2.3 THRESHOLDS OF SIGNIFICANCE

According to Appendix G of the most recent update of the *State CEQA Guidelines*, the Project could result in significant impacts to air quality if it would:

- Conflict with or obstruct implementation of the applicable air quality plan;
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard;
- Expose sensitive receptors to substantial pollutant concentrations; or

- Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

The *State CEQA Guidelines* (Section 15064.7) provide that, when available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make determinations of significance. The potential air quality impacts of the Project are, therefore, evaluated according to thresholds developed by the BAAQMD, which are discussed below.

3.2.3.1 BAAQMD Thresholds

The BAAQMD CEQA Air Quality Guidelines (BAAQMD Guidelines)[9] set forth methodologies and quantitative significance thresholds that a lead agency may use to estimate and evaluate the significance of a project's air emissions, see **Table 3.2-6, Bay Area Air Quality Management District Regional Significance Thresholds**. The BAAQMD has also established significance thresholds for the excess health risks posed to nearby sensitive receptors, see **Table 3.2-7, Health Risk Significance Thresholds.**

Table 3.2-6
Bay Area Air Quality Management District Regional Significance Thresholds

Pollutant	Construction-Related	Operational-Related	
	Average Daily Emissions (lbs/day)	Average Daily Emissions (lbs/day)	Maximum Annual Emissions (tpy)
ROG	54	54	10
NOx	54	54	10
PM10	82 (exhaust)	82	15
PM2.5	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (8-hour average) or 20.0 (1-hour average)	
Fugitive Dust	Best Management Practices	None	

Source: BAAQMD. CEQA Guidelines. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

9 Bay Area Air Quality Management District. *BAAQMD CEQA Guidelines*. 2022. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

Table 3.2-7
Health Risk Significance Thresholds

Health Risks and Hazards	Single Sources Within 1,000-foot Zone of Influence	Combined Sources (Cumulative from all sources within 1,000-foot zone of influences)
Excess Cancer Risk	>10 per one million	>100 per one million
Hazard Index	>1.0	>10.0
Incremental Annual PM2.5	>0.3 ug/m3	>0.8 ug/m3

Source: BAAQMD. CEQA Guidelines. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

3.2.4 METHODOLOGY

Construction and operational criteria air pollutant emissions were calculated in the California Emissions Estimator Model (CalEEMod) and were compared to the BAAQMD's significance thresholds. Average daily emissions from Project construction and operation were calculated, including both on-site and off-site activities.

The analysis examines temporary construction emissions, long-term operational emissions, localized pollutant concentrations, TACs, and odors. Common sources of construction emissions include heavy-duty off-road construction equipment exhaust, fugitive dust, and architectural coatings. Sources of operational emissions include the use of consumer products, motor vehicle trips attracted to or generated by a land use, and on-site combustion of natural gas. Consistent with the requirements of CEQA, this analysis reflects a best-effort approach to disclose all reasonably foreseeable impacts based on currently available information.

3.2.5 ENVIRONMENTAL IMPACTS

Impact AQ-1 Would the Project conflict with or obstruct implementation of the applicable air quality plan?

The most recent clean air plan is the Bay Area 2017 Clean Air Plan that was adopted by BAAQMD in April 2017. The Plan includes control measures that are intended to reduce air pollutant emissions in the Bay Area either directly or indirectly. Projects that are consistent with the development of a regional or local air quality plan are considered not to conflict with the attainment of air quality standards identified in the plan.

Consistency with the air quality plan can be determined through evaluation of project-related air quality impacts and demonstration that project-related emissions would not increase the frequency or severity of existing violations or contribute to a new violation of the national ambient air quality standards. The BAAQMD CEQA Air Quality Guidelines include thresholds of significance that are applied to evaluate regional impacts of project-specific emissions of air pollutants and their impact on BAAQMD's ability to reach attainment. Emissions that are above these thresholds have not been accommodated in the air quality plans and would not be consistent with the air quality plans. The Project would not conflict with the latest Clean Air planning efforts because emissions would not exceed BAAQMD thresholds (see **Table 3.2-8, Construction-Related Criteria Pollutant Emissions – Average Pounds per Day,** and **Table 3.2-9, Estimated Operational Emissions,** in **Impact AQ-2**). Therefore, the Project would not conflict with or obstruct implementation of the applicable air quality plan and impacts would be less than significant.

Level of Significance Before Mitigation

Less Than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact AQ-2 Would the Project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

A project may have a significant impact if project-related emissions would exceed federal, State, or regional standards or thresholds, or if project-related emissions would substantially contribute to an existing or project air quality violation. To determine Project significance, emissions were compared to the BAAQMD construction and operational air quality thresholds.

Construction Emissions

Construction associated with the Project would generate short-term emissions of criteria air pollutants. The criteria pollutants of primary concern within the Project vicinity include ozone-precursor pollutants (i.e.,

ROG and NOx), PM10, and PM2.5. Construction-generated emissions are short term and of temporary duration, lasting only when construction activities occur, but would be considered a significant air quality impact if the volume of pollutants generated exceeds the BAAQMD's thresholds of significance.

Construction is expected to be completed in two phases, over a period of 28 months. Phase 1 would involve the demolition of the existing structure on-site (one month), the grading of the entire site (one month) and building construction (12 months) of the proposed seven-plex and twelve-plex townhomes. Paving (two months) and architectural coating/painting (one month) are assumed to overlap with the final months of the building construction phase for Phase 1. Phase 2 would include the building construction (24 months) of the proposed apartment complex. Architectural coating/painting (two months) is assumed to overlap with the final months of the building construction phase for Phase 2 to provide a worst-case scenario.

Construction activities would generate emissions of ozone precursors (ROG and NO_x), CO, and dust (PM10, and PM2.5). Construction activity under the Project has the potential to create air quality impacts through emissions produced by the use of heavy-duty construction equipment and by vehicle trips generated by construction worker commuting, construction vendor material deliveries, and haul truck trips to and from Project Site. Fugitive dust (PM10 and PM2.5) emissions would primarily result from demolition and grading activities. NO_X emissions, a precursor emission to ozone, would primarily result from the use of construction equipment. During the finishing phases, paving operations and the application of architectural coatings (e.g., paints) and other building materials would release ROGs, the other precursor emission to O_3. Construction emissions can vary substantially from day to day, depending on the level of activity, the specific type of operation and, for dust, the prevailing weather conditions. Please refer to **Appendix 3.2** for more information related to the construction assumptions associated with the Project.

Construction-generated emissions associated with the Project were calculated using CalEEMod. Predicted average daily construction-generated emissions for the Project are summarized in **Table 3.2-8, Construction-Related Criteria Pollutant Emissions – Average Pounds per Day**. As shown in **Table 3.2-8**, the average daily emissions generated during the construction of the Project would not exceed the BAAQMD construction emission thresholds for any of the Project phases or a worst case-construction scenario with both phases overlapping. Therefore, impacts associated with construction emissions are considered less than significant.

Table 3.2-8
Construction-Related Criteria Pollutant and Precursor Emissions – Average Daily Emissions

Construction Emissions	ROG	NOx	PM10 Exhaust	PM2.5 Exhaust
Phase 1				
Average Daily Emissions	2.07	9.88	0.40	0.36
Regional Threshold (lbs/day)	*54*	*54*	*82*	*54*
Exceed Threshold?	No	No	No	No
Phase 2				
Average Daily Emissions	1.84	7.42	0.30	0.27
Regional Threshold (lbs/day)	*54*	*54*	*82*	*54*
Exceed Threshold?	No	No	No	No
Both Phases (Overlapping)				
Average Daily Emissions	3.91	17.30	0.70	0.63
Regional Threshold (lbs/day)	*54*	*54*	*82*	*54*
Exceed Threshold?	No	No	No	No

Operational Emissions

Operational emissions of the Project would be comprised of mobile source emissions, emissions associated with energy consumption, and area source emissions. **Table 3.2-9, Estimated Operational Emissions,** presents total operational emissions associated with the Project. As shown in **Table 3.2-9**, operational emissions from the Project would not exceed BAAQMD thresholds of significance for average daily emissions or annual emissions. As such, impacts associated with operational emissions would be *less than significant*.

Table 3.2-9
Estimated Operational Emissions

Emissions Source	ROG	NOx	PM10 Exhaust	PM2.5 Exhaust
Average Daily Emissions				
Mobile Source (lbs./day)	3.79	4.79	0.08	0.08
Area Source (lbs./day)	5.21	0.11	0.01	0.01
Energy Source (lbs./day)	0.04	0.64	0.05	0.05
Total Average Daily Operational Emissions (lbs./day)	**9.04**	**5.53**	**0.14**	**0.14**
Average Daily Emissions Thresholds (lbs./day)	54	54	82	54
Exceed Thresholds?	*No*	*No*	*No*	*No*
Annual Emissions				

Emissions Source	ROG	NOx	PM10 Exhaust	PM2.5 Exhaust
Mobile Source (tons/year)	0.69	0.87	0.02	0.01
Area Source (tons/year)	0.95	0.02	<0.01	<0.01
Energy Source (tons/year)	0.01	0.12	0.01	0.01
Total Annual Operational Emissions (tons/year)	**1.65**	**1.01**	**0.03**	**0.02**
Annual Thresholds (tons/year)	10	10	15	10
Exceed Thresholds?	*No*	*No*	*No*	*No*

*Source: Impact Sciences, December 2022. See **Appendix 3.2** to this EIR.*

Public Health

On December 24, 2018, the California Supreme Court published its opinion on the *Sierra Club et al. v. County of Fresno et. Al.* (Case No. S219783) which determined that an environmental review must adequately analyze a project's potential impacts and inform the public how its bare numbers (i.e., emissions estimate only) translate to a potential adverse health impact or explain how existing scientific constraints cannot translate the emissions numbers to the potential health impacts.

Criteria air pollutants are defined as those pollutants for which the federal and state governments have established air quality standards for outdoor or ambient concentrations to protect public health. As discussed previously, the SFBAAB is in state non-attainment for Ozone (O_3), PM10, and PM2.5 and federal non-attainment for O_3 and PM2.5. Therefore, an increase in emissions of particulate matter or ozone precursors (ROG and NOx) has the potential to push the region further from reaching attainment status and, as a result, are the pollutants of greatest concern in the region.

As discussed above, Project operations would not exceed BAAQMD thresholds of significance. Also discussed previously, the Project would not conflict with or obstruct implementation of the Clean Air Plan, which has been prepared to achieve the national and state air pollution standards set at levels to protect human health. Therefore, public health impacts associated with criteria pollutant emissions for the Project would be less than significant. With respect to the Project's potential TAC and DPM impacts upon sensitive receptors, please refer to the discussion under **Impact AQ-3**.

Level of Significance Before Mitigation

While impacts would be less than significant without mitigation, the BAAQMD requires the implementation of the BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions. See **Mitigation Measure AQ-1** below.

Mitigation Measures

MM AQ-1 The following BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions shall be implemented:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.
- Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.

Level of Significance After Mitigation

Less than Significant Impact.

Impact AQ-3 Would the Project expose sensitive receptors to substantial pollutant concentrations?

Toxic Air Contaminants

The primary sources of potential TACs under the Project would be construction activity and the associated generation of DPM emissions from the use of off-road diesel equipment required for demolition, grading, paving, and other construction activities. The amount to which nearby sensitive receptors are exposed (a function of concentration and duration of exposure) is the primary factor used to determine health risk. Health-related risks associated with diesel-exhaust emissions are primarily linked to long-term exposure and the associated risk of contracting cancer.

According to the BAAQMD, a project would result in a significant impact if it would individually expose sensitive receptors to TACs resulting in an increased cancer risk greater than 10.0 in one million, increase non-cancer risk of greater than 1.0 on the hazard index (chronic or acute), or result in an annual average PM2.5 increase greater than 0.3 $\mu g/m^3$.[10]

In March 2015, the OEHHA adopted revised guidelines that update previous guidance by incorporating advances in risk assessment with consideration of infants and children using Age Sensitivity Factors (ASF). A Construction HRA was prepared for the Project and is included in **Appendix 3.2** to this EIR. The Construction HRA was performed in accordance with the revised OEHHA Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments (OEHHA 2015).

Based on the Project's construction assumptions and CalEEMod data, daily DPM and PM2.5 emissions were assessed for potential health risks to the nearest off-site sensitive receptors. The American Meteorological Society (AMS) / U.S. EPA Regulatory Model (AERMOD) was utilized to quantify the concentrations of DPM and PM2.5 at the nearest sensitive receptors, and a worst-case receptor location was analyzed. AERMOD is steady-state plume modeling system specially designed to support the U.S. EPA's regulatory modeling programs. AERMOD allows the user to conduct site-specific modeling with the use of various inputs including source types, receptor locations, terrain data, meteorological conditions, and much more. Please refer to **Appendix 3.2** to this EIR for all assumptions and inputs associated with the

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10 Bay Area Air Quality Management District. *BAAQMD CEQA Guidelines*. 2022. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

Project's Construction HRA. As shown in **Table 3.2-10, Construction Health Risk Summary**, the maximum health risks at the nearest sensitive receptor (i.e., residences to the east of the Project Site) would be less than the BAAQMD thresholds of significance for incremental cancer risk, non-cancer risk, and annual PM2.5 concentrations. Health risks at locations farther than this maximum impact receptor would be further reduced, and thus impacts to sensitive receptors would be less than significant.

Table 3.2-10
Construction Health Risk Summary

Scenario	Incremental Cancer Risk	Non-Cancer Chronic Risk	Annual PM2.5 Concentrations (ug/m3)
Project Construction	9.44	0.02	0.07 ug/m3
BAAQMD Threshold of Significance	>10.0 per one million	>1.0	>0.3 ug/m3
Significant Impact?	**No**	**No**	**No**

*Source: See **Appendix 3.2** to this EIR for the Project's Construction Health Risk Assessment.*

Carbon Monoxide Hotspots

The BAAQMD's CEQA Guidelines include screening criteria for localized carbon monoxide (CO) concentrations. The BAAQMD Guidelines state that a proposed project would be considered to have a less than significant CO concentration if:

1. Project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans.

2. The project traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour.

3. The project traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, bridge underpass, natural or urban street canyon, below-grade roadway).

As discussed in **Section 3.14, Transportation**, the Project would not conflict with a program, plan, ordinance, or policy addressing the circulation system. Furthermore, peak hour traffic volumes at studied intersections would range from 1,432 vehicles to 3,405 vehicles during peak hours. As such, the Project would not have the potential to increase traffic volumes at affected intersections to more than 44,000

vehicles per hour or 24,000 vehicles per hour where vertical and/or horizonal mixing is substantially limited. Therefore, the Project would not have the potential to cause or contribute to an exceedance of the California one-hour or eight-hour CO standards. Impacts with respect to localized CO concentrations would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Land Use Compatibility

While agencies subject to CEQA are not required to analyze or mitigate the impact of existing environmental conditions on a project's future users or residents, the following discussion associated with the placement of future residences on the Project Site is included for informational purposes.

Regarding health risks from existing emissions sources, the California Supreme Court ruling in *California Building Industry Association vs. Bay Area Air Quality Management District* (December 17, 2015) held that, "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But when a proposed project's risks exacerbate those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the project's impact on the environment – and not the environment's impact on the project – that compels an evaluation of how future residents or users could be affected by exacerbated conditions." Assessing health risks from existing land uses equates to assessing the environment's impact on the project. The California Supreme Court ruled that this analysis would not be consistent with CEQA.

The Project Site is located adjacent to Interstate 880 (I-880) and thus, future residents could be exposed to elevated ambient air quality conditions. With respect to the Project's potential to exacerbate existing air quality conditions within the Project Site vicinity and beyond, the Project would not generate operational air quality emissions exceeding the BAAQMD thresholds of significance and the Project would not include land uses associated with the generation of TACs (see **Impact AQ-2** and **Impact AQ-3**). As such, the Project

would not have the potential to significantly exacerbate long term air quality conditions and associated health risks near the Project Site.

In January 2016, the BAAQMD issued *Planning Healthy Places* which states HVAC filtration is an effective and feasible air quality improvement strategy. The report cites studies conducted in California (Bhangar et al 2011, Less et al., 2015), which have shown that particulate levels in homes with high efficiency filtration systems were 50% to 74% lower than those without filtration systems. In addition, the report states, the BAAQMD recommends requiring the installation and implementation of an air filtration system in sensitive land uses (minimum of MERV 13) along with a maintenance plan detailing how the filtration system will be maintained.

The Project would be required to comply with the State's 2022 Building Energy Efficiency Standards, which states all multi-family buildings must include an air filter efficiency system having a designated efficiency equal to or greater than MERV 13 when tested in accordance with ASHRAE Standard 52.2, or a particle size efficiency rating equal to or greater than 50 percent in the 0.30–1.0 μm range, and equal to or greater than 85 percent in the 1.0–3.0 μm range when tested in accordance with AHRI Standard 680.

Impact AQ-4 Would the Project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

The BAAQMD CEQA Guidelines identify certain land uses as sources of odors. These land uses include wastewater treatment plants, food processing facilities, composting facilities, petroleum refineries, chemical manufacturing, landfills, dairies, and fiberglass manufacturing. The Project would not include any of the land uses that have been identified by the BAAQMD as odor sources.

Construction activities associated with the Project may generate detectable odors from heavy-duty equipment exhaust and architectural coatings. However, construction-related odors would be short-term in nature and cease upon buildout. In addition, the Project would be required to comply with the California Code of Regulations, Title 13, sections 2449(d)(3) and 2485, which minimizes the idling time of construction equipment either by shutting it off when not in use or by reducing the time of idling to no more than five minutes. This would reduce the detectable odors from heavy-duty equipment exhaust. Any odor impacts to existing adjacent land uses would be short-term and not substantial. As such, the Project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people and this impact would be less than significant.

Level of Significance Before Mitigation

Less Than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less Than Significant Impact.

3.2.6 CUMULATIVE IMPACTS

As discussed in **Section 3.2.1, Environmental Setting**, the SFBAAB includes all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties, the southern portion of Sonoma, and the southwestern portion of Solano County. Cumulative projects would include any reasonably anticipated development in the SFBAAB for regional air quality impacts.

Bay Area 2017 Clean Air Plan Consistency. Plan consistency is discussed under Impact AQ-1. As discussed therein, the Project would not conflict with the Bay Area 2017 Clean Air Plan. The Plan includes control measures that are intended to reduce air pollutant emissions in the Bay Area either directly or indirectly. Emissions that are above these thresholds have not been accommodated in the air quality plans and would not be consistent with the air quality plans. The Project would not facilitate population or employment growth exceeding the population or employment forecasts for the region as a whole as discussed in **Section 3.12, Population and Housing**. Therefore, implementation of the Project would not conflict with the 2017 Clean Air Plan. Impacts related to consistency would be less than significant and would not be cumulatively considerable.

Criteria Pollutant Emissions for which the Region is Non-Attainment (Ozone, PM10 and PM2.5). As discussed under **Impact AQ-2**, construction and operational activities would not exceed BAAQMD significance thresholds for criteria pollutants. Thus, the incremental effect of the Project related to nonattainment pollutants would be less than significant and would not be cumulatively considerable.

Sensitive Receptors and Substantial Pollutant Concentrations. As indicated under **Impact AQ-3**, land uses associated with the Project typically do not generate TAC emissions that would expose people to substantial pollutant concentrations. Furthermore, the Project would not exceed BAAQMD health risk thresholds or screening criteria for localized carbon monoxide impacts. As such, impacts would be less

than significant with respect to exposing sensitive receptors to substantial pollutant concentrations and would not be cumulatively considerable**.**

Odor. As indicated under **Impact AQ-4,** the Project would not facilitate the development of uses typically associated with odor complaints. While construction activity can emit odors, construction activity has not been identified as a source of odor complaints. Therefore, impacts related to odors would be less than significant and would not be cumulatively considerable.

3.2.7 REFERENCES

Bay Area Air Quality Management District (BAAQMD). *CEQA Air Quality Guidelines*. 2022. Available online at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines. accessed June 19, 2023.

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California Air Resources Board. *Sensitive Receptor Assessment*. Available online at: https://ww2.arb.ca.gov/capp-resource-center/community-assessment/sensitive-receptor-assessment, accessed March 31, 2023.

California Air Resources Board. "Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling." Available online at: https://ww2.arb.ca.gov/our-work/programs/atcm-to-limit-vehicle-idling/about, accessed March 31, 2023.

Office of Environmental Health Hazard Assessment and The American Lung Association of California. "Air Pollution and Children's Health." Available online at: https://oehha.ca.gov/air/air-pollution-and-childrens-health-fact-sheet-oehha-and-american-lung-association, accessed March 31, 2023.

3.3 BIOLOGICAL RESOURCES

INTRODUCTION

This section discusses the biological resources occurring at 1355 California Circle (Project Site), evaluates the significance of potential impacts to these resources based on thresholds defined in CEQA and the State CEQA Guidelines, and provides a determination of significance. The analysis in this section is based in part on ***Appendix 3.3-1, Arborist Report****.*

State and federal regulatory agencies that have jurisdiction over biological resources within the Project Site include the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), and the California Regional Water Quality Control Board (RWQCB). This section addresses potential impacts to biological resources that are governed by these agencies' laws and regulations.

3.3.1 ENVIRONMENTAL SETTING

3.3.1.1 General Site Characteristics

Soils

The Project Site is in a predominantly flat environment that is approximately twelve feet above mean sea level (amsl). Most soils within the Project Site is comprised of "Urban Land- Campbell complex" soils, zero to two percent slopes.[1] The underlying soil composition is mainly composed of alluvial fan, which are triangle-shaped deposits of gravel, sand, and even smaller pieces of sediment, such as silt.[2]

Vegetation

The Project Site is predominantly developed with an existing industrial office building and a paved associated surface parking lot. For the purposes of this analysis, areas that are classified as developed or disturbed are defined to be areas that have been constructed upon or otherwise physically altered to an extent that native vegetation is no longer supported. Disturbed or developed lands are characterized by permanent or semi-permanent structures, pavement or hardscape, and landscaped areas that often require irrigation. The Project Site includes an existing building and minimal landscaping and ornamental vegetation scattered throughout on-site.

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1 United States Department of Agriculture, "Natural Resource Conservation System." Available online at: https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx, accessed September 20, 2022.

2 National Geographic, "Alluvial Fan." Available online at: https://education.nationalgeographic.org/resource/alluvial-fan, accessed September 20, 2022.

Trees

There are currently 49 trees present on-site. Of the 49 trees, one is in good health, 29 are in fair health, 18 are in poor health, and one is dead. The City of Milpitas Municipal Code defines Protected trees as any tree with a circumference of 37 inches or greater, there are 27 trees on-site that are considered to be Protected. Per the City's Municipal Code protected trees that are to be removed must be replaced at a ratio of 2:1. The Project will plant 269 new trees of various species, resulting in a replacement ratio of 10:1. **Table 3.3-1**, **Existing Trees Summary**, details the species and health condition of each existing tree.

Table 3.3-1
Existing Trees Summary

Common Name	Scientific Name	Condition Rating				Total
		Dead (0)	Poor (1-2)	Fair (3)	Good (4-5)	
Blackwood acacia	*Acacia melanoxylon*	-	10	6	-	**16**
Hopseed bush	*Dodonaea viscosa*	-	1	2	-	**3**
River red gum	*Eucalyptus camaldulensis*	-	2	1	-	**3**
Flooded gum	*Eucalyptus rudis*	-	-	1	1	**2**
Raywood ash	*Fraxinus angustifolia 'Raywood'*	-	2	8	-	**10**
Cajeput paperbark tree	*Melaleuca quinquenervia*	-	-	5	-	**5**
Willowleafed peppermint	*Eucalyptus nicholii*	1	2	1	-	**4**
Mexican fan palm	*Washingtonia robusta*	-	1	5	-	**6**
Total		**1**	**18**	**29**	**1**	**49**

Source: ***Appendix 3.3-1, Arborist Report***

General Wildlife

The City of Milpitas is located within the Bay Area/Delta bioregion. There are 59 wildlife habitats in City: 27 tree, 12 shrub, six herbaceous, four aquatic, eight agricultural, one developed, and one non-vegetated habitat.[3]

As stated above, the Project Site is predominantly developed with industrial uses, surface paved parking spaces, and ornamental landscaping along the existing building and within islands in the parking lot. The Project Site also lacks connectivity with the larger expanses of natural habitat identified in the City's

3 City of Milpitas. *Environmental Impact Report for the General Plan Update* . November 2, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed September 15, 2022.

General Plan Environmental Impact Report (EIR). As such, it is unlikely that the Project Site would support special-status species. An exception to this would be the existing trees on-site, which potentially could provide suitable habitat for special-status bird species that may occur within the area.

3.3.1.2 Wildlife Movement

Special-Status Biological Resources

For the purposes of analysis in this EIR, "special-status" refers to those resources that meet one or more of the following criteria:

- Plant and animal species listed by the USFWS or CDFW as threatened or endangered; proposed for listing as threatened or endangered; or listed as a candidate for listing as threatened or endangered.

- Plant and animal species considered as "endangered, rare or threatened" as defined by Section 15380 of the *State CEQA Guidelines*. Section 15380(b) states that a species of animal or plant is "'endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. A species is "rare" when either (A) although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or (B) the species is likely to become endangered within the foreseeable future throughout all or a portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act (FESA).

- Plants included on CNPS Lists 1 or 2. These species are included because the CNPS is an authority recognized by the CDFW on the status of rare plant species in California, and because the criteria for placement on List 1 or List 2 are similar to criteria that CDFW and USFWS use for species considered as candidates for listing or that are already listed as threatened or endangered.

- Animal species designated as "Species of Special Concern" or "Fully Protected" by the CDFW. Although these species have no legal status under the California Endangered Species Act (CESA), the CDFW recommends their protection as the populations of these species are generally declining and they could be listed as threatened or endangered (under CESA) in the future.

- Birds designated by the USFWS as "Birds of Conservation Concern." Although these species have no legal status under FESA, the USFWS recommends their protection as populations of these species are generally declining and they could be listed as threatened or endangered (under FESA) in the future.

- Riparian habitat or other natural communities considered sensitive or otherwise regulated by the CDFW.
- Drainages or other aquatic habitats under the jurisdiction of the USACE.
- Established resident or migratory wildlife movement corridors.
- Trees, habitats, or other resources protected by local policies, ordinances, or otherwise considered of local concern.

3.3.1.3 Sensitive Plant Communities

Special-Status Plants

For the purposes of this analysis, special-status species includes those plants and animals listed, proposed for listing, or candidates for listing as threatened or endangered by the USFWS and National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (FESA) (7 U.S.C.§ 136, 16 U.S.C. § 1531 et seq.),[4] those listed or candidates for listing as rare, threatened, or endangered by the CDFW under the California Endangered Species Act (CESA) or Native Plant Protection Act; animals designated as "Fully Protected" by the California Fish and Game Code (CFGC); animals listed as "Species of Special Concern" (SSC), by the CDFW; those species on the Special Animals List,[5] and/or those species on the Special Vascular Plants, Bryophytes, and Lichens List.[6] This latter document includes the California Native Plant Society (CNPS) Inventory of Rare and Endangered Vascular Plants of California, Eighth Edition (CNPS 2019) as updated online. Those plants contained on the CNPS Rare Plant Rank (CRPR) Lists 1, 2, 3, and 4 are considered special-status species in this EIR, per the CNPS code definitions:

- List 1A = Plants presumed extinct in California;
- List 1B.1 = Rare or endangered in California and elsewhere; seriously endangered in California (over 80 percent of occurrences threatened/high degree and immediacy of threat);
- List 1B.2 = Rare or endangered in California and elsewhere; fairly endangered in California (20- 80 percent occurrences threatened);

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4 United States Fish and Wildlife Service (USFWS). 1973. The Endangered Species Act of 1973, as amended (16 U.S.C 1531 et seq.).

5 CDFW. CNDDB QuickView Tool BIOS Viewer. Available online at: https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick, accessed September 28, 2022.

6 Biogeographic Data Branch, California Natural Diversity Database. Special Vascular Plants, Bryophytes, and Lichens List. 2018b. June 2019.

- List 1B.3 = Rare or endangered in California and elsewhere, not very endangered in California (<20 percent of occurrences threatened, or no current threats known);
- List 2 = Rare, threatened or endangered in California, but more common elsewhere;
- List 3 = Plants needing more information (most are species that are taxonomically unresolved; some species on this list meet the definitions of rarity under CNPS and CESA);
- List 4.2 = Plants of limited distribution (watch list), fairly endangered in California (20-80 percent occurrences threatened); and
- List 4.4 = Plants of limited distribution (watch list), not very endangered in California (<20 percent occurrences threatened, or no current threats known).

Approximately 15 special-status plants were identified in a search of the CNPS database,[7] in the Milpitas quadrangles in which the Project Site is located. Because the CDFW utilizes the CNPS database as a source, the same special-status plant species were also identified in a query of the CNDDB database records.[8] However, none of these plant species are expected to occur in the Project Area given the urban landscape and historic disturbance.

Special-Status Plant and Animal species

All special-status plant species observed, historically occurring, or potentially occurring in the Project Site or within its vicinity according to the CNDDB, are presented in **Table 3.3-2, Summary of the Potentially Occurring Special-Status Plant and Animal Species**. The potential for these species to occur within the Project Site are described below.

Given the current level of disturbance and the urban landscape of the Project Site, it is highly unlikely that the special-status plant and animal species identified in **Table 3.3-2** would occur on-site. However, based on the database and literature review, the existing trees within the Project Site may provide suitable nesting for the 24 special-status bird species that may potentially occur within the Milpitas Quadrangle.

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7 California Native Plant Society, "CNPS Native Inventory of Rare Plants," 2019. Available online https://www.cnps.org/rare-plants/cnps-inventory-of-rare-plants, accessed on September 27, 2022.

8 CDFW. CNDDB QuickView Tool BIOS Viewer. Available online at: https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick, accessed September 28, 2022.

Table 3.3-2
Summary of the Potentially Occurring Special-Status Plant and Animal Species

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
		Animals				
Amphibians						
Ambystomacaliforniense pop.	California tiger salamander - central California DPS	Burrows of ground squirrels, gophers and other rodents in open wooded or grassy areas.	-	Threatened	WL	
Rana boylii	foothill yellow-legged frog	Pacific drainages from the upper reaches of the Willamette River system, Oregon, all the way south to the Upper San Gabriel River in Los Angeles County, California.	-	--	SSC	
Rana draytonii	California red-legged frog	Aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons.	-	Threatened	SSC	
Birds						
Aquila chysaetos	golden eagle	Open mountains, foothills, plains, open country. Requires open terrain. In the north and west, found over tundra, prairie, rangeland, or desert; very wide-ranging in winter, more restricted to areas with good nest sites in summer. Suitable nesting habitats occur on cliff and rock outcroppings	--	--	FP, WL	
Circus hudsonius	northern harrier	Wide-open habitats for breeding ranging from arctic tundra to prairie grasslands to fields and marshes. Nesting occurs within open habitat.	-	-	SSC	
Elanus leucurus	white-tailed kite	Savannas, open woodlands, marshes, desert grasslands, partially cleared lands, and cultivated fields. Nesting Habitats are primarily within the in the upper third of trees between 10–160 feet in height.	--	--	FP	
Haliaeetusleucocephalus	bald eagle	Typically, within lakes and reservoirs with lots of fish and surrounding forests. Nesting typically occurs within live pine or cypress trees.	--	--	FP	

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
Ardea alba	great egret	Marshes, ponds, shores, mud flats. Usually forages in rather open situations, as along edges of lakes, large marshes, shallow coastal lagoons and estuaries, also along rivers in wooded country. Usually nests in trees or shrubs near water, sometimes in thickets some distance from water, sometimes low in marsh.	--	--		
Ardea herodias	great blue heron	Saltwater and freshwater habitats, from open coasts, marshes, sloughs, riverbanks, and lakes to backyard goldfish ponds. They also forage in grasslands and agricultural fields.	--	--		
Egretta thula	snowy egret	Marshes, swamps, ponds, shores. Widespread in many types of aquatic habitats, including fresh and salt water; in coastal areas, may seek sheltered bays. Inland, favors extensive marshes and other large wetlands. Sometimes forages in dry fields.	--	--		
Nycticorax	black-crowned night heron	Marshes, shores; roosts in trees in Midwestern America. Nesting typically occurs within trees.	--	--		
Charadrius nivosusnivosus	western snowy plover	Coastal beaches, sand bars, sand dunes, and river-mouths, above the high tide line.	--	--	SSC	
Coccyzus americanus occidentalis	western yellow-billed cuckoo	A riparian species that breeds in low-to moderate elevation native forests lining rivers and streams, principally cotton-wood willow forests.	Threatened	Endangered	--	--
Falco peregrinusanatum	American peregrine falcon	Variety of habitats, rom rainforests to the arid zone.	Delisted	Delisted	FP	
Agelaius tricolor	tricolored blackbird	Reside principally in Central Valley. Usually move north after first nesting (Mar–Apr) in the San Joaquin Valley and Sacramento County to new breeding locations in Sacramento Valley and northeastern California.	--	Threatened	SSC	--
Lanius ludovicianus	loggerhead shrike	Short vegetation and well-spaced shrubs or low trees.	--	--	SSC	

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
Hydroprogne caspia	Caspian tern	Found on both fresh and salt water, favoring protected waters such as bays, lagoons, rivers, lakes, not usually foraging over open sea. Inland, more likely on large lakes than on small ponds. Nests on open ground on islands, coasts.	--	--		
Larus californicus	California gull	Garbage dumps, scrublands, pastures, orchards, meadows, and farms.	--	--	WL	
Rynchops niger	black skimmer	Coastal areas, usually around sandy beaches and islands.	--	--	SSC	
Geothlypis trichassinuosa	saltmarsh common yellow throat	Marshes and other very wet habitats with dense low growth.	--	--		
Melospiza melodiapusillula	Alameda song sparrow	Tidal salt marshes on the fringes of south San Francisco Bay. Nesting occurs typically in hidden grasses or weeds, sometimes placed on the ground and occasionally as high as 15 feet; often near water.	--	--	SSC	
Passerculussandwichensisalaudinus	Bryant's savannah sparrow	Tidal marshes and grasslands in the coastal fog belt. Nesting occurs typically in grasses, goldenrod, saltmarsh vegetation, or low shrubs.	--	--	SSC	
Nannopterum auritum	double crested cormorant	Coasts, bays, lakes, rivers. Very adaptable, may be found in almost any aquatic habitat, from rocky northern coasts to mangrove swamps to large reservoirs to small inland ponds. Nests in trees near or over water, on sea cliffs, or on ground on islands.	--	--	WL	
Coturnicopsnoveboracensis	yellow rail	Wet meadows, fens and shallow marshes in the greater North America. Nests on the ground within grassy vegetation.	--	--	SSC	
Laterallus jamaicensiscoturniculus	California black rail	Tidal salt marshes of the northern San Francisco Bay region, primarily in San Pablo and Suisun Bays. Nesting occurs in marshes and wet meadows.	--	Threatened	FP	
Rallus obsoletusobsoletus	California Ridgway's rail	Nesting occurs within saltwater marshes, freshwater marshes, and mangrove swamps.	Endangered	Endangered	FP	

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
Athene cunicularia	Burrowing owl	Open, dry annual or perennial grasslands, deserts & scrublands with low-growing vegetation.	--	--	SSC	--
Crustaceans						
Lepidurus packardi	vernal pool tadpole shrimp	Ephemeral freshwater habitats, including alkaline pools, clay flats, vernal lakes, vernal pools, vernal swales and other seasonal wetlands in California	Endangered	--		
Fish						
Lavinia exilicaudaexilicaudа	Sacramento hitch	Ear streams, turbid sloughs, lakes and reservoirs	--	--	SSC	
Hysterocarpus traskiitraskii	Sacramento-San Joaquin tuleperch	Low-elevation lakes, streams, and estuaries.	--	--	--	
Spirinchusthaleichthys	longfin smelt	San Francisco Estuary and the Sacramento/San Joaquin Delta (Bay-Delta), Humboldt Bay, and the estuaries of the Eel River and Klamath River.	--	--		
Entosphenustridentatus	Pacific lamprey	Freshwater streams and the Pacific Ocean.	--	--	SSC	
Oncorhynchus mykissirideus pop.	steelhead - central California coast DPS	Freshwater rivers and estuaries.	Threatened	--		
Oncorhynchustshawytscha pop	chinook salmon - CentralValley fall / late fall-run ESU	Freshwater rivers and estuaries.	--	--	SSC	
Insects						
Bombus caliginosus	obscure bumble bee	Open grassy coastal prairies and coast range meadows	--	--		
Bombus crotchii	Crotch bumblebee	Grasslands and shrublands and requires a hotter and drier environment than other bumblebee species.	--	--		
Bombus occidentalis	western bumble bee		--	--		
Mammals						
Neotoma fuscipesannectens	San Francisco dusky-footedwoodrat	Primarily in grasslands, scrub and wooded areas within the San Francisco Bay Area	--	--	SSC	

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
Reithrodontomysraviventris	salt-marsh harvest mouse	Saline or subsaline marsh habitats around the San Francisco Bay Estuary and, with some exception, mixed saline or brackish areas in the Suisun Bay area.	Endangered	Endangered	FP	
Enhydra lutris nereis	southern sea otter	Freshwater and ocean habitats.	Threatened	--	FP	
Sorex vagranshalicoetes	salt-marsh wandering shrew	Salt marshes.	--	--	SSC	
Corynorhinustownsendii	Townsend's big-eared bat	Maternity roosts and hibernacula.	--	--	SSC	
Myotis yumanensis	Yuma myotis	Mines or caves.	--	--		
Mollusks						
Tryonia imitator	mimic trytonia = California brackish water snail	Coastal lagoons, estuaries, sloughs, and Salicornia-dominated marshes with areas of permanent water harboring stands of emergent native vegetation and algae.	--	--		
Gonidea angulata	western ridged mussel	Freshwater habitats, such as streams, rivers, and lakes.	--	--		
Reptiles						
Anniella pulchra	Northern California leglesslizard	Coastal sand dunes and a variety of interior habitats, including sandy washes and alluvial fans. They live mostly underground, burrowing in the loose, sandy soil.	--	--	SSC	
Emys marmorata	western pond turtle	Freshwater habitats, such as streams and rivers.	--	--	SSC	
		Plants				
Terrestrial						
Northern Coastal Salt Marsh	Northern Coastal Salt Marsh	Located sporadically along the California Coast and typically adjacent to bays, harbors, and inlets.	--	--	--	--
Vascular						
Eryngium aristulatumvar. hooveri	Hoover's button-celery	Vernal Pools	--	--		1B.1
Centromadia parryissp. congdonii	Congdon's tarplant	Seasonal wetlands on heavy clay, saline, and alkaline soils located in grasslands and disturbed sites.	--	--		1B.1

Scientific Name	Common Name	Habitat	Federal Status /a/	State Status /b/	CDFW /c/	CNPS /d/
Lasthenia conjugens	Contra Costa goldfields	Open grasslands and freshwater vernal pools, specifically along State Route 4 (SR-4)	Endangered			1B.1
Atriplex depressa	brittlescale	Open sand and beach areas.		--		1B.2
Atriplex minuscula	lesser saltscale	Sink scrub, valley sacaton grassland, and non-native grassland.		--		1B.1
Extriplex joaquinana	San Joaquin spearscale	Alkali grassland and alkali meadow, or on the margins of alkali scrub		--		1B.2
Suaeda californica	California seablite	Scattered in various areas within Alameda, Contra Costa, Santa Clara, and San Luis Obispo counties.	Endangered	--		1B.1
Eleocharis parvula	small spikerush	Intertidal marshes, mudflats, and on shorelines	--	--		4.3
Astragalus tener var.tener	alkali milk-vetch	Alkaline/saline soils in vernally wet playas, flats, and valley and foothill grasslands	--	--		1B.2
Trifolium hydrophilum	saline clover	Salt marshes, open areas in alkaline soils, alkaline grassland	--	--		1B.2
Malacothamnusar cuatus	arcuate bush-mallow	Brushy canyons, chaparral, cismontane woodland.	--	--		1B.2
Chloropyronmarit imum ssp.palustre	Point Reyes salty bird's-beak	Upper end of salt marshes.	--	--		1B.2
Navarretia prostrata	prostrate vernal pool navarretia	Occurs in wetland-riparian habitats of coastal sage scrub.	--	--		1B.2
Chorizanthe robustavar. robusta	robust spineflower	Primarily located in Santa Cruz, CA	Endangered	--		1B.1

Source: California Department of Fish and Wildlife, California Natural Diversity Database (CNDDB) search for Milpitas USGS Quadrangle https://www.wildlife.ca.gov/Data/CNDDB/Maps-and-Data, accessed October 2022.
/a/ United States legal status under the Federal Endangered Species Act.
/b/ State of California legal status.
/c/ California Department of Fish and Wildlife (CDFW) designation and applies to animals only.
FP = Federally Protected.
SSC = Species of Special Concern.
WL = Watch List.
/d/ California Native Plant Society (CNPS) rare plant rank status applies to plants only.
1A = plants presumed extirpated in California and either rare or extinct elsewhere.
1B.1 = rare, threatened or endangered in California and elsewhere; seriously threatened in California.
1B.2 = rare, threatened or endangered in California and elsewhere; fairly threatened in California.
1B.3= rare, threatened or endangered in California and elsewhere; not very threatened in California.
2B.1 = rare, threatened or endangered in California but more common elsewhere; seriously threatened in California.
2B.2 = rare, threatened or endangered in California but more common elsewhere; moderately threatened in California.
3.1 = seriously threatened in California.
4.2 = plants of limited distribution; moderately threatened in California.
4.3 = plants of limited distribution; not very threatened in California.

Migratory Birds

Under the provisions of the Migratory Bird Treaty Act (MBTA), it is unlawful to "take" any migratory birds except as permitted by regulations issued by the USFWS. The term "take" is defined by the USFWS regulation to mean to "pursue, hunt, shoot, wound, kill, trap, capture or collect" any migratory bird or any part, nest, or egg of any migratory bird covered by the MBTA, or to attempt those activities. In addition, Sections 3503, 3503.5, 3511, and 3513 of the CFGC describe unlawful take, possession, or destruction of birds, nests, and eggs. Fully protected birds (Section 3511) may not be taken or possessed except under specific permit. Section 3503.5 of the CFGC protects all birds of prey and their eggs and nests against take, possession, or destruction. While common birds are not special-status species, destruction of their eggs, nests, or nestlings is prohibited by law and must be avoided.

Trees and riparian vegetation that can support common nesting birds and raptors protected under the CFGC Section 3503 and the MBTA (16 U.S.C. §§ 703–712). The on-site existing trees detailed in **Table 3.3-2** could provide suitable nesting habitat for migratory birds (generally from early February through late August). This includes the special-status migratory birds listed in **Table 3.3-2**. Ornamental trees that could provide suitable nesting habitat are present within the Project Site (located west between the Project Site and I-880). However, the Project Site has low native habitat diversity and is generally disturbed.

Raptors generally require large home ranges, and individual foraging territories are often measured in terms of tens of acres to square miles. During breeding, demand for prey increases and additional habitat must be available for young birds to disperse from nesting locations and establish new territories. Loss of foraging habitat reduces prey abundance and availability, which reduces and limits the number of raptors a given area can support. In general, smaller populations are less resilient to environmental stress (e.g., drought, disease, and fluctuations in prey availability). The Project Site offers low quality foraging habitat for raptors given the urbanized landscape and small area of riparian habitat. Larger and more well-connected open spaces and surrounding regions provide higher value raptor foraging habitats.

Jurisdictional Waters and Wetlands

In accordance with Section 1602 of the CFGC, the CDFW has jurisdiction over lakes and streambeds (including adjacent riparian resources). The CDFW regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake. Of particular interest to CDFW are riparian trees greater than two inches in diameter at breast height (DBH; CDFW). Under Section 404 of the Clean Water Act (CWA), the USACE has authority to regulate activities that discharge dredge or fill material into wetlands or other "Waters of the United States" (WoUS) through issuance of a Section 404 Permit. Finally, the Los Angeles Regional Water Quality Control Board (LARWQCB) has jurisdiction over "Waters of the State" (WoUS)

pursuant to the Porter-Cologne Water Quality Control Act and has the responsibility for issuing Water Quality Certifications per Section 401 of the federal CWA.

Except for the existing adjacent storm drain channel west of the Project Site, there are no riparian habitats in the Project Site or its immediate vicinity.[9] Additionally, the adjacent storm drain channel is not an identifiable jurisdictional waters or wetlands. Rather, the channel is identified as a Riverine Habitat R4SBAx, which is characterized as a man-made storm channel that serves a larger deepwater system and contains surface water for brief periods of time.[10]

Wildlife Movement Corridors

Wildlife corridors are generally defined as connections between habitat patches that allow for physical and genetic exchange between otherwise isolated animal populations. Such linkages may serve a local purpose, such as foraging and denning areas, or they may be regional in nature, allowing movement across the landscape. Some habitat linkages may serve as migration corridors, wherein animals periodically move away from an area and then subsequently return. Examples of barriers or impediments to movement include housing and other urban development, roads, fencing, unsuitable habitat, or open areas with little vegetative cover.

As a fully developed area, the Project Site does not serve as a wildlife movement corridor. The closest wildlife movement corridor to the Project Site would be Coyote Creek, located approximately 0.2 miles west of the Project Site.[11] It should be noted that I-880 serves as a barrier between the Project Site and Coyote Creek.

3.3.2 REGULATORY FRAMEWORK

3.3.2.1 Federal Laws and Regulations

Federal Endangered Species Act

Under the Federal Endangered Species Act (FESA), the Secretary of the Interior and the Secretary of Commerce have joint authority to list a species as Threatened or Endangered (16 United States Code [USC]

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9 United States Fish Wildlife, National Wetlands Inventory, Available online at: https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/, accessed September 27, 2022.

10 United States Fish Wildlife, National Wetlands Inventory, Available online at: https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/, accessed September 27, 2022.

11 City of Milpitas. *Environmental Impact Report for the General Plan Update* . November 2, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed September 15, 2022.

1533[c]). Pursuant to the requirements of the FESA, an agency reviewing a proposed project within its jurisdiction must determine whether any federally listed or proposed species may be present in the project region, and whether the proposed project would result in a "take" of such species. The "take" provision of the FESA applies to actions that would result in injury, death, or harassment of a single member of a species protected under the Act. In addition, the agency is required to determine whether the project is likely to jeopardize the continued existence of any species proposed to be listed under the FESA or result in the destruction or adverse modification of critical habitat for such species (16 USC 1536[3][4]). If it is determined that a project may result in the "take" of a federally listed species, a permit from the U.S. Fish and Wildlife Service (USFWS) would be required under Section 7 or Section 10 of the FESA. Section 7 applies if there is a federal nexus (e.g., the project is on federal land, the lead agency is a federal entity, a permit is required from a federal agency, or federal funds are being used). Section 10 applies if there is no federal nexus.

Clean Water Act

The Federal Water Pollution Control Act of 1972, often referred to as the Clean Water Act, is the nation's primary law for regulating discharges of pollutants into waters of the United States. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The regulations adopted pursuant to this act deal extensively with the permitting of actions in waters of the United States, including wetlands. The U.S. Environmental Protection Agency (US EPA) has primary authority under the Clean Water Act to set standards for water quality and for effluents, but the USACE has primary responsibility for permitting the discharge of dredge or fill materials into streams, rivers, wetlands, and other waters of the United States.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act ([MBTA] 16 USC, Section 703, Supplement I, 1918) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. The Act encompasses whole birds, parts of birds, and bird nests and eggs. With a few exceptions, most birds are considered migratory under the MBTA. Disturbances that cause nest abandonment and/or loss of reproductive effort or loss of habitat upon which these birds depend could be in violation of the MBTA. A December 2017 opinion from the Office of the Solicitor for the U.S. Department of the Interior (M-opinion) concluded the MBTA restrictions apply only to affirmative and purposeful actions, such as hunting and poaching that reduce migratory birds and their nests and eggs, by killing or capturing, to human control and not incidental taking. April 2018 guidance from the Principal Deputy Director of the USFWS provides further guidance on revisions to past policies and guidance regarding the MBTA. This guidance concludes the MBTA's prohibitions on take of migratory birds apply only when the

purpose of the action is to take migratory birds, their eggs, or their nests. On April 26, 2020, the USFWS published an updated list of birds protected by the MBTA.

3.3.2.2 State Laws and Regulations

California Endangered Species Act

Under the California Endangered Species Act (CESA), the CDFW has the responsibility for maintaining a list of Threatened and Endangered species (California Fish and Game Code Section 2070). The CDFW also maintains a list of "candidate species," which are species formally under review for addition to either the list of endangered species or the list of threatened species. In addition, the CDFW maintains lists of "species of special concern," which serve as watch lists. Pursuant to the requirements of the CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any state-listed endangered or threatened species could be present on the project site and determine whether the proposed project could have a potentially significant impact on such species.

California Native Plant Protection Act

State listing of plant species began in 1977 with the passage of the California Native Plant Protection Act (NPPA), which directed the CDFW to carry out the legislature's intent to "preserve, protect, and enhance Endangered plants in this state." The NPPA gave the California Fish and Wildlife Commission the power to designate native plants as Endangered or Rare and to require permits for collecting, transporting, or selling such plants. The CESA expanded upon the original NPPA and enhanced legal protection for plants. There are three listing categories for plants in California: Rare, Threatened, and Endangered.

California Fish and Game Code

The California Fish and Game Code provides a variety of protections for species that are not federally, or state listed as Threatened, Endangered, or of Special Concern.

- Section 3503 protects all breeding native bird species in California by prohibiting the take,[12] possession, or needless destruction of nests and eggs of any bird, except for non-native English sparrows and European starlings (Section 3801).

- Section 3503.5 protects all birds of prey (in the orders Falconiformes and Strigiformes) by prohibiting the take, possession, or killing of raptors and owls, their nests, and their eggs.

12 "Take" in this context is defined in Section 86 of the California Fish and Game Code as to "hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill."

- Section 3513 of the code prohibits the take or possession of migratory nongame birds as designated in the MBTA or any parts of such birds except in accordance with regulations prescribed by the Secretary of the Interior.

- Section 3800 of the code prohibits the taking of nongame birds, which are defined as birds occurring naturally in California that are not game birds or fully protected species.

- Section 3511 (birds), Section 5050 (reptiles and amphibians), and Section 4700 (mammals) designate certain animal species as fully protected in California.

California Regional Water Quality Control Board

Wetlands and permanent and intermittent drainages, creeks, and streams that fall under the jurisdiction of the USACE are also regulated by the California Regional Water Quality Control Board (RWQCB), as defined by Section 401 of the Clean Water Act, which authorizes the State of California to certify that federal permits and licenses do not violate the state's water quality standards. The state's implementing regulations to conduct certifications are codified under the California Code of Regulations, Title 23 Waters, Sections 3830 through 3869. In addition, waters into which discharge may occur are regulated by the RWQCB, pursuant to the California Porter-Cologne Water Quality Act. This includes surface waters (such as wetlands), groundwater, and point and non-point sources of pollution.

3.3.2.3 Local Regulations

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* (General Plan) Conservation and Sustainability Element includes goals, policies, and standards for preserving biological resources and improving the City's high living standards while simultaneously providing for economic development, balanced growth, sustainability, improved air quality and reduced energy use. The Conservation and Sustainability Element focuses on the City's effects to air quality, natural resources, and the cumulative impacts because of climate change.

The Conservation and Sustainability Element states the following relevant goals and policies:

Goal CON-2: Protect and enhance native trees and vegetation throughout the City.

Policy CON 2-2: Require the use of primarily locally sourced native and drought-tolerant plants and trees for landscaping on public projects, if feasible, and strongly encourage their use for landscaping on private projects.

City of Milpitas Municipal Code

Title X, Chapter 2.0 of the City of Milpitas Municipal Code (Tree Maintenance and Protection) provides the regulatory standards and requirements regarding the protection and the removal of "street trees" and "protected trees".

Section 2 (Definitions) of this Chapter defines "Approved Street Tree" as "any tree hereafter planted within any street right-of-way or easement adjacent thereto which conforms to the Approved Street Tree List and which his planted in accordance with this Chapter. Approved Street Tree shall also mean any existing tree within the right-of-way or easement adjacent thereto which conforms to the established species and location in any given area, and which was planted as a required street tree under the provisions of any improvement agreement, or as otherwise approved by the Public Works Director or any tree of the approved species and in an acceptable location which was or may be planted as a replacement". Street trees within the Public Right-of-Way are City property and require City approval to "remove any street tree, protected tree or heritage planting without first applying for a permit issued by the Public Works Department."

Section 7 (Tree Protection and Heritage Tree Program) of this Chapter classifies "protected trees" located on developed industrial property as "a thirty-seven-inch (37") or greater circumference of any trunk measured 4 ½ feet from the ground". The removal of any protected tree from the public right-of-way is considered unlawful unless the developer obtains a permit issued by the City of Milpitas Public Works Department. Additionally, the City would be allowed to seek cost recovery from the removal of any protected tree through the following:

a) Reimbursement to the City for the full costs of time and materials to prune, remove and/or replace trees within the public right-of-way or tree planting easements.

b) Reimbursement to the City for the value of the removed or damaged tree as determined by an arborist certified by the International Society of Arboriculture utilizing the current edition of the "Guide for Plant Appraisal, International Society of Arboriculture"; or

c) A combination of the above terms as determined by the City Public Works Director.

In addition, Ordinance 201.6, adopted on August 2, 2016 by the Milpitas City Council, created a requirement of two (2) replacement trees for every one (1) protected tree that is removed on private property. This standard helps to compensate for the loss of established trees and their canopies. The replacement trees may be located anywhere on the same property. The tree removal permit, through the

Planning Department, provides process for removing trees on private property, while also ensuring the preservation of "protected plantings of significant, age, and/or benefit to the community at large".

3.3.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to biological resources are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Development of the 1355 California Circle Project could result in significant impacts to biological resources, if any of the following would occur:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service. Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, *etc.*) through direct removal, filling, hydrological interruption, or other means.

- Interfere substantially with the movement of any native or migratory fish or animal species or with established native resident or migratory wildlife corridors or impedes the use of native wildlife nursery sites.

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

In addition to the above criteria, *State CEQA Guidelines* Section 15065(a), Mandatory Findings of Significance, states that a project may have a significant effect on the environment if "… the project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or animal species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species …" These mandatory findings of significance are considered in assessing project-related impacts on biological resources.

The following is an evaluation of whether the Project's impacts to biological resources are significant, considering how each resource is important in a regional or local context. "Significant" impacts are those that would substantially diminish, or result in the loss of, an important biological resource or those impacts that would conflict with local, state, or federal resource conservation plans, goals, or regulations. Impacts are sometimes locally adverse, but not significant, because, although they would result in an adverse alteration of existing conditions, they would not substantially diminish or result in the permanent loss of an important resource on a local or regional level.

State CEQA Guidelines Section 15380 states that a lead agency shall consider a non-listed species to be rare or endangered for the purposes of CEQA, if the species can be determined to meet the applicable criteria established in the section. For the purposes of this impact analysis, the current scientific knowledge on the population size and distribution for each special-status species was considered, as instructed in the *State CEQA Guidelines* Section 15380.

3.3.4 METHODOLOGY

This section outlines the methodology for evaluating impacts to biological resources, including sensitive natural communities and special status species.

For this analysis, "sensitive natural communities" are considered to be habitats or natural communities that are unique, of relatively limited distribution in the region, and/or of particularly high value for wildlife. Sensitive habitats include specific natural communities defined by CDFW, as well as wetlands and riparian communities, which are considered special status natural communities due to their limited distribution in California. Sensitive natural communities are usually identified in regional or local plans, policies, or regulations, and may or may not contain special status species.

For purposes of this analysis, "special status species" include:

- Plants and animal species listed as rare, threatened, or endangered under the FESA or the CESA;
- Species that are candidates for listing under federal or state law;
- Species designated by the USFWS as Proposed or Candidates for listing and/or species designated as Species of Special Concern by CDFW;
- Species protected by the Federal Migratory Bird Treaty Act;
- Species identified as rare, threatened, or endangered by the California Native Plant Society (CNPS); and

- Any other species that may be considered endangered or rare pursuant to *State CEQA Guidelines* Section 15380(b).

The impact analysis considers the indirect impacts from the Project to special status species and sensitive natural communities under the threshold questions. Impacts to biological resources could include the direct take of a species or the removal or disturbance of habitats from future development or more indirect delayed or secondary effects from future development, such as fragmentation, pollination interruption, plant and wildlife dispersal interruption, increased risk of fire, and increased invasion of non-native animals and plants that out-compete natives.

3.3.5 ENVIRONMENTAL IMPACTS

Impact BIO-1 Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulation, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

As shown in **Table 3.3-2**, **Summary of the Potentially Occurring Special-Status Plant and Animal Species**, there are approximately 63 special status animal species and plant species were reported within the same USGS quadrant as the Project Site and could potentially occur on-site. Three animal species are listed as endangered, and four are listed as threatened by the CDFW and/or the USFWS. Three plant species are also listed as endangered. There are 19 animal species that are listed as species of special concern by CDFW, and eight animal species are listed as federally protected by CDFW. The Project's potential impacts to these sensitive species are further discussed below.

Endangered Animal Species

According to the CNDDB, endangered animal species have historically been observed within same USGS quadrant as the Project Site. These endangered animal species include the California Ridgway's rail (*Rallus obsoletusobsoletus*), salt-marsh harvest mouse (*Reithrodontomysraviventris*), and vernal pool tadpole shrimp (*Lepidurus packardi)*. As discussed in **Table 3.3-2**, typical habitat environments for the vernal pool tadpole shrimp and salt-marsh harvest mouse tend to be primarily bodies of water or low-lying flooded areas. The California Ridgway's rail tends to nest within primarily within primarily in San Pablo and Suisun Bays. The Project Site is developed with an industrial business office and associated surface parking lot and is located within a predominantly urbanized area. The Project Site is immediately adjacent to developed properties to the north and west and is adjacent to a concrete drainage channel and an interstate highway (I-880) to the west. The parcel located immediately south of the Project Site is undeveloped with low-lying grass and scattered unpaved cement. However, construction activities and Project operations would not

disturb or remove the existing vegetation within this parcel. On-site non-native vegetation is minimal and limited to the western and southern perimeters of the Project Site. Given the Project Site's disturbed existing conditions and lack of native vegetation, development of the Project would not adversely impact endangered animal species. Further, no habitat that could support such species are currently present on-site. Thus, no impacts to endangered animal species would occur.

Endangered Plant Species

Endangered plant species have historically been observed within same USGS Quadrangle as the Project Site, and therefore having to potential to occur on-site. These species include the Contra Costa goldfields (*Lasthenia conjugens*), California seablite (*Suaeda californica*), robust spineflower (*Chorizanthe robustavar. robusta*). As discussed in **Table 3.3-2**, the Contra Costa goldfields are primarily known to occur within open grasslands. The California seablite are scattered in various areas within Alameda, Contra Costa, Santa Clara, and San Luis Obispo counties. The robust spineflower is primarily located within the City of Santa Cruz. As stated above, the Project Site is currently developed with an industrial business office and an associated surface parking lot. Non-native vegetation on-site is minimal and is limited to the western and southern perimeters of the Project Site. Additionally, the Project Site is not located within any of the critical habitat regions listed in **Table 3.3-2** for Contra Costa goldfields, California seablite, or robust spineflower. Therefore, it is highly unlikely that these plant species would occur within the Project Site. Impacts to endangered plant species would be less than significant.

Special-Status Animal and Plant Species

There are 14 special-status animal and plant species that have historically been observed within same USGS Quadrangle as the Project Site. Of these species, it should be noted that the California red-legged frog is listed as a special-status and an endangered animal species by the CDFW. The critical habitat of these special-status species are primarily composed of either open grassland, riparian habitats (i.e., lakes, marshes, scrublands), and sand dunes. As described above, the current environmental setting of the Project Site is heavily disturbed and does not include any of these conditions. Thus, the Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or U.S. Fish and Wildlife Service. No impacts would occur in this regard.

Migratory Birds

As discussed in **Table 3.3-2**, several migratory bird species and special-status bird species could potentially occur within the Project Site that typically nest in tall trees. These species include the white-tailed kite (*Elanus leucurus*), bald eagle (*Haliaeetusleucocephalus*), great egret (*Ardea alba*), black-crowned night heron

(*Nycticorax nycticorax*), and double crested cormorant (*Nannopterum auritum*). Thus, the existing trees on-site could currently serve as critical nesting habitats for these migratory bird species. The Project would operate as multi-family residential uses. These uses are highly unlikely to disturb any potential nesting habitat on-site. However, given the health condition of the majority of existing trees on-site, construction activities associated with the Project would comply with the recommendations outlined in the Arborist Report, and remove all 49 trees, including 27 protected trees. The Project will plant 269 new trees of various species, resulting in a replacement ratio of 10:1. Notwithstanding, the Project could potentially disturb and modify any critical habitats that may be present on-site for special-status bird species. **Mitigation Measure MM BIO-1** would require a pre-construction clearance survey to be conducted on-site with a qualified biologist prior to the initiation of construction activities associated with the Project. In the event that an active nest is discovered during the pre-construction clearance survey, **Mitigation Measure MM BIO-1** would require all constructions activities associated with the Project to stay outside of a 100 feet buffer around the discovered nest. Implementation of **Mitigation Measure MM BIO-1** would reduce such impacts to the special-status migratory birds to less than significant levels.

Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

MM BIO-1 In the event that ground-disturbing activities or removal of any trees, shrubs, or any other potential nesting habitat that are associated with the Project are scheduled to occur within the avian nesting season (from January 1 through August 31), a qualified biologist retained by the City shall conduct a pre-construction clearance survey for nesting birds within three days prior to any ground disturbing activities.

The biologist conducting the clearance survey shall document the negative results if no active bird nests are observed on the Project Site during the clearance survey with a brief letter report indicating that no impacts to active bird nests would occur before construction can proceed. If an active bird nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a 100-foot buffer around the active nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist. Any activities requiring the removal of a tree with an active bird nest shall halt until nesting activity seasons, which would be determined by the qualified biologist.

The biologist shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction

activity. Results of the pre-construction survey and any subsequent monitoring shall be provided to the City of Milpitas, California Department of Fish and Wildlife, and other appropriate agencies. This requirement shall be indicated on the site improvement plan and specifications for verification by the City of Milpitas prior to the initiation of construction activities.

Significance After Mitigation

Less than significant impact with mitigation incorporated.

Impact BIO-2 Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

There are no natural hydrologic features that are present on-site. As mentioned above, there are no riparian habitats within the Project Site or in its immediate vicinity. There is an existing storm drain channel, located west of the Project Site. However, the storm drain channel is not an identifiable jurisdictional waters or wetlands. Rather, the channel is identified as a Riverine Habitat R4SBAx, which is characterized as a man-made storm channel that serves a larger deepwater system and contains surface water for brief periods of time. Although the Coyote Creek is located approximately 630 feet west of the Project Site, developed properties and I-880 serve as a barrier between the riverine and the Project Site. Thus, Project implementation would have no impacts on the riverine.

As shown in **Table 3-2**, **Summary of the Potentially Occurring Special-Status Plant and Animal Species**, one natural community has historically been observed within the same USGS Quadrangle as the Project Site: the Northern Coastal Salt Marsh. However, the Project Site is a developed property with minimal non-native vegetation and is not adjacent to a bay, harbor, or inlet. Thus, the Project Site would not provide a suitable habitat for the natural community.

In conclusion, the Project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community, and no impacts would occur.

Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

No Impact.

Impact BIO-3 Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

As discussed above, the Project Site is developed and located within an urbanized area of Milpitas. Additionally, the Project Site does not contain any natural hydrologic or drainage features. Further, there no State or Federally protected wetlands on-site. Therefore, Project implementation would not have a substantial adverse effect on state or federally protected wetlands. No impacts to protected wetlands would occur.

Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

No Impact.

Impact BIO-4 Would the Project interfere substantially with the movement of any native resident or migratory fish or animal species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Due to the developed and urbanized nature of the Project Site and surrounding area, Project implementation would not interfere with the movement of any native resident, migratory fish or animal

species. Existing ornamental vegetation on-site has the potential to provide suitable nesting habitat for birds. The Migratory Bird Treaty Act (MBTA) governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, or nests. There are several mature trees present within the Project Site that may provide suitable habitat for nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code §§ 3500-5500. Birds may also nest on or within the vacant building on site. As discussed in **Impact BIO-1**, construction activities associated with the Project would remove all trees on-site, thus removing potential habitat for birds. However, the Project would plant approximately 269 new trees. Additionally, the Project would implement **Mitigation Measure MM BIO-1**, which would halt the removal of any trees with active bird nests until said nesting becomes inactive. With the implementation of **Mitigation Measure MM BIO-1,** direct and indirect impacts to protected nesting birds would be reduced to less than significant levels.

Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Refer to **Mitigation Measure MM BIO-1**.

Significance After Mitigation

Less than significant impact with mitigation incorporated.

Impact BIO-5 Would the Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

The City of Milpitas Municipal Code (Title X, Streets and Sidewalks Chapter 2.0, *Tree Maintenance and Protection*) prohibits the removal of any street tree, protected tree or heritage planting from the Public Right-of-Way or private properties without first applying for a permit issued by the City of Milpitas Public Works and/or Planning Department. Additionally, the City may seek additional cost recovery for the removal of any protected tree.

There are approximately nine street trees, located within the western perimeter of the Project Site, which are within the easement adjacent to public ROW. According to **Appendix 3.3-1, Arborist Report**, there are 27 existing tree on-site that were reported to have a diameter greater than 37 inches measured at least 4.5 feet from the ground, and therefore qualifies as a protected tree under the City's Municipal Code. As

discussed, the Project would adhere to the recommendations outlined in **Appendix 3.3-1, Arborist Report,** and remove all 49 trees on-site, including the nine street trees and 27 City Ordinance-sized protected trees. The Project Applicant would adhere to the requirements outlined in Title X, Chapter 2.0 of the Municipal Code and obtain all applicable permits from the City of Milpitas prior to the removal of any trees. In the event that the City seeks further cost recovery requirements for the removal of the existing protected tree, the Project Applicant would adhere to these requirements prior to the removal and any existing trees on-site. Adherence to the applicable regulatory requirements outlined in the City's Municipal Code would ensure that impacts would be less than significant.

Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than significant impact.

Impact BIO-6 Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Th City of Milpitas is located within the planning area of the adopted *Santa Clara Valley Habitat Plan* (SCVHP). The Project Site is located outside of the SCVHP planning area.[13] However, the Project Site is within the Expanded Study Area for Burrowing Owl Conservation, where the SCVHP aims to acquire suitable habitat for burrowing owls.[14] As discussed above in this section, the Project Site is currently fully developed with an existing vacant industrial office building with associated surface parking lot, and the existing conditions do not provide sufficient habitat for the burrowing owl. As such, the Project Site is not

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13 Santa Clara Valley Habitat Agency, *Final Santa Clara Valley Habitat Plan*, Figure 1-2, Santa Clara Valley Habitat Plan Study Area and Permit Area. August 2012. Available online at: https://www.scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan, accessed November 4, 2022.

14 Santa Clara Valley Habitat Agency, *Final Santa Clara Valley Habitat Plan*, Figure 1-2, Santa Clara Valley Habitat Plan Study Area and Permit Area. August 2012.Available online at: https://www.scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan, accessed November 4, 2022.

considered to be a Covered Activity under the SCVHP.[15] No other Habitat Conservation Plan, Natural Community Conservation Plan, or other approved habitat conservation plans apply to the Project Site. Therefore, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan, and no mitigation is required.

Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

No Impact.

3.3.6 CUMULATIVE IMPACTS

The following factors are considered with respect to analyzing cumulative impacts to biological resources:

- The cumulative contribution of other approved and proposed projects to the fragmentation of critical habitat;
- The loss of sensitive habitats and species; and
- The removal or pruning of existing trees that qualify as a street tree or protected tree under the City's Municipal Code.

Similar to the 1355 California Circle, the cumulative development and infrastructure projects discussed in **Chapter 3.0**, **Environmental Impact Analysis,** could disturb areas with the potential to contain sensitive habitats and biological resources. It is anticipated that other developments that could potentially have significant impacts on such resources, similar mitigation measures described herein would be imposed, along with requirements to comply with all applicable laws and regulations governing said resources. Existing policies and regulations, in combination with **Mitigation Measure MM BIO-1**, will result reduce impacts to sensitive habitats and biological resources to a less than significant level. As such, the Project

[15] A "Covered Activity" is a lawful action authorized by the Incidental Take Permit and is implemented by the Permittee(s) in accordance with a Habitat Conservation Plan.

would not substantially contribute to cumulative impacts on sensitive habitats and biological resources outside the Milpitas USGS Quadrangle. In addition, individual development projects are reviewed separately by the appropriate jurisdiction and undergo environmental review when it is determined that the potential for significant impacts may occur. Given the urban and developed setting of the City, it is unlikely that future development projects in the City could result in cumulatively significant potential impacts to sensitive habitats and biological resources. Regardless, potential biological impacts would be analyzed and addressed on a case-by-case basis for each development proposal in the City. Therefore, impacts related to sensitive habitats and biological resources would not be cumulatively considerable.

3.3.7 REFERENCES

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3.4 CULTURAL AND TRIBAL CULTURAL RESOURCES

INTRODUCTION

This section presents an overview of the existing cultural resource conditions within the boundaries of the Project area. The section also discusses the potential impacts to Cultural Resources (i.e., historical resources and archeological resources), Tribal Cultural Resources, and paleontological resources as a result of construction and operation activities associated with the implementation of the Project. The analysis for this section is based, in part, on the information contained in ***Appendix 3.4, Phase I Cultural Resource Inventory*** *(herein referenced as the Cultural Report).*

3.4.1 ENVIRONMENTAL SETTING

3.4.1.1 Ethnographic and Prehistoric Background

Millingstone Horizon (ca. 7,000 – 4,000 B.C.)

The Millingstone Period is characterized by small groups who travelled widely and practiced broad spectrum foraging of easily acquired plant and animal resources. Artifacts common to this time period are hand stones and millingstones. Flaked stone implements, such as projectile points, are much less common than grinding and bartering tools (Fitzgerald 2000). Common foods are thought to have included a variety of small seeds, shellfish, and small mammals.

Wallace defined the Milling Stone Horizon as "marked by extensive use of milling stones and mullers, a general lack of well-made projectile points, and burials with rock cairns" (1955:219). The dominance of such artifact types indicates a subsistence strategy oriented around collecting plant foods and small animals. A broad spectrum of food resources was consumed by the inhabitants of the area, including small and large terrestrial mammals, sea mammals, birds, shellfish, fishes, and other littoral and estuarine species, yucca, agave, and seeds and other plant products (Kowta 1969; Reinman 1964). Variability in artifact collections over time and from the coast to inland sites indicates that Milling Stone Horizon subsistence strategies adapted to environmental conditions (Byrd and Raab 2007:220). The Millingstone Horizon was thought to represent the first aboriginal groups in the Valley. King and Hickman proposed that these populations were the result of overpopulation in the coastal areas of southern California. As population pressures increased in these regions, pioneering groups are thought to have moved into previously unoccupied territories. Archaeological evidence for this period is scant; occupation components reveal low artifact counts, few radiocarbon dates, and poor depositional integrity (Hildebrandt and Mikkelsen 1993:34). Tool assemblages from a cluster of sites located near Coyote Creek just north of Morgan Hill (CA-SCL-178, -237, and -167) reveal a preponderance of small, informal flake tools, hand stones and milling slabs, and an

absence of beads and ornaments (Hildebrandt 1983). Radiocarbon assays from one site (CASCL-178) range from 10,000 to 8500 BP, indicating earlier occupation of the Valley than proposed by King and Hickman.

Middle Horizon (4000 B.C. – A.D. 1500)

The next period identified by King and Hickman is the Middle Horizon (4000–1500 BP). Aboriginal The Middle Period represents a time when people were somewhat more residentially stable and practiced more logistical (short-term) mobility (Milliken et al. 2007:106). By this time, people apparently went on extended resource acquisition forays for the purpose of bringing subsistence or trade items back to residential base camps. Large, terrestrial mammals were hunted more often during this time and grinding implements become more common (Milliken et al. 2007:107).

Settlements during this interval are thought be more permanent than during the Millingstone Horizon. They also propose that population densities increased during this time stimulating dependence on a stored food economy with an emphasis on acorn processing. Continued population growth is thought to have resulted in tremendous economic stress and an increase in warfare. King and Hickman hypothesize that native populations attempted to alleviate this stress in a number of ways including population control and adjustments in settlement strategy.

Late Period (A.D. 500 – Historical Contact)

The Late Period begins at 1000 Before the Present (BP) and extends to ca. 1550 BP (Hylkema 2002:33), or perhaps more recently. The Late Period is characterized by increased sociopolitical complexity and settlement centralization. Large village sites in the northern Santa Clara Valley are often found in the valley center along perennial streams (Bergthold 1982; Milliken et al. 2007). There is continued prevalence of mortar and pestle technology, thought to signify a greater reliance on acorn than in earlier times. Other labor-intensive foods were also used with greater frequency during this latest time period (Hylkema 2002). For example, sea otter and harbor seal were exploited more heavily. These animals are thought to be more labor-intensive to capture compared to other pinnipeds and large mammals, which were more commonly hunted in earlier time. Bow and arrow technology is also believed to have been adopted by aboriginal hunters during this latest precolonial interval (Milliken et al. 2007:117).

3.4.1.2 Historical Background

The Spanish Mission Period

In 1777, the first Mission in Santa Clara was established in what would later be known as the Santa Clara Valley, though at the time was called Llano de Los Robles (or "Plain of the Oaks") by the Spanish (Garcia

1997:5). The valley formed a broad, grassy plain that was dotted with oaks and well-watered by creeks and streams. Numerous Native villages also occupied the region, an important reason the Spanish decided to establish a Mission in the area. The reason for colonization in California was to protect the Spanish-owned, northern Mexico silver mines and other New World investments from Russians encroaching from the north (Archibald 1978:xi; Webb 1952:3). Establishing missions, presidios, and pueblos was seen as an inexpensive way of protecting northern Mexico, while simultaneously attempting to spread Spanish culture and Christian faith. Interactions between Franciscan priests, diverse soldiers of the Crown, and local and non-local Indigenous peoples took place under this economic and political regime for nearly sixty years, and under Spanish and later Mexican governments.

Movement of Indigenous peoples to the Spanish Missions was one response to the many ways the Spanish and Mexican governments, and their supporters, disrupted local communities. Franciscan priests reproduced the common Spanish colonial practice of moving Native peoples into mission centers, strategically disassociating them from their homelands and the mythical landscapes, graves of their ancestors, and the named rocks and landmarks contained therein (Lightfoot 2005:65; Margolin 1989:33). The historical record tells us this practice created mission populations composed of peoples from variable ethnolinguistic groups and very distant polities. During several population spikes, more than 1400 Native Americans lived at Mission Santa Clara. Mission Santa Clara's historic documents indicate a steady influx of Ohlone, Northern Valley Yokuts, and Miwok populations from=diverse villages within those ethnolinguistic territories. Milliken (2002:60-61) summarizes the mix of Native groups at Mission Santa Clara in 1836, at the end of the Mission Period:

> *At the beginning of that year there were 1,189 baptized Indians at the Mission and its outlying ranches. About one-third of them, 367 people, were Ohlone-speakers from the original villages of the Santa Clara Valley environs or their descendants (31% of the total). The great majority, 622 people, were Native Yokuts speakers from the San Joaquín Valley, and their children (52% of the total). In addition, 37 young people were descendants of Ohlone-Yokuts Mission marriages (3% of the total). Sierra Miwok-speaking migrants from the Sierra Nevada foothills totaled 104 people (9% of the total). Another 50 people from the "tulares" were either Miwok or Yokuts speakers (5% of the total).*

Thus, the Indian village at Mission Santa Clara is best viewed as a growing and changing amalgam of Indigenous peoples drawn at first from the San Francisco Bay region and later as far away as the San Joaquin Valley and the foothills of the Sierra Nevada. The population represented dozens of formerly autonomous tribelets of no more than a few hundred people, some closely related culturally and linguistically, others from vastly different traditions. The community or perhaps communities within the village were adjusting to both the Spanish Colonial regime and to day-to-day relationships with people with whom they had little or no contact prior to the advent of the Mission. These adjustments and the creation of new personal and community identities are reflected in the archaeological record.

Along with the establishment of twenty-one missions (religious institutions), four presidios (military forts) and three pueblos (civil towns) were also established in Alta California. The presidios (San Diego, Santa Barbara, Monterey, and San Francisco) provided support for the religious goals of the missionaries, and also presented a military force to Russian settlers, other foreigners, and local Indigenous peoples. The pueblos (San Jose, Los Angeles, and Branciforte) were solely devoted to agricultural pursuits; their purpose was to raise crops to provide for the presidio population, relieving Mexico from having to supply food to the population in this new region and provide a buffer against the often-delayed San Blas shipments (Garr 1976:94; Winther 1935:4). With this goal, early explorers in Alta California found sites for establishing such towns and ranchos, and soldiers and civilians of mixed backgrounds were selected to settle these places, and the earliest historic towns were developed in California.

The Mexican Ranchi Period

In 1821, Mexico achieved independence from Spain, and word of this event reached Alta California the following year. The colonial policies of the republic were to be quite different from those of the Spanish monarchy. Not only were Californians allowed to trade with foreigners, but foreigners could also now hold land in the province once they had been naturalized and converted to Catholicism.

Under Spain, land grants to individuals were few in number, and title to these lands remained in the hands of the Crown. Under Mexican rule, however, governors were encouraged to make more grants for individual ranchos, and these grants were to be for outright ownership. Most importantly, the new Mexican Republic was determined to "secularize" the missions, to remove the natives and the mission property from the control of the Franciscan missionaries.

Secularization was set in motion by the Mexican Governor Echeandia in 1826 but was not carried out in earnest until 1834 when Governor José Figueroa issued an official proclamation ordering the secularization of the California missions. His proclamation turned the mission properties over to Mexican civil authorities, allowed for the disbursement of mission property, opened mission land for settlement by petitioners, and created a series of pueblos. Indian neophytes were freed from their role as personal servants to the padres; however, in reality, the effects of secularization throughout California were to deprive a large percentage of the remaining mission Indians of their property. This resulted in the creation of a relatively large population of landless Indian tenants, many of whom sought work in the newly created ranchos. The Indigenous population frequently scattered away from the mission centers. Most of the former mission land was divided among loyal Mexican subjects, and the few Ohlone who chose to remain in their ancestral territory were sometimes obligated to become squatters. By the same token, there were some Indians, though few in number, who did successfully petition the Mexican government and receive land grants

(Milliken et al. 2009:161-162). Most, however, were given jobs as manual laborers or domestic servants on Mexican cattle ranches.

The new ranchos that sprang up as a result of secularization created a wholly new culture in California, one that was centered on the raising and maintaining of vast herds of cattle. These ranchos were usually owned by individual families who supervised a veritable army of Indian laborers and vaqueros. The ranch owners owed their livelihood to the sale and trade of the products, primarily hide and tallow, derived from their cattle. A flourishing trade with foreign merchants, mostly Americans, kept the Mexican ranchos afloat; hides and tallow were traded to American merchants for everything from food staples and clothing to furniture and luxury goods.

American Period Land Development

By the beginning of the Early American Period, Mexican landholders began to lose their holdings to American settlers. Land ownership was consolidated during this period. By 1871, it was estimated that three land-holding organizations controlled more than 800,000 acres of Santa Clara Valley.

With this consolidation, land use patterns changed from open cattle ranging to more intensive controlled pasturing. Support facilities such as barns and feed sheds were increasingly built to support this new intensive land use. The extension of the Southern Pacific in the late 1860s was a catalyst for a local population boom, resulting in the founding of local communities including Morgan Hill, San Martin, and Gilroy. Aer a peak in development during the early 1900s the area remained relatively stagnant until the late-20th century when U.S. Highway 101 was opened. Access to transport dramatically increased the population and development of area cites. Population expansion and economic development shied a focus in land development from agriculture to suburban residential use.

Project Site History

The Project Site was part of the Rancho Rincon de los Esteros, a 6,353-acre Mexican land grant given by Governor Juan Bautista Alvarado to Ignacio Alviso in 1838 (Hoffman 1862). According to an 1858 and an 1869 plat map, the Project Site is located in the northern portion of the Rancho in Lot 41. An 1899 topographic map shows the Project Site, although the Rancho is no longer indicated. The Pacific Railroad is located approximately 600–700 meters to the east of the Project Site. For most of the 19th and 20th century, the Rancho was used to support orchards and fruit farms in a similar manner as the rest of the Santa Clara Valley.

By 1961, this area of Milpitas had been developed considerably, including the construction of the Nimitz Freeway (Interstate 880) and the Milpitas Sewage Disposal, located approximately 250 meters to the west.

According to the Cultural Resources Report, minimal development within the Project Site , although several dirt roads are visible across it. A 1980 aerial photograph shows little development within the Project Site still; however, new construction is visible approximately 180 meters north of it. Although no buildings or obvious infrastructure are present in the aerial photograph, the landscape within the Project Site and surrounding it appear to be altered, with Sites appearing to be bulldozed or graded with several meandering dirt roads throughout.

3.4.1.3 Records Search

Literature searches of the California Historical Resources Information System (CHRIS) at the Northwest Information Center (NWIS) located at Sonoma State University were conducted on November 14, 2022, as part of the Cultural Report. The searches were conducted to identify previous cultural resources studies and previously recorded cultural resources within a 1/4-mile radius of the Project Site.

Previous Cultural Studies

The 2022 NWIS records search identified 15 resource studies within a ¼-mile radius of the Project Site. Of these studies, three (S-008368, S-008977, and S-025043) were conducted within the Project Site; see Table 1, Previous Cultural Resource Studies Within the Project Site, of the Cultural Report. These studies consisted of archaeological field studies, specifically Phase I surveys.

S-008368

In 1980, and archaeological reconnaissance was conducted of the Milpitas Golf Course parcel in Milpitas, California.

S-008977

In 1986, and archaeological survey report was conducted for the highway widening from Montague Expressway in Santa Clara County to Route 262 in Alameda County, 04-SCL/ALA-880 P.M. 6.7/10.5-0.0/2.3 04570-112820.

S-025043

In 2001, an Historic Property Survey Report was prepared for the Route 262/Warren Avenue/I-880 Interchange Reconstruction and I-880 Widening Project.

Previously Recorded Cultural Resources

The 2022 NWIS records search did not identify any previously recorded cultural resources within the Project Site nor within a 1/4-mile radius of the Project Site.

3.4.1.4 Sacred Land Files Search

As part of the process of identifying cultural resources issues within or near the Project Site , and to assist the City with Native American government-to-government consultation in accordance with California Government Code 65352 (Senate Bill 18 of 2004; SB 18) and Assembly Bill 52 of 2014 (AB 52), the City of Milpitas contacted the Native American Heritage Commission (NAHC) on November 10, 2022 requesting a review of the Sacred Lands Files (SLF), a list of Native American individuals and tribal organizations for tribal consultation per SB 18, and a list of Native American individuals and tribal organizations for tribal consultation per AB 52. The NAHC responded via email on December 11, 2022 with a list of NAHC individuals and tribal organizations that may be impacted by the Project, stating the SLF search came back with negative results.

3.1.4.5 Native American Consultation

On January 27, 2023, the City sent notification letters to each of the NAHC individuals and tribal organizations to consult on the proposed 1355 California Circle Project in accordance with SB 18 and AB 52. On April 6, 2023, the City sent follow-up emails to the notification letters. As of July 2023, the City has not received any responses to these notification letters.

3.1.4.6 Historical Mapping and Aerial Imagery

As part of identifying the historical significance of the Project Site, historical maps and aerial images of the Project Site were analyzed in the Cultural Resources Report (see Figures 3 through 8 of the Cultural Resources Report). Specific maps and aerial images pertinent to the Project Site included an 1858 plat map, 1869 GLO plat map, 1899 topographic map, 1961 topographic map, 1968 aerial photograph, 1980 aerial photograph. Based on these historical maps and aerial images, the existing industrial facility located on-site today was not constructed until after year 1980.

3.1.4.7 Surface Survey

On November 21, 2022, an intensive surface survey of the was conducted as part of the Cultural Report. This involved cultural resource specialists walking 5- to 15- meter-wide transects along the Project Site while closely inspecting the ground surface, so that the entire Project Site was intensely inspected.

The surface survey indicated that the surface visibility in the Project Site was generally poor, as the Project Site was covered by existing roadway/roadside, commercial development, hardscaping, and landscaping.

3.1.4.8 Pre-Colonial Archaeologically Sensitivity

To assess the Project Site's potential for buried archaeological sites, the Cultural Resources Report used a model to rank the existing landforms of the Project Site as being more or less sensitive based on demonstrated relationships between environmental variables and known precolonial site locations. This model analyzed existing geomorphic surfaces on-site. The model also utilizes Geographic Information Systems (GIS) data to determine the Project Site's archaeological distance.

In summary, the model was used to determine the potential for buried archaeological deposit. According to the Cultural Resources Report, the potential for buried archaeological deposits can be conceived as follows:

- Very Low — pre-latest Pleistocene deposits regardless of the combination of other factors,
- Low — Latest Pleistocene or Holocene deposits with slopes greater than 9 degrees located more than 200 meters (656 feet) from a water source and/or geomorphic contact,
- Moderate — Holocene deposits with slopes less than 9 degrees located less than 200 meters (656 feet) geomorphic contact, located more than 200 meters (656 feet) from a water source,
- High — Holocene deposits with slopes less than 9 degrees located less than 200 meters (656 feet) geomorphic contact, AND less than 200 meters (656 feet) from a water source,
- Very High — Holocene deposits with slopes less than 9 degrees located less than 200 meters (656 feet) from a geomorphic contact, water source, and confluence of two or more watercourses, AND/OR contains previously identified buried site.

Based on this model, the Cultural Resources Report concludes that the sensitivity for the Project Site to contain buried archaeological sites is moderate.

3.4.2 Regulatory Framework

Cultural Resources, Tribal Cultural Resources, and Paleontological Resources are regulated at the federal, state, and local levels as discussed below.

3.4.2.1 Federal

National Historic Preservation Act, Section 106

The National Historic Preservation Act (NHPA) establishes the National Register of Historic Places (NRHP) and defines federal criteria for determining the historical significance of archaeological sites, historic buildings and other resources. To be determined eligible for the NRHP, a potential historic property must meet one of four historical significance criteria (listed below), and also must possess sufficient deposition, architectural, or historic integrity to retain the ability to convey the resource's historic significance. Resources determined to meet these criteria are eligible for listing in the NRHP and are termed historic properties. A resource may be eligible at the local, state, or national level of significance.

Properties are eligible for the NRHP if they possess integrity of location, design, setting, materials, workmanship, feeling, and association, and they:

A. are associated with events that have made a significant contribution to the broad patterns of our history;

B. are associated with the lives of a person or persons of significance in our past;

C. embody the distinctive characteristics of a type, period or method of construction, or represent the work of a master, or possess high artistic value, or represent a significant and distinguishable entity whose components may lack individual distinction; or

D. have yielded or may be likely to yield information important in prehistory or history.

These factors are known as "Criteria A, B, C, and D."

A resource that lacks integrity or does not meet one of the NRHP criteria of eligibility is not considered a historic property under federal law, and effects to such a resource are not considered significant under the NHPA. Archaeological sites are generally evaluated under Criterion D, which concerns the potential to yield information important in prehistory or history.

3.4.2.2 State Laws and Regulations

California Environmental Quality Act

Under CEQA, public agencies must consider the effects of their actions on both "historical resources" and "unique archaeological resources." Pursuant to California Public Resources Code (PRC) Section 21084.1, a "project that may cause a substantial adverse change in the significance of an historical resource is a project

that may have a significant effect on the environment." PRC 21083.2 requires agencies to determine whether a proposed project would have an effect on "unique archaeological resources."

"Historical resource" is a term of art with a defined statutory meaning (see PRC 21084.1 and *State CEQA Guidelines* Sections 15064.5(a) and 15064.5(b)). The term embraces any resource listed in or determined to be eligible for listing in the California Register of Historical Resources (CRHR). The CRHR includes resources listed in or formally determined eligible for listing in the NRHP, as well as some California State Landmarks and Points of Historical Interest.

Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the CRHR and are presumed to be "historical resources" for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC 5024.1 and 14 CCR 4850). Unless a resource listed in a survey has been demolished or has lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource potentially eligible for the CRHR.

In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the CRHR criteria prior to making a finding as to a proposed project's impacts to historical resources (PRC 21084.1 and *State CEQA Guidelines* Section 15064.5(a)(3)). In general, a historical resource, under this approach, is defined as any object, building, structure, site, area, place, record, or manuscript that:

A. Is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, or cultural annals of California; and

B. Meets any of the following criteria:

    1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

    2. Is associated with the lives of persons important in our past;

    3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

    4. Has yielded, or may be likely to yield, information important in prehistory or history (*State CEQA Guidelines* Section 15064.5(a)(3)).

These factors are known as "Criteria 1, 2, 3, and 4" and parallel Criteria A, B, C, and D under the NHPA (discussed earlier). The fact that a resource is not listed or determined to be eligible for listing does not preclude a lead agency from determining that it may be a historical resource (PRC 21084.1 and *State CEQA Guidelines* Section 15064.5(a)(4)).

CEQA also distinguishes between two classes of archaeological resources: archaeological sites that meet the definition of a historical resource, as described above, and "unique archaeological resources." Under CEQA, an archaeological resource is considered "unique" if it:

- Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information;
- Has a special and particular quality such as being the oldest of its type or the best available example of its type; or
- Is directly associated with a scientifically recognized important prehistoric or historic event or person (PRC 21083.2(g)).

CEQA states that if a proposed project would result in an impact that might cause a substantial adverse change in the significance of a historical resource, then an EIR must be prepared, and mitigation measures should be considered. A "substantial adverse change" in the significance of a historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historical resource would be materially impaired (*State CEQA Guidelines* Section 15064.5(b)(1)).

The *State CEQA Guidelines* (Section 15064.5(c)) also provide specific guidance on the treatment of archaeological resources, depending on whether they meet the definition of a historical resource or a unique archaeological resource. If the site meets the definition of a unique archaeological resource, it must be treated in accordance with the provisions of PRC 21083.2.

State CEQA Guidelines Section 15126.4(b) sets forth principles relevant to means of mitigating impacts on historical resources. It provides as follows:

- Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the

project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

- In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

- Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

  – Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

  – Preservation in place may be accomplished by, but is not limited to, the following:

    - Planning construction to avoid archaeological sites;

    - Incorporation of sites within parks, greenspace, or other open space;

    - Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

    - Deeding the site into a permanent conservation easement.

  – When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

  – Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the

determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

Section 15064.5(f) deals with potential discoveries of cultural resources during project construction. That provision states that, "[a]s part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

State CEQA Guidelines Section 15064.5(e), requires that excavation activities be stopped whenever human remains are uncovered and that the county coroner be called in to assess the remains. If the county coroner determines that the remains are those of Native Americans, the Native American Heritage Commission (NAHC) must be contacted within 24 hours. At that time, the lead agency must consult with the appropriate Native Americans, if any, as identified in a timely manner by the NAHC. Section 15064.5 of the *State CEQA Guidelines* directs the lead agency (or applicant), under certain circumstances, to develop an agreement with the Native Americans for the treatment and disposition of the remains.

Senate Bill 18

Senate Bill (SB) 18 requires cities and counties to contact and consult with California Native American tribes prior to making land use decisions. The bill requires local governments to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of general plans (defined in Government Code §65300 et seq.). For projects proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the NAHC for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code that are located within the city or county's jurisdiction.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

Assembly Bill 52

AB 52, which was approved in September 2014 and became effective on July 1, 2015, requires that CEQA lead agencies consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project, if so, requested by the tribe. A provision of the bill, chaptered in CEQA Section 21084.2, also specifies that a project with an effect that may cause a substantial adverse change in the significance of a Tribal Cultural Resource (TCR) is a project that may have a significant effect on the environment.

Defined in Section 21074(a) of the Public Resources Code, TCRs are:

1. Sites, features, places, cultural landscapes, sacred places and objects with cultural value to a California Native American tribe that are either of the following:

    a. Included or determined to be eligible for inclusion in the CRHR; or

    b. Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

2. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

TCRs are further defined under Section 21074 as follows:

a. A cultural landscape that meets the criteria of subdivision (a) is a TCR to the extent that the landscape is geographically defined in terms of the size and scope of the landscape; and

b. A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 may also be a TCR if it conforms with the criteria of subdivision (a).

Mitigation measures for TCRs must be developed in consultation with the affected California Native American tribe(s) pursuant to newly chaptered Section 21080.3.2, or according to Section 21084.3. Section 21084.3 identifies mitigation measures that include avoidance and preservation of TCRs and treating TRCs with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource.

3.4.2.3 Local Plans and Policies

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* (General Plan) Conservation and Sustainability Element includes goals, policies, and standards for preserving the prehistoric, historic, and archaeological resources within the City. The Conservation and Sustainability Element focuses on the City's effects to air quality, natural resources, and the cumulative impacts because of climate change.

The Conservation and Sustainability Element states the following relevant goals and policies:

Goal CON 4-1: Preserve and protect prehistoric, historic, archaeological, and paleontological resources in Milpitas.

Policy CON 4-1: Review proposed developments and work in conjunction with the California Historical Resources Information System, Northwest Information Center at Sonoma State University, to determine whether Project Sites contain known archaeological resources, either prehistoric and/or historic-era, or have the potential for such resources.

Policy CON 4-2: If found during construction, ensure that human remains are treated with sensitivity and dignity, and ensure compliance with the provisions of California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

Policy CON 4-3: Work with Native American representatives to identify and appropriately address, through avoidance or mitigation, impacts to Native American cultural resources and sacred sites during the development review process.

Policy CON 4-4: Consistent with State, local, and tribal intergovernmental consultation requirements such as SB 18 and AB 52, the City shall consult as necessary with Native American tribes that may be interested in proposed new development and land use policy changes.

Goal CON-5: Protect and enhance historic resources- including places, buildings, or landmarks with historic, architectural, cultural, and/or aesthetic significance.

Policy CON 5-1: Protect significant historic resources and use these resources to promote a sense of place and history in Milpitas through implementation of the Milpitas Cultural

Resources Preservation Program (Municipal Code, Title XI, Chapter 4), the Conceptual Historic Resources Master Plan, the conservation and preservation of the City's historical collection at the Milpitas Community Museum, and other applicable codes, regulations, and area plans.

3.4.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to Cultural Resources, including Historical Resources, Tribal Cultural Resources and Paleontological Resources are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts if any of the following would occur:

Impacts related to Cultural Resources are considered significant if the project would:

- Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5.
- Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.
- Disturb any human remains, including those interred outside of dedicated cemeteries.

Impacts related to Tribal Cultural Resources are considered significant if the project would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
  - Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or
  - A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Impacts related to Paleontological Resources are considered significant if the project would:

- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

3.4.4 METHODOLOGY

The cultural resources analysis considers the presence and absence of known cultural resources, as well as the potential for significant cultural resources to occur, within the Project Site and considers the potential impacts on such resources from implementation of the Project. The tribal cultural resources analysis assesses the potential impacts to tribal cultural resources that could result from implementation of the Project.

The analysis of historical resources examines the likelihood that the Project could cause a substantial adverse change in the significance of a historical resource. A significant impact to historic resources would occur if there is a "substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired, which is considered to be a significant effect on the environment." *State CEQA Guidelines* Section 15064.5(b)(1). Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995) is considered to be mitigated to a level of less-than-significant impact on the historical resource.[1]

The analysis of archaeological resources identifies the likelihood of ground disturbing activities to potentially result in a significant impact to unique archaeological resources. PRC Section 21083.2 defines a unique archaeological resource as an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

- Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information;

- Has a special and particular quality such as being the oldest of its type or the best example of its type; or

1 California Code of Regulations, Title 14, Chapter 3 15064.5. (b)(3). Available online at: https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_FINAL_TEXT_122818.pdf, accessed May 3, 2023.

- Is directly associated with a scientifically recognized important prehistoric or historic event or person.

Similar to archaeological resources, the analysis of human remains considers the likelihood of ground disturbing activities to potentially encounter human remains.

3.4.5 ENVIRONMENTAL IMPACTS

Impact CUL-1 Would the Project cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?

As stated above, there are no cultural resources identified within the Project Site. Although there was one historic property survey report conducted within the Project Site (S-025043), this report is likely to have focused on properties within the immediate vicinity of the Route 262/Warren Avenue/I-880 Interchange, located approximately 2.6 miles north of the Project Site. The Project Site is not listed as a property with historic buildings in the *City of Milpitas General Plan Environment Impact Report* (November 2020). Further, historical maps and aerial photography analyzed in the Cultural Resources Report indicate that the Project Site remained as a vacant, undeveloped area until after 1980. Thus, the Cultural Resources Report determined that the Project Site has a low potential for encountering historic resources. As such, the Project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5 of the CEQA Guidelines, and no impacts would occur.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact.

Impact CUL-2 Would the Project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

As stated above, 15 previously recorded cultural resource studies were conducted within a 0.25-mile radius of the Project Site . Of the 15 studies, three were recorded in the Project Site and consisted of archaeological

field studies, specifically Phase I archaeological surveys. As discussed above, the sensitivity for the Project Site to contain buried archaeological sites is moderate. As such, the Project Site could contain previously undiscovered archaeological resources. Construction activities associated with the Project Site would require on-site surface and subsurface excavation and grading to install the necessary utility lines and support the proposed developments. Thus, undiscovered archaeological resources could potentially be encountered during this period.

In the event that archaeological resources are encountered during Project construction, **Mitigation Measure CUL-1** would require all construction efforts associated with the Project to halt immediately until a qualified archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action. If the archaeologist determines the resource constitutes a "unique archaeological resource", time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation would be made available to the Applicant. With implementation of **Mitigation Measure CUL-1**, the Project would not cause a substantial adverse change in the significance of an archaeological resource or site pursuant to Section 15064.5 of the CEQA Guidelines, and impacts would be reduced to less than significant levels.

Level of Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

CUL-1 The Project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area shall be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of archaeological testing for California Register of Historical Resources (CRHR) eligibility. Results of the archaeological testing shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the Project, additional work may be warranted, such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.

Level of Significance After Mitigation

Less than Significant Impact.

Impact CUL-3 Would the Project disturb any human remains, including those interred outside of dedicated cemeteries?

Due to the level of past disturbance on-site, it is not anticipated that human remains, including those interred outside of formal cemeteries, would be encountered during excavation or ground disturbance activities associated with the Project. If human remains are found, those remains would require proper treatment, in accordance with applicable laws. State of California Public Resources Health and Safety Code Section 7050.5-7055 describe the general provisions for human remains. Specifically, Health and Safety Code Section 7050.5 describes the requirements if any human remains are accidentally discovered during excavation of a site. As required by State law, the requirements and procedures set forth in Section 5097.98 of the California Public Resources Code would be implemented, including notification of the County Coroner, notification of the Native American Heritage Commission and consultation with the individual identified by the Native American Heritage Commission to be the most likely descendant. If human remains are found during excavation, excavation must stop near the find and any area that is reasonably suspected to overlay adjacent remains until the Santa Clara County coroner has been notified, and the remains have been investigated and appropriate recommendations have been made for the treatment and disposition of the remains. Following compliance with the regulations, impacts related to the disturbance of human remains would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact TRC-1 Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) Listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code Section 5020.1(k), or

ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?

As stated above, the City sent letters inviting tribes to consult on the Project per AB 52 and SB 18 on January 27, 2023, via notification letters. To date, no responses to this invitation have been received by the City.

Based on the records search, literature review, field survey results, and tribal consultation results, there is low potential for unknown tribal cultural resources to be discovered on-site during site disturbance activities. As discussed above, the Project would involve excavation activities on-site to install the necessary utility lines to support the proposed developments. As such, Project excavation could encounter native soils which has the potential to support undiscovered tribal cultural resources. If tribal cultural resources are encountered during Project construction, **Mitigation Measure CUL-1** would require all construction efforts associated with the Project to halt until an archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action which must be implemented. Implementation of **Mitigation Measure CUL-1** would ensure that appropriate protocols are in place in the event unknown cultural resources, including archaeological and tribal cultural resources, are discovered during ground-disturbing activities. As such, impacts to tribal cultural resources would be reduced to less than significant levels.

Level of Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

See **Mitigation Measure CUL-1.**

Level of Significance After Mitigation

Less than Significant Impact.

3.4.6 CUMULATIVE IMPACTS

Impacts to cultural resources (including historical resources) and TCRs tend to be site specific and are assessed on a site-by-site basis. Where such resources exist, the Project together with other development in the City and region could result in an incremental adverse impact to cultural resources and TCRs. In this case, the cumulative impact would be to unknown cultural resources, TCRs, and paleontological resources. However, provided that proper mitigation, as defined by *State CEQA Guidelines* Section 15126.4(b), is implemented in conjunction with cumulative development in the area, no significant cumulative impacts are anticipated.

3.4.7 REFERENCES

Albion. *Phase I Cultural Resource Inventory for the 1355 California Circle Project EIR, Milpitas, Santa Clara County, California*. February 2023.

Native American Heritage Commission, *Native American Tribal Consultation, Pursuant to the Assembly Bill 52 (AB 52), Amendments to the California Environmental Quality Act (CEQA) (Chapter 532, Statutes of 2014), Public Resources Code Sections 5097.94 (m), 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2 and 21084.3, 1355 California Circle EIR, Milpitas Project, Santa Clara County*, December 11,2022.

3.5 ENERGY

INTRODUCTION

This section evaluates potential impacts associated with energy consumption and demand that would result from the proposed development at 1355 California Circle (Project). The section also provides a description of the regulatory framework governing the management of energy on a federal, state, regional, and local level. Project impacts on energy consumption and analysis of compliance with applicable regulations have also been provided.

3.5.1 EXISTING CONDITIONS

3.5.1.1 Electrical Service

Pacific Gas & Electric (PG&E) provides electrical service to the County of Santa Clara, including the City of Milpitas. Over the past 15 years, electricity generation in California has undergone a transition. Historically, California has relied heavily on oil- and gas-fired plants to generate electricity. Spurred by regulatory measures and tax incentives, California's electrical system has become more reliant on renewable energy sources, including cogeneration, wind energy, solar energy, geothermal energy, biomass conversion, transformation plants, and small hydroelectric plants. Unlike petroleum production, generation and transmission of electricity is usually not tied to the location of the fuel source and can travel great distances via the electrical grid. According to PG&E's Preliminary 2020 Annual Renewables Portfolio Standard (RPS) Compliance Report, PG&E has met and exceeded the 2017-2020 Compliance Period requirements.[1] In 2020, 34.2 percent of the power delivered to customers by PG&E came from renewable energy sources, exceeding the 33 percent requirement for the 2017-2020 Compliance Period.[2]

The electricity consumption attributable to the entirety of Santa Clara County for is shown in **Table 3.5-1, Electricity Consumption in Santa Clara County (2021)**.

1 Pacific Gas and Electric Company. *Preliminary 2020 Annual RPS Compliance Report of Pacific Gas and Electric Company*. 2021. Available for download online at: https://files.cpuc.ca.gov/RPS_PPAs/Compliance%20Report%20Archives/. Accessed November 9, 2022.

2 Pacific Gas and Electric Company. *Preliminary 2020 Annual RPS Compliance Report of Pacific Gas and Electric Company*. 2021. Available for download online at: https://files.cpuc.ca.gov/RPS_PPAs/Compliance%20Report%20Archives/. Accessed November 9, 2022.

Table 3.5-1
Electricity Consumption in Santa Clara County (2021)

Residential	Non-Residential	Total Usage
4,273	12,632	16,905

Note: All Usage Expressed in Millions of kWh (GWh)
Source: California Energy Commission, California Energy Consumption Database, 2021. Accessed November 9, 2022.

3.5.1.2 Natural Gas

PG&E also provides natural gas service to the County of Santa Clara, including the City of Milpitas. The availability of natural gas is based upon recent conditions of gas supply and regulatory policies. As a public utility, PG&E is under the jurisdiction of the California Public Utilities Commission and can be affected by actions of gas supply or the condition under which service is available. Gas service will be provided in accordance with any revised conditions. The core gas supply is purchased from producers and marketers in Canada, the Rockies, and the Southwest.

The Natural Gas consumption attributable to the entirety of Santa Clara County is shown in **Table 3.5-2, Natural Gas Consumption in Santa Clara County (2021)**.

Table 3.5-2
Natural Gas Consumption in Santa Clara County (2021)

Residential	Non-Residential	Total Usage
236.3	181.0	417.3

Note: All usage expressed in MMThm
Source: California Energy Commission, California Energy Consumption Database, 2021. Accessed November 9, 2022.

3.5.1.3 Petroleum

California is one of the top producers of petroleum in the nation, with drilling operations primarily concentrated in Kern and Los Angeles Counties. A network of crude oil pipelines connects production areas to oil refineries in the Los Angeles, San Francisco Bay, and Central Valley areas. California oil refineries also process large volumes of Alaskan and foreign crude oil received in the ports of Los Angeles, Long Beach, and San Francisco Bay. Crude oil production in California and Alaska is in decline,

and California refineries have become increasingly dependent on foreign imports. Led by Ecuador and Saudi Arabia, foreign suppliers now produce more than half of the crude oil refined in California.[3,4]

According to the United States Energy Information Administration (EIA), transportation accounted for approximately 34 percent of California's energy demand, amounting to approximately 2,355 trillion British thermal units (Btu) in 2020.[5] Most gasoline and diesel fuel sold in California for motor vehicles is refined in California to meet state-specific formulations required by the California Air Resources Board (CARB).

There are no petroleum refineries located in the City of Milpitas. Neither the EIA, nor the California Energy Commission (CEC) maintain a database of estimated transportation fuels consumption at the city level.

3.5.2 REGULATORY FRAMEWORK

3.5.2.1 Federal

Energy Policy and Conservation Act

Enacted in 1975, this legislation established fuel economy standards for new light-duty vehicles sold in the U.S. The law placed responsibility on the National Highway Traffic and Safety Administration (a part of the U.S. Department of Transportation) for establishing and regularly updating vehicle standards. The U.S. Environmental Protection Agency (U.S. EPA) administers the Corporate Average Fuel Economy (CAFE) program, which determines vehicle manufacturers' compliance with existing fuel economy standards. Since the inception of the CAFE program, the average fuel economy for new light-duty vehicles (autos, pickups, vans, and SUVs) steadily increased from 13.1 miles per gallon (mpg) for the 1975 model year to 27.5 mpg for the 2012 model year and is proposed to increase to 54.5 by 2025.

Energy Star Program

In 1992, the U.S. EPA introduced Energy Star as a voluntary labeling program designed to identify and promote energy-efficient products to reduce greenhouse gas emissions. The program applies to major

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3 California Energy Commission (CEC). "Foreign Sources of Crude Oil Imports to California 2020." Available at: https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/foreign-sources-crude-oil-imports. Accessed November 9, 2022.

4 California Energy Commission (CEC). "Oil Supply Sources to California Refineries." Available https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries. Accessed November 9, 2022.

5 United States Energy Information Administration. "California Profile Data." Available online at: https://www.eia.gov/state/data.php?sid=CA#ConsumptionExpenditures. Accessed November 9, 2022.

household appliances, lighting, computers, and building components such as windows, doors, roofs, and heating and cooling systems. Under this program, appliances that meet specifications for maximum energy use established under the program are certified to display the Energy Star label. In 1996, U.S. EPA joined with the Energy Department to expand the program, which now also includes qualifying commercial and industrial buildings, and homes.

3.5.2.2 State

Title 24

Title 24, Part 6, of the California Code of Regulations contains the CEC's Energy Efficiency Standards for Residential and Nonresidential Buildings. Title 24 was first established in 1978, in response to a legislative mandate to reduce California's energy consumption. Since that time, Title 24 has been updated periodically to allow for consideration and possible incorporation of new energy efficiency technologies and methods.

On April 23, 2008, the CEC adopted the 2008 standards, which applied to projects that submitted an application for a building permit on or after January 1, 2010. The CEC adopted the 2008 standards for a number of reasons: (1) to provide California with an adequate, reasonably priced, and environmentally sound supply of energy; (2) to respond to Assembly Bill 32 (AB 32; the Global Warming Solutions Act of 2006), which requires California to reduce its greenhouse gas emissions to 1990 levels by 2020; (3) to pursue the statewide policy that energy efficiency is the resource of choice for meeting California's energy needs; (4) to act on the findings of California's Integrated Energy Policy Report, which indicate that the 2008 Standards are the most cost-effective means to achieve energy efficiency, reduce the energy demand associated with water supply, and reduce greenhouse gas emissions; (5) to meet the West Coast Governors' Global Warming Initiative commitment to include aggressive energy efficiency measures in the update of all state building codes; and (6) to meet the Executive Order in the Green Building Initiative to improve the energy efficiency of nonresidential buildings through aggressive standards. The most recently adopted updates to the standards are known as the 2022 Building Energy Efficiency Standards, which go into effect on January 1, 2023.[6]

The California Green Building Standards Code (CalGreen Code), which is Part 11 of the Title 24 Building Standards Code, is commonly referred to as the CALGreen Code. The 2008 edition was the first edition of the CALGreen Code and contained only voluntary standards. The 2022 CalGreen Code includes

6 California Energy Commission. "2022 Building Energy Efficiency Standards." Available online at: https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022-building-energy-efficiency. Accessed November 9, 2022.

mandatory requirements for new residential and nonresidential buildings (including buildings for retail, office, public schools, and hospitals) throughout California beginning on January 1, 2023. The 2022 CalGreen Code contains regulations for energy efficiency, water efficiency and conservation, material conservation and resource efficiency, environmental quality, and more.

Renewable Portfolio Standard

Established in 2002 under SB 1078, accelerated in 2006 under SB 107, and expanded in 2011 under SB 2, California's Renewables Portfolio Standard (RPS) is one of the most ambitious renewable energy standards in the country. The RPS program required investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable energy resources to 33 percent of total procurement by 2020. In general, retail sellers throughout the state either met or exceeded the 33 percent 2017-2020 Compliance Period RPS target.[7]

Assembly Bill 32: Global Warming Solutions Act

In addition to Title 24, Assembly Bill 32 (AB 32) is anticipated to result in the future regulation of energy resources in California (see **Section 3.7, Greenhouse Gas Emissions,** for additional information on AB 32). In order to achieve these emission reductions, it is generally accepted that California will need to improve its overall energy efficiency, which includes the use of more renewable energy resources. Pursuant to AB 32, the California Air Resources Board (CARB) will work with other state agencies (including the CEC), to implement feasible programs and regulations that reduce emissions and improve energy efficiency.

Senate Bill 350

In the 2015, the Legislature passed, and the Governor signed, Senate Bill 350 (SB 350). The legislation requires that, by 2030, 50 percent of all electricity provided by power plants in California must be from renewable sources. SB 350 further requires the CEC to establish annual targets for statewide energy efficiency savings and demand reduction that would achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas by retail customers by 2030. The bill requires the Public Utilities Commission (PUC) to establish efficiency targets for investor-owned electrical and gas corporations consistent with the 2030 goal, and the CEC to establish annual targets for energy efficiency savings and demand reductions for local publicly owned electric utilities consistent with the 2030 goal. Each retailer of electricity must regularly file an integrated resource plan (IRP) for review and approval.

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7 California Public Utilities Commission. *2021 California Renewables Portfolio Standard Annual Report*. 2021. Available online at: https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/energy/rps/2022-rps-annual-report-to-the-legislature.pdf. Accessed November 9, 2022.

Senate Bill 32

In the 2016 legislative session, the Legislature passed, and the Governor signed, Senate Bill 32 (SB 32). This bill requires CARB to adopt rules and regulations to ensure that statewide greenhouse gas (GHG) emissions are reduced to 40 percent below the 1990 level by 2030.

California's Building Energy Efficiency Standards

In December 2018, the California Building Standards Commission gave the final approval to a solar PV requirement mandating all new nonresidential buildings under three stories tall include a solar zone, which is a section of the roof designated and reserved for future installation of a solar electric or solar thermal system. The standards took effect on January 1, 2020, and include solar installation, battery storage, and improved energy savings through high-performance walls, attics, and windows. The most recent adopted updates to the standards are known as the 2022 Building Energy Efficiency Standards, which go into effect on January 1, 2023.[8]

Other Energy Related Statutes and Executive Orders

Additional legislation and executive orders focused on energy efficiency in California are highlighted briefly below:

- **Assembly Bill 1613:** This legislation, also known as the Waste Heat and Carbon Emissions Reduction Act, was designed to encourage the development of new combined heat and power systems in California with a generating capacity of up to 20 megawatts (MW).

- **Senate Bill 1:** In 2006, this legislation enacted Governor Schwarzenegger's Million Solar Roofs program and has an overall objective of installing 3,000 MW of solar photovoltaic systems. The goal of installing one million solar energy systems was reached in 2019.[9]

- **Senate Bill 1389:** This legislation requires the California Energy Commission to prepare a biennial integrated energy policy report that contains an assessment of major energy trends and issues facing the state's electricity, natural gas, and transportation fuel sectors, and provides policy

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8 California Energy Commission. "2022 Building Energy Efficiency Standards." Available online at: https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022-building-energy-efficiency. Accessed November 9, 2022.

9 California Solar and Storage Association. "Million Solar Roofs." Available online at: https://calssa.org/million-solar-roofs#:~:text=In%202006%2C%20California%20made%20international,incorporating%20solar%20into%20new%20homes. Accessed November 9, 2022.

recommendations to conserve resources; protect the environment; ensure reliable, secure, and diverse energy supplies; enhance the state's economy; and protect public health and safety.

- **Executive Order S-14-08:** This order established accelerated RPS targets— retail sellers achieved the goal to serve 33 percent of their load with renewable energy by 2020.

- **Executive Order S-21-09:** This order requires CARB to adopt regulations, by July 31, 2010, increasing California's RPS to 33 percent by 2020. In general, retail sellers either met or exceeded the 33 percent interim 2020 RPS target.[10]

- **Executive Order B-18-12:** This order directs state agencies to reduce their grid-based energy purchases by at least 20 percent by 2018, as compared to a 2003 baseline.

- **Executive Order B-48-18:** This order will boost the use of zero-emission vehicles (ZEVs), electric vehicle charging infrastructure, and hydrogen refueling infrastructure in California in order to implement Governor Brown's target of 5 million ZEVs on the road by 2030 and 250,000 vehicle charging stations and 200 hydrogen refueling stations by 2015.

3.5.2.3 Local

City of Milpitas Climate Action Plan

The City of Milpitas adopted a Climate Action Plan (CAP) in 2013 to make Milpitas a more sustainable community by reducing GHG emissions and to establish a "qualified greenhouse gas reduction strategy." In addition, the CAP provides guidance for adapting to anticipated effects of climate change. The CAP looks at five key sectors—energy use, vehicle miles, waste production, water usage, and off-road activities—the CAP incorporates best practices to produce a blueprint for achieving GHG emissions reduction in Milpitas and ultimately, to comply with AB 32 and SB 375.

The City released a CAP Update for public review in May 2022. The CAP Update is designed to be a comprehensive roadmap to continue addressing the challenges of climate change and keep the City on its path to carbon neutrality by 2045.

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10 California Public Utilities Commission. *2021 California Renewables Portfolio Standard Annual Report*. 2021.Available online at: https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/energy/rps/cpuc-2021-rps-annual-report-to-legislature.pdf. Accessed November 3, 2022.

City of Milpitas Green Building Regulations

The City of Milpitas Municipal Code (MMC) includes Chapter 20, Green Building Regulations which regulates the design, construction, maintenance, operation, and deconstruction of buildings by incorporating green building practices into all development. The building provisions are designed to achieve the following goals:

1. Increase energy efficiency;
2. Encourage water and resource conservation;
3. Reduce waste generated by construction projects; and
4. Promote the health of residents, workers, and visitors to the City.

3.5.3 THRESHOLDS OF SIGNIFICANCE

Pursuant to Appendix G of the *State CEQA Guidelines*, potentially significant impacts would occur if the Project would:

- Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.
- Conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

3.5.4 METHODOLOGY

The analysis in this section focuses on the nature and magnitude of the change in energy resources due to construction and operation of the Project. Energy consumption during both construction and operation are discussed. To address the significance thresholds, the focus of this analysis is related to energy efficiency within the context of existing regulatory environment.

The existing Project Site contains a two-story, 90,000 square-foot industrial office building. However, the building is currently vacant and therefore, existing operational energy use is minimal and assumed to be zero for purposes of this analysis. The Project is compared to applicable regulations to determine whether it would conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

3.5.5 ENVIRONMENTAL IMPACTS

Impact EN-1 Would the Project result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

Construction

Construction activity would use energy in the form of petroleum-based fuels to power off-road construction vehicles and equipment, construction worker travel, and vehicles used to deliver materials to the Project Site. The Project would require demolition, site preparation, and grading, including hauling material off-site; building construction; paving; and architectural coating.

During construction, electricity would be consumed on a limited basis to power lighting, electrical equipment, and supply and convey water for dust control. Electricity would be supplied to the Project Site from existing electrical lines that connect to the Project Site. The electricity demand at any given time would vary throughout the construction period based on the construction activities being performed and would cease upon completion of construction. Electricity use from construction would be short-term, limited to working hours, used for necessary construction-related activities, and represent a small fraction of the Project's annual operational electricity.

Construction activities typically do not involve the consumption of natural gas. Accordingly, natural gas would not be supplied to support Project construction activities; thus, there would be no expected demand generated by construction of the Project. If natural gas is used during construction, it would be in limited amounts and on a temporary basis and would specifically be used to replace or offset diesel-fueled equipment and as such would not result in substantial on-going demand.

Construction of the Project would utilize fuel-efficient equipment consistent with State and federal regulations, such as fuel efficiency regulations in accordance with CARB standards and California Code of Regulations, Title 13, sections 2449(d)(3) and 2485, which minimizes the idling time of construction equipment either by shutting it off when not in use or by reducing the time of idling to no more than five minutes. The applicant is committed to using Tier 3 engines during construction and idling regulations would ensure fuel in not unnecessarily or inefficiently wasted during construction. Tier 3 vehicle standards reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles.

Construction equipment would be maintained to applicable standards, and construction activity and associated fuel consumption and energy use would be temporary and typical of construction sites. It is

also reasonable to assume contractors would avoid wasteful, inefficient, and unnecessary fuel consumption during construction to reduce construction costs. Therefore, the Project would not involve the inefficient, wasteful, and unnecessary use of energy during construction, and the construction-phase impact related to energy consumption would be less than significant.

Operation

Operation of the Project would consume energy for multiple purposes, including, but not limited to, lighting, use of electronics, appliances, HVAC equipment, and refrigeration. Energy would also be consumed during Project operations related to water usage, solid waste disposal, and vehicle trips.

The Project must comply with CALGreen requirements, which would minimize the Project's energy demands. The Project would also be required to comply with the City's Green Building Regulations, which, in part, would aim to reduce building energy use. In addition, the Project would be supplied by PG&E, which in turn must comply with the Renewables Portfolio Standard (RPS) targets set by the State. PG&E has demonstrated that it has met these requirements previously, and it is reasonable to assume it would continue to do so and meet these targets. As such, electricity supplied to the Project Site would increasingly come from renewable sources throughout the life of the Project.

Regarding natural gas resources, compliance with Title 24 standards, applicable CALGreen requirements, and the City's Green Building Regulations. As with electricity use, the Project would comply with applicable provisions in effect at the time of building permit issuance to minimize natural gas demand.

During operation, Project-related traffic would result in the consumption of petroleum-based fuels related to vehicular travel to and from the Project Site. The majority of the vehicle fleet that would be used by occupants and residents of the Project would consist of light-duty automobiles and light-duty trucks, which are subject to fuel efficiency standards, such as the Low Carbon Fuel Standard (LCFS) and Low-Emission Vehicle Program Standards. The Low Carbon Fuel Standard, in part, aims to reduce fuel consumption and providers of transportation fuels must demonstrate that the mix of fuels they supply for use in California meets the LCFS carbon intensity standards for each annual compliance period.[11]

For these reasons, the Project would not result in wasteful, inefficient, or unnecessary consumption of energy resources during construction or operation and impacts would be less than significant.

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11 California Air Resources Board. "Low Carbon Fuel Standard." Available online at: https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/about, accessed December 15, 2022.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact

Impact EN-2 Would the Project conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

Compliance with Title 24, CALGreen standards, and the City's Green Building Regulations would ensure the Project would incorporate energy efficient windows, insulation, lighting, ventilation systems, as well as water efficient fixtures, which is consistent with the state and City's goals for energy efficiency. The Project would include ten electric vehicle charging stations at the northeastern parking lot area, in addition to the bicycle parking included as part of the proposed apartment complex. As part of the City's Green Building Regulations, the Project would be Build it Green or LEED for Homes certified, which aims to increase energy efficiency.

Additionally, per the RPS, the Project would utilize electricity provided by PG&E that would achieve 60 percent renewable energy by 2030 and 100 percent renewable energy by 2045.[12] Therefore, the Project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency and impacts would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

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12 Pacific Gas and Electric Company. Integrated Resource Planning. https://www.pge.com/en_US/for-our-business-partners/energy-supply/integrated-resource-plan/integrated-resource-plan.page. Accessed November 10, 2022.

Level of Significance After Mitigation

Less than Significant Impact

3.5.6 CUMULATIVE IMPACTS

The Project would not result in wasteful, inefficient, or unnecessary use of energy during construction. The Project consists of new construction which would comply with current California Building Energy and Efficiency Standards (Title 24, Part 6 and CALGreen Title 24, Part 11) and the City's Green Building Regulations. Energy use from other nearby projects is unknown but also would be built to current energy efficiency standards. Therefore, the Project's incremental impact would not be considered cumulatively considerable, and impacts would be less than significant.

3.5.7 REFERENCES

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Pacific Gas and Electric Company. "Integrated Resource Planning." Available online at: https://www.pge.com/en_US/for-our-business-partners/energy-supply/integrated-resource-plan/integrated-resource-plan.page. Accessed November 10, 2022.

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United States Energy Information Administration. "California Profile Data." Available online at: https://www.eia.gov/state/data.php?sid=CA#ConsumptionExpenditures. Accessed November 9, 2022.

3.6 GEOLOGY AND SOILS

INTRODUCTION

This section analyzes the potential environmental effects on geology and soils within the Project Site and its surrounding area. Topics addressed include suitability of soil for development, seismicity, faults, ground shaking, liquefaction, and landslides. This section was prepared using documents and maps published by the United States Geological Survey, California Department of Conservation (DOC), California Geological Survey (CGS), City of Milpitas, and other applicable sources. The analysis for this section is based, in part, on the information contained in ***Appendix 3.6, Preliminary Geotechnical Investigation Report: California Circle Residential Development, 1355 California Circle Milpitas, California (Geotechnical Report).***

3.6.1 EXISTING ENVIRONMENTAL SETTING

3.6.1.1 Regional Setting

The Project Site is situated in the northern end of Santa Clara Valley, a broad alluvial plane between the Santa Cruz Mountains to the southwest and west, and the Diablo Range to the northeast. The San Andreas Fault system, including the Monte Vista-Shannon Fault exists within the Santa Cruz Mountains and the Hayward and Calaveras Fault systems exists within the Diablo Range.

Regional Faulting and Seismicity

The Project Site is not located within a State-designated Alquist-Priolo Earthquake Fault Zone for surface fault rupture hazards.[1] There are no active or potentially active faults with the potential for surface fault rupture are known to pass directly beneath the site nor in the immediate vicinity. No active or potentially active faults with the potential for surface fault rupture are known to pass directly beneath the site nor in the immediate vicinity. However, the Project Site is situated in the San Francisco Bay region, a major seismically active area in California. Thus, the Project Site could be subjected to moderate to strong ground shaking in the event of an earthquake on a regional scale. According to the Geotechnical Report, the USGS' Working Group on California Earthquake Probabilities 2015 estimates the rate of earthquakes in the San Francisco Bay region to be around a magnitude of 6.7. The USGS also estimates that there is a 63 percent chance of at least one magnitude 6.7 or greater earthquake occurring in the San Francisco Bay region between 2007 and 2036.

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1 California State Geoportal, "CGS Seismic Hazards Program: Alquist-Priolo Fault Hazard Zones," Available online at: https://gis.data.ca.gov/maps/ee92a5f9f4ee4ec5aa731d3245ed9f53/explore?location=37.449850%2C-121.917441%2C13.60. Accessed October 3, 2022.

Faults within a 20-mile distance from the Project Site are listed below in **Table 3.6-**1, **Approximate Fault Distances**. As shown in **Table 3.6-1**, The closest active surface traces of an active faults to the Project Site are the Hayward Fault and Calaveras Fault, located approximately 1.7 miles (or 2.7 kilometers) and 5.8 miles (or 9.0 kilometers) from the Project Site, respectively.[2] According to the *City of Milpitas 2040 General Plan Environmental Impact Report* (EIR), an estimated maximum magnitude (MWMw) of 6.9 has been estimated for the Hayward Fault and Hayward Fault Southeast Extension. The northern section of the Calaveras Fault is estimated to likely produce a MWMw of 7.0, and the southern section of the Calaveras MWMw of 6.2.

Table 3.6-1
Approximate Fault Distances

Fault Name	Distance from the Project Site	
	(miles)	(kilometers)
Hayward Fault	4.1	6.6
Hayward Fault (southeast extension)	1.7	2.7
Calveras Fault (north)	5.8	9.0
Calveras Fault (south)	7.3	2.7
Monte Vista-Shannon Fault	12.8	20.6
San Andreas Fault	16.0	25.8

Source:
[1] *Cornerstone Earth Group, Preliminary Geotechnical Investigation Report, California Circle Residential Development, 1355 California Circle Milpitas, California, November 19, 2020.*

3.6.1.2 Local Setting

The Project Site currently contains a vacant industrial office building with an associated surface parking lot, and landscaping areas. The thickness of the existing at-grade asphalt and concrete parking lots on-site are estimated to vary between 3 to 4 inches. According to the *Geotechnical Report*, existing soil conditions on-site include subsurface fill matter that is consisted of dry to moist sandy lean clay with dry to moist clayey sand with gravel underneath. Below the existing fill matters, stiff to very stiff clay with some interbedded layers of sand of about 45 feet were observed. According to the Geotechnical Report, subsurface soils on-site were determined to have a moderate plasticity and expansion potential to wetting and drying cycles.

2 United States Geological Survey. "U.S. Quaternary Faults." Available online at: https://usgs.maps.arcgis.com/apps/webappviewer/index.html?id=5a6038b3a1684561a9b0aadf88412fcf. Accessed October 3, 2022.

3.6.1.3 Geologic Hazards

Liquefaction

Liquefaction is a phenomenon in which loose, saturated, relatively cohesionless soil deposits lose shear strength during strong ground motions. Primary factors controlling liquefaction include intensity and duration of ground motion, gradation characteristics of the subsurface soils, in-situ stress conditions, and the depth to groundwater. According to the California Geological Survey, the Project Site is located within an area that is identified as a liquefaction hazard zone.[3]

Slope Stability and Landslides

Topography within the Project Site is relatively flat, while the vicinity of the Project Site slopes downward gently to the west.[4] However, the Project Site is not located within a designated landslide zone.[5]

Lateral Spreading

Lateral spreading is a phenomenon in which surface sediment moves downslope due to liquefaction in a subsurface layer. There is potential for liquefaction anticipated at the Project Site. Therefore, the potential for lateral spreading is also possible.

Subsidence

Subsidence occurs when a large portion of land is displaced vertically, usually due to the withdrawal of groundwater, oil, or natural gas. Soils that are particularly subject to subsidence include those with high silt or clay content. The Santa Clara County and the majority Santa Clara Valley have experienced subsidence-related geological hazards. According to the USGS, the Project Site is located within an area that experiences a continuance of groundwater area.[6] Therefore, the Project Site may experience groundwater subsidence.

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3 California State Geoportal, "CGS Seismic Hazards Program: Liquefaction Zone." Available online at: https://gis.data.ca.gov/datasets/b70a766a60ad4c0688babdd47497dbad_0/explore?location=37.449810%2C-121.918903%2C15.84. Accessed on October 3, 2022.

4 Please see **Appendix 3.8**, **Phase I Environmental Site Assessment Update**.

5 California Department of Conservation. "Landslide Inventory (Beta)." Available online at: https://maps.conservation.ca.gov/cgs/lsi/. Accessed on October 3, 2022.

6 United States Geological Survey. "Areas of Land Subsidence in California." Available at: https://ca.water.usgs.gov/land_subsidence/california-subsidence-areas.html. Accessed on October 3, 2022.

Ground Settlement and/or Soil Collapse

The potential hazard posed by settlement due to seismic ground shaking and liquefaction is considered to be moderate, based on the compressibility of the underlying alluvial soils and the presence of shallow groundwater. Strong ground shaking can cause settlement of alluvial soils underlying the site by allowing sediment particles to become more tightly packed. Alluvial deposits are especially susceptible to this phenomenon. Artificial fills, if not adequately compacted, may also experience seismically induced settlement.

Although artificial fill was observed within the Project Site, the Geotechnical Report indicates that the artificial fill on-site was tightly compacted. However, as discussed above, the Project Site is located within a seismically active region in Northern California and is in close proximity to seismically active faults. Therefore, the Project Site would be susceptible to ground settlement and soil collapse.

Soil Expansion

Expansive soils occur when the moisture content in the soil causes swelling or shrinking as a result of cyclic wet/dry weather cycles, installation of irrigation systems, change in landscape plantings, or changes in grading. Swelling and shrinking soils can result in differential movement of structures, including floor slabs and foundations, and site work including hardscape, utilities, and sidewalks. According to the Geotechnical Report, moderately expansive soils were located in the undocumented fill and are expected to generally blanket the site.

3.6.1.4 Groundwater

According to the Geotechnical Report, historic high groundwater is mapped to be approximately five feet or less below-grad on-site. The poor pressure dissipations tests performed in four of the five locations for borings tests indicated groundwater depths ranging from approximately five to 10 feet below existing site grades.

3.6.1.5 Paleontological Resources

Paleontological resources, or fossils, are the remains, imprints, or traces of once-living organisms preserved in rocks and sediments. These include mineralized, partially mineralized, or un-mineralized bones and teeth, soft tissues, shells, wood, leaf impressions, footprints, burrows, and microscopic remains. The fossil record is the only evidence that life on earth has existed for more than 3.6 billion years. Fossils are considered nonrenewable resources because the organisms they represent no longer exist. Thus, once destroyed, a fossil can never be replaced.

The Society for Vertebrate Paleontology (SVP) broadly defines significant paleontological resources as follows:

> *"Fossils and fossiliferous deposits consisting of identifiable vertebrate fossils, large or small, uncommon invertebrate, plant, and trace fossils, and other data that provide taphonomic, taxonomic, phylogenetic, paleoecologic, stratigraphic, and/or biochronologic information. Paleontological resources are considered to be older than recorded human history and/or older than middle Holocene (i.e., older than about 5,000 radiocarbon years)."*

Significant paleontological resources are determined to be fossils or assemblages of fossils that are unique, unusual, rare, uncommon, diagnostically important, or are common but have the potential to provide valuable scientific information for evaluating evolutionary patterns and processes, or which could improve our understanding of paleochronology, paleoecology, paleophylogeography or depositional histories. New or unique specimens can provide new insights into evolutionary history; however, additional specimens of even well represented lineages can be equally important for studying evolutionary pattern and process, evolutionary rates and paleophylogeography. Even unidentifiable material can provide useful data for dating geologic units if radiocarbon dating is possible. As such, common fossils (especially vertebrates) may be scientifically important, and therefore considered highly significant.

The SVP describes sedimentary rock units as having high, low, undetermined, or no potential for containing significant nonrenewable paleontological resources. These criteria are based on rock units within which vertebrate or significant invertebrate fossils have been determined by previous studies to be present or likely to be present. Significant paleontological resources are fossils or assemblages of fossils, which are unique, unusual, rare, uncommon, diagnostically or stratigraphically important, and those which add to an existing body of knowledge in specific areas, stratigraphically, taxonomically, or regionally. While these standards were specifically written to protect vertebrate paleontological resources, all fields of paleontology have adopted these guidelines. Paleontological sensitivity was evaluated according to the following SVP categories.

High Potential (sensitivity)

Rock units from which significant vertebrate or significant invertebrate fossils or significant suites of plant fossils have been recovered are considered to have a high potential for containing significant non-renewable fossiliferous resources. These units include but are not limited to, sedimentary formations and some volcanic formations which contain significant nonrenewable paleontological resources anywhere within their geographical extent, and sedimentary rock units temporally or lithologically suitable for the preservation of fossils. Sensitivity comprises both (a) the potential for yielding abundant or significant vertebrate fossils or for yielding a few significant fossils, large or small, vertebrate, invertebrate, or

botanical and (b) the importance of recovered evidence for new and significant taxonomic, phylogenetic, ecologic, or stratigraphic data. Areas which contain potentially datable organic remains older than Holocene, including deposits associated with nests or middens, and areas that may contain new vertebrate deposits, traces, or trackways are also classified as significant.

Low Potential (sensitivity)

Sedimentary rock units that are potentially fossiliferous but have not yielded fossils in the past or contain common and/or widespread invertebrate fossils of well documented and understood taphonomic, phylogenetic species and habitat ecology. Reports in paleontological literature or field surveys by a qualified vertebrate paleontologist may allow determination that some areas or units have low potentials for yielding significant fossils prior to the start of construction. Generally, these units will be poorly represented by specimens in institutional collections and will not require protection or salvage operations. However, as excavation for construction gets underway significant and unanticipated paleontological resources could be encountered and require a change of classification from Low to High Potential and, thus, require monitoring and mitigation if the resources are found to be significant.

Undetermined Potential (sensitivity)

Specific areas underlain by sedimentary rock units for which little information is available are considered to have undetermined fossiliferous potentials. Field surveys by a qualified vertebrate paleontologist to specifically determine the potentials of the rock units are required before programs of impact mitigation for such areas may be developed.

No Potential

Rock units of metamorphic or plutonic igneous origin are commonly classified as having no potential for containing significant paleontological resources.

3.6.2 REGULATORY FRAMEWORK

3.6.2.1 Federal

Paleontological Resources Preservation Act

The Paleontological Resources Preservation Act (PRPA) was signed into law in 2009. The PRPA directs the Department of Agriculture and the Department of the Interior to implement comprehensive paleontological resource management programs on federal lands. The PRPA protects scientifically significant fossils on federal lands and provides a permitting system where researchers can collect and

study scientifically significant fossils which will remain in the public trust. The act also allows for the collection of common plant and invertebrate fossils for personal, non-commercial use on federal lands. The PRPA requires the Secretaries of the Interior and Agriculture to manage and protect paleontological resources on federal land. The PRPA furthers the protection of fossils on federal lands by criminalizing the unauthorized removal of fossils.

Society for Vertebrate Paleontology Standard Guidelines

The Society for Vertebrate Paleontology (SVP) has established standard guidelines[7] that outline professional protocols and practices for conducting paleontological resource assessments and surveys, monitoring and mitigation, data and fossil recovery, sampling procedures, and specimen preparation, identification, analysis, and curation. The Paleontological Resources Preservation Act (PRPA) of 2009 calls for uniform policies and standards that apply to fossils on all federal public lands. All federal land management agencies are required to develop regulations that satisfy the stipulations of the PRPA. As defined by the SVP,[8] significant nonrenewable paleontological resources are:

Fossils and fossiliferous deposits here are restricted to vertebrate fossils and their taphonomic and associated environmental indicators. This definition excludes invertebrate or paleobotanical fossils except when present within a given vertebrate assemblage. Certain invertebrate and plant fossils may be defined as significant by a project paleontologist, local paleontologist, specialists, or special interest groups, or by lead agencies or local governments.

As defined by the SVP,[9] significant fossiliferous deposits are:

> *A rock unit or formation which contains significant nonrenewable paleontologic resources, here defined as comprising one or more identifiable vertebrate fossils, large or small, and any associated invertebrate and plant fossils, traces, and other data that provide taphonomic, taxonomic, phylogenetic, ecologic, and stratigraphic information (ichnites and trace fossils generated by vertebrate animals, e.g., trackways, or nests and middens which provide datable material and climatic information). Paleontologic resources are considered to be older than recorded history and/or older than 5,000 years BP [before present].*

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7 Society of Vertebrate Paleontology. *Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources.* 2010. Available online at: https://vertpaleo.org/wp-content/uploads/2021/01/SVP_Impact_Mitigation_Guidelines.pdf, accessed September 28, 2023.

8 Society of Vertebrate Paleontology, *Assessment and mitigation of adverse impacts to nonrenewable paleontologic resources: standard guidelines,* Society of Vertebrate Paleontology News Bulletin 163:22-27, 1995.

9 Society of Vertebrate Paleontology, *Assessment and mitigation of adverse impacts to nonrenewable paleontologic resources.*

Based on the significance definitions of the SVP,[10] all identifiable vertebrate fossils are considered to have significant scientific value. This position is adhered to because vertebrate fossils are relatively uncommon, and only rarely will a fossil locality yield a statistically significant number of specimens of the same genus. Therefore, every vertebrate fossil found has the potential to provide significant new information on the taxon it represents, its paleoenvironment, and/or its distribution. Furthermore, all geologic units in which vertebrate fossils have previously been found are considered to have high sensitivity. Identifiable plant and invertebrate fossils are considered significant if found in association with vertebrate fossils or if defined as significant by project paleontologists, specialists, or local government agencies.

National Pollutant Discharge Elimination System

The National Pollutant Discharge Elimination System (NPDES) was created by the Clean Water Act in 1972. Construction activities that disturb one or more acres of land surface are subject to the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (NPDES General Construction Permit) (Order No. 20120006DWQ) adopted by the State Water Resources Control Board (SWRCB). Compliance with the permit requires each qualifying development project to file a Notice of Intent with the SWRCB. Permit conditions require development of a stormwater pollution prevention plan (SWPPP), which must describe the site, the facility, erosion and sediment controls, runoff water quality monitoring, means of waste disposal, implementation of approved local plans, control of construction sediment and erosion control measures, maintenance responsibilities, and non-stormwater management controls. Inspection of construction sites before and after storms is also required to identify stormwater discharge from the construction activity and to identify and implement erosion controls, where necessary.

In the City of Milpitas, SWPPP requirements are enforced through the City's Building and Safety Department plan review and approval process. During the review process, development project plans are reviewed for compliance with the stormwater requirements. Plans and specifications are reviewed to ensure that the appropriate Best Management Practices (BMPs) are incorporated to address stormwater pollution prevention goals as they relate to erosion and sediment movement on the project site. Sediment and erosion control measures can include both stabilization and structural practices. Stabilization practices, which refer to methods of covering or maintaining existing soil cover, can include seeding, vegetation and tree preservation, and contouring of project design. Such measures prevent initial disturbance of soil that can enable subsequent potential erosion during construction activities. Structural practices involve the use of devices to divert, store, or limit runoff that can transport sediment offsite and can include use of silt

10 Society of Vertebrate Paleontology, *Assessment and mitigation of adverse impacts to nonrenewable paleontologic resources.*

fences, earth dikes, sedimentation basins, and sediment traps. These measures obstruct runoff flows to reduce erosion and other soil transport.

Earthquake Hazards Reduction Act

The Earthquake Hazards Reduction Act was enacted in 1977 to "reduce the risks to life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards and reduction program." To accomplish this, the Earthquake Hazards Reduction Act established the National Earthquake Hazards Reduction Program (NEHRP). This program was substantially amended by the NEHRP Reauthorization Act of 2004 (Public Law 108-360).

NEHRP's mission includes improved understanding, characterization, and prediction of hazards and vulnerabilities; improvement of building codes and land use practices; risk reduction through post-earthquake investigations and education; development and improvement of design and construction techniques; improvement of mitigation capacity; and accelerated application of research results. The NEHRP designates the Federal Emergency Management Agency (FEMA) as the lead agency of the program and assigns it several planning, coordinating, and reporting responsibilities. Programs under NEHRP help inform and guide local planning and building code requirements such as emergency evacuation responsibilities and seismic code standards such as those to which a proposed project would be required to adhere.

International Building Code

The International Building Code (IBC) is published by the International Code Council (ICC). The scope of this code covers major aspects of construction and design of structures and buildings. The IBC has replaced the Uniform Building Code (UBC) as the basis for the California Building Code (CBC) and contains provisions for structural engineering design. The 2015 IBC addresses the design and installation of structures and building systems through requirements that emphasize performance. The IBC includes codes governing structural as well as fire- and life-safety provisions covering seismic, wind, accessibility, egress, occupancy, and roofs.

3.6.2.2 State

Seismic Safety Act

California Seismic Safety Commission was established by the Seismic Safety Act in 1975 with the intent of providing oversight, review, and recommendations to the Governor and State Legislature regarding seismic issues. The commission's name was changed to Alfred E. Alquist Seismic Safety Commission in

2006. Since then, the Commission has adopted several documents based on recorded earthquakes, such as the 1994 Northridge earthquake, 1933 Long Beach earthquake, the 1971 Sylmar earthquake, etc. Some of these documents are listed as follows:

- Research and Implementation Plan for Earthquake Risk Reduction in California 1995 to 2000, report dated December 1994;
- Seismic Safety in California's Schools, 2004, "Findings and Recommendations on Seismic Safety Policies and Requirements for Public, Private, and Charter Schools," report dated December 1994;
- Findings and Recommendations on Hospital Seismic Safety, report dated November 2001;
- Commercial Property Owner's Guide to Earthquakes Safety, report dated October 2006; and
- California Earthquake Loss Reduction Plan 2007–2011, report dated July 2007.

California Penal Code Section 623

California Penal Code Section 623 provides the following: "Except as otherwise provided in Section 599c, any person who, without the prior written permission of the owner of a cave, intentionally and knowingly does any of the following acts is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment: (1) breaks, breaks off, cracks, carves upon, paints, writes or otherwise marks upon or in any manner destroys, mutilates, injures, defaces, mars, or harms any natural material found in any cave. (2) disturbs or alters any archaeological evidence of prior occupation in any cave. (3) kills, harms, or removes any animal or plant life found in any cave. (4) burns any material which produces any smoke or gas which is harmful to any plant or animal found in any cave. (5) removes any material found in any cave. (6) breaks, forces, tampers with, removes or otherwise disturbs any lock, gate, door, or any other structure or obstruction designed to prevent entrance to any cave, whether or not entrance is gained.

California PRC Section 5097.5

California PRC Section 5097.5 provides protection for paleontological resources on public lands, where Section 5097.5(a) states, in part, that:

No person shall knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or

historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

California Building Code

The California Building Code (2022CBC), which is codified in Title 24 of the California Code of Regulations was promulgated to safeguard the public health, safety, and general welfare by establishing minimum standards related to structural strength, means of egress facilities, and general stability of buildings. The purpose of the CBC is to regulate and control the design, construction, quality of materials, use/occupancy, location, and maintenance of all buildings and structures within its jurisdiction. Title 24 is administered by the California Building Standards Commission, which, by law, is responsible for coordinating all building standards. Under State law, all building standards must be centralized in Title 24 or those standards are not enforceable. The provisions of the CBC apply to the construction, alteration, movement, replacement, location, and demolition of every building or structure, or any appurtenances connected or attached to such buildings or structures throughout California.

The 2022 edition of the CBC is based on the 2021 International Building Code (IBC) published by the International Code Council. The code is updated triennially, and the 2022 edition of the CBC was published by the California Building Standards Commission on July 1, 2022, and became effective January 1, 2023. Every three years, the State adopts new codes (known collectively as the California Building Standards Code) to establish uniform standards for the construction and maintenance of buildings, electrical systems, plumbing systems, mechanical systems, and fire and life safety systems. Sections 17922, 17958, and 18941.5 of the California Health and Safety Code require that the latest edition of the California Building Standards Code apply to local construction 180 days after publication. The significant changes to Title 24 in the 2022 edition can be found at California Department of General Services website.[11]

Appendix J of the CBC applies to grading, excavation, and earthwork construction, and prohibits grading from occurring without first having obtained a permit from the building official. A geotechnical report must be prepared and include the following:

- The nature and distribution of existing soils,
- Conclusions and recommendations for grading procedures,
- Soil design criteria for any structure of embankments required to accomplish the proposed grading, and

11 California Department of General Services. "California Building Standards Code." Available online at: https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo/, accessed September 15, 2022.

- Where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Fault Zoning Act (formerly the Alquist-Priolo Special Studies Zone Act) was signed into law December 22, 1972 (revised in 1994) and codified into State law in the Public Resources Code as Division 2, Chapter 7.5 to address hazards from earthquake fault zones. The purpose of this law is to mitigate the hazard of surface fault rupture by regulating development near active faults. As required by the Act, the State has delineated Earthquake Fault Zones (formerly Special Studies Zones) along known active faults in California, which vary in width around the fault trace from about 200 to 500 feet on either side of the fault trace. Cities and counties affected by the zones must regulate certain development projects within the zones. The State Geologist is also required to issue appropriate maps to assist cities and counties in planning, zoning, and building regulation functions. Local agencies enforce the Alquist-Priolo Earthquake Fault Zoning Act in the development permit process, where applicable, and may be more restrictive than State law requires. According to the Alquist-Priolo Earthquake Fault Zoning Act, before a project that is within an Alquist-Priolo Earthquake Fault Zone can be permitted, cities and counties shall require a geologic investigation, prepared by a licensed geologist, to demonstrate that buildings will not be constructed across active faults. If an active fault is found, a structure for human occupancy cannot be placed over the trace of the fault and must be set back a distance to be established by a California Certified Engineering Geologist. Although setback distances may vary, a minimum 50-foot setback is typically required.

Seismic Hazards Mapping Act

In order to address the effects of strong ground shaking, liquefaction, landslides, and other ground failures due to seismic events, the State of California passed the Seismic Hazards Mapping Act of 1990 (Public Resources Code Sections 2690-2699.6). Under the Seismic Hazards Mapping Act, the State Geologist is required to delineate "seismic hazard zones." Cities and counties must regulate certain development projects within these zones until the geologic and soil conditions of their project sites have been investigated and appropriate mitigation measures, if any, have been incorporated into development plans. The State Mining and Geology Board provides additional regulations and policies to assist municipalities in preparing the Safety Element of their General Plans and to encourage the adaptation of land use management policies and regulations to reduce and mitigate seismic hazards to protect public health and safety. Under PRC Section 2697, cities and counties must require, prior to the approval of a project located in a seismic hazard zone, submission of a geotechnical report defining and delineating any seismic hazard.

California Geologic Energy Management Division (CalGEM)

CalGEM regulates the production of oil and gas, as well as geothermal resources, within the State of California. CalGEM requirements in preparation of environmental documents under CEQA are defined in CCR, Title14, Division 2, Chapter 2. Staff also assist operators in avoiding or reducing environmental impacts from the development of oil, gas, and geothermal resources in California, including subsidence. PRC Sections 3315, et seq. CalGEM regulations, which are defined in CCR, Title 14, Division 2, Chapter 4, include well design and construction standards, surface production equipment and pipeline requirements, and well abandonment procedures and guidelines to ensure effectiveness in preventing migration of oil and gas from a producing zone to shallower zones, including potable groundwater zones, as well as subsidence.

San Francisco Bay Basin Water Quality Control Plan

The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) includes a summary of beneficial water uses, water quality objectives needed to protect the identified beneficial uses, and implementation measures. The Basin Plan establishes water quality standards for all the ground and surface waters of the region. The term "water quality standards," as used in the Federal Clean Water Act, includes both the beneficial uses of specific water bodies and the levels of quality that must be met and maintained to protect those uses. The Basin Plan includes an implementation plan describing the actions by the San Francisco Bay Regional Water Quality Control Board (SBRWQCB) and others that are necessary to achieve and maintain the water quality standards.

The SBRWQCB regulates waste discharges to minimize and control their effects on the quality of the region's ground and surface water. Permits are issued under a number of programs and authorities. The terms and conditions of these discharge permits are enforced through a variety of technical, administrative, and legal means. Water quality problems in the region are listed in the Basin Plan, along with the causes, where they are known. For water bodies with quality below the levels necessary to allow all the beneficial uses of the water to be met, plans for improving water quality are included. The Basin Plan reflects, incorporates, and implements applicable portions of a number of national and statewide water quality plans and policies, including the California Water Code and the Clean Water Act.

3.6.2.3 Local

City of Milpitas 2040 General Plan

The City of Milpitas 2040 *General Plan* (General Plan) includes goals, policies, and standards related to geologic impacts and resources in the City as set forth in the Safety Element.

The Safety Element of the *General Plan* provides the framework to reduce risks associated with seismic and geologic hazards that may pose a risk to life and property in the City. This element focuses on the potential risk resulting from geologic hazards, such as landslides from the City's hillside or potential ground failure resulting from an earthquake.

The Safety Element states the following relevant goals and policies:

Goal SA-1 Minimize community exposure to geologic and seismic hazards.

Policy SA 1-1 Require development to reduce risks to life and property associated with earthquakes, liquefaction, erosion, landslides, and unstable soil conditions.

Policy SA-2 Ensure that all new development and construction is in conformance with all applicable building standards related to geologic and seismic safety.

Policy SA-3 Require geotechnical investigations to be completed prior to approval of any public safety or other critical facilities, in order to ensure that these facilities are constructed in a way that mitigates site-specific seismic and/or geologic hazards.

Policy SA-4 Development in areas subject to unstable soil and/or geologic conditions shall be reviewed by qualified engineers and or geologists prior to development in order to ensure the safety and stability of all new construction.

Policy SA 1-5 Require an erosion and sediment control plan prepared by a civil engineer, or other professional who is qualified to prepare such a plan, as part of any grading permit application for new development. The erosion and sediment control plan shall delineate measures to appropriately and effectively minimize soil erosion and sedimentation.

Policy SA 1-6 All structures and building foundations requiring a building permit located within areas containing expansive soils, or other soils conditions which, if not corrected, would lead to structural defects, or unsafe conditions, shall be reviewed by a qualified engineer, who shall recommend corrective actions as appropriate to remedy onsite soil conditions.

Policy SA 1-7 All structures and additions requiring a building permit shall be designed and engineered to comply with the most current version of the California Code of Regulations (CCR), Title 24.

City of Milpitas Municipal Code

Title XI (Zoning, Planning, and Annexation), Chapter 15 (Floodplain Management Regulations) of the City's Municipal Code provides regulations to minimize public and private losses due to flood hazard areas of Milpitas being subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

Title XI (Zoning, Planning, and Annexation), Chapter 16 (Stormwater and Urban Runoff Pollution Control) of the city's Municipal Code provides regulations and gives legal effect to certain requirements of the WDRs and NPDES permit for the discharge of stormwater runoff from the City's municipal separate storm sewer (MS4), issued by the California RWQCB, San Francisco Region to the City of Milpitas. The chapter applies to all water entering the City of Milpitas storm drain system generated on any developed and undeveloped lands lying within the City. Chapter 16 of the Municipal Code ensures consistency with the requirements of federal and state law, and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

3.6.3 THRESHOLDS OF SIGNIFICANCE

In 2015, the California Supreme Court in *CBIA v. BAAQMD*, held that CEQA generally does not require a lead agency to consider the impacts of the existing environment on the future residents or users of a project. However, if a project exacerbates a condition in the existing environment, the lead agency is required to analyze the impact of that exacerbated condition on future residents and users of a project, as well as other impacted individuals. The following thresholds of significance will be analyzed consistent with this decision.

In accordance with Appendix G of the *State CEQA Guidelines*, the Project would have a significant impact related to geology and soils if they would:

- Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving;
  - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault. Refer to Division of Mines and Geology Special Publication 42.
  - Strong seismic ground shaking.

  - Seismic-related ground failure, including liquefaction.
  - Landslides.

- Result in substantial soil erosion or the loss of topsoil.
- Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.
- Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property.
- Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

3.6.4 METHODOLOGY

This analysis uses the thresholds in Appendix G of the *State CEQA Guidelines* to make a significance determination.

Baseline information for the analysis was compiled from a review of published geologic maps and reports. Information compiled and evaluated by the State of California in conjunction with the City of Milpitas' overall planning and hazard mitigation processes was used to identify geologic conditions and geologic hazards in the areas that could potentially be affected by the Project. For geology and soils, the areas that could potentially be affected by the proposed Project since potential impacts related to geology and soils are generally site-specific.

Independent of the CEQA process, there is a comprehensive regulatory framework implemented at the State and City levels to mitigate potential hazards associated with geologic and soils conditions. The design-controllable aspects of building foundation support, protection from seismic ground motion, and soil instability are governed by existing regulations. Compliance with these regulations is required and is not optional. Any proponent of a development project must demonstrate compliance by incorporating the regulations in the project's design before permits for project construction are issued. The analysis presented herein assumes compliance with all applicable laws, regulations, and standards, as part of the initial CEQA baseline and future conditions.

The impact analysis for geology and soils addresses impacts within the Project Site. The analysis is based on proposed land use designations under the Project, the existing geologic conditions and hazards on-site, and the thresholds of significance for geology and soils.

The analysis of paleontological resources identifies the likelihood of ground disturbing activities to encounter rock units with potential for containing significant paleontological resources, which is considered high in quaternary alluvial fan deposits exhibiting a composition conducive to the preservation of fossil resources. Paleontological resources in the Project area were evaluated qualitatively based on general information about conditions within the Project area. In the absence of an inventory of unique paleontological resources, the potential for such resources to be present and impacted is generally assessed.

3.6.5 IMPACTS

Impact GEO-1 Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving the rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?

The California Supreme Court ruled in *CBIA v. BAAQMD* that CEQA does not require a lead agency to consider the impacts of the existing environment on the future users of a project unless the project exacerbates the existing environmental conditions. As such, the potential for adverse effects on people or structures from fault rupture is not an impact under CEQA.

The California Geological Survey (CGS) has not published any Alquist-Priolo map containing the Project Site. As stated previously, the Project Site is not located within an Alquist-Priolo Earthquake Fault Zone for surface fault rupture hazard.

Project impacts concerning strong seismic ground shaking would be addressed through compliance with State and local seismic and geologic safety laws, standards, and guidelines, including the Seismic Hazard Mapping Act and the 2022 CBC, among others. In general, the City regulates development (and reduces potential seismic and geologic impacts) through compliance with the 2022 CBC as adopted by the City pursuant to Milpitas Municipal Code Title II, Chapter 3 (Adoption of the California Building Code) and project-specific design and construction recommendations. The CBC includes earthquake safety standards based on a variety of factors, including occupancy type, types of soils and rocks on-site, and strength of probable ground motion at the Project Site.

In conclusion, compliance with the CBC regulations would ensure that the Project would not expose people or structures to potential substantial adverse effects involving strong seismic ground shaking. Impacts would be less than significant, and no mitigation measures are required.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-2 Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking?

As discussed above under **Impact GEO-1**, the California Supreme Court ruled in *CBIA v. BAAQMD* that CEQA does not require a lead agency to consider the impacts of the existing environment on the future users of a project unless the project exacerbates existing conditions. In light of this, the potential for substantial adverse effects on people or structures from strong seismic ground shaking is not an impact under CEQA.

As discussed above, the Project Site is located less than two miles from the southeast extension of the Hayward Fault, an earthquake fault line with an estimated MWMw of 6.9. On a movement magnitude scale (Mw), seismic events with a magnitude between 6.1 to 6.9 are classified as events that "may cause a lot of damage in very populated areas."[12] As such, the proposed townhomes and apartment complex under the Project would be constructed in accordance with the design recommendations as outlined in Section 7.0 of the Geotechnical Report to ensure that the foundation of the proposed development is sufficient to tolerate the anticipate total and differential settlements outlined across the Project Site. The Project would also be required to comply with the seismic design requirements for building, as detailed in

12 Michigan Tech University, "Earthquake Magnitude Scale," Available online at: https://www.mtu.edu/geo/community/seismology/learn/earthquake-measure/magnitude/, accessed on March 24, 2023.

the 2022 CBC. Therefore, compliance with the Geotechnical Report and the 20122 CBC, impacts related to strong seismic ground shaking would be less than significant and no mitigation measures are required.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-3 Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction?

The California Supreme Court ruled in *CBIA v. BAAQMD* that the potential for adverse effects on people or structures from any seismic-related hazards is not an impact under CEQA unless the project exacerbates existing conditions.

As discussed previously, the California Geological Survey identified the Project Site to have potential for liquefaction during a seismic event. According to the Geotechnical Report, liquefaction-induced settlement on the order of 0.5-inch to two inches could occur on-site following strong ground shaking. As stated, the Project would be constructed in accordance with the design recommendations as outlined in Section 7.0 of the Geotechnical Report. The Project would also be required to demonstrate compliance with the design requirements detailed under the CBC. Adherence to the foundation requirements outlined in the Geotechnical Report, as well as the seismic design parameters required by the CBC would be confirmed at a plan check and design review with the City of Milpitas. As such, compliance with applicable laws, standards, and guidelines, including the CBC, as adopted by reference in Title II, Chapter 3 Municipal Code, would ensure that Project implementation would not expose people or structures to potentially significant impacts involving liquefaction. Therefore, impacts regarding seismic related ground failure would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-4 Would the Project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including landslides?

Although the topography gently slopes downward to the west, elevation levels remain similar throughout the majority of the Project Site. Additionally, the Project is not located within an area identified as having a potential for earthquake-induced landslides. No known landslides were observed at or near the site, nor is the site in the path of any known or potential landslides. Therefore, the Project would not result in the seismic-related ground failure related to landslides, and no impacts would occur in this regard.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact.

Impact GEO-5 Would the Project result in substantial soil erosion or the loss of topsoil?

Construction

According to the Geotechnical Report, undocumented fill materials subside on-site to a depth of about two and a half feet below the existing surface grade. Below the fill materials are primarily medium stiff to very stiff clay and silty clay with some interbedded layers of sand to a depth of approximately 45 feet. Additionally, there are thicker layers of medium dense sand, silty sand, and sandy silt are present on-site at a depth of approximately 27 feet.

As such, the required site grading and construction activities associated with the Project would disturb and expose soil and could, thus, accelerate erosion if effective soil erosion measures are not used. Per the NPDES, construction Projects of one acre or more, including the proposed Project, are regulated under the Statewide Construction General Permit. Projects obtain coverage under the Construction General Permit by developing and implementing a SWPPP estimating sediment risk from construction activities to receiving waters and specifying BMPs that would be used by the Project to minimize the pollution of stormwater. Adherence to the NPDES and the implementation of a Construction General Permit would reduce construction-related impacts concerning soil erosion and loss of topsoil to less than significant.

Operations

The Project would involve a greater square footage of landscaping and open topsoil compared to existing conditions on-site. Therefore, Project operations would increase the potential for loss of soil and subsequent soil erosion. In compliance with SBRWQCB, the Project would be required to obtain a Municipal Regional Stormwater Permit (MRP). Projects obtain coverage under the MRP by developing and implementing a Stormwater Management Plan that outlines the proposed Low Impact Development (LID) based on the post-construction stormwater control measures to reduce the amount of soil erosion that would occur post-development. The Project would implement the appropriate LID-based measures that are approved by the City during the site plan review of the Project. Nevertheless, adherence to the SFBRWQCB and the preparation of a Stormwater Management Plan would reduce potential operational-related impacts concerning soil erosion and loss of topsoil to less than significant levels.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-6 Would the Project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

Slope Stability and Landslides

As concluded above, the Project Site is not located within an earthquake-induced landslide area, and there is no identified evidence of nearby landslides. Furthermore, the topography at the site is relatively flat, and the site is not located within an area identified as having a potential for slope instability. Thus, landslide and slope instability are not anticipated, and no impact would result.

Subsidence

The Project Site is located within an area that has been identified to potentially experience groundwater subsidence. Although groundwater is present within five to 10 feet below the Project Site, the Project would not involve groundwater pumping from the Project area. The Project would be required to comply with recommendations outlined Section 6.0 of the Geotechnical Report which provides recommended practices for the earthwork and soil treatment during Project-related construction activities. As discussed in **Impact GEO-1**, the Project would also implement the recommendations outlined in Section 7.0 of the Geotechnical Report regarding the required foundational support for the proposed structures needed to prevent geologic-related hazards, including subsidence. Further, the Project would adhere to the requirements outlined in the 2022 CBC related to soil treatment and excavation during construction. Therefore, adherence to the 2022 CBC and implementing the recommendations outlined in the Geotechnical Report would reduce impacts related to subsidence hazards to less than significant levels.

Lateral Spreading and Liquefaction

The potential for liquefaction is anticipated at the project site and, therefore, the potential for lateral spreading is also possible. As analyzed under **Impact GEO-3**, the grading and foundation recommendations presented in the Geotechnical Report would minimize the effects of liquefaction settlement. The Project would also be designed and constructed to comply with the 2022 CBC. These design requirements would minimize the impacts from lateral spreading and liquefaction to less than significant.

Adherence to the seismic design parameters of the 2022 CBC would be confirmed at plan check and building design review with the City of Milpitas. Nevertheless, Project impacts concerning lateral spreading and liquefaction would be less than significant and no mitigation measures are required.

Settlement and/or Soil Collapse

Although the existing artificial fill on-site was observed to be tightly compacted, the Project Site is still located within a seismically active region or Northern California and is therefore susceptible to ground settlement and soil collapse. Recommendations of the Geotechnical Report related to seismically induced settlement are discussed above and under **Impact GEO-2**. The grading and foundation recommendations presented in the Geotechnical Report would minimize the impacts of settlement and/or collapse to less than significant levels. Furthermore, the seismically induced settlement would be reduced by adhering to the seismic design parameters of the 2022 CBC. Therefore, impacts related to soil settlement and/or collapse would be less than significant and no mitigation measures are required.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-7 Would the Project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?

Based on the Geotechnical Report, the near surface soils underlying the Project Site are moderately expansive. To reduce the risks of potential differential movement of structures and associated utilities, the Project would implement the recommendations outlined in Section 8.0 of the Geotechnical Report, which provides recommendations to the structure of the proposed development's exterior concrete flatwork. Additionally, the Project would be required to be constructed in compliance with the CBC and the City's Municipal Code, that requires appropriate back fill, compaction of soils, and foundation design to ensure

stable soils, which would be verified through the City's building permit plan check and permitting process. Adherence to the CBC and the City's Municipal Code and the implementation of the recommendations outlined in the Geotechnical Report would reduce impacts to less than significant levels.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact GEO-8 Would the Project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

The Project would not include the use of septic tanks or alternative wastewater disposal systems, and no impacts would occur.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact.

Impact GEO-9 Would the Project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

Construction activities associated with the Project would include demolition of existing structures and grading.

The Project Site is located in a highly developed and disturbed area of the City. The adjacent Interstate 880 (I-880), located immediately south of the Project, has operated as a roadway since as early as 1956.[13] The Project Site and its immediate surrounding uses appear to have been functioning as an urban environment since the year 1987.[14] As discussed above, undocumented fill materials currently subside on-site to a depth of about two and a half feet below the existing surface grade. Very stiff clay and silty clay with some interbedded layers of sands subside at the subsurface and below ground surface (bgs) of the Project. Additionally, the subsurface conditions of the Project Site are defined as Quaternary alluvium and marine deposits that date from the Pleistocene to Holocene epoch.[15]

Due to the present surface soils on-site and the historically developed nature of the Project Site and its immediate surrounding areas, the surface of the Project Site has a low potential for paleontological sensitivity. However, the soil conditions at the subsurface and bgs of the Project Site have an undetermined potential for paleontological sensitivity. In the event that a potentially significant paleontological resource is encountered during ground-disturbing activities, **Mitigation Measure MM GEO-1** would require all work within 100 feet of the discovery to halt and a qualified professional paleontologist to be retained to evaluate the find in consultation with the City. With implementation of **Mitigation Measure MM GEO-1**, impacts pertaining to paleontological resources would be reduced to a less than significant level.

Level of Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

MM GEO-1 In the event a potentially significant paleontological resource is encountered during ground-disturbing activities, work within 100 feet of the discovery shall halt and a professional paleontologist who meets the qualification standards of the Society of Vertebrate Paleontology shall be retained by the Project Applicant immediately to evaluate

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13 Netronline Historic Aerial Viewer. Available online at: https://www.historicaerials.com/viewer. Accessed January 13, 2023.

14 Please see **Appendix 3.8, Phase I Environmental Site Assessment Update**.

15 Please see **Appendix 3.4, Phase I Cultural Resource Inventory**.

the significance of the discovery. The City of Milpitas Planning Department shall be notified immediately. If the resource is found to be significant, the professional paleontologist shall systematically remove it from the site for laboratory preparation. Following laboratory preparation, the resource would be identified, cataloged, and inventoried in anticipation of curation. All collected and prepared resources would be curated and stored in an accredited repository.

Level of Significance After Mitigation

Less than Significant Impact.

3.6.6 CUMULATIVE IMPACTS

It is not anticipated that the Project would contribute to a cumulatively considerable increase in risk associated with geologic hazards. The Project would not foreseeably exacerbate any seismic conditions. This includes fault rupture, seismic-related ground failure, substantial erosion or the loss of topsoil, landslides, lateral spreading, subsidence, collapse, and unstable soil. In addition, no development would occur in areas that do not have existing sewer service.

Cumulative development throughout the City of Milpitas could potentially disturb unknown paleontological resources that could be present in the City. It is anticipated that Citywide development would have the potential to disturb paleontological resources. Potentially significant cumulative paleontological resource impacts could, however, be mitigated to below a level of significance through resource avoidance or recovery on a case by-case basis. As discussed under **Impact GEO-9,** the Project is not anticipated to disturb paleontological resources and **Mitigation Measure GEO-1** has been included to ensure that the impacts would not be cumulatively considerable as they would ensure on-site resources are protected or recovered.

Therefore, the Project would not result in a cumulatively considerable contribution and impacts would be less than significant with respect to geology, soils and paleontological resources.

3.6.7 REFERENCES

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3.7 GREENHOUSE GAS EMISSIONS

INTRODUCTION

This section discusses the global, national, and statewide conditions related to greenhouse gases (GHG) and global climate change. This section also provides a discussion of the applicable federal, state, regional, and local agencies that regulate, monitor, and control GHG emission, potential GHG impacts from the Project, and applicable mitigation measures. Calculations made to estimate GHG emissions associated with the Project and supporting technical data are found in ***Appendix 3.2, Air Quality Data,*** *of this Environmental Impact Report (EIR).*

3.7.1 ENVIRONMENTAL SETTING

3.7.1.1 Global Climate Change

Global Climate Change Background

Global climate change refers to any significant change in climate measurements, such as temperature, precipitation, or wind, which lasts for an extended period (i.e., decades or longer).[1] Climate change may result from:

- natural factors, such as changes in the sun's intensity or slow changes in the Earth's orbit around the sun;
- natural processes within the climate system (e.g., changes in ocean circulation, reduction in sunlight from the addition of GHG and other gases to the atmosphere from volcanic eruptions); and
- human activities that change the atmosphere's composition (e.g., through burning fossil fuels) and the land surface (e.g., deforestation, reforestation, urbanization, desertification).

The third bullet is the focus of climate change legislation. The natural process through which heat is retained in the troposphere[2] is called the "greenhouse effect." The greenhouse effect traps heat in the troposphere through a three-fold process as follows: (1) short-wave radiation in the form of visible light emitted by the Sun is absorbed by the Earth as heat; (2) long-wave radiation is re-emitted by the Earth;

1 U.S. Environmental Protection Agency (U.S. EPA), "Glossary of Climate Change Terms," Available online at: https://19january2017snapshot.epa.gov/climatechange/glossary-climate-change-terms_.html#Climate%20Change. Accessed March 17, 2023.

2 The troposphere is the bottom layer of the atmosphere, which varies in height from the Earth's surface to 10 to 12 kilometers.

and (3) greenhouse gases (GHGs) in the atmosphere absorb or trap the long-wave radiation and re-emit it back towards the Earth and into space.

While water vapor and carbon dioxide (CO_2) are the most abundant GHG, other trace GHGs have a greater ability to absorb and re-radiate long-wave radiation. To gauge the potency of GHGs, scientists have established a Global Warming Potential (GWP) for each GHG based on its ability to absorb and re-emit long-wave radiation over a specific period. The GWP of a gas is determined using CO_2 as the reference gas with a GWP of 1 over 100 years. For example, a gas with a GWP of 10 is 10 times more potent than CO_2 over 100 years. The use of GWP allows GHG emissions to be reported using CO_2 as a baseline. The sum of each GHG multiplied by its associated GWP is referred to as carbon dioxide equivalents (CO_2e). This essentially means that 1 metric ton of a GHG with a GWP of 10 has the same climate change impacts as 10 metric tons of CO_2.

Greenhouse Gases

The compounds described below are GHGs subject to control under state law.[3] Water vapor is also a GHG; however, its concentration in the atmosphere is a function of temperature and vapor pressure and cannot be controlled by any known means; therefore, water vapor is not subject to control under state law.

- **Carbon Dioxide (CO_2)**. Carbon dioxide is primarily generated by fossil fuel combustion from stationary and mobile sources. Due to the emergence of industrial facilities and mobile sources over the past 250 years, the concentration of carbon dioxide in the atmosphere has increased 35 percent.[4] Carbon dioxide is the most widely emitted GHG and is the reference gas (GWP of 1) for determining the GWP of other GHGs. In 2020, 80.2 percent of California's GHG emissions were carbon dioxide.[5]

- **Methane (CH_4)**. Methane is emitted from biogenic sources, incomplete combustion in forest fires, landfills, manure management, and leaks in natural gas pipelines. In the United States, the top three sources of methane are the agriculture sector, natural gas and petroleum systems, and landfills.[6]

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3 All GWPs are given as 100-year GWP. Unless noted otherwise, all GWPs were obtained from the Intergovernmental Panel on Climate Change. *Climate Change 1995: The Science of Climate Change – Contribution of Working Group I to the Second Assessment Report of the IPCC*. Cambridge (UK): Cambridge University Press, 1996.

4 U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2006 (EPA 430-R-08-005)*, (2008) 1-3.

5 California Air Resources Board (CARB), *California Greenhouse Gas Inventory for 2000 – 2020 by Gas,* 2022. Available online at: https://ww2.arb.ca.gov/sites/default/files/classic/cc/inventory/ghg_inventory_bygas.pdf. Accessed March 17, 2023.

6 U.S. EPA, "Overview of Greenhouse Gases – Methane Emissions," Available online at: https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane. Accessed March 17, 2023.

Methane is the primary component of natural gas, which is used for space and water heating, steam production, and power generation. The GWP of methane is 21.

- **Nitrous Oxide (N_2O)**. Nitrous oxide is produced by both natural and human-related sources. Primary human-related sources include agricultural soil management, animal manure management, sewage treatment, mobile and stationary combustion of fossil fuel, adipic acid production, and nitric acid production. The GWP of nitrous oxide is 310.

- **Hydrofluorocarbons (HFCs)**. HFCs typically are used as refrigerants in both stationary refrigeration and mobile air conditioning. The use of HFCs for cooling and foam blowing is growing, particularly as the continued phase-out of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) gains momentum. The GWP of HFCs ranges from 140 for HFC-152a to 6,300 for HFC-236fa.

- **Perfluorocarbons (PFCs)**. Perfluorocarbons are compounds consisting of carbon and fluorine. They primarily are created as a byproduct of aluminum production and semiconductor manufacturing. Perfluorocarbons are potent GHGs with a GWP several thousand times that of carbon dioxide, depending on the specific PFC. Another area of concern regarding PFCs is their long atmospheric lifetime (up to 50,000 years).[7] The GWPs of PFCs range from 5,700 to 11,900.

- **Sulfur Hexafluoride (SF_6).** Sulfur hexafluoride is a colorless, odorless, nontoxic, nonflammable gas. It is most commonly used as an electrical insulator in high voltage equipment that transmits and distributes electricity. Sulfur hexafluoride is the most potent GHG that has been evaluated by the IPCC with a GWP of 23,900. However, its global warming contribution is not as high as the GWP would indicate due to its low mixing ratio, as compared to carbon dioxide (4 parts per trillion [ppt] in 1990 versus 365 parts per million [ppm]).[8]

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7 U.S. EPA, "Understanding Global Warming Potentials." Available online at: https://www.epa.gov/ghgemissions/understanding-global-warming-potentials. Accessed March 17, 2023.

8 U.S. EPA, "Sulfur Hexaflouride (SF6) Basics," Available online at: https://www.epa.gov/eps-partnership/sulfur-hexafluoride-sf6-basics. Accessed March 17, 2023.

Effects of Global Climate Change

Global climate change refers to any significant change in climate measurements, such as temperature, precipitation, or wind, lasting for an extended period (i.e., decades or longer).[9] Climate change may result from:

- natural factors, such as changes in the sun's intensity or slow changes in the Earth's orbit around the sun;
- natural processes within the climate system (e.g., changes in ocean circulation, reduction in sunlight from the addition of GHGs and other gases to the atmosphere from volcanic eruptions); and
- human activities that change the atmosphere's composition (e.g., through burning fossil fuels) and the land surface (e.g., deforestation, reforestation, urbanization, desertification).

According to scientists, human activities have resulted in a change in the global climate. The primary manifestation of global climate change has been a rise in the average global tropospheric temperature of 0.2 degree Celsius (°C) per decade, determined from meteorological measurements worldwide between 1990 and 2005.

The impacts of climate change have been documented by the Office of Environmental Health Hazard Assessment (OEHHA), which includes the following changes that are already occurring:[10]

- A recorded increase in annual average temperatures as well as increases in daily minimum and maximum temperatures.
- An increase in the occurrence of extreme events, including wildfire and heat waves.
- A reduction in spring runoff volumes, as a result of declining snowpack.
- A decrease in winter chill hours, necessary for the production of high-value fruit and nut crops.
- Changes in the timing and location of species sightings, including migration upslope of flora and fauna, and earlier appearance of Central Valley butterflies.

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9 U.S. EPA, "Glossary of Climate Change Terms," Available online at: https://19january2017snapshot.epa.gov/climatechange/glossary-climate-change-terms_.html#Climate%20Change. Accessed March 17, 2023.

10 OEHHA, "Indicators of Climate Change in California." Available online at: https://oehha.ca.gov/climate-change/document/indicators-climate-change-california. Accessed March 17, 2023.

In addition to this, California's recent drought incited land subsidence, pest invasions that killed over 100 million trees, and water shortages. The total statewide economic cost of the 2014 drought was estimated at $2.2 billion, with a total loss of 17,100 jobs.[11] An analysis of water usage between 1990 and 2012 showed that while California's energy policies have supported climate mitigation efforts, the performance of these policies have increased vulnerability to climate impacts.[12]

According to the U.S. Forest Service National Insect and Disease Forest Risk Assessment,[13] California is at risk of losing 12 percent of the total area of forests and woodlands in the State due to insects and disease, or over 5.7 million acres. While future climate change is not modeled within the risk assessment, and current drought conditions are not accounted for in these estimates, the projected climate changes over a 15-year period (2013-2027) are expected to significantly increase the number of acres at risk and will increase the risk from already highly destructive pests such as the mountain pine beetle. The 2018 update of the National Insect and Disease Risk Map (NIDRM) recognized these effects and adjusted the 2012 NIDRM by subtracting major disturbance events, thus accounting for reductions in hazards due to previous and ongoing tree mortality.[14]

The warming climate also causes sea level rise by warming the oceans which causes water to expand, and by melting land ice which transfers water to the ocean. Sea-level rise is expected to magnify the adverse impact of any storm surge and high waves on the California coast. As temperatures warm and GHG concentrations increase, more carbon dioxide dissolves in the ocean, making it more acidic. More acidic ocean water affects a wide variety of marine species, including species that people rely on for food.

While more intense dry periods are anticipated under warmer conditions, increased extreme wet conditions are also expected to increase due to more frequent warm, wet atmospheric river events and a higher proportion of precipitation falling as rain instead of snow. In recent years, atmospheric rivers have also been recognized as the cause of the large majority of major floods in rivers all along the U.S. West Coast and as the source of 30-50 percent of all precipitation in the same region.[15] These extreme precipitation events, together with the rising snowline, often cause devastating floods in major river basins (e.g., California's Russian River). Looking ahead, the frequency and severity of atmospheric rivers

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11 Howitt, R., Medellin-Azuara, J., MacEwan, D., Lund, J., and Summer, D. *Economic Analysis of 2014 Drought for California Agriculture.* 2014.

12 Fulton, J., and Cooley, H., *The Water Footprint of California's Energy System, 1990-2012.* 2015.

13 U.S. Forest Service, *2013-2027 National Insect and Disease Forest Risk Assessment.* January 2014.

14 U.S. Forest Service, National Insect & Disease Risk and Hazard Mapping, Available online at: https://www.fs.usda.gov/foresthealth/applied-sciences/mapping-reporting/national-risk-maps.shtml. Accessed March 17, 2023.

15 American Meteorological Society, *Atmospheric Rivers as Drought Busters on the U.S. West Coast,* April 2013.

on the U.S. West Coast will increase due to higher atmospheric water vapor that occurs with rising temperature, leading to more frequent flooding.[16,17]

As GHG emissions continue to accumulate and climate disruption grows, such destructive events will become more frequent. Several recent studies project increased precipitations within hurricanes over ocean regions.[18,19] The primary physical mechanism for this increase is higher water vapor in the warmer atmosphere, which enhances moisture convergence in a storm for a given circulation strength. Since hurricanes are responsible for many of the most extreme precipitation events, such events are likely to become more extreme. Anthropogenic warming by the end of the 21st century will likely cause tropical cyclones globally to become more intense on average. This change implies an even larger percentage increase in the destructive potential per storm, assuming no changes in storm size.[20,21]

Together, historical data, current conditions, and future projections provide a picture of California's changing climate, with two important messages:

- Change is already being experienced and documented across California, and some of these changes have been directly linked to changing climatic conditions.
- Even with the uncertainty in future climate conditions, every scenario estimates further change in future conditions.

It is critical that California continue to take steps to reduce GHG emissions in order to avoid the worst of the projected impacts of climate change. At the same time, the State is taking steps to make the State more resilient to ongoing and projected climate impacts as laid out by the Safeguarding California Plan.[22] The Safeguarding California Plan was updated in 2018 to present new policy recommendations and provide a

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16 Hagos, S., Leung, L.R., Yoon, JH., Lu, J., and Gao, Y., *A projection of changes in landfalling atmospheric river frequency and extreme precipitation over western North America from the Large Ensemble CESM simulations.* January 2016.

17 Payne, Ashley and Magnusdottir, Gudrun, *An Evaluation of Atmospheric Rivers over the North Pacific in CMIP5 and their response to warming under RCP 8.5.* November 2015.

18 Easterling, D.R., Kunkel, K.E., Wehner, M.F., and Sun, L., *Detection and Attribution of Climate Extremes in the Observed Record.* March 2016.

19 National Academies of Sciences, Engineering, and Medicine, *Attribution of Extreme Weather Events in the Context of Climate Change.* 2016.

20 Sobel, A.H., Camargo, S.J., Hall, T.M., Lee, C-Y., Tippett, M.K., and Wing, A.A., *Human Influence on Tropical Cyclone Intensity.* 2016.

21 Kossin, James P., NOAA/National Centers for Environmental Information, *Past and Projected Changes in Western North Pacific Tropical Cyclone Exposure*. July 2016.

22 California Natural Resources Agency, *Safeguarding California and Climate Change Adaption Policy*, Available online at: https://www.slc.ca.gov/sea-level-rise/safeguarding-california-plan-2018-update/. Accessed March 17, 2023.

roadmap of all the actions and next steps that state government is taking to adapt to the ongoing and inevitable effects of climate change.[23]

Global Greenhouse Gas Emissions Inventory

Worldwide anthropogenic GHG emissions for industrialized nations (referred to as Annex I) and developing nations (referred to as Non-Annex I) are tracked through the year 2019. The sum of the top five GHG producing nations (plus the European Union) totaled approximately 28,225 million metric tons of CO_2 equivalents ($MMTCO_2e$).[24,25] The top five countries and the European Union accounted for approximately 63 percent of the total global GHG emissions according to the most recently available data (see **Table 3.7-1, Top Five GHG Producer Countries and the European Union [Annual]**). The GHG emissions in more recent years may differ from the inventories presented in **Table 3.7-1**; however, the data is representative of currently available global inventory data.

Table 3.7-1
Top Five GHG Producer Countries and the European Union (Annual)

Top Emitting Countries	2019 GHG Emissions ($MMTCO_2e$)
China	12,055
United States	5,771
India	3,364
European Union (EU), 27 Member States	3,150
Russia	1,960
Indonesia	1,925

Source: World Resources Institute. Climate Watch Historical GHG Emissions. Available at: https://www.climatewatchdata.org/ghg-emissions?end_year=2019&regions=TOP&start_year=1990. Accessed March 17, 2023.
Note: Emissions are based on 2019 data.

23 California Natural Resources Agency, *Safeguarding California Plan: 2018 Update*. Available online at: https://www.slc.ca.gov/sea-level-rise/safeguarding-california-plan-2018-update/. Accessed March 17, 2023.

24 World Resources Institute, "Historical GHG Emissions," Available online at: https://www.climatewatchdata.org/ghg-emissions?end_year=2019&regions=TOP&start_year=1990. Accessed March 17, 2023.

25 The CO_2 equivalent emissions commonly are expressed as "million metric tons of carbon dioxide equivalent ($MMTCO_2E$)." The carbon dioxide equivalent for a gas is derived by multiplying the tons of the gas by the associated GWP, such that $MMTCO_2E$ = (million metric tons of a GHG) x (GWP of the GHG). For example, the GWP for methane is 21. This means that the emission of one million metric tons of methane is equivalent to the emission of 21 million metric tons of CO_2.

As noted in **Table 3.7-1**, the United States was the number two producer of global GHG emissions in 2019. The primary GHG emitted by human activities in the United States was CO_2, representing approximately 80 percent of total GHG emissions.[26]

Global Ambient CO_2 Concentrations

To determine the global atmospheric variation of CO_2, CH_4, and N_2O from before the start of industrialization, air trapped by ice has been extracted from core samples taken from polar ice sheets. For the period from around 1750 to the present, global CO_2 concentrations increased from a pre-industrialization period concentration to 410 ppm in 2019, which represents an exceedance of 1750 levels by approximately 46 percent.[27,28] Global CH_4 and N_2O concentrations show similar increases for the same period (see **Table 3.7-2, Comparison of Global Pre-Industrial and 2019 GHG Concentrations**).

Table 3.7-2
Comparison of Global Pre-Industrial and 2019 GHG Concentrations

Greenhouse Gas	Early Industrial Period Concentrations[1]	Natural Range for Last 650,000 Years[1]	2019 Concentrations[2]
Carbon Dioxide (CO_2)	280 ppm	180 to 300 ppm	410 ppm
Methane (CH_4)	715 ppb	320 to 790 ppb	1,866 ppb
Nitrous Oxide (N_2O)	270 ppb	NA	332 ppb

Source:
[1] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2013: The Physical Science Basis, Summary for Policymakers 2013. [2] IPCC. Summary for Policy Makers. Inc., Climate Change 2021: The Physical Science Basis, Summary for Policymakers 2021.
ppm=parts per million; ppb=parts per billion.

State of California Greenhouse Gas Emissions Inventory

The California Air Resources Board (CARB) compiles GHG inventories for the State of California. Based on the 2019 GHG inventory data (i.e., the latest year for which data are available), California emitted 418.2 $MMTCO_2e$ in 2019.[29] **Table 3.4-1, GHG Emissions in California**, provides a summary of GHG

26 World Resources Institute, "Climate Watch Historical GHG Emissions." Available online at: https://www.climatewatchdata.org/ghg-emissions?end_year=2019&regions=TOP&start_year=1990. Accessed March 17, 2023.

27 IPCC, *Climate Change 2013 The Physical Science Basis.* 2013.

28 IPCC, *Climate Change 2021 The Physical Science Basis. 2021.*

29 California Air Resources Board, *California Greenhouse Gas Inventory 2000-2019 - by IPCC Category*, 2021. Available online at: https://ww3.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_ipcc_sum_2000-19.pdf, accessed March 17, 2023.

emissions reported in California in 2000 and 2019 separated by categories defined by the United Nations Intergovernmental Panel on Climate Change (IPCC).

Between 2000 and 2019, the population of California grew by approximately 5.6 million, from 33.9 to 39.5 million.[30] This represents an increase of approximately 14 percent from 2000 population levels. In addition, the California economy, measured as gross state product, grew from $1.4 trillion in 2000 to $3.1 trillion in 2019, doubling the 2000 gross state product.[31] Despite the population and economic growth, California's net GHG emissions decreased by approximately 11 percent. The California Energy Commission (CEC) attributes decreases in GHG emissions to the success of California's renewable energy programs and its commitment to clean air and clean energy.

Table 3.7-3
GHG Emissions in California

Source Category	2000 ($MMTCO_2e$)	Percent of Total	2019 ($MMTCO_2e$)	Percent of Total
Energy	**411.4**	**87.91%**	**343.6**	**82.16%**
Energy Industries	159.16	--	105.11	--
Manufacturing Industries & Construction	22.65	--	20.89	--
Transport	177.20	--	165.36	--
Other Sectors (Residential/Commercial/Institutional)	44.65	--	43.26	--
Fugitive Emissions from Solid Fuels	0.04	--	0.02	--
Fugitive Emissions from Oil & Natural Gas	6.56	--	8.11	--
Fugitive Emissions from Geothermal Energy Production	1.13	--	0.83	--
Pollution Control Devices	0.02	--	0.00	--
Industrial Processes & Product Use	**18.9**	**4.04%**	**33.1**	**7.91%**
Mineral Industry	5.60	--	4.98	--
Chemical Industry	0.06	--	0.00	--
Metal Industry	0.07		0.00	
Non-Energy Products from Fuels & Solvent Use	2.52	--	1.73	--
Electronics Industry	0.20	--	0.14	--
Substitutes for Ozone Depleting Substances	5.57	--	20.30	--
Other Product Manufacture and Use	1.52	--	1.14	--
Other	3.31	--	4.77	--
Agriculture, Forestry, & Other Land Use	**28.4**	**6.07%**	**30.7**	**7.34%**
Livestock	19.12	--	22.60	--

30 U.S. Census Bureau, *Explore Census Data*. Available online at: https://data.census.gov/cedsci/, accessed March 17, 2023.

31 California Department of Finance, *Gross State Product*. Available online at: https://dof.ca.gov/forecasting/economics/economic-indicators/gross-state-product/, accessed March 17, 2023. Amounts are based on current dollars as of the data of the report (May 2022).

Source Category	2000 ($MMTCO_2e$)	Percent of Total	2019 ($MMTCO_2e$)	Percent of Total
Aggregate Sources & Non-CO_2 Sources on Land	9.27	--	8.06	--
Waste	**9.3**	**1.99%**	**10.9**	**2.61%**
Solid Waste Disposal	7.24	--	8.48	--
Biological Treatment of Solid Waste	0.13	--	0.38	--
Wastewater Treatment & Discharge	1.93	--	2.00	--
Emissions Summary				
Gross California Emissions	**468.0**		**418.2**	

Sources:

[1] *California Air Resources Board, California Greenhouse Gas Inventory for 2000-2019 - by IPCC Category. 2021. Available online at https://ww3.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_ipcc_sum_2000-19.pdf, accessed March 17, 2023.*

3.7.2 REGULATORY FRAMEWORK

3.7.2.1 Federal Regulations

Global Change Research Act (1990)

In 1990, Congress passed, and the President signed, Public Law 101-606, the Global Change Research Act. The purpose of the legislation was: "…to require the establishment of a United States Global Change Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions towards international protocols in global change research, and for other purposes." To that end, the U.S. Global Change Research Information Office (GCRIO) was established in 1991 to serve as a clearinghouse of information. The Act requires a report to Congress every four years on the environmental, economic, health and safety consequences of climate change; however, the first and only one of these reports to date, the National Assessment on Climate Change, was not published until 2000. In February 2004, operational responsibility for GCRIO shifted to the U.S. Climate Change Science Program.

Supreme Court Ruling

The U.S. Supreme Court ruled in *Massachusetts v. Environmental Protection Agency, 127 S. Ct. 1438 (2007)*, that carbon dioxide and other greenhouse gases are pollutants under the Federal Clean Air Act (CCA), which the US Environmental Protection Agency (U.S. EPA) must regulate if it determines they pose an endangerment to public health or welfare.

U.S. EPA Endangerment Finding

On December 7, 2009, the U.S. EPA Administrator Lisa P. Jackson signed two distinct findings regarding GHGs under section 202(a) of the Clean Air Act (42 USC Section 7521):

- **Endangerment Finding**: The Administrator finds that the current and projected concentrations of the six key well-mixed GHGs (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) in the atmosphere threaten the public health and welfare of current and future generations.

- **Cause or Contribute Finding**: The Administrator finds that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare.

Energy Policy Act of 1992 (EPAct)

The Energy Policy Act of 1992 (EPAct) was passed to reduce the country's dependence on foreign petroleum and improve air quality. EPAct includes several parts intended to build an inventory of alternative fuel vehicles (AFVs) in large, centrally fueled fleets in metropolitan areas. EPAct requires certain federal, state, and local government and private fleets to purchase a percentage of light duty AFVs capable of running on alternative fuels each year. In addition, financial incentives are also included in EPAct. Federal tax deductions will be allowed for businesses and individuals to cover the incremental cost of AFVs. States are also required by the act to consider a variety of incentive programs to help promote AFVs.

Energy Policy Act of 2005

The Energy Policy Act of 2005 provides renewed and expanded tax credits for electricity generated by qualified energy sources, such as landfill gas; provides bond financing, tax incentives, grants, and loan guarantees for clean renewable energy and rural community electrification; and establishes a federal purchase requirement for renewable energy.

Energy Independence and Security Act

The Energy Independence and Security Act of 2007 includes several key provisions that will increase energy efficiency and the availability of renewable energy, which will reduce greenhouse gas emissions as a result. First, the Act sets a Renewable Fuel Standard that requires fuel producers to use at least 36 billion gallons of biofuel by 2022. Second, it increased Corporate Average Fuel Economy (CAFE) Standards to require a minimum average fuel economy of 35 miles per gallon for the combined fleet of

cars and light trucks by 2020. Third, the adopted bill includes a variety of new standards for lighting and for residential and commercial appliance equipment. The equipment includes residential refrigerators, freezers, refrigerator-freezers, metal halide lamps, and commercial walk-in coolers and freezers.

U.S. EPA Reporting Rule

The U.S. EPA adopted a mandatory GHG reporting rule in September 2009. The rule would require suppliers of fossil fuels or entities that emit industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions to submit annual reports to the U.S. EPA beginning in 2011 (covering the 2010 calendar year emission). Vehicle and engine manufacturers were required to begin reporting GHG emissions for the model year 2011.

Fuel Economy Standards

On September 15, 2009, the National Highway Traffic Safety Administration (NHTSA) and U.S. EPA announced a proposed joint rule that would explicitly tie fuel economy to GHG emissions reductions requirements. The proposed new CAFE Standards would cover automobiles for model years 2012 through 2016 and would require passenger cars and light trucks to meet a combined, per mile, carbon dioxide emissions level. It was estimated that by 2016, this GHG emissions limit could equate to an overall light-duty vehicle fleet average fuel economy of as much as 35.5 miles per gallon. The proposed standards would require model year 2016 vehicles to meet an estimated combined average emission level of 250 grams of carbon dioxide per mile under U.S. EPA's GHG program.

On November 16, 2011, U.S. EPA and NHTSA issued a joint proposal to extend the national program of harmonized GHG and fuel economy standards to model year (MY) 2017 through 2025 passenger vehicles. In August 2012, President Barack Obama finalized standards that will increase fuel economy to the equivalent of 54.5 mpg for cars and light-duty trucks by MY 2025.

On January 12, 2017, U.S. EPA Administrator Gina McCarthy signed her determination to maintain the GHG emissions standards for model year (MY) 2022-2025 vehicles. Her final determination found that automakers are well positioned to meet the standards at lower costs than previously estimated.

On March 15, 2017, the new U.S. EPA Administrator Scott Pruitt and Department of Transportation Secretary Elaine Chao announced that U.S. EPA intended to reconsider the final determination, issued on January 12, 2017, that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025.

On April 2, 2018, the Administrator Scott Pruitt signed the Mid-term Evaluation Final Determination which finds that the model year 2022-2025 greenhouse gas standards are not appropriate in light of the record before the U.S. EPA and, therefore, should be revised.

On September 19, 2019, President Donald J. Trump announced the "One Nation Program Rule," which will enable the federal government to provide nationwide uniform fuel economy and greenhouse gas emission standards for automobiles and light duty trucks. The rule determines that only the federal government may set fuel economy standards, and state and local governments may not establish their own separate fuel economy standard, repealing California's 2013 Clean Air Act waiver.

Heavy-Duty Vehicle Program

In May 2010, President Barack Obama issued a Presidential Memorandum Regarding Fuel Efficiency Standards requesting that U.S. EPA and National Highway Traffic Safety Administration (NHTSA) take additional coordinated steps to produce a new generation of clean vehicles. In response, U.S. EPA and NHTSA adopted regulations governing Medium- and Heavy-Duty Greenhouse Gas Emissions and Fuel Efficiency (title 40, Code of Federal Regulations, Chapter I) on September 15, 2011 (most recently amended on August 16, 2013) to establish the first fuel efficiency requirements for medium- and heavy-duty vehicles beginning with the model year 2014 through model year 2018. On February 18, 2014, the President directed the U.S. EPA and NHTSA to set the next round of fuel efficiency standards for Medium- and heavy-duty vehicles (beyond model year 2018) that will build on the existing standards to further reduce fuel consumption through the application of advanced cost-effective technologies and continue to improve the efficiency of moving goods across the United States. In October 2016, U.S. EPA and NHTSA adopted Phase 2 GHG and fuel efficiency standards for medium- and heavy-duty engines and vehicles.[32]

Clean Power Plan

In 2015, U.S. EPA published the Clean Power Plan (80 Fed. Reg. 64661, October 23, 2015). The Clean Power Plan sets achievable standards to reduce CO_2 emissions by 32 percent from 2005 levels by 2030. This Plan establishes final emissions guidelines for states to follow in developing plans to reduce GHG emissions from existing fossil fuel-fired electric generating units (EGUs). Specifically, U.S. EPA is establishing: (1) CO_2 emission performance rates representing the best system of emission reduction (BSER) for two subcategories of existing fossil-fuel-fired EGUs, fossil-fuel-fired electric utility steam

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32 U.S. EPA, *Final Rule for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles - Phase 2*. Available online at: https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-greenhouse-gas-emissions-and-fuel-efficiency#rule-history. Accessed March 17, 2023.

generating units and stationary combustion turbines; (2) state-specific CO_2 goals reflecting the CO_2 emission performance rates; and (3) guidelines for the development, submittal and implementation of state plans that establish emission standards or other measures to implement the CO_2 emission performance rates, which may be accomplished by meeting the state goals. This final rule would continue progress already under way in the United States to reduce CO_2 emissions from the utility power sector. On February 9, 2016, the Supreme Court (Order No. 15A773) stayed implementation of the Clean Power Plan pending judicial review. In addition, U.S. EPA is currently proposing to repeal the Clean Power Plan after completing a thorough review as directed by the Executive Order on Energy Independence (as discussed below). In sum, the Clean Power Plan continues to face multiple legal challenges and its future is uncertain.

Executive Order on Energy Independence

On March 28, 2017, former President Trump signed Executive Order 13783, "Promoting Energy Independence and Economic Growth," which calls for:

- Review of the Clean Power Plan.
- Review of the 2016 Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources.
- Review of the Standards of Performance for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units.
- Withdrawal of Proposed Rules: Federal Plan Requirements for GHG Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; and Clean Energy Incentive Program Design Details.

Affordable Clean Energy Rule

The U.S. EPA issued the Affordable Clean Energy (ACE) rule on June 19, 2019, in order to replace the Clean Power Plan. The ACE rule establishes emissions guidelines for states to use when developing plans to limit carbon dioxide at coal-fired power plants. Specifically, the ACE rule aims at improving the heat rate as the best system of emissions reductions for carbon dioxide at coal-fired power plants and these improvements can be made at individual facilities. States will have three years to submit plans. The EPA

estimates that the ACE rules will result in a reduction of CO_2 emissions from the electricity sector by as much as 35% below 2005 levels by 2030.[33]

3.7.2.2 State Regulations

Title 24 Building Standards Code

The California Energy Commission first adopted Energy Efficiency Standards for Residential and Nonresidential Buildings (California Code of Regulations, Title 24, Part 6) in 1978 in response to a legislative mandate to reduce energy consumption in the state. Although not originally intended to reduce GHG emissions, increased energy efficiency, and reduced consumption of electricity, natural gas, and other fuels would result in fewer GHG emissions from residential and nonresidential buildings subject to the standard. The standards are updated periodically to allow for the consideration and inclusion of new energy efficiency technologies and methods.

The California Green Building Standards Code, which is Part 11 of the California Code of Regulations (the "CCR"), is commonly referred to as the CALGreen Code. CALGreen was added to Title 24 to represent base standards for reducing water use, recycling construction waste, and reducing polluting materials in new buildings. In contrast, Title 24 focuses on promoting more energy-efficient buildings and considers the building envelope, heating and cooling, water heating, and lighting restrictions. The first edition of the CALGreen Code in 2008 contained only voluntary standards. The 2010 edition included mandatory requirements for state-regulated buildings and structures throughout California, including requirements for construction site selection, storm water control during construction, construction waste reduction, indoor water use reduction, material selection, natural resource conservation, site irrigation conservation and more.

The CALGreen Code provides for design options allowing the designer to determine how best to achieve compliance for a given site or building condition. The CALGreen Code also requires building commissioning which is a process for the verification that all building systems, like heating and cooling equipment and lighting systems are functioning at their maximum efficiency. The most recent 2022 CALGreen Code became effective January 1, 2023, and includes regulations for energy efficiency, mandatory provisions for commercial, residential, and public-school buildings, and voluntary provisions.

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33 U.S. EPA, *Final Rule for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles - Phase 2*. Available online at: https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-greenhouse-gas-emissions-and-fuel-efficiency#rule-history. Accessed March 17, 2023.

Assembly Bill 1493

In response to the transportation sector's contribution of more than half of California's CO_2 emissions, Assembly Bill 1493 (AB 1493, Pavley) was enacted on July 22, 2002. AB 1493 requires CARB to set GHG emission standards for passenger vehicles, light-duty trucks, and other vehicles whose primary use is noncommercial personal transportation. However, before these regulations go into effect, the U.S. EPA must grant California a waiver under the federal CAA, which ordinarily preempts state regulation of motor vehicle emission standards. On June 30, 2009, the U.S. EPA formally approved California's waiver request. However, in light of the September 15, 2009, announcement by the U.S. EPA and NHTSA regarding the national program to reduce vehicle GHG emissions, California—and states adopting California emissions standards—have agreed to generally defer to the proposed national standard through model year 2016 if granted a waiver by the U.S. EPA. The 2016 endpoint of the two standards is similar, although the national standard ramps up slightly more slowly than required under the California standard. In 2012, CARB approved the LEV III greenhouse gas regulation, which requires further reductions in passenger greenhouse gas emissions for 2017 and subsequent vehicle model years.[34]

Executive Order S-3-05

On June 1, 2005, Governor Arnold Schwarzenegger issued Executive Order S-3-05, which set the following GHG emission reduction targets: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; and by 2050, reduce GHG emissions to 80 percent below 1990 levels. The California Environmental Protection Agency (Cal EPA) formed a Climate Action Team ("CAT") that recommended strategies that can be implemented by state agencies to meet GHG emissions targets. The Team reported several recommendations and strategies for reducing GHG emissions and reaching the targets established in the Executive Order.[35] Furthermore, the report provided to then Governor Schwarzenegger, indicated that smart land use and increased transit availability should be a priority in the State of California.[36] According to the California Climate Action Team, smart land use is an umbrella term for strategies that integrate transportation and land-use decisions. Such strategies generally encourage jobs/housing proximity, promote transit-oriented development (TOD), and encourage high-density residential/commercial development along transit corridors. These strategies

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34 California Air Resources Board, *Low-Emission Vehicle Greenhouse Gas Program.* Available online at: https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/lev-program/low-emission-vehicle-greenhouse-gas. Accessed March 17, 2023.

35 California Climate Action Team, *Climate Action Team Report to Governor Schwarzenegger and the Legislature*, March 2006.

36 California Climate Action Team, *Climate Action Team Report to Governor Schwarzenegger and the Legislature*, March 2006, p. 57.

develop more efficient land-use patterns within each jurisdiction or region to match population increases, workforce, and socioeconomic needs for the full spectrum of the population.

Assembly Bill 32

In furtherance of the goals established in Executive Order S-3-05, the Legislature enacted Assembly Bill 32 (AB 32, Nuñez and Pavley), the California Global Warming Solutions Act of 2006, which Governor Schwarzenegger signed on September 27, 2006. AB 32 represents the first enforceable statewide program to limit GHG emissions from all major industries with penalties for noncompliance. AB 32 required CARB to adopt a scoping plan indicating how reductions in significant GHG sources will be achieved through regulations, market mechanisms, and other actions. After receiving public input on their discussion draft of the Proposed Scoping Plan released in June 2008, CARB released the Climate Change Proposed Scoping Plan in October 2008 that contains an outline of the proposed state strategies to achieve the 2020 greenhouse gas emission limits. The CARB Governing Board approved the Scoping Plan on December 11, 2008.

Senate Bill 32 (SB 32) and AB 197

On September 8, 2016, California signed into law Senate Bill 32 (SB 32), which adds Section 38566 to the Health and Safety Code and requires a commitment to reducing statewide GHG emissions by 2020 to 1990 levels and by 2030 to 40 percent less than 1990 levels. SB 32 was passed with companion legislation AB 197 (Chapter 250, Statutes of 2016), which provides greater legislative oversight of CARB's GHG regulatory programs, requires CARB to account for the social costs of GHG emissions, and establishes a legislative preference for direct reductions of GHG emissions.

In November 2017, CARB adopted California's 2017 Climate Change Scoping Plan (2017 Update), which outlines the proposed framework of action for achieving California's SB 32 2030 GHG target: a 40 percent reduction in GHG emissions by 2030 relative to 1990 levels.[37] The 2030 target is intended to ensure that California remains on track to achieve the goal set forth by E.O. B-30-15 to reduce statewide GHG emissions by 2050 to 80 percent below 1990 levels.

The 2017 Update identifies key sectors of the implementation strategy, which includes improvements in low carbon energy, industry, transportation sustainability, natural and working lands, waste management, and water. Through a combination of data synthesis and modeling, CARB determined that the target statewide 2030 emissions limit is 260 $MMTCO_2e$, and that further commitments will need to be made to achieve an additional reduction of 50 $MMTCO_2e$ beyond current policies and programs. Key

37 CARB, *California's 2017 Climate Change Scoping Plan*, November 2017.

elements of the 2017 Update include a proposed 20 percent reduction in GHG emissions from refineries and an expansion of the Cap-and-Trade program to meet the aggressive 2030 GHG emissions goal and ensure achievement of the 2050 limit set forth by E.O. B-30-15. For the transportations sector, the 2017 Update indicates that while most of the GHG reductions will come from technologies and low carbon fuels, a reduction in the growth of vehicle miles traveled (VMT) is also needed. The 2017 Update indicates that stronger SB 375 GHG reduction targets will enable the State to make significant progress toward this goal, but alone will not provide all of the VMT growth reductions that will be needed. It notes that there is a gap between what SB 375 can provide and what is needed to meet the State's 2030 and 2050 goals. The 2017 Update recommends that local governments consider policies to reduce VMT, including: land use and community design that reduces VMT; transit-oriented development; street design policies that prioritize transit, biking, and walking; and increasing low carbon mobility choices, including improved access to viable and affordable public transportation and active transportation opportunities.

Assembly Bill (AB) 1279

AB 1279 establishes the policy of the state to achieve carbon neutrality as soon as possible, but no later than 2045; to maintain net negative GHG emissions thereafter; and to ensure that by 2045 statewide anthropogenic GHG emissions are reduced at least 85 percent below 1990 levels. The bill requires CARB to ensure that Scoping Plan updates identify and recommend measures to achieve carbon neutrality, and to identify and implement policies and strategies that enable CO2 removal solutions and carbon capture, utilization, and storage (CCUS) technologies. This bill is reflected directly in the 2022 Scoping Plan described in more detail below.

2022 Scoping Plan for Achieving Carbon Neutrality

In response to the passage of AB 1279 and the identification of the 2045 GHG reduction target, CARB published the 2022 Scoping Plan for Achieving Carbon Neutrality on November 16, 2022, and it was approved on December 15, 2022.[38] The 2022 Scoping Plan lays out the sector-by-sector roadmap for California, the world's fifth largest economy, to achieve carbon neutrality by 2045 or earlier, outlining a technologically feasible, cost-effective, and equity-focused path to achieve the state's climate target. The 2022 Scoping Plan includes policies to achieve a significant reduction in fossil fuel combustion, further reductions in short-lived climate pollutants, support for sustainable development, increased action on natural and working lands (NWL) to reduce emissions and sequester carbon, and the capture and storage of carbon.

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38 California Air Resources Board, *2022 Scoping Plan Documents, Notice of Decision.* 2022. Available online at: https://ww2.arb.ca.gov/sites/default/files/2022-12/2022-sp-appendix-b-notice-of-decision.pdf; accessed March 17, 2023.

The 2022 Scoping Plan assesses the progress California is making toward reducing its GHG emissions by at least 40 percent below 1990 levels by 2030, as called for in SB 32 and laid out in the 2017 Scoping Plan, addresses recent legislation and direction from Governor Newsom, extends and expands upon these earlier plans, and implements a target of reducing anthropogenic emissions to 85 percent below 1990 levels by 2045, as well as taking an additional step of adding carbon neutrality as a science-based guide for California's climate work. As stated in the 2022 Scoping Plan, "The plan outlines how carbon neutrality can be achieved by taking bold steps to reduce GHGs to meet the anthropogenic emissions target and by expanding actions to capture and store carbon through the state's NWL and using a variety of mechanical approaches." Specifically, the 2022 Scoping Plan:

- Identifies a path to keep California on track to meet its SB 32 GHG reduction target of at least 40 percent below 1990 emissions by 2030.
- Identifies a technologically feasible, cost-effective path to achieve carbon neutrality by 2045 and a reduction in anthropogenic emissions by 85 percent below 1990 levels.
- Focuses on strategies for reducing California's dependency on petroleum to provide consumers with clean energy options that address climate change, improve air quality, and support economic growth and clean sector jobs.
- Integrates equity and protecting California's most impacted communities as driving principles throughout the document.
- Incorporates the contribution of NWL to the State's GHG emissions, as well as their role in achieving carbon neutrality.
- Relies on the most up-to-date science, including the need to deploy all viable tools to address the existential threat that climate change presents, including carbon capture and sequestration, as well as direct air capture.
- Evaluates the substantial health and economic benefits of taking action.
- Identifies key implementation actions to ensure success.

In addition to reducing emissions from transportation, energy, and industrial sectors, the 2022 Scoping Plan includes emissions and carbon sequestration in NWL and explores how NWL contributes to long-term climate goals. Under the Scoping Plan Scenario, California's 2030 emissions are anticipated to be 48 percent below 1990 levels, representing an acceleration of the current SB 32 target. Cap-and-Trade regulation continues to play a large factor in the reduction of near-term emissions for meeting the

accelerated 2030 reduction target. Every sector of the economy will need to begin to transition in this decade to meet our GHG reduction goals and achieve carbon neutrality no later than 2045. The 2022 Scoping Plan approaches decarbonization from two perspectives, managing a phasedown of existing energy sources and technologies, as well as increasing, developing, and deploying alternative clean energy sources and technology.

The 2022 Scoping Plan discusses the role of local governments in meeting the State's GHG reductions goals because local governments have jurisdiction and land use authority related to: community-scale planning and permitting processes, local codes and actions, outreach and education programs, and municipal operations. Furthermore, local governments may have the ability to incentivize renewable energy, energy efficiency, and water efficiency measures. As discussed in detail in Appendix D (Local Actions) of the 2022 Scoping Plan, local jurisdictions can do much to enable statewide priorities, such as taking local action to help the state develop the housing, transport systems, and other tools we all need. Indeed, state tools—such as the Cap-and-Trade Program or zero-emission vehicle programs—do not substitute for these local efforts. Multiple legal tools are open to local jurisdictions to support this approach, including development of a climate action plan (CAP), sustainability plan, or inclusion of a plan for reduction of GHG emissions and climate actions within a jurisdiction's general plan. Any of these can help to align zoning, permitting, and other local tools with climate action.

Senate Bill 375

The California Legislature passed Senate Bill 375 (SB 375) on September 1, 2008, and SB 375 was signed by former Governor Schwarzenegger and chaptered into law on September 30, 2008. SB 375 requires CARB, working in consultation with the metropolitan planning organizations (MPOs), to set regional greenhouse gas reduction targets for the automobile and light truck sector for 2020 and 2035. CARB must provide each MPO with its reduction target by September 30, 2010. The target must then be incorporated within that region's Regional Transportation Plan (RTP), which is used for long-term transportation planning, in a Sustainable Communities Strategy (SCS). Certain transportation planning and programming activities would then need to be consistent with the SCS; however, SB 375 expressly provides that the SCS does not regulate the use of land, and further provides that local land use plans and policies (e.g., general plan) are not required to be consistent with either the RTP or SCS.

In accordance with SB 375, on January 23, 2009, CARB appointed a Regional Targets Advisory Committee (RTAC) to provide recommendations and methodologies to be used in the target setting process. The RTAC provided its recommendations in a report to CARB on September 29, 2009. On August 9, 2010, CARB staff issued the *Proposed Regional Greenhouse Gas Emission Reduction Targets For Automobiles And*

Light Trucks Pursuant to Senate Bill 375.[39] CARB staff proposed draft reduction targets for the four largest MPOs (Bay Area, Sacramento, Southern California, and San Diego) of 7 to 8 percent for 2020 and reduction targets between 13 to 16 percent for 2035. For the Southern California Association of Governments (SCAG), which is the MPO for the region the proposed project is located; CARB established a draft target of 8 percent for 2020 and 13 percent for 2035, subject to SCAG Board approval. CARB staff proposed a draft reduction target for the combined San Joaquin Valley MPOs of 5 percent for 2020 and 10 percent for 2035, acknowledging that the growth rate in the San Joaquin Valley is projected to be double that of most other areas of California. The remaining six MPOs represent about 5 percent of both the State's greenhouse gas emissions and vehicle miles traveled from passenger vehicles. For these MPOs, CARB staff is proposing to use the most current greenhouse gas per capita projections from each MPO, adjusted for the impacts of the recession, as the basis for individual MPO targets for this first target-setting cycle. This approach allows the focus of this first target-setting cycle to appropriately remain on the largest and fastest growing regions of the state. Of note, the proposed reduction targets explicitly exclude emission reductions expected from the AB 1493 and low carbon fuel standard regulations. As indicated above, CARB was required to adopt the final targets by September 30, 2010. However, further discussion on the draft targets was requested by SCAG, with an additional meeting occurring and SCAG approving the draft targets in February 2011. The draft targets were finalized by Executive Order on February 15, 2011.

California Climate Action Registry

The California Climate Action Registry (CCAR) is a private non-profit organization formed by the State of California that serves as a voluntary GHG registry to protect and promote early actions to reduce GHG emissions by organizations. Senate Bill 1771 (SB 1771, Sher) formally established the CCAR with technical changes made to the statute in SB 527, which finalized the structure of the CCAR. The CCAR began with 23 charter members and currently has over 300 corporations, universities, cities and counties, government agencies and environment organizations voluntarily measuring, monitoring, and publicly reporting their GHG emissions using the CCAR protocols. The CCAR has published a General Reporting Protocol, as well as project- and industry-specific protocols for landfill activities, livestock activities, the cement sector, the power/utility sector, and the forest sector. The protocols provide the principles, approach, methodology, and procedures required for participation in the CCAR.

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[39] California Air Resources Board, *Staff Report: Proposed Regional Greenhouse Gas Emission Reduction Targets For Automobiles And Light Trucks Pursuant To Senate Bill 375*, (2010).

Due to the growth of the CCAR, it now operates under the Climate Action Reserve,[40] which is a national offsets program for the United States carbon market. As part of this transition, the California Climate Action Registry was instrumental in establishing the Climate Registry, with the mission of expanding the California Registry's emissions reporting work to include all of North America.[41] Emissions inventory reporting is being transitioned to the Climate Registry and reports for the 2009 reporting year will be the last the California Registry will accept. However, even after that year, the California Registry will continue to represent its members' emissions reports to the state of California.

3.7.2.3 Local Regulations

Bay Area Air Quality Management District (BAAQMD)

For land use development projects, the BAAQMD recommends using the approach endorsed by the California Supreme Court in Center for Biological Diversity v. Department of Fish & Wildlife (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less than significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

City of Milpitas Climate Action Plan[42]

The City of Milpitas adopted a Climate Action Plan Update (CAP Update) in 2022 to make Milpitas a more sustainable community by reducing GHG emissions and to establish a "qualified greenhouse gas reduction strategy." The CAP Update is designed to be a comprehensive roadmap to continue addressing the challenges of climate change and keep the City on its path to carbon neutrality by 2045. The CAP Update is the product of extensive and ongoing engagement with residents, businesses, local government, and other organizations and stakeholders. These extensive community engagement efforts have resulted in locally based and context-specific strategies, measures, and actions designed to achieve

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40 Additional information about the Climate Action Reserve may be obtained at the following website: http://www.climateactionreserve.org/., Accessed March 17, 2023.

41 Additional information about the Climate Registry may be obtained at the following website: http://www.theclimateregistry.org/. Accessed March 17, 2023.

42 City of Milpitas, *Climate Action Plan Update*, 2022. Available online at: https://www.milpitas.gov/wp-content/uploads/2022/05/CAP-Public-Draft-Milpitas-CAP-Update-May-2022-with-Apdx-A-C-reduced-size.pdf. Accessed April 7, 2023.

the City's climate objectives while simultaneously enhancing the quality of life for Milpitas's residents, workers, and visitors.

The CAP Update also identifies nine "co-benefits" that would result from the implementation of the CAP Update. These co-benefits are considered as additional valuable outcomes that are not the primary intent of climate change mitigation or adaptation actions, such as improvements to local air quality and water supply, increases in local green jobs and cost savings, and benefits to public health and improved mobility options. The CAP Update incorporates best practices to produce a blueprint for achieving GHG emissions reduction in Milpitas and ultimately, to comply with AB 32, SB 32, AB 1279 and SB 375.

Milpitas's CAP Update meets the standards of a Qualified GHG Reduction Plan (which parallel and elaborate upon criteria established in *State CEQA Guidelines* Section 15183.5(b)(1)), as presented in the chapters referenced below.

- Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area (Chapter 2).
- Establish a level, based on substantial evidence, below which the contribution of GHG emissions from activities covered by the plan would not be cumulatively considerable (Chapter 2).
- Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area (Chapter 3).
- Specify measures or a group of measures, including performance standards that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level (Chapter 4).
- Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specific levels (Chapter 6).
- Adopt the GHG Reduction Strategy in a public process following environmental review.[43]

The City also published an Addendum to the *City of Milpitas General Plan Final EIR* for the CAP Update in June 2022. The Addendum includes an attachment with an environmental checklist that serves as the appropriate CEQA compliance document and has been prepared in compliance with the requirements of Section 15162 of the *State CEQA Guidelines*. The checklist contains substantial evidence to support that the

43 City of Milpitas. *Special Meeting of the Milpitas City Council*. August 9, 2022.

CAP update would not result in any new or substantially more severe environmental impacts from those identified in the *City of Milpitas General Plan EIR*.

City of Milpitas Green Building Regulations[44]

The City of Milpitas Municipal Code (MMC) includes Chapter 20, Green Building Regulations which regulates the design, construction, maintenance, operation, and deconstruction of buildings by incorporating green building practices into all development. The building provisions are designed to achieve the following goals:

1. Increase energy efficiency;
2. Encourage water and resource conservation;
3. Reduce waste generated by construction projects; and
4. Promote the health of residents, workers, and visitors to the City.

3.7.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to greenhouse gas emissions are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. The Project could result in significant impacts associated with greenhouse gas emissions if any of the following would occur:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or
- Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

The BAAQMD does not have an adopted threshold of significance for construction related GHG emissions. The *BAAQMD Guidelines*[45] state that GHG emissions from construction represent a very small portion of a project's lifetime GHG emissions.

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44 City of Milpitas, Milpitas Municipal Code, Chapter 20 – Green Building Regulations, Available online at: https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITIIBURE_CH20GRBURE. Accessed March 16, 2023.

45 Bay Area Air Quality Management District, *CEQA Thresholds for Evaluating the Significance of Climate Impacts*, April 2022. Available online at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en. Accessed March 16, 2023.

The BAAQMD identifies thresholds for GHG emissions during project operation. A proposed land use development project would not have a significant GHG impact, if operation of the project would meet one of the following thresholds (must include **A** or **B**):

A. Projects must include, at a minimum, the following project design elements:

- Buildings
  - The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
  - The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the *State CEQA Guidelines*.
- Transportation
  - Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA:
    - Residential projects: 15 percent below the existing VMT per capita.
    - Office projects: 15 percent below the existing VMT per employee.
    - Retail projects: no net increase in existing VMT.
- Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.

B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under *State CEQA Guidelines* Section 15183.5(b).

3.7.4 METHODOLOGY

GHG emissions for the Project were analyzed using the methodology recommended in the BAAQMD CEQA Thresholds and Guidelines Update. As stated under the thresholds of significance heading above, the BAAQMD recommends the operation of all land use projects meet either BAAQMD Thresholds "**A**"

or "**B.**" As discussed previously, the City's CAP qualifies as a "greenhouse gas emissions reduction plan" pursuant to Section 15183.5(b)(1) of the *State CEQA Guidelines*. Therefore, **Impacts GHG-1** and **GHG-2** have been analyzed together within the scope of BAAQMD Threshold "**B**."

GHG emissions were calculated with the California Emissions Estimator Model (CalEEMod) Version 2022. Operational GHG emissions result from both direct and indirect sources. Direct emissions include emissions from fuel combustion in vehicles and natural gas combustion from stationary sources. Indirect sources include off-site emissions occurring as a result of electricity and water consumption and solid waste.

3.7.5 ENVIRONMENTAL IMPACTS

Greenhouse Gas Emissions Estimate

Construction Emissions

The Project would generate GHG emissions during temporary, short-term construction activities such as demolition, site preparation and grading, running of construction equipment engines, movement of on-site heavy-duty construction vehicles, hauling of materials to and from the site, asphalt paving, and construction worker motor vehicle trips.

With the use of CalEEMod, GHG emissions associated with Project construction were calculated from off-road equipment usage, hauling vehicles, delivery, and worker trips to and from the site. According to CalEEMod calculations, the total GHG construction emissions would be approximately 1,430 MT CO_{2e}. However, these emissions would be temporary in nature and would represent a small portion of a Project's lifetime GHG emissions. The BAAQMD has not adopted a threshold of significance for construction related GHG emissions, though BAAQMD recommends quantifying emissions and disclosing that GHG emissions would occur during construction.

Operational Emissions

Section 15064.4(a) of the *State CEQA Guidelines* states, in part, that a lead agency shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. As such, **Table 3.7-4, Operational Greenhouse Gas Emissions,** identifies an estimate of total GHG emissions of the Project. This quantification has been included for illustrative purposes and to satisfy the requirements of CEQA. The determination of significance for the Project is discussed under **Impact GHG-1** and **Impact GHG-2**.

Table 3.7-4
Operational Greenhouse Gas Emissions

Emissions Source	Metric Tons of Carbon Dioxide Equivalent (per year)
Mobile Sources	2,227
Area Sources	13.4
Energy Sources	209
Water Sources	14.9
Waste Sources	47.6
Refrigerants	0.22
Total GHG Emissions	**2,513**

*Source: Impact Sciences, Inc. See **Appendix 3.2** for CalEEMod data.*

Impact GHG-1 Would the Project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Impact GHG-2 Would the Project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gas emissions?

BAAQMD Threshold "B" states that projects must be consistent with a local GHG reduction strategy that meets the criteria under *State CEQA Guidelines* Section 15183.5(b). The City of Milpitas Climate Action Plan Update (CAP Update) satisfies Section 15183.5(b) of the *State CEQA Guidelines* and is therefore the appropriate local GHG reduction plan that the Project can be compared to for consistency. **Table 3.7-5, Project Consistency with Milpitas 2022 CAP Update**, shows the Project's consistency with the strategies and measures of the Milpitas CAP.

Table 3.7-5
Project Consistency with Milpitas 2022 CAP Update

Strategies and Actions	Consistency Analysis
Strategy BE-1: Shift to Clean and Reliable Energy	
Measure BE-1.1: Achieve 100 percent carbon-free electricity by 2030 in all existing and new developments.	**Consistent. Mitigation Measure GHG-1** would require new development associated with the Project to install on-site renewable energy storage systems, such as solar panels.
Measure BE-1.2: Facilitate innovative approaches to energy generation, distribution, and storage (e.g., microgrids).	**Not Applicable.** This measure requires the City to consider opportunities for alternative energy generation, and to collaborate with local electricity agencies to implement said opportunities. The Project would not interfere with any strategies or measures by the City to identify and adopt alternative methods of energy generation.
Measure BE-1.3: Strengthen community awareness of energy efficiency, energy conservation, electrification, and clean energy**.**	**Not Applicable.** This measure directs the City to implement comprehensive energy efficiency, energy conservation, electrification, and clean energy outreach and education campaigns. The Project would not conflict with this campaign
Strategy BE-2: Maximize Building Decarbonization and Efficiency	
Measure BE-2.1: Adopt updated "reach" building codes with each building and energy code cycle to accelerate all-electric new development.	**Not Applicable.** This measure directs the City to update the reach code that prohibits the installation of natural gas infrastructure, as well as coordinate with other cities and electric/natural gas companies to implement mor efficient strategies. The Project would not interfere with any strategies or measures by the City to update energy efficient electricity Citywide.
Measure BE-2.2: Facilitate all-electric development projects for industrial buildings.	**Not Applicable.** This measure calls for the market demand for all-electric industrial buildings to be met. The Project would not introduce new industrial buildings to the Project Area.
Measure BE-2.3: Expand the City's Green Building Program.	**Not Applicable.** This measure requires the City to develop and implement incentives for projects that incorporate sustainable design approaches and/or elements that exceed local, regional, and State requirements. The Project would not interfere or conflict with these incentives.
Measure BE-2.4: Retrofit existing residential and nonresidential buildings and municipal facilities to improve energy efficiency and facilitate fuel switching.	**Not Applicable.** This measure is aimed at improving the energy efficiency of existing residential and nonresidential buildings and municipal facilities and does not involve any actions towards new development. The Project would not conflict with this measure.
Measure BE-2.5: Facilitate energy audits for existing buildings to identify energy efficiency retrofit and electrification opportunities**.**	**Not Applicable.** This measure is aimed at improving existing buildings and does not involve any actions towards new development. The Project would not conflict with this measure.
Measure BE-2.6: Reduce plug loads in existing buildings.	**Not Applicable.** This measure is aimed at improving existing buildings and does not involve any actions towards new development. The Project would not conflict with this measure.
Strategy TR-1 Facilitate Sustainable Transportation and Land Use Planning	
Measure TR-1.1: Reduce VMT from new development in compliance with SB 743.	**Consistent:** As concluded in Section 3.14, Transportation, the Project would reduce VMT generated from the Project Area, per SB 743 regulations.
Measure TR-1.2: Reduce VMT from existing development.	**Not Applicable.** This measure is aimed at reducing the VMT of existing buildings and does not involve any actions towards new development. The Project would not conflict with this measure.

Strategies and Actions	Consistency Analysis
Measure TR-1.3: Continue to implement and adopt policies that support high-density, mixed use, and transit-oriented development and housing near jobs.	**Not Applicable.** This measure directs the City to implement and adopt policies that promote the use of transit-oriented development in more areas of the City, where feasible. The Project Site is not located within a transit-oriented development area. The Project would not interfere with such policies.
Measure TR-1.4: Explore car-free zones or shared streets in appropriate areas.	**Not Applicable.** This measure focuses on implementing car-free zones in areas with multiple commercial developments. The Project would not conflict with the City's efforts to implement car-free zones.
Strategy TR-2 Decarbonize Vehicles	
Measure TR-2.1: Increase EV charging infrastructure.	**Consistent:** With implementation of **Mitigation Measure GHG-1**, the Project would install electric vehicle charging stations on-site.
Measure TR-2.2: Increase EV and low-carbon vehicle adoption.	**Not Applicable:** This measure directs the City to collaborate with local and regional agencies and implement incentives to increase the number of EV and low-carbon vehicles within the City. The Project would not conflict with these efforts.
Measure TR-2.3: Reduce vehicle idling.	**Not Applicable:** This measure directs the City to take actions to reduce vehicle idling. The Project would not interfere with such efforts.
Measure TR-2.4: Reduce the amount of parking such that it meets the needs of residents, workers, and visitors in a way that is consistent with the City's sustainability goals.	**Not Applicable.** This measure is directed at the City to lower the number of parking spaces within the City to meet the needs of the City population, while maintaining consistency with the City's sustainability goals. The Project would not interfere with such efforts.
Strategy TR-3 Increase Active and Public Transportation Use	
Measure TR-3.1: Enhance and expand transit facilities and infrastructure.	**Not Applicable**. This measure aims to improve and expand the City's existing transit facilities. The Project would not interfere with such efforts.
Measure TR-3.2: Increase transit ridership.	**Not Applicable.** This measure aims to increase the number of transit rides and riders within the City. The Project would not interfere with such efforts.
Measure TR-3.3: Improve active transportation options.	**Consistent.** As discussed in **Section 2.0**, **Project Description**, the Project would introduce new pedestrian walkways on-site and would provide bike racks for residents.
Strategy SW-1 Achieve Zero Waste	
Measure SW-1.1: Eliminate the disposal of organic solid waste in landfills.	**Consistent:** The Project would adhere to the regulatory requirements of AB 341, SB1383 AB 1826, and the City's Municipal Code that pertain to organic solid waste disposal.
Measure SW-1.2: Increase recycling and the diversion of other inorganic solid waste.	**Consistent:** The Project would adhere to the recycling standards set forth in Chapter 200 (Solid Waste) of the City's Municipal Code and the CalGreen Code.
Measure SW-1.3: Reduce the generation of waste from residents and businesses.	**Consistent.** The Project would comply with state and local laws and regulations (i.e., CalGreen Code, AB 341, SB1383, AB 1826, and in Chapter 200 of the City's Municipal Code) that govern the generation and disposal of waste in residential developments.
Measure SW-1.4: Reduce the generation of construction and demolition waste.	**Consistent.** All construction activities associated with the Project would be required to demonstrate compliance with the applicable state and local laws and regulations (i.e., AB 939 and Chapter 200 of the City's Municipal Code) that requires all generated construction-related waste to be reduced, recycled, and re-used.
Measure SW-1.5: Facilitate repair and reuse of consumer products.	**Not Applicable.** This measure directs the City to create reuse facilities. The Project would not interfere with such efforts.
Strategy OT-1 Shift to Clean Off-Road Equipment and Vehicles	
Measure OT-1.1: Reduce landscaping-related emissions.	**Consistent.** The Project would utilize energy efficient equipment to maintain the proposed open space and landscaping on-site.

Strategies and Actions	Consistency Analysis
Measure OT-1.2: Reduce construction-related emissions.	**Consistent.** As discussed above, construction activities associated with the Project would generate approximately 1,430 MT CO_{2e}. However, emissions would be temporary in nature and would represent a small portion of a Project's lifetime GHG emissions. Further, implementation **Mitigation Measure MM GHG-1** would require the Project to implement practices that would reduce emissions, such as utilizing energy-efficient construction equipment.
Strategy WA-1 Promote Resilient Water Supply, Water Use, and Water Resources	
Measure WA-1.1: Reduce indoor water consumption in buildings**.**	**Not Applicable.** This measure directs the City to implement water conserving programs and policies. The Project would not conflict with these policies.
Measure WA-1.2: Reduce water consumption for irrigation and landscaping.	**Consistent.** With implementation of **Mitigation Measure GHG-1**, the Project would include water-efficient irrigation systems capable of using reclaimed water.
Measure WA-1.3: Increase the use of recycled water and support efforts to drought-proof our water supply.	**Consistent.** The proposed outdoor landscaping for the Project's townhome community would be drought tolerant. Additionally, the Project would utilize reclaimed water on-site, when feasible.
Strategy CS-1 Resilient Infrastructure and Healthy Forest and Natural Systems	
Measure CS-1.1: Protect native trees and vegetation and enhance carbon sequestration.	**Not Applicable.** Currently, the Project Site is highly developed with little to no vegetation on-site. Further, **Appendix 3.3-1**, **Arborist Report** does not identify any native trees on-site.
Measure CS-1.2: Reduce the urban heat island effect to conserve energy.	**Consistent.** Tree coverings that would provide shading to residents would be planted throughout the Project Site. As stated, the proposed landscaping within the townhome community would be drought tolerant. All of the proposed shrubs and groundcover material would be low to moderate in water use.
Measure CS-1.3: Increase the use of green infrastructure.	**Consistent.** The Project would implement all sustainable building materials as recommended by the CalGreen Code to the proposed townhomes and apartment complex.
Measure CS-1.4: Increase soil carbon content.	**Not Applicable.** This measure requires the City to develop a soil strategy for the city to support urban agriculture, address carbon sequestration, and increase water capture. The Project would not conflict with these efforts.
Measure CS-1.5: Use low-carbon and carbon sequestering construction materials in new development.	**Not Applicable.** This measure implements plazas to include pervious pavement material, and new nonresidential developments to utilize building materials that store carbon.
Strategy GE-1 Foster Green and Sustainable Economic Development Opportunities	
Measure GE-1.1: Support and attract clean technology businesses and green jobs in Milpitas.	**Not Applicable.** This measure directs the City to collaborate with local and regional agencies to provide outreach programs, training, and educational courses pertaining to energy efficiency. This measure also requires the City to develop a Green Business Strategic Plan. The Project would not conflict with these efforts.
Measure GE-1.2: Incentivize and promote green business practices.	**Not Applicable.** This measure requires the City to promote certain "green" business practices: such as promoting green tenant and leasing practices for commercial businesses and to develop a "Clean Energy Pledge for commercial businesses. The Project would not conflict with these efforts.
Strategy GE-2 Support Circular Economy Policies	
Measure GE-2.1: Engage with circular economy and zero waste policymaking at the Federal, State, and local levels.	**Not Applicable.** This measure would encourage the City to implement best management practices that would reduce the City's waste generation. The Project would not conflict with these efforts.

Source:
City of Milpitas. Climate Action Plan Update. 2022. Available online at: https://www.milpitas.gov/climate-action-plan/climate-action-plan-documents/. Accessed April 6, 2023.

Level of Significance Before Mitigation

While impacts would be less than significant without mitigation, **Mitigation Measure GHG-1** would demonstrate the Project's compliance with applicable goals and measures set forth in the *Milpitas 2022 CAP Update*. As such, the Project would comply with BAAQMD threshold "B" which states that projects must be consistent with a local GHG reduction strategy.

Mitigation Measures

MM GHG-1 Prior to the issuance of a building permit, the Project Applicant shall demonstrate compliance with relevant and applicable measures of the CAP Update by preparing and implementing a project-specific consistency review checklist. The City shall review this consistency review checklist as part of the Project plan review.

The consistency review checklist shall outline feasible, effective and applicable measures that will be required for the Project. Applicable and effective measures in reducing Project GHG emissions include, but are not limited to, the following:

- Utilize the latest energy-efficient construction equipment, when feasible;
- Install Energy Star appliances;
- Install on-site renewable energy, such as solar panels;
- Provide on-site electric vehicle charging stations and associated infrastructure; and
- Install water-efficient irrigation systems capable of using reclaimed water, when available.

Level of Significance After Mitigation

Less than Significant Impact.

3.7.6 CUMULATIVE IMPACTS

The central requirement of the CEQA environmental analysis is to determine whether implementing a project will result in any significant adverse impact on the environment, either individually or cumulatively. In the cumulative context, the analysis has two parts. To evaluate cumulative impacts, the agency must assess (1) whether the overall cumulative impact will be significant and, (2) if the overall impact is significant, whether the incremental contribution that the individual project under review will add to the overall cumulative problem will be cumulatively considerable.

For land use development projects, the BAAQMD recommends using the approach endorsed by the California Supreme Court in the *Center for Biological Diversity* decision, discussed above, which focuses on determining whether the project would be doing its "fair share" to implement California's ambitious long term climate goals. This approach evaluates whether a project's GHG emissions are cumulatively considerable based on "their effect on the state's efforts to meet [those] goals...." (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 221.)

The GHG analysis presented herein is consistent with *State CEQA Guidelines* Section 15064.4(b) and considers whether the incremental contributions of the Project could be cumulatively considerable. As analyzed under **Impact GHG-1** and **GHG-2,** no significant GHG impacts are expected to result from the Project, and cumulative impacts related to GHG emissions would be less than significant and would not be cumulatively considerable.

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3.8 HAZARDS AND HAZARDOUS MATERIALS

INTRODUCTION

This section presents an overview of the existing conditions with regard to the presence of hazards and/or hazardous materials within the boundaries of the 1355 California Circle Project. It also discusses the potential impacts resulting from hazards or hazardous materials as a result of construction and operation activities associated with the Project. The analysis for this section is based, in part, on the information contained in ***Appendix 3.8, Phase I Environmental Site Assessment Update****.*

3.8.1 ENVIRONMENTAL SETTING

3.8.1.1 Hazardous Materials

Section 25501(m) of the California Health and Safety Code defines a "hazardous material" as:

> *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 into the workplace or the environment. "Hazardous Materials" include, but are not limited to, hazardous substances, hazardous wastes, and any materials which 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 environment.*

"Hazardous waste" is any hazardous material that is abandoned, discarded, or recycled, as defined by Sections 25117 and 25124 of the California Health and Safety Code. In addition, hazardous waste may occasionally be generated by actions that change the composition of previously nonhazardous materials. The criteria used to characterize a material as hazardous include ignitability, toxicity, corrosivity, reactivity, radioactivity, or bioactivity.

As will be discussed in more detail below, hazardous materials and wastes are defined and regulated in the United States by federal, state, and local regulations, including those administered by the U.S. Environmental Protection Agency (U.S. EPA), the California Environmental Protection Agency (Cal/EPA), the U.S. Occupational Safety and Health Administration, the U.S. Department of Transportation, the U.S. Nuclear Regulatory Commission, and various other agencies. Hazardous materials include hazardous wastes and, in the discussion, below (except as noted) hazardous materials refers to both hazardous materials and wastes.

Public health is potentially at risk whenever hazardous materials are, or would be, used and when hazardous wastes are disposed of, including transportation of hazardous materials and wastes. It is necessary to differentiate between the "hazard" of these materials and the acceptability of the "risk" they

pose to human health and the environment. A hazard is any situation that has the potential to cause damage to human health and the environment. The California Department of Toxic Substances Control (DTSC) determines the risk to health and public safety by the probability of exposure, in addition to the inherent toxicity of a material. Factors that can influence the health effects when human beings are exposed to hazardous materials or wastes include: the dose the person is exposed to, the frequency of exposure, the duration of exposure, the exposure pathway (route by which a chemical enters a person's body), and the individual's unique biological susceptibility.

3.8.1.2 Existing Land Uses

Transportation of Hazardous Materials

The transportation of hazardous materials within the State of California is subject to various federal, state, and local regulations. It is illegal to transport explosives or inhalation hazards on any public highway not designated for that purpose, unless the use of the highway is required to permit loading or delivery of such materials (California Vehicle Code Sections 31602(b), 32104(a)). The California Highway Patrol, (CHP) designates through routes to be used for the transportation of hazardous materials. Transportation of hazardous materials in the City is restricted to this route except in cases where additional travel is required from that route to deliver or receive hazardous materials to and from users. There are several risks associated with the transportation of hazardous materials. Transport of hazardous materials via truck, rail, and other modes involves a degree of risk of accident and release. The use of hazardous materials and the generation of hazardous waste in the construction and maintenance of the transportation system are other avenues for risk or exposure. Past disposal of hazardous materials in a manner that creates residual contamination of soil or water can be a source of risk when such sites are disturbed during construction and development. Each of these avenues is discussed below.

Current Use of Property

The Project Site is currently developed and consists of an approximately 90,000-square-foot industrial facility, which is located in the center of and covers most of the site. The Project Site was previously occupied and utilized by the LTX-Credence Corporation. However, the building was vacated in 2016, and has remained unoccupied ever since. The remainder of the site consists of landscaped areas, surface parking lots, and storage materials.

Historic Use of Property

As discussed in **Section 2.0**, **Project Description**, the Project Site was used for dry agricultural purposes and dry farming between 1959 and 1960. The Project Site was graded in 1982 and the existing building

was constructed in 1986. Between 1986 and 2010, the existing building was used by Sun Microsystems, LTX Credence Corporation, and XCERRA Corporation for semiconductor research and development purposes and office space. Between 2010 and 2014, LTX-Credence Corporation was the sole occupant of the building. LTX Credence Corporation and XCERRA Corporation both occupied the building between 2014 and 2016.

Records Review

The *Phase I Environmental Site Assessment Update, 1355 California Circle Milpitas, California*, (Phase I ESA) dated November 18, 2020, included a search of federal, state, and local databases regarding the use, storage, disposal, or release of hazardous substances and/or petroleum products for the site and area within one mile of the Project Site. LTX Credence Corporation is listed in the Certified Unified Program Agencies Listings (CUPA LISTINGS) for a Santa Clara County CUPA registration for the generation of between 100 kilograms and 5 tons of hazardous waste per year. Sun Microsystems is listed on the HAZNET for hazardous waste manifests reporting "other organic solids" waste for one 1,000-gallon diesel underground (UST). They are also listed in the Statewide environmental evaluation and planning system (SWEEPS UST) and the Local list of registered USTs (CA FID UST) for the registration for one 1,000-gallon diesel underground storage tank (UST).

Previous UST

According to the Phase I ESA, a 1,000-gallon diesel underground storage tank (UST) was present along the western side of the structure (see **Figure 3.8-1**, **Previous Hazardous Uses and Exploratory Borings Locations**) and was used to fuel an emergency generator. This UST was removed in 1992 under observation by the Milpitas Fire Department, during which stained soil was observed in the UST pit. According to a memorandum prepared by the Milpitas Fire Department (see Appendix F of the Phase I ESA), there were no holes noted in the UST and no odors or visibly stained soil was observed within the excavation. The memorandum also noted that there were no holes observed in the tank and no odors or visibly stained soil was observed within the excavation. This UST was replaced with three aboveground storage tanks (ASTs). However, these ASTs were not reported to remain on-site in the Phase I ESA.

In July 2019, the preparers of the Phase I ESA, Cornerstone Earth Group, prepared a previous Phase I ESA of the Project Site, titled *Phase I ESA and Preliminary Soil, Soil Vapor, and Groundwater Quality Evaluation*. This report documented a previous laboratory testing in July 2019, in which soil, soil vapor, and groundwater samples were collected at one location adjacent to location of the previous UST and downgradient from the UST. Diesel-range petroleum hydrocarbons (TPHd) were detected in the soil sample collected at a depth of approximately 15 to 16 feet. TPHd was also detected in the groundwater

samples collected at concentrations above the ASTM E 1527-13 standard threshold; and TPHg, benzene, and ethylbenzene were detected in soil vapor samples above their ASTM E 1527-13 standard thresholds. These detections indicated localized residual UST impacts. As such, the removal of this UST is identified in the Phase I ESA as an Historical Recognized Environmental Condition (HREC).

Previous Hazardous Waste Storage

On November 9, 2020, Cornerstone Earth Group conducted a site reconnaissance to document observed conditions of the Project Site.

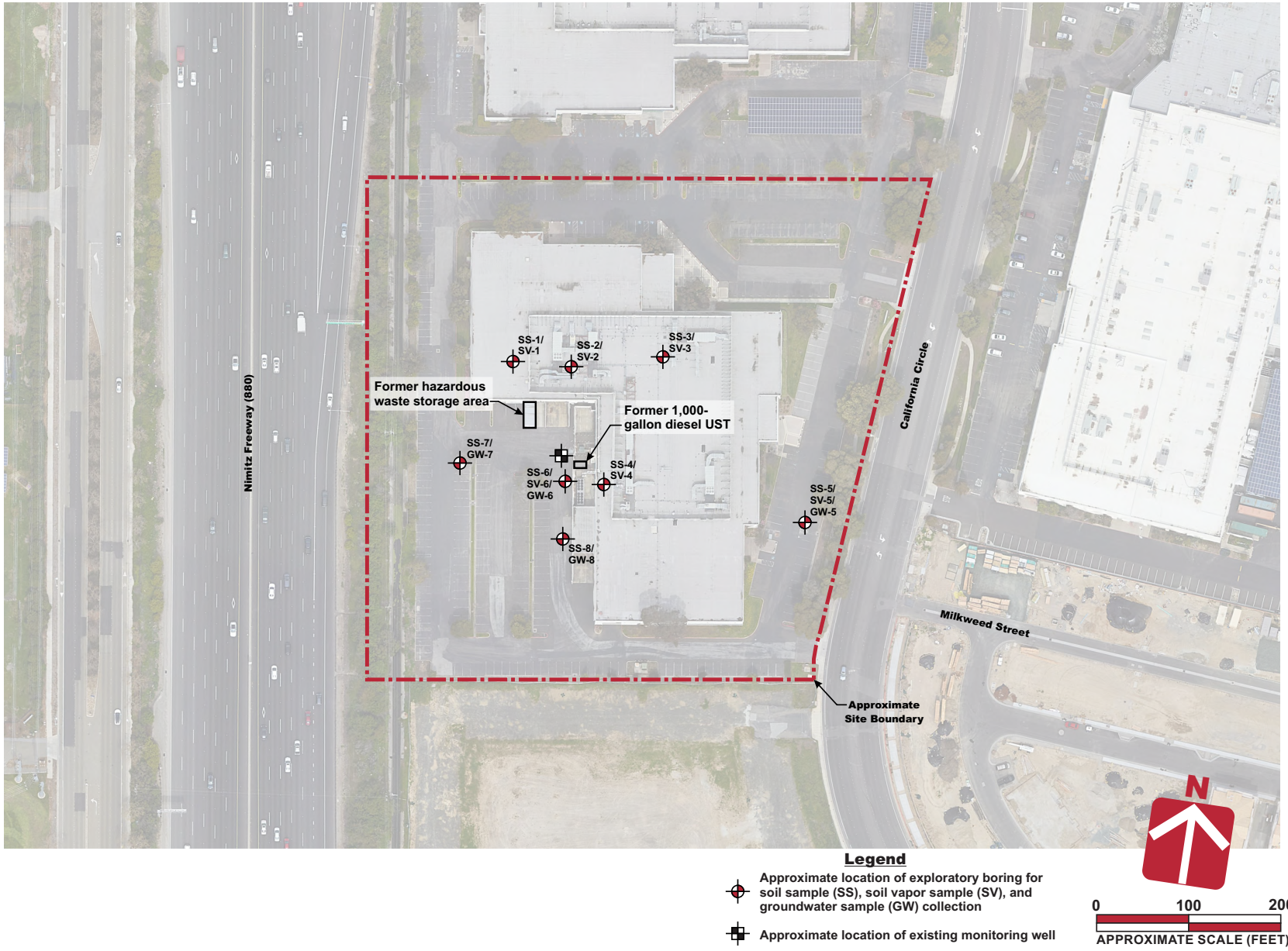
During this site reconnaissance conducted observed a former hazardous waste storage area on the western side of the Project Site (see Figure structure (see **Figure 3.8-1**, **Previous Uses and Exploratory Borings Locations**), outside of the existing industrial facility. The storage area had a locking gate, concrete floor, and an overhang. During the reconnaissance, the storage area did not contain any evidence of hazardous waste or materials. No indicators of spills or leaks (e.g., stains, pooling, etc.) were observed within this area.

Airport-Related Hazards

There are no public or private use airports located within the City of Milpitas. The closest airport to the Project would be the Norman Y. Mineta San Jose International Airport located approximately 5.42 miles southwest of the Project Site at 1701 Airport Boulevard in the City of San José.

Schools

The nearest public schools to the Project Site are Milpitas High School and Thomas Russell Middle School located approximately 0.82 miles east and 1.08 miles east from the Project Site, respectively. The nearest private school to the Project Site is Crescent Montessori School of Silicon Valley, located approximately 0.56 miles northeast from the Project Site.



SOURCE: Cornerstone Earth Group, 2022

FIGURE **3.8-1**

IMPACT SCIENCES

Previous Hazardous Uses and Exploratory Borings Locations

1451.001•11/22

3.8.1.3 Emergency Response Planning

The Milpitas Fire Department Office of Emergency Management (OEM) coordinates the City's preparedness efforts to mitigate against, plan for, respond to and recover from natural and technological disasters.[1] To meet this commitment, the OEM trains City employees on disaster planning, updates the City's emergency plans, provides disaster preparedness information to residents and local businesses, and manages the Community Emergency Response Team (CERT) program. The City's CERT program is an emergency preparedness program created to train individuals to initiate mitigation activities before or immediately following an emergency or disaster event. Under the CERT program, the City of Milpitas currently has approximately eight SAFE teams that are trained to respond to emergency and disaster events, including disaster events related to hazardous materials. The OEM is operated from an Emergency Operations Center (EOC) that is kept in a constant state of readiness for City staff to manage and respond to emergency situations, which includes hazard-related disaster events.

Wildland Fires

The Project Site and surrounding areas are built out with urban land uses; no wildland vegetation that could fuel wildfires is present on-site. Further, the only areas in the City that are designated as moderate to high Fire Hazard Severity Zones in State Responsibility Areas are the open hillsides at the eastern side of the City.[2] These hillsides are approximately 3.5 miles east of the Project Site.

3.8.1.4 Potential Hazardous Materials in Buildings

Hazardous materials, such as asbestos, lead, and polychlorinated biphenyls (PCBs), may also be contained in building materials and components. Procedures for dealing with these materials, and for safely removing and disposing of them in accordance with applicable regulations, have been developed by oversight agencies and are described below.

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1 City of Milpitas, "Office Emergency Management," Available online at: https://www.milpitas.gov/milpitas/departments/fire/office-of-emergency-management/, accessed October 4, 2022.

2 City of Milpitas, *General Plan Update Environmental Impact Report*. November 2, 2020, Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed September 15, 2022.

Asbestos

Asbestos is a naturally occurring fibrous material that was used as a fireproofing and insulating agent in building construction before such uses were banned by U.S. EPA in the 1970s, although some nonfriable[3] use of asbestos in roofing materials still exists. The presence of asbestos can be found in materials such as ducting insulation, wallboard, shingles, ceiling tiles, floor tiles, insulation, plaster, floor backing, and many other building materials. Asbestos and Asbestos Containing Materials (ACMs) are considered both hazardous air pollutants and human health hazards. The risk to human health is from inhalation of airborne asbestos, which commonly occurs when ACMs are disturbed during such activities as demolition and renovation. The Phase I ESA determined that, due to the age of the existing on-site building, it is unlikely that the Project Site contains ACMs.

Lead

In 1978, the Consumer Product Safety Commission set the allowable lead levels in paint at 0.06 percent by weight in a dry film of newly applied paint. In the 1970s, the chief concern for lead-based paint was its cumulative effect on body systems, primarily when paint chips containing lead were ingested by children. Research in the early 1980s showed that lead dust is of special concern because the smaller particles are more easily absorbed by the body. Common methods of paint removal, such as sanding, scraping, and burning, create excessive amounts of dust. Lead dust is especially hazardous to young children because they play on the floor and engage in a great deal of hand-to-mouth activity, increasing their potential for exposure. Lead-based paints (LBPs) were commonly used in buildings built prior to the 1970s. According to the Phase I ESA, LBPs may be present within the existing industrial facility.

Polychlorinated Biphenyls

Polychlorinated Biphenyls (PCBs) are organic oils that were formerly placed in many types of electrical equipment, including transformers and capacitors, primarily as electrical insulators. They may also be contained in hydraulic fluid used for hoists, elevators, etc. Years after widespread and commonplace installation, it was discovered that exposure to PCBs may cause various deleterious health effects and that PCBs are highly persistent in the environment. These substances have been listed as carcinogens by U.S. EPA. PCBs were banned from use in electrical capacitors, electrical transformers, vacuum pumps, and gas turbines in 1979. There are no existing transformers or capacitors on-site or within the immediate perimeters of the Project Site. Additionally, the existing industrial facility was constructed after 1979. Therefore, is unlikely that PCBs are present on-site.

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3 Nonfriable asbestos refers to ACMs that contain asbestos fibers in a solid matrix that does not allow for them to be easily released.

3.8.2 REGULATORY FRAMEWORK

3.8.2.1 Federal Regulations

The U.S. Environmental Protection Agency (U.S. EPA) is the main federal agency responsible for enforcing regulations relating to hazardous materials and wastes, including evaluation and remediation of contamination and hazardous wastes. The U.S. EPA works collaboratively with other agencies to enforce materials handling and storage regulations and site cleanup requirements. The Occupational Safety and Health Administration (OSHA) and the Department of Transportation (DOT) are authorized to regulate safe transport of hazardous materials.

Resource Conservation and Recovery Act (RCRA)

RCRA is the public law that creates the framework for the proper management of hazardous and non-hazardous solid waste. The law describes the waste management program mandated by Congress that gave the U.S. EPA authority to develop the RCRA program. The term RCRA is often used interchangeably to refer to the law, regulations, and the U.S. EPA policy and guidance.

U.S. Dept. of Transportation, Hazardous Materials Transport Act (49 USC 5101)

The U.S. Department of Transportation, in conjunction with the U.S. EPA, is responsible for enforcement and implementation of federal laws and regulations pertaining to transportation of hazardous materials. The Hazardous Materials Transportation Act of 1974 directs the U.S. Department of Transportation to establish criteria and regulations regarding the safe storage and transportation of hazardous materials. Code of Federal Regulations (CFR) 49, 171–180, regulates the transportation of hazardous materials, types of material defined as hazardous, and the marking of vehicles transporting hazardous materials.

Toxic Substances Control Act

Congress enacted the Toxic Substances Control Act (TSCA) of 1976 to give U.S. EPA the ability to track the approximately 75,000 industrial chemicals currently produced or imported into the United States. The U.S. EPA repeatedly screens these chemicals and can require reporting or testing of those that may pose an environmental or human-health hazard. The U.S. EPA can ban the manufacture and import of those chemicals that pose an unreasonable risk.

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents,

spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the U.S. EPA was given power to seek out those parties responsible for any release and assure their cooperation in the cleanup.

Emergency and Community Right to Know Act

The Emergency and Community Right to Know Act (EPCRA) was enacted by Congress as the national legislation on community safety. This law was designated to help local communities protect public health, safety, and the environment from chemical hazards. EPCRA was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. EPCRA establishes requirements for federal, state, and local governments, tribes and industry regarding emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment. To implement EPCRA, Congress required each state to appoint a State Emergency Response Commission (SERC). The SERCs were required to divide their states into Emergency Planning Districts and to name a Local Emergency Planning Committee for each district.

Residential Lead-Based Paint Hazard Reduction Act

The purposes of the Residential Lead-Based Paint Hazard Reduction Act are to:

- Develop a national strategy to build the infrastructure necessary to eliminate LBP hazards in all housing as expeditiously as possible;
- Reorient the national approach to the presence of LBP in housing to implement, on a priority basis, a broad program to evaluate and reduce LBP hazards in the Nation's housing stock;
- Encourage effective action to prevent childhood lead poisoning by establishing a workable framework for LBP hazard evaluation and reduction and by ending the current confusion over reasonable standards of care;
- Ensure the existence of LBP hazards is taken into account in the development of Federal, State, and local housing policies and in the sale, rental, and renovation of homes and apartments;
- Mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing LBP hazards;

- Reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government; and

- Educate the public concerning the hazards and sources of LBP poisoning and steps to reduce and eliminate such hazards.

3.8.2.2 State Regulations

Department of Toxic Substances Control

The State Department of Toxic Substances Control (DTSC) is authorized by CAL EPA to administer the hazardous waste laws and oversee remediation of hazardous wastes sites. Regulations require that DTSC "shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all the following: (1) [a]ll hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code (HSC)."[4]

The hazardous waste facilities identified in HSC Section 25187.5 are those where DTSC has taken or contracted for corrective action because a facility owner/operator has failed to comply with a date for taking corrective action in an order issued under the HSC, or because DTSC determined that immediate corrective action was necessary to abate an imminent or substantial endangerment.[5]

Hazardous Waste Control Law of 1972

The Hazardous Waste Control Act (Health and Safety Code Sections 25100 et seq.) created the state hazardous waste management program, which is similar to but more stringent than the federal RCRA program. The Act is implemented by regulations contained in Title 26 of the California Code of Regulations (CCR), which describes the following required aspects for the proper management of hazardous waste: identification and classification; generation and transportation; design and permitting of recycling, treatment, storage, and disposal facilities; treatment standards; operation of facilities and staff training; and closure of facilities and liability requirements. These regulations list more than 800 materials that may be hazardous and establish criteria for identifying, packaging, and disposing of such waste. Under the Hazardous Waste Control Act and Title 26, the generator of hazardous waste must complete a manifest that accompanies the waste from generator to transporter to the ultimate disposal location. Copies of the manifest must be filed with DTSC.

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4 California Government Code, Title 22, Section 65962.5.

5 California Health and Safety Code, Section 25187.5.

Hazardous Materials Release Response Plans and Inventory Law of 1985

The Hazardous Materials Release Response Plans and Inventory Law of 1985 (Business Plan Act; HSC Division 20 Chapter 6.95 [25500–25547.8]) governs hazardous materials handling, reporting requirements, and local agency surveillance programs.

Lempert-Keene-Seastrand Oil Spill Prevention and Response Act

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 granted the Office of Spill Prevention and Response (OSPR) the authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in marine waters of California. OSPR implements the California Oil Spill Contingency Plan, consistent with the National Contingency Plan, which pays special attention to marine oil spills and impacts to environmentally- and ecologically-sensitive areas. In 2014, the OSPR program was expanded to cover all statewide surface waters at risk of oil spills from any source, including pipelines and the increasing shipments of oil transported by railroads.

California Dept. of Conservation, Division of Oil, Gas, and Geothermal Resources

The California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) is mandated by Section 3106 of the Public Resources Code to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells for the purpose of preventing (1) damage to life, health, property, and natural resources; (2) damage to underground and surface waters suitable for irrigation or domestic use; (3) loss of oil, gas, or reservoir energy; and (4) damage to oil and gas deposits by infiltrating water and other causes. The regulations can be found in the CCR Title 14. DOGGR's Well Review Program assists developers in addressing issues associated with development near oil and gas wells.[6]

California Disaster Assistance Act

The California Disaster Assistance Act (CDAA; CCR Title 19, Chapter 6) authorizes the Director of the California Governor's Office of Emergency Services (Cal OES) to administer a disaster assistance program that provides financial assistance from the state for costs incurred by local governments as a result of a disaster event. Funding for the repair, restoration, or replacement of public real property damaged or

6 California Division of Oil, Gas, and Geothermal Resources, *Well Review Program Introduction and Application*, 2007 ftp://ftp.consrv.ca.gov/pub/oil/Well_Review_Program.pdf. Accessed October 17,2022.

destroyed by a disaster is made available when the Director concurs with a local emergency proclamation requesting state disaster assistance.[7]

Hazardous Substances Account Act (State Superfund) (HSC Sections 25300–25301)

Chapter 6.8 of the California Health and Safety Code requires the DTSC to include "the largest manageable number" of potentially responsible parties (PRPs) in any cleanup order that applies to a multiple PRP site after considering certain factors, including the adequacy of the evidence of each PRP's liability, the financial viability of each PRP, and the degree to which each PRP contributed to the release of hazardous substances at the site.[8]

Hazardous Materials Release Cleanup (Assembly Bill 440 Chapter 588)

Assembly Bill (AB) 440 Chapter 588, passed into law in 2013, authorizes a local agency to take clean up action similar to that under the Polanco Redevelopment Act that the local agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances within the boundaries of the local agency. AB 440 allows the local agency to designate another agency, in lieu of the department or the regional board, to review and approve a cleanup plan and to oversee the cleanup of hazardous material from a hazardous material release site, under certain conditions. It also provides immunity to the local agency as long as the action is in accordance with a cleanup plan prepared by a qualified independent contractor, and approved by the department, a regional board, or the designated agency, and the cleanup is undertaken and properly completed. Finally, AB 440 authorizes the local agency to recover cleanup costs from the responsible party.[9]

Asbestos Regulations

In 1990, ARB issued an Airborne Toxic Control Measure (ATCM), which prohibited the use of serpentine aggregate for surfacing if the asbestos content was 5 percent or more.[10] In July 2000, ARB adopted amendments to the existing ATCM prohibiting the use or application of serpentine, serpentine-bearing materials and asbestos-containing ultramafic rock for covering unpaved surfaces unless it has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than

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7 California Office of Emergency Services, *California Disaster Assistance Act (CDAA)*, 2019. Available online at: https://www.caloes.ca.gov/cal-oes-divisions/recovery/public-assistance/california-disaster-assistance-act.

8 California Legislative Information, *ARTICLE 1. Short Title and Legislative Intent [25300-25301]*, 1999.

9 California Legislative Information, *Assembly Bill No. 440*, 2013.

10 California Air Resources Board, *Asbestos ATCM for Surfacing Applications*, 2019. Available online at: https://ww3.arb.ca.gov/toxics/atcm/asbeatcm.htm.

0.25 percent.[11] In July 2001, ARB adopted a new ATCM for construction, grading, quarrying, and surface mining operations in areas with serpentine or ultramafic rocks.[12] These regulations are codified in Title 17, Section 93105 of the CCR. The regulations require preparation and implementation of an Asbestos Dust Mitigation Plan for construction or grading activities on sites greater than 1 acre in size with known Naturally Occurring Asbestos (NOA) soils. The air districts enforce this regulation.[13]

In October 2000, the Governor's Office of Planning and Research (OPR) issued a memorandum providing guidance to lead agencies in analyzing the impacts of NOA on the environment through the California Environmental Quality Act (CEQA) review process.[14] In November 2000, the California Department of Real Estate added a section to subdivision forms that includes questions related to NOA on property proposed for development.[15] In 2004, as part of its school-site review program, the DTSC's School Property Evaluation and Cleanup Division released interim guidance on evaluating NOA at school sites.[16]

In addition, HSC Section 19827.5 prohibits the issuance of demolition permits by local and State agencies for any building or structure that has not submitted all required asbestos notifications to the U.S. EPA, pursuant to Part 61 of Title 40 of the Code of Federal Regulations.[17]

California Occupational Safety and Health Administration (Cal/OSHA) Regulations. Cal/OSHA sets forth regulations for the disturbance of Asbestos Containing Construction Materials (ACCMs) including removal operations for all types of ACCMs. Cal/OSHA requires contractors and employers that remove ACCMs to be registered and consultants and technicians who conduct sampling and/or removal to be certified. In addition, the agency has developed standards for general industry and the construction industry hazardous waste operations and emergency response. Cal/OSHA ensures that employers must

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11 California Air Resources Board, *Amendments to the Asbestos Regulation for Surfacing Applications*, 2001. Available online at: https://ww3.arb.ca.gov/toxics/asbestos/atcm/regadv1101.pdf.

12 California Air Resources Board, *Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations*, 2001. Available online at: https://ww3.arb.ca.gov/toxics/asbestos/atcm/regadv0702.pdf.

13 California Code of Regulations, "Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations." Available online at: http://www.baaqmd.gov/~/media/Files/Compliance%20and%20Enforcement/Asbestos/final_reg_order.ashx.

14 Governor's Office of Planning and Research, *Addressing Naturally Occurring Asbestos in CEQA Documents*, 2000. Available online at: http://www.co.mendocino.ca.us/aqmd/pdf_files/NOA_OPR.pdf.

15 California Department of Real Estate, "Subdivision Forms." Available online at: http://www.bre.ca.gov/Forms/Subdivisions.html.

16 Department of Toxic Substances Control, *Interim Guidance Naturally Occurring Asbestos (NOA) at School Sites*, 2004. Available online at: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/SMBRP_POL_Guidance_Schools_NOA.pdf.

17 California Legislative Information, *ARTICLE 1. Contents [19825-19829]*, 1979.

have controls to reduce and monitor exposure levels of hazardous materials, an informational program describing any exposure during operations and the inspection of drums and containers prior to removal or opening. Decontamination procedures and emergency response plans must be in place before employees begin working in hazardous waste operations.[18]

California Code of Regulations (CCR) Title 8 Section 1529. This section of the CCR regulates asbestos exposure for work identified in Section 1502, including demolition or salvage of structures where asbestos is present; removal or encapsulation of materials containing asbestos; construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos, installation of products containing asbestos; asbestos spill/emergency cleanup; transportation, disposal, storage, containment of and housekeeping activities involving asbestos or products containing asbestos, on the site or location at which construction activities are performed; and excavation that may involve exposure to asbestos as a natural constituent which is not related to asbestos mining and milling activities.[19]

Lead Regulations

Because of its toxic properties, lead is regulated as a hazardous material. Lead is also regulated as a toxic air contaminant. State-certified contractors must perform inspection, testing, and removal (abatement) of lead-containing building materials in compliance with applicable health and safety and hazardous materials regulations, including those outlined in Title 17 of the CCR.

CCR Title 8 Section 1532.1. This section of the CCR applies to all construction work where employees could be occupationally exposed to lead, including demolition or salvage of structures where lead or materials containing lead are present; removal or encapsulation of materials containing lead; new construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead or materials containing lead; installation of products containing lead; lead contamination/emergency clean-up; transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and maintenance operations associated with construction activities. This section sets a maximum exposure limit; requires an assessment to determine whether employees may be exposed to lead; requires employees to create a compliance program to ensure that employee exposure to lead are at or below the permissible exposure limit to the extent

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18 California Department of Industrial Relations. *Cal/OSHA*. 2019. Available online at: https://www.dir.ca.gov/DOSH/.

19 California Code of Regulations. *§1529. Asbestos*. Available online at: https://www.dir.ca.gov/title8/1529.html.

feasible; and requires that employees with exposure to lead are provided with respiratory protection, protective work clothing and equipment.[20]

Other state laws that address lead include:

- Hazardous Waste Control Law
- Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)
- Carpenter-Presley-Tanner Hazardous Substances Account Act
- Hazardous Waste Management Planning and Facility Siting (Tanner Act)
- Hazardous Materials Release Response Plan and Inventory Law of 1985 (Business Plan Act)

California Accidental Release Prevention Program

The California Accidental Release Prevention Program (CalARP; CCR Title 19, Division 2, Chapter 4.5) was implemented on January 1, 1997, and replaced the California Risk Management and Prevention Program (RMPP). The CalARP program encompasses both the federal "Risk Management Program," established in the Code of Federal Regulations, Title 40, Part 68, and the State of California program, in accordance with the Title 19 of the California Code of Regulations, Division 2, Chapter 4.5.

The main objective of the CalARP program is to prevent accidental releases of those substances determined to potentially pose the greatest risk of immediate harm to the public and the environment, and to minimize the consequences if releases do occur. These substances are called regulated substances and include both flammable and toxic hazardous materials listed on the Federal Regulated Substances for Accidental Release Prevention and on the State of California Regulated Substances lists. Businesses that handle regulated substances in industrial processes above threshold quantity levels are subject to CalARP program requirements.

The CalARP program requires businesses to have planning activities that are intended to minimize the possibility of an accidental release by encouraging engineering and administrative controls. It is further intended to mitigate the consequences of an accidental release, by requiring owners or operators of facilities to develop and implement an accident prevention program.

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20 California Code of Regulations. *§1532.1. Lead*. Available online at: https://www.dir.ca.gov/title8/1532_1.html.

California Human Health Screening Levels

The California Human Health Screening Levels (CHHSLs) were developed as a tool to assist in the evaluation of contaminated sites for potential adverse threats to human health. Preparation of the CHHSLS was required by the California Land Environmental Restoration and Reuse Act of 2001. The CHHSLs were developed by OEHHA, an agency under the umbrella of Cal/EPA, and are contained in its report entitled *Human-Exposure- Based Screening Numbers Developed to Aid Estimation of Cleanup Costs for Contaminated Soil1*. The thresholds of concern used to develop the CHHSLs are an excess lifetime cancer risk of one in 1 million and a hazard quotient of 1.0 for non-cancer health effects. The CHHSLs were developed using standard exposure assumptions and chemical toxicity values published by EPA and Cal/EPA. The CHHSLs can be used to screen sites for potential human health concerns where releases of hazardous chemicals to soils have occurred. Under most circumstances, the presence of a chemical in soil, soil gas, or indoor air at concentrations below the corresponding CHHSLs can be assumed to not pose a significant health risk to people who may live (residential CHHSLs) or work (commercial/ industrial CHHSLs) at the site.

California Fire Code

The California Fire Code (CFC) is Chapter 9 of CCR Title 24. It is the primary means for authorizing and enforcing procedures and mechanisms to ensure the safe handling and storage of any substance that may pose a threat to public health and safety. The CFC regulates the use, handling, and storage requirements for hazardous materials at fixed facilities. The CFC and the California Building Code use a hazard classification system to determine what protective measures are required to protect fire and life safety. These measures may include construction standards, separations from property lines, and specialized equipment. To ensure that these safety measures are met, the CFC employs a permit system based on hazard classification. The CFC is updated every three years.

2017 State of California Emergency Plan

The 2017 State of California Emergency Plan, also referred to as the State Emergency Plan (SEP), addresses the state's response to extraordinary emergency situations associated with natural disasters or human-caused emergencies. The California Emergency Services Act provides the basic authorities for conducting emergency operations following the proclamation of emergencies by appropriate local officials and/or the Governor. The provisions of this act are further reflected and expanded upon by local emergency ordinances. In accordance with this act, the SEP describes the methods for carrying out emergency operations, the process for rendering mutual aid, the emergency services of governmental agencies, how resources are mobilized, how the public will be informed and the process to ensure

continuity of government during an emergency or disaster. The SEP emphasizes mitigation programs to reduce the vulnerabilities to disaster and preparedness activities to ensure the capabilities and resources are available for an effective response. To assist communities and governments to recover from the disaster, the SEP outlines programs that establish a consistent, statewide framework to enable state, local, tribal governments, federal government and the private sector to work together to mitigate, prepare for, respond to and recover from the effects of emergencies regardless of cause, size, location, or complexity.

2018 State Hazard Mitigation Plan

Approved by the Federal Emergency Management Agency (FEMA) in September 2018, as an Enhanced State Mitigation Plan, the 2018 State Hazard Mitigation Plan (SHMP) update continues to build upon California's commitment to reduce or eliminate the impacts of disasters caused by natural, technological, accidental, and adversarial/human-caused hazards, and further identifies and documents progress made in hazard mitigation efforts, new or revised state and federal statutes and regulations, and emerging hazard conditions and risks that affect the State of California. Resilience depends on the whole community and is a shared responsibility for all levels of government, private and nonprofit sectors, and individuals.

3.8.2.3 Local Regulations

Bay Area Air Quality Management District

The Bay Area Air Quality Management District (BAAQMD) works with the California Air Resources Board (CARB) and is responsible for developing and implementing rules and regulations regarding air toxics (i.e., asbestos containing materials and lead-based paint) on a local level. The BAAQMD establishes permitting requirements, inspects emission sources, and enforces measures through educational programs and/or fines. The BAAQMD and regulations related to air quality are discussed in detail in **Section 3.2, Air Quality**.

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* (General Plan) includes goals, policies, and standards related to the transporting and handling of hazardous materials in the City as set forth in the Safety Element. The Safety Element provides the framework to reduce risks associated with a range of environmental and human-caused hazards that may pose a risk to life and property in Milpitas.

The Safety Element states the following relevant goals and policies:

Goal SA-5: Protect citizens from hazardous materials.

Policy SA 5-1: Require hazardous waste generated within Milpitas to be disposed of in a safe manner, consistent with all applicable local, state, and federal laws.

Policy SA 5-2: Hazardous materials shall be stored in a safe manner, consistent with all applicable local, state, and federal laws.

Policy SA 5-3: Use the environmental review process to comment on Hazardous Waste Transportation, Storage and Disposal (TSD) Facilities proposed in the Milpitas Planning Area and throughout the County to request a risk assessment and ensure that potentially significant, widespread, and long-term impacts on public health and safety of these facilities are identified and mitigated, as such impacts do not respect jurisdictional boundaries.

3.8.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to hazards and hazardous materials are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Adoption and/or implementation of the 1355 California Circle Project could result in significant impacts due to the use and/or transportation of hazards and hazardous materials, if any of the following would occur:

- Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;
- 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;
- Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school;
- Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment;
- For a Project located 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, would the Project result in a safety hazard or excessive noise for people residing or working in the Project area;

- Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; or

- Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.

3.8.4 METHODOLOGY

The analysis in this section includes a focus on the use, disposal, transport, and management of hazardous or potentially hazardous materials resulting from potential development or redevelopment resulting from the implementation of the Project. Disposal options, the probability for risk of upset, and the severity of consequences to people or property associated with the increased use, handling, transport, and/or disposal of hazardous materials associated with the implementation of the Project is also analyzed. This section addresses potential short-term construction impacts resulting from demolition of existing (usually older) structures, as well as from disturbance of contaminated soils, and impacts related to the operation of development in the Project over time. Operational impacts would generally be associated with the type of uses proposed and the materials that operation of these uses would entail. In determining the level of significance, the analysis assumes that any development under the Project would comply with relevant federal and state laws and regulations.

In 2015, the California Supreme Court in *CBIA v. BAAQMD*, held that CEQA generally does not require a lead agency to consider the impacts of the existing environment on the future residents or users of a project. However, if a Project exacerbates a condition in the existing environment, the lead agency is required to analyze the impact of that exacerbated condition on future residents and users of a project, as well as other impacted individuals. Therefore, the analysis focused on the potential for the Project to exacerbate an existing condition.

3.8.5 ENVIRONMENTAL IMPACTS

Impact HAZ-1 Would the Project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Exposure of the public or the environment to hazardous materials could occur through improper handling or use of hazardous materials or hazardous wastes during routine use, disposal, and/or transport of hazardous materials/waste. The severity of potential effects varies with the activity conducted, the concentration and type of hazardous materials or wastes present, and the proximity of sensitive receptors.

Construction Activities

Construction activities associated with the Project would involve the demolition, excavation, grading, and construction of new residential buildings. Potentially hazardous materials used during construction include substances such as paints, sealants, lubricants, solvents, adhesives, cleaners, and diesel fuel. There is potential for these materials to spill or to create hazardous conditions. However, these activities would also be short term and would cease upon completion of construction. Additionally, the materials used for these activities would not be in such quantities or stored in such a manner as to pose a significant safety hazard.

As discussed, it is unlikely that certain hazardous substances, such as ACMs and PCBs, are likely present on the Project Site. However, according to the Phase I ESA, LBPs are likely present within the existing industrial facility and could potentially expose construction workers to high levels of lead during the demolition activities associated with the Project. As such, the Project Applicant would comply with the recommendations outlined in the Phase I ESA and remove any observed flaking, peeling, or blistering LBPs prior to the demolition of the existing on-site building. Additionally, the Project Applicant would comply with the BAAQMD rules and regulations pertaining to the handling of LBP materials. Further, the Project would comply with all applicable OSHA regulatory requirements, including requirements for worker training, air monitoring and dust control.

The Phase I ESA identified one HREC in connection with the property: a 1,000-gallon UST that was reported to have been removed in 1992. Although agency records indicate that an oil release had not occurred at that time; soil, soil vapor, and groundwater samples that were collected in the assumed downgradient direction from the UST for the purposes of this Project detected concentrations of petroleum hydrocarbons (TPHd) and VOCs (benzene, ethylbenzene, and TPHg) that exceeded their respective Tier 1 ESLs. The Phase I ESA concluded that residual concentration of these petroleum hydrocarbons and VOC from this UST may be present in the subsurface. Notwithstanding, construction workers may encounter contaminated soils while excavating and grading at the on-site location of the former UST.

Prior to initiation of construction activities, the Project Applicant would be required to coordinate with the City and the Milpitas Fire Department (MFD) in determining if appropriate site remediation as a condition of approval is required. In the event that further remediation is required, the Project Applicant would comply with the existing federal, state, and local laws and regulations outlined in **Section 3.8.2**, **Regulatory Framework**, to prevent hazardous conditions at the Project's construction sites. Compliance with existing regulations would ensure construction workers and the general public are not exposed to any risks related to hazardous materials during demolition and construction activities. Cal/OSHA has

regulations concerning the use of hazardous materials, including requirements for safety training, exposure warnings, availability of safety equipment, and preparation of emergency action/prevention plans. For example, all spills or leakage of petroleum products during construction activities are required to be immediately contained, the hazardous material identified, and the material remediated in compliance with applicable State and local regulations for the cleanup and disposal of that contaminant. All contaminated waste encountered would be required to be collected and disposed of at an appropriately licensed disposal or treatment facility. Nevertheless, coordination with the City and MFD and adherence to Cal/OSHA regulatory requirements would reduce potential construction-related questions to less than significant levels.

Operational Activities

Operation of the proposed residential uses could involve the use of small amounts of hazardous materials, such as cleansers, paints, fertilizers, and pesticides for cleaning and maintenance purposes. However, these uses would be minimal, and the transport of these uses are not expected to occur in large quantities. Additionally, the proposed land uses are not associated with uses that use, generate, store, or transport large quantities of hazardous materials; such uses generally include manufacturing, industrial, medical (e.g., hospital), and other similar uses.

Furthermore, the use, storage, transport, and disposal of hazardous materials would be governed by existing regulations of several agencies, including DTSC, U.S. EPA, U.S. Department of Transportation, California Department of Conservation, and Cal/OSHA. Adherence to these applicable laws and regulations governing the use, storage, transportation, and disposal of hazardous materials would ensure all potentially hazardous materials are used and handled in an appropriate manner and would minimize the potential for safety impacts. Therefore, substantial hazards to the public or the environment arising from the routine use, storage, transport, and disposal of hazardous materials during long-term operation of the Project would not occur.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact HAZ-2 Would the Project 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?

One of the means through which human exposure to hazardous substance could occur is through accidental release. Incidents that result in an accidental release of hazardous substances into the environment can cause contamination of soil, surface water, and groundwater, in addition to any toxic fumes that could be generated. Human exposure of contaminated soil, soil vapor, or water can have potential health effects on a several factors, including the nature of the contaminant and the degree of exposure.

Construction Activities

As described above, historical agricultural uses and dry farming occurred on-site between 1959 and 1960. According to the Phase I ESA, sites that were dry farmed are determined to be at low risk for residual pesticides in soil. Therefore, residual pesticides are not likely to be encountered during construction activities related to the Project.

Demolition of the existing building and surface parking on-site could release LBPs that could potentially result in potential health effects for construction workers on site and people within the Project Site's immediate vicinity. Therefore, the Project would be required to comply with the requirements for worker training, air monitoring requirements and dust control requirements outlined in OSHA. Adherence to these federal requirements would reduce hazard-related impacts pertaining to LBP to less-than-significant level.

As discussed, the Phase I ESA did identify one HREC in connection to a UST removal that occurred in 1992, resulting in concentrations of hazardous chemicals (i.e., petroleum hydrocarbons (TPHd) and VOCs) from subsequent soil samples taken on-site. Residual concentrations of these chemicals could be exposed to construction workers in an accidental release during excavation and grading activities associated with the Project. Nevertheless, the Project would be required to comply with all applicable federal and state laws and regulations pertaining to the accidental release of hazardous materials, including CERCLA, CalARP, CHHLs and requirements outlined by the DTSC and the CFC. Additionally,

as recommended by the Phase I ESA, any the Project Applicant would be required to over-excavate any contaminated soils encountered within the area of the former UST. Subsequent to this removal, groundwater and soil vapor samples should be collected from this area to determine if elevated petroleum hydrocarbons or VOCs remain. Additional vapor mitigation controls may be required based on the post-removal soil vapor concentrations. This area would be required to be backfilled with compacted clean fill material. Further, the Project would be subject to **Mitigation Measure MM HAZ-1** which would require a Soil Management Plan (SMP) to be prepared and implemented during grading and excavation activities. The SMP would detail the best management practices to properly manage impacted soil in a manner protective of human health and consistent with applicable Federal, State, and local laws. Subsequent to the subsurface evaluation previously discuss, the SMP would implement protocols for the removal of impacted soil. Further, the SMP would require all excavated soil generated from the Project Site that requires off-site disposal to be required to be characterized prior to disposal at a licensed disposal facility or other commercial property, as appropriate in consultation with a Phase II/Site Characterization specialist. Nevertheless, adherence to applicable federal and state laws and regulations and the implementation of **Mitigation Measure MM HAZ-1** would reduce impacts resulting from the construction-related accident conditions involving the release of hazardous materials to less than significant levels.

Operational Activities

The Project would operate as a group of multi-family housing developments. Hazardous materials are not typically associated with residential uses. Anticipated hazardous materials use during Project operations may include minor cleaning products and the occasional use of pesticides and herbicides for landscape maintenance. Nevertheless, adherence to applicable federal and state regulations related to hazards and hazardous materials would ensure safety impacts pertaining to the potential for accidental conditions during Project operations would be less than significant.

Level of Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

MM-HAZ-1 Prior to issuance of a grading permit, a Soil Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience to establish appropriate management practices for handling impacted soil, soil vapor and ground water if encountered during construction activities. These documents shall include the following:

- Site control procedures to control the flow of personnel, vehicles and materials in and out of the Site.
- Measures to minimize dust generation, storm water runoff and tracking of soil off-Site.
- If excavation de-watering is required, protocols to evaluate water quality and discharge/disposal alternatives shall be described.
- Protocols for soil removal and subsequent subsurface soil sampling and evaluation.
- Protocols for conducting earthwork activities in areas where impacted soil, soil vapor and/or ground water are present or suspected. Worker training requirements, health and safety measures and soil handing procedures should be described.
- Protocols to be implemented if buried structures, wells, debris, or unidentified areas of impacted soil are encountered during construction activities.
- Protocols to evaluate the quality of soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be determined.
- Procedures to evaluate and document the quality of any soil imported to the Site.
- Soil containing chemicals exceeding residential (unrestricted use) screening levels or typical background concentrations of metals should not be accepted.
- Methods to monitor excavations for the potential presence of volatile chemical vapors.

Level of Significance After Mitigation

Less than Significant with Mitigation Incorporated.

Impact HAZ-3 Would the Project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school?

The Project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. As discussed, the closest private school to the Project Site is the Crescent Montessori School of Silicon Valley, located approximately 0.56 miles northeast from the Project Site. The closest public schools to the Project Site are Milpitas High School and Thomas Russell Middle School, located approximately 0.82 miles east and 1.08 miles east from the Project Site, respectively. Additionally, the MUSD has not announced the planning or construction of any new schools or educational facilities within its service area.[21] Therefore, the Project would not impact surrounding schools in this regard.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact

Impact HAZ-4 Would the Project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment?

Government Code Section 65962.5 requires the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB) to compile and update the regulatory sites listing (per the Code Section's criteria).[22] Additionally, the State Department of Health Services is also required to compile and update, as appropriate, a list of all public drinking water wells that contain detectable levels of organic contaminants and are subject to water analysis pursuant to Health and Safety Code Section

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21 Milpitas Unified School District, *District News*, Available online at: https://www.musd.org/district-news, accessed on October 10, 2022.

22 California Environmental Protection Agency, *Cortese List Data Resources*. Available online at: https://calepa.ca.gov/SiteCleanup/CorteseList/, accessed on October 10, 2022.

116395. Government Code Section 65962.5 requires the local enforcement agency, as designated pursuant to California Code of Regulations Tile 14 Section 18051 to compile, as appropriate, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste.

Based on the California Environmental Protection Agency's (CalEPA) Cortese List Data Resources, the Project Site is not reported on a list maintained pursuant to Government Code Section 65962.5. No impacts would occur in this regard.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact

Impact HAZ-5 For a Project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the Project result in a safety hazard or excessive noise for people residing or working in the Project area?

As discussed above, the closest airport to the Project Site is the Norman Y. Mineta San Jose International Airport located approximately 5.42 miles southwest of the Project Site. Additionally, the Project Site is located outside of the Airport Influence Area of the *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan*.[23] Therefore, the Project would not expose residents in the Project Site to excessive airport-related noise levels. No impacts would occur in this regard.

Level of Significance Before Mitigation

No Impact.

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[23] Walter B. Windus PE, Aviation Consultant, *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan, Figure 8 "Airport Influence Area, November 16, 2016.*

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact

Impact HAZ-6 Would the Project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

The Project would not physically interfere with an adopted emergency response plan or emergency evacuation plan. Project construction activities could result in short-term temporary impacts to street traffic along California Circle. While temporary lane closures may be required, travel along surrounding roadways would remain open and would not interfere with emergency access in the vicinity of the Project Site. As discussed, the City maintains an EOP, which addresses the City's planned responses to natural and human-caused disasters. The City of Milpitas Fire Department OEM trains City employees on disaster planning, updates the City's emergency plans, provides disaster preparedness information to residents and local businesses, and manages the CERT Program. The Project would not affect existing emergency operations and disaster planning. Therefore, impacts would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact

Impact HAZ-7 Would the Project expose people or structures to a significant risk of loss, injury, or death involving wildland fires?

Wildfire hazard areas are commonly identified in regions of the wildland/urban interface. However, the Project Site is located in an entirely built-out urban community that is characterized (and surrounded) by a mix of commercial and industrial areas. The Project Site does not interface with any wildlands, or an area classified as a Fire Hazard zone as identified by the California Department of Forestry and Fire Protection (CAL FIRE).[24] Therefore, impacts related to exposure of people to wildland fires would not occur. As such, the Project would not expose people or structures to a significant risk of loss, injury, or death involving wildland fires. No impact would occur.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact

3.8.6 CUMULATIVE ANALYSIS

The geographic context for the cumulative analysis of hazards and hazardous materials is the City of Milpitas as well as areas within the Cities of Fremont and San Jose, based on the geographic area that could be affected by accidental release into the environment. The cumulative context for the hazards analysis includes future development within a five-mile radius of the Project Site.

Routine Transport, Use, or Disposal of Hazardous Materials. Cumulative projects are not anticipated to result in a cumulatively considerable hazardous materials impact during construction. All construction activities would be required to comply with existing laws and regulations related to the handling and transport of hazardous waste materials. Future development in the surrounding area would be required to evaluate their respective hazards and hazardous materials impacts on a project-by-project basis. However, similar to the Project, the related cumulative projects identified in **Section 3.0**, **Environmental Impact Analysis**, would have the potential to encounter hazardous substances and/or petroleum

[24] California Department of Forestry and Fire Prevention (CAL FIRE). "Fire Hazard Severity Zone Viewer." Available online at: https://egis.fire.ca.gov/FHSZ/, accessed October 28, 2022.

products during construction. As discussed above, the Project may utilize potentially hazardous materials typically used during demolition and construction activities, such as paints, sealants, lubricants, solvents, adhesives, cleaners, and diesel fuel. To minimize potential impacts, the Project would comply with all applicable federal, state, and local laws and regulations related to the handling and transport of hazardous materials during construction. Adherence to these laws and regulations would reduce impacts to be less than cumulatively considerable.

Cumulative residential development would also increase the use of household-type hazardous materials. The use, storage, disposal, and transport of hazardous materials could result in a foreseeable number of spills and accidents. All new developments would be subject to compliance with applicable laws and regulations related to hazardous materials. Future development in the surrounding area would be required to evaluate their respective hazards and hazardous materials impacts on a project-by-project basis. Compliance with all Federal, State, and local regulations during the operation of new developments would ensure there are no cumulatively considerable significant hazards to the public or the environment associated with the routine transportation, use, disposal, or release of hazardous materials during operations. As concluded above, Project operations would transport a nominal number of hazardous materials that are typically used in residential developments (i.e., cleansers, paints, fertilizers, and pesticides). The Project would further adhere to the laws and regulations governing the use, storage, transportation, and disposal of hazardous materials. Therefore, impacts associated with the routine transport, use, or disposal of hazardous materials would be less than cumulatively considerable.

Upset/Accidental Release of Hazardous Materials. Cumulative commercial, industrial, and residential development discussed in **Section 3.0** could occur on properties listed on hazardous materials sites or involve the demolition of existing structures, which may contain hazardous materials such as LBP and ACMs. Thus, these cumulative projects would be required to evaluate their project's likelihood and severity of accidental releases of hazardous materials on a project-by-project basis. Cumulative projects would also be required to comply with all applicable laws and regulations as appropriate; including CERCLA, CalARP, CHHLs and requirements outlined by the DTSC and the CFC. The Project would result in a potentially significant impact reasonably foreseeable upset and accident conditions involving the release of hazardous materials. However, the Project Applicant would adhere to all applicable regulations and regulatory requirements. Further, implementation of **Mitigation Measure MM HAZ-1** would require the preparation of a Soil Management Plan (SMP) prior to the initiation of excavating activities. Therefore, adherence to regulatory requirements and **MM HAZ-1** would minimize impacts to be less than cumulatively considerable.

Hazardous Materials Near Schools. Cumulative projects discussed in **Section 3.0**, could be located within one quarter mile distance of an existing or proposed school. As such, cumulatively considerable

impacts related to the release of hazardous or acutely hazardous materials within this distance to an existing or proposed school may occur. Cumulative projects would be required to undergo project-specific environmental review under CEQA and the City's discretionary review process to determine potential impacts. The Project is not located within a one-quarter o mile radius of an existing or proposed school. Therefore, the Project would not result in impacts to schools that are cumulatively considerable.

Hazardous Materials Sites Listed Pursuant to Government Code Section 65962.5. Cumulative projects discussed in **Section 3.0** could occur on hazardous material sites pursuant to Government Code Section 65962.5. As stated, cumulative projects would be required to undergo project-specific environmental review under CEQA and the City's discretionary review process to determine potential impacts in this regard and any required mitigation. The Project Site is not reported on a list maintained pursuant to Government Code Section 65962.5. Therefore, the Project Site would not result in any cumulatively considerable impacts.

Public Airports/Private Airstrips. Cumulative projects discussed in **Section 3.0** could occur within an airport land use plan or within two miles of a public airport or public use airport. As stated, cumulative projects would be required to undergo project-specific environmental review under CEQA and the City's discretionary review process to determine potential impacts in this regard and any required mitigation. Additionally, cumulative projects that are located within the *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan* would be required to meet all applicable criteria that are outlined in FAR Part 77. The Project Site is located outside of the *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan* and is not located within two miles of any public airports. Thus, the Project would not result in any cumulatively considerable impacts.

Emergency Response and Evacuation. Cumulative projects discussed in **Section 3.0** could potentially impede an adopted emergency response plan. However, cumulative projects would be required to undergo project-specific environmental review under CEQA and the City's discretionary review process to determine potential impacts to their respective municipal emergency response plan. Compliance with federal, state, and local regulations would ensure that the cumulative projects would not make a cumulatively considerable contribution to impacts related to interference with adopted emergency plans, including temporary street closures. As discussed, the Project would not interfere with the City's EOP. Thus, the Project would not result in any cumulatively considerable impacts.

Wildland Fires. Cumulative projects discussed in **Section 3.0** could occur on land that is designated as a wildland area. However, cumulative projects would be required to undergo project-specific environmental review under CEQA and the City's discretionary review process to determine potential impacts. Cumulative projects would also be required to adhere to all state and local regulatory

requirements regarding development within a designated wildland area. As discussed, the Project Site is not located within an identified wildland area and would not result in any cumulatively considerable impacts.

3.8.7 REFERENCES

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3.9 HYDROLOGY AND WATER QUALITY

INTRODUCTION

This section addresses impacts to water quality and hydrological resources from the Project, identifies the regulatory framework with respect to regulations that address hydrology and water quality, and evaluates the significance of potential changes to hydrologic features and water quality.

3.9.1 ENVIRONMENTAL SETTING

3.9.1.1 Watershed

Regional Hydrology

The Project Site is in the City of Milpitas, which is located at the southern end of the San Francisco Bay.[1] The entire bay comprises a group of interconnecting bays and rivers, including the Sacramento River, San Joaquin River, and Napa River; Suisun Bay, San Pablo Bay, the main San Francisco Bay; and the Carquinez Strait.

Watersheds

The City of Milpitas is located within the Coyote Watershed,[2] the largest watershed in Santa Clara County (County) encompassing approximately 322 square miles.[3] Coyote Creek, the main waterway for the watershed, is the longest creek in the County. The Coyote Watershed is home to the Penitencia Water Treatment Plant, which provides drinking water for 270,000 residential and commercial users.[4]

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1 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

2 Santa Clara Valley Waters District, "Valley Water Datasets - Santa Clara County Watersheds." Available online at: https://data-valleywater.opendata.arcgis.com/. Accessed November 10, 2022.

3 Santa Clara Valley Water District. "Watersheds of the Santa Clara Valley." Available online at: https://www.valleywater.org/learning-center/watersheds-santa-clara-valley#menu. Accessed November 10, 2022.

4 Santa Clara Valley Water District. "Watersheds of the Santa Clara Valley." Available online at: https://www.valleywater.org/learning-center/watersheds-santa-clara-valley#menu. Accessed November 10, 2022.

Surface Water

The most prominent surface water body in the area is Coyote Creek, located approximately 950 feet west of the Project Site. Coyote Creek runs along the western boundary of the City of Milpitas. Penitencia Creek is also located near the Project Site, approximately 800 feet to the east at the nearest point.[5]

Groundwater

Santa Clara County includes portions of two groundwater basins as defined by the California Department of Water Resources (DWR):[6] the Santa Clara Valley Basin and the Gilroy-Hollister Valley Basin. The Santa Clara Valley Water District (SCVWD) manages two groundwater subbasins: the Santa Clara Subbasin and the Llagas Subbasin. These subbasins cover approximately 325 square miles and are bordered by the Santa Cruz Mountains to the west and the Diablo Range to the east. The aquifers that comprise the subbasins are made of gravel, sand, and silty sand deposits. In the Santa Clara and Llagas subbasins, aquifers extend to depths of over 1,000 feet in places. The Coyote Valley region of the Santa Clara Subbasin is shallow, extending to a maximum depth of approximately 500 feet. Groundwater in the Santa Clara Subbasin generally flows to the northwest toward San Francisco Bay, while groundwater in the Llagas Subbasin generally flows to the southeast toward San Benito County.

The City does not use groundwater to meet customer demands under normal conditions. The City has one existing fully developed well, Pinewood Well. Two additional wells are planned or in development: Curtis Well and McCandless Well. These wells are located in the southwestern part of the City.[7]

The Project Site is in the Santa Clara Subbasin area. The Preliminary Geotechnical Investigation encountered groundwater at depths of approximately 5 and 10 feet below the existing site surface.[8]

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5 Santa Clara Valley Waters District, "Valley Water Datasets - Santa Clara County Creeks." Available online at: https://data-valleywater.opendata.arcgis.com/. Accessed November 10, 2022.

6 Department of Water Resources, *California's Groundwater Update 2020 (Bulletin 118),* 2020. Available online at: https://data.cnra.ca.gov/dataset/calgw_update2020. Accessed November 10, 2022.

7 City of Milpitas. *2020 Urban Water Management Plan.* 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

8 Cornerstone Earth Group. *Preliminary Geotechnical Investigation – California Circle Residential Development*. 2020.

3.9.1.2 Floodplain Mapping and Hydraulic Modeling

Flooding

Flood Hazards and Flood Control

Flooding is a temporary increase in water flow that overtops the banks of a river, stream, or overwhelms drainage channels and infrastructure to inundate adjacent areas not normally covered by water. Localized flooding may occur in low spots or where infrastructure is unable to accommodate peak flows during a storm event.

Flooding typically occurs within Milpitas due to two interrelated factors:

1. The overflow of major creeks and channels due to limited capacity in relation to flood flows; and
2. Inadequate capacity of local drainage facilities.

The SCVWD manages the major creeks and channels that flow through the City, while the City of Milpitas maintains the storm drain system and is responsible for managing flow in Wrigley-Ford Creek. Historical flooding has occurred in 1978, 1980, 1982, 1983, 1986, 1995, 1998, and 2014. In February 1998, localized flooding occurred in the areas of Hillview Drive, S. Milpitas Boulevard at Montague Expressway, and Gladding Court. A storm in March 2014 resulted in power outages and localized flooding in Milpitas, including Dixon Landing Park and Montague Expressway. Additional areas subject to historical flooding and located near the Project Site include:[9]

- **Calera Creek** – Storm runoff spills over the south bank upstream of North Park Victoria Road and Interstate 680, flooding the adjacent Higuera Adobe Park. Spills from the south bank downstream of Escuela Parkway flow toward Berryessa Creek, where levees trap the water at Hidden Lake and the Berryessa Pump Station. Flood waters that cannot be pumped into Berryessa Creek form a residual floodplain.

- **Lower Penitencia Creek** – The SCVWD has lined this creek with concrete and built floodwalls to protect adjacent properties throughout the City of Milpitas. Lower Penitencia Creek overflows to the west from just south of Elmwood Jail north to the Coyote Creek confluence. However, Highway 880 contains this spill. The east bank levee of Lower Penitencia Creek is fully accredited for published

[9] City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

base flood discharges between the confluence with Berryessa Creek and Coyote Creek. Nuisance flooding and 10-year storm event ponding to the top of the curb occur along Abel Street north of Calaveras Boulevard.

The *City of Milpitas General Plan Update EIR* mapped the Federal Emergency Management Agency (FEMA) Flood Zones throughout the City. The Project Site is located within a 100-year FEMA Flood Hazard Zone.[10]

Tsunami and Seiche

Tsunamis and seiches are standing waves that occur in the ocean or relatively large, enclosed bodies of water (i.e., Lake Tahoe) that can follow seismic, landslide, and other events from local sources (e.g., California, Oregon, and Washington coast) or distant sources (e.g., Pacific Rim, South American Coast, and Alaska/Canadian coast). The City of Milpitas is not within a tsunami or seiche hazard area.[11]

Dam Inundation

Dam failure is the uncontrolled release of impounded water from behind a dam. Flooding, earthquakes, blockages, landslides, lack of maintenance, improper operation, poor construction, or sabotage can all cause a dam to fail. Dam failure can result in downstream flooding that can affect property and life. Dam Inundation maps have been required in California since 1972, following the 1971 San Fernando Earthquake and near failure of the Lower Van Norman Dam. The regional vicinity has several dams that are identified to have the potential to inundate portions of the City of Milpitas. The Coyote Dam and Reservoir would have an inundation area which would border just to the west of the Project Site, should dam failure occur.[12] None of the identified dams, including the Coyote Dam and Reservoir, with the potential to affect the City of Milpitas or Project Site have a history of dam failure; however, they are

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10 City of Milpitas. *Milpitas General Plan Update Environmental Impact Report*, 2020, Figure 3.9-2. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

11 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report,* 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

12 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, Figure 3.9-3. 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

identified as having the potential to inundate habitable portions of the City in the unlikely event of dam failure.[13]

3.9.1.3 Water Quality

Surface water quality is affected by point source and non-point source pollutants. Point source pollutants are those emitted at a specific point, such as a pipe, while non-point source pollutants are typically generated by surface runoff from diffuse sources, such as streets, paved areas, and landscaped areas. Point source pollutants are controlled with pollutant discharge regulations or waste discharge requirements (WDRs). Non-point source pollutants are more difficult to monitor and control, although they are important contributors to surface water quality in urban areas.

Stormwater runoff pollutants vary based on land use, topography, the amount of impervious surface, and the amount and frequency of rainfall and irrigation practices. Runoff in developed areas typically contains oil, grease, and metals accumulated in streets, driveways, parking lots, and rooftops, as well as pesticides, herbicides, particulate matter, nutrients, animal waste, and other oxygen-demanding substances from landscaped areas. The highest pollutant concentrations usually occur at the beginning of the wet season during the "first flush."

Santa Clara Valley streams do not receive discharges from industrial or municipal wastewater. Industrial discharges are routed to municipal sanitary sewers and then to regional municipal wastewater treatment plants that discharge treated effluent to the tidal sloughs of San Francisco Bay. In general, pollutant concentrations in stormwater runoff do not vary significantly within an urbanized watershed. However, pollutant concentrations do increase when impervious cover is more than 40 to 50 percent of the drainage area. Runoff volume is the most important variable in predicting pollutant loads.

303(d) Impaired Water Bodies: Section 303(d) of the Federal Clean Water Act requires states to identify waters that do not meet water quality standards or objectives and, thus, are considered "impaired." Once listed, Section 303(d) mandates prioritization and development of a Total Maximum Daily Load (TMDL). The TMDL is a tool that establishes the allowable loadings or other quantifiable parameters for a waterbody and thereby the basis for the states to establish water quality-based controls. The purpose of TMDLs is to ensure that beneficial uses are restored and that water quality objectives are achieved.

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13 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

Coyote Creek is identified as an impaired water body on the 2018 Section 303(d) list.[14] Coyote Creek (Santa Clara County) is listed as Category 5 segment, which means it is a water segment where standards are not met and a TMDL is required, but not yet completed, for at least one of the pollutants being listed for this segment.

3.9.2 REGULATORY FRAMEWORK

3.9.2.1 Federal Regulations

Rivers and Harbors Appropriation Act of 1899, Section 10

Authorization from the United States Army Corps of Engineers (USACE) must be obtained for construction of a structure in or over any navigable water of the U.S., pursuant to Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S. Code [USC] 403). Authorization is also needed for structures built near navigable water if they would affect the course, location, condition, or capacity of the water body, as through re-channelization, disposal of fill, and so forth.

Clean Water Act of 1972, as amended (CWA)

The law was originally enacted as the Federal Water Pollution Control Act (FWPCA; Public Law 92–500) in 1948 but took on its modern form when completely rewritten in 1972 in an act entitled the Federal Water Pollution Control Act Amendments of 1972, now commonly known as the Clean Water Act (CWA). Major changes have subsequently been introduced via amendatory legislation, including the Clean Water Act of 1977 and the Water Quality Act of 1987.

The CWA is the primary federal law in the United States governing water pollution. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands. It is one of the United States' first and most influential modern environmental laws. As with many other major U.S. federal environmental statutes, it is administered by the U.S. Environmental Protection Agency (U.S. EPA), in coordination with state governments. Its implementing regulations are codified at 40 C.F.R. Subchapters D, N, and O (Parts 100-140, 401-471, and 501-503).

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14 California State Water Resources Control Board, *2018 California Integrated Report* (Clean Water Act Section 303(d) List and 305(b) Report) – Appendix A: 2018 303(d) List of Impaired Waters, 2021. Available online at: https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2018_integrated_report.html. Accessed November 11, 2022.

Section 303(d)

Section 303(d) of the Federal CWA requires the State Water Resources Control Board (SWRCB) to list impaired water bodies and determine TMDLs of pollutants or other stressors that are contributing excessively to these impaired waters.

Section 401 – Water Quality Certification

Section 401 establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters. Under the CWA, the U.S. EPA has implemented pollution control programs such as setting wastewater standards for industries and surface waters.

Pollution Prevention Act of 1990

The Pollution Prevention Act (42 USC §13101 et seq.) focused on reducing the amount of pollution through cost-effective changes in production, operation, and raw materials. The Act focuses on source reduction, which reduces the release of hazardous substances through practices that increase efficiency in energy, water, or other natural resources.

Federal Antidegradation Policy

The Antidegradation Policy under the U.S. EPA's Water Quality Standards Regulations (48 F.R. 51400, 40 CFR 131.12, November 8, 1983) requires states and tribes to establish a three-tiered antidegradation program to prevent a decrease in water quality standards:

- Tier 1—Maintains and protects existing uses and water quality conditions that support such uses. Tier 1 is applicable to all surface waters.
- Tier 2—Maintains and protects "high quality" waters where existing conditions are better than necessary to support "fishable/swimmable" waters. Water quality can be lowered in such waters but not to the point at which it would interfere with existing or designed uses.
- Tier 3—Maintains and protects water quality in outstanding national resource waters (ONRWs). Water quality cannot be lowered in such waters except for certain temporary changes.

Antidegradation was explicitly incorporated into the federal CWA through 1987 amendments, codified in section 303(d)(4)(B), requiring satisfaction of antidegradation requirements before making certain changes in National Pollutant Discharge Elimination System (NPDES) permits.

Clean Water Rule: Definition of Waters of the United States (WOTUS Rule)

On June 29, 2015, the U.S. EPA and USACE jointly published the final WOTUS Rule (40 CFR Parts 110, 112, 116, et al. and 33 CFR Part 328) for determining the extent to which wetlands and other water features are protected under the CWA. The original final rule:

- **Clearly defines and protects tributaries that impact the health of downstream waters.** The CWA protects navigable waterways and their tributaries. The rule says that a tributary must show physical features of flowing water—a bed, bank, and ordinary high-water mark—to warrant protection. The rule provides protection for headwaters that have these features and that science shows can have a significant connection to downstream waters.

- **Provides certainty in how far safeguards extend to nearby waters.** The rule protects waters that are next to rivers and lakes and their tributaries because science shows that they impact downstream waters. The rule sets boundaries on covering nearby waters for the first time that are physical and measurable.

- **Protects the nation's regional water treasures.** Science shows that specific water features can function as part of a system and impact the health of downstream waters. The rule protects prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands when they impact downstream waters.

- **Focuses on streams, not ditches.** The rule limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream. So, ditches that are not constructed as streams and that flow only when it rains are not covered.

- **Maintains the status of waters within Municipal Separate Storm Sewer Systems.** The rule does not change how those waters are treated and encourages the use of green infrastructure.

- **Reduces the use of case-specific analysis of waters.** Previously, almost any water resource could be put through a lengthy case-specific analysis, even if it would not be subject to the Clean Water Act. The rule significantly limits the use of case-specific analysis by creating clarity and certainty on protected waters and limiting the number of similarly situated water features.

A CWA permit is only needed if a "water of the United States" is going to be polluted or destroyed. The Clean Water Rule only protects the types of waters that have historically been covered under the CWA. It

does not regulate most ditches and does not regulate groundwater, shallow subsurface flows, or tile drains. It does not make changes to current policies on irrigation or water transfers or apply to erosion in a field. The Clean Water Rule addresses the pollution and destruction of waterways—not land use or private property rights.

States opposing the far-reaching impacts of the WOTUS rule challenged the validity of the rule in 13 states, and the fight has expanded nationwide. Attorney generals from 18 states filed a motion with the 6th Circuit Court of Appeals in Ohio in early September asking the court to place a stay on WOTUS, barring the U.S. EPA from enforcing it for 50 days. The move came after U.S. District Court-District of North Dakota placed a stay on the WOTUS rule in the 13 states under its jurisdiction but, in a separate ruling, refused to expand the injunction nationwide. In February 2018, the U.S. EPA established an applicability date of February 2020 for the 2015 Rule defining WOTUS. The lack of clarity and timeliness has left many agencies confused and the 2015 Rule remains in effect in only 22 states, the District of Columbia, and the U.S. territories. On December 30, 2022, federal agencies announced a final "Revised Definition of 'Waters of the United States'" that took effect on March 20, 2023.[15] However, the final rule is not currently operative in certain states due to litigation. Information is currently being updated on an ongoing basis.

National Flood Insurance Act

The U.S. Congress passed the National Flood Insurance Act in 1968 and the Flood Disaster Protection Act in 1973 to restrict certain types of development on floodplains and to provide for a National Flood Insurance Program (NFIP). The purpose of these acts is to reduce the need for large, publicly funded flood control structures and disaster relief. The NFIP is a federal program administered by the Flood Insurance Administration of FEMA. It enables individuals who have property (a building or its contents) within the 100-year floodplain to purchase insurance against flood losses. FEMA works with the states and local communities to identify flood hazard areas and publishes a flood hazard boundary map of those areas. Floodplain mapping is an ongoing process in the Bay Area, and flood maps must be regularly updated for both major rivers and tributaries as land uses and development patterns change.

15 United States Environmental Protection Agency. Revising the Definition of "Waters of the United States"- Final Revised Definition of "Waters of the United States". Available online at: https://www.epa.gov/wotus/revising-definition-waters-united-states, accessed May 5, 2023.

Executive Order 11988, Flood Plain Management

The objective of Presidential Executive Order 11988, dated May 24, 1977, is the avoidance of, to the extent possible, long- and short-term adverse impacts associated with the occupancy and modification of the base floodplain (100-year floodplain) and the avoidance of direct and indirect support of development in the base floodplain wherever there is a practicable alternative. Under the Executive Order, the USACE must provide leadership and take action to:

- Avoid development in the base floodplain unless it is the only practicable alternative.
- Reduce the hazard and risk associated with floods.
- Minimize the impact of floods on human safety, health, and welfare.
- Restore and preserve the natural and beneficial values of the base floodplain.

3.9.2.2 State

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act of 1967 (Cal. Water Code Section 13000 et seq.) requires the SWRCB and the nine Regional Water Quality Control Boards (RWQCBs) to adopt water quality criteria to protect State waters. These criteria include the identification of beneficial uses, narrative to the applicable and numerical water quality standards, and implementation procedures.

The Porter-Cologne Water Quality Control Act also authorizes the State Boards to adopt, review, and revise policies for all waters of the state (including both surface and ground waters) and directs the regional boards to develop Basin Plans. The act also authorizes State Boards to adopt Water Quality Control Plans. In the event of inconsistencies among state and regional board plans, the more stringent provisions apply.

Lake or Streambed Alteration

If the California Department of Fish and Wildlife (CDFW) determines that the activity may substantially adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. In August 2005, the California Fish and Game Commission policy regarding wetlands resources stated that "it is the policy of the Fish and Game Commission to seek to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California" and to "strongly discourage

development in or conversion of wetlands."[16] As a result, although the Commission has no independent statutory permitting authority related to wetlands, the policy underscores that the Commission does not support wetland development proposals unless "project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage" and "prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values." The Agreement includes reasonable conditions necessary to protect those resources and must comply with CEQA. The entity may proceed with the activity in accordance with the final Agreement.

State Antidegradation Policy

California's antidegradation policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. It protects waters where existing quality is higher than necessary for the protection of beneficial uses. Any actions with the potential to adversely affect water quality must 1) be consistent with maximum benefit to the people of the State, 2) not unreasonably affect present and anticipated beneficial use of the water, and 3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the federal antidegradation policy (40 CFR Section 131.12) developed under the CWA.

Sustainable Groundwater Management Act

On September 16, 2014, Governor Edmund G. Brown, Jr., signed a three-bill package known as the Sustainable Groundwater Management Act (SGMA). The legislation allows local agencies to customize groundwater sustainability plans to their regional economic and environmental needs. SGMA creates a framework for sustainable, local groundwater management for the first time in California history.

The three bills that make up SGMA are Assembly Bill (AB) 1739 by Assembly Member Roger Dickinson, Senate Bill (SB) 1319, and SB 1168 by Senator Fran Pavley.

In September 2015, Governor Brown signed SB 13, by Senator Fran Pavley. The Bill makes various technical, clarifying changes to SGMA including requirements for groundwater sustainability agency formation, the process for State Water Board intervention if no responsible agency is specified for a basin, guidelines for high- and medium-priority basins, and participation of mutual water companies in a groundwater sustainability agency.

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16 California Fish and Game Commission, "Miscellaneous Policies: Wetlands Resources." Available online at: https://fgc.ca.gov/About/Policies/Miscellaneous, accessed February 4, 2022.

Construction General Permit

The California Construction Stormwater Permit (Construction General Permit) 1, adopted by the SWRCB, regulates construction activities that include clearing, grading, and excavation resulting in soil disturbance of at least one acre of total land area. The Construction General Permit authorizes the discharge of stormwater to surface waters from construction activities. It prohibits the discharge of materials other than stormwater and authorized non-stormwater discharges and all discharges that contain a hazardous substance in excess of reportable quantities established in Title 40, Sections 117.3 or 302.4 of the CFR, unless a separate NPDES permit has been issued to regulate those discharges. The Construction General Permit requires that all developers of land where construction activities will occur over more than one acre do the following:

- Complete a Risk Assessment to determine pollution prevention requirements pursuant to the three Risk Levels established in the General Permit;
- Eliminate or reduce non-stormwater discharges to storm sewer systems and other waters of the Nation;
- Develop and implement a stormwater pollution prevention plan (SWPPP), which specifies best management practices (BMPs) that will reduce pollution in stormwater discharges to the Best Available Technology Economically Achievable / Best Conventional Pollutant Control Technology standards; and
- Perform inspections and maintenance of all BMPs.

To obtain coverage under the NPDES Construction General Permit, the Legally Responsible Person must electronically file all permit registration documents with the SWRCB before the start of construction. Permit registration documents must include:

- Notice of Intent,
- Risk Assessment,
- Site Map,
- SWPPP,
- Annual Fee, and
- Signed Certification Statement.

Typical BMPs contained in SWPPPs are designed to minimize erosion during construction, stabilize construction areas, control sediment, control pollutants from construction materials, and address post construction runoff quantity (volume) and quality (treatment). The SWPPP must also include a discussion of the program to inspect and maintain all BMPs.

California Stormwater Quality Association Best Management Practices Handbooks

The California Stormwater Quality Association (CASQA) is a professional member association dedicated to the advancement of stormwater quality management through collaboration, education, implementation guidance, regulatory review, and scientific assessment. CASQA's membership comprises a diverse range of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state. CASQA develops and publishes four BMP Handbooks. The New Development and Redevelopment Handbook provides guidance on developing project-specific Stormwater Management Plans (SWMPs), including selection and implementation of BMPs, for a particular development or redevelopment project.

Cobey-Alquist Floodplain Management Act

The Cobey-Alquist Floodplain Management Act (California Water Code 8400-8415) and Executive Order B-39-77 support the NFIP. The Act encourages local governments to plan, adopt, and enforce land use regulations for floodplain management, to protect people and property from flooding hazards. The Act also identifies requirements that jurisdictions must meet to receive state financial assistance for flood control. Executive Order B-39-77 requires state agency compliance with good floodplain management practices.

California Fish and Game Code

The California Department of Fish and Wildlife is responsible for conserving, protecting, and managing California's fish, wildlife, and native plant resources. To meet this responsibility, the Fish and Game Code (Section 1602) requires an entity to notify the Department of any proposed activity that may substantially modify a river, stream, or lake. Notification is required by any person, business, state or local government agency, or public utility that proposes an activity that will:

- substantially divert or obstruct the natural flow of any river, stream or lake;
- substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or
- deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

The notification requirement applies to any work undertaken in or near a river, stream, or lake that flows at least intermittently through a bed or channel. This includes ephemeral streams, desert washes, and

watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

3.9.2.3 Regional

San Francisco Regional Water Quality Control Board (Basin Plan)

The Basin Plan is a master policy document that contains descriptions of the legal, technical, and programmatic bases of water quality regulation in the San Francisco Bay region. The plan, which is updated every three years, describes the beneficial uses to be protected in these waterways, water quality objectives to protect those uses, and implementation measures to ensure those objectives are achieved.

Santa Clara Valley Water District Comprehensive Water Resources Management Plan

The SCVWD's Comprehensive Water Resources Management Plan is organized in the following elements: Water Supply, Natural Flood Protection, and Water Resources Stewardship. Each element includes an informational overview that describes overarching goals and related objectives on a broad level and places them in a countywide context. At the heart of the plan are the goals, objectives, and strategies that serve as the district's framework and provide information for partner agencies. The SCVWD is involved in water management at varying levels of involvement. In some instances, it plays a primary role; in others, the district collaborates with other agencies and/or partners; in still other cases, the SCVWD serves as an informational resource and public advocate. The Comprehensive Water Resources Management Plan clarifies these degrees of involvement.

Santa Clara Valley 2016 Groundwater Management Plan

The SCVWD's Groundwater Management Plan (GWMP) describes the District's comprehensive groundwater management framework, including existing and potential actions to achieve basin sustainability goals and ensure continued sustainable groundwater management. The GWMP covers the Santa Clara and Llagas subbasins, located entirely in Santa Clara County. The SCVWD's prior Groundwater Management Plan was adopted by the Board in 2012 and described the District's comprehensive groundwater management framework, including basin management objectives, strategies, groundwater management programs, and outcome measures. The 2016 GWMP updates and expands on technical information in the 2012 GWMP and is prepared as an alternative to a Groundwater Sustainability Plan under the Sustainable Groundwater Management Act (SGMA).

Santa Clara Valley Urban Runoff Pollution Prevention Program

The Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) is an association of 13 cities and towns in the Santa Clara Valley, the County of Santa Clara, and the SCVWD all working to improve the water quality of south San Francisco Bay and the streams of Santa Clara County, by reducing nonpoint source pollution in storm water runoff and other surface flows. The Program and member agencies collaborate and share in implementation of the NPDES permit and municipal SWPPP to mitigate discharges, also referred to as the Municipal Regional Stormwater Permit (MRP), into the San Francisco Bay. Member agencies include Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, the County of Santa Clara, and the SCVWD.

The MRP includes requirements for controlling regional pollutants of concern (i.e., pesticides, mercury, polychlorinated biphenyls [PCBs]), copper, and legacy pesticides). Stormwater management requirements in the current MRP include (Santa Clara Valley Urban Runoff Pollution Prevention Program 2019):

- Reducing trash loads from stormwater by 100 percent by July 2022;
- Developing and implementing a trash monitoring program for creeks and shorelines;
- Meeting mercury and PCBs stormwater reduction goals; and
- Developing and implementing Green Stormwater Infrastructure (GSI) Plans.

3.9.2.4 Local

City of Milpitas Stormwater Regulations

In order to comply with Provision C.3 of the MRP, project applicants are required to submit a SWMP with building plans, to be reviewed and approved by the City of Milpitas' Public Works Department. The SWMP must be prepared under the direction of and certified by a licensed and qualified professional, which includes civil engineers, architects, or landscape architects. Conditions of approval for development projects include the installation and maintenance of Best Management Practices (BMPs) for site design and stormwater treatment, which must be designed per approved numeric sizing criteria.

Each development project mandated to implement stormwater treatment will also require a Certification of Engineered Stormwater Treatment for New and Redevelopment Projects. The Certification of Engineered Stormwater Treatment for New and Redevelopment Projects may be obtained at the City's

Public Works Department. Owners of properties with treatment BMPs will also be required to certify on-going operation and maintenance by filing and recording a covenant submitted to the City.

In addition to implementing LID measures, the MRP also includes a provision to mitigate for hydromodification caused by increases in the volume and frequency of runoff discharges to creeks and streams. Generally, projects in highly developed urban areas are less likely to cause hydromodification. Consequently, projects located in catchment/watersheds that are already more than 65 percent impervious are exempt from this requirement. For projects in these areas that create or replace one acre or more of impervious surfaces, flow controls are required so that post-project runoff does not exceed pre-project runoff rates and durations.

City of Milpitas Municipal Code

Chapter 15, Floodplain Management Regulations, of the City's Municipal Code provides regulations to minimize public and private losses due to flood hazard areas of Milpitas being subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

Chapter 16, Stormwater and Urban Runoff Pollution Control, of the city's Municipal Code provides regulations and gives legal effect to certain requirements of the WDRs and NPDES permit for the discharge of stormwater runoff from the City's municipal separate storm sewer (MS4), issued by the California RWQCB, San Francisco Region to the City of Milpitas. The chapter applies to all water entering the City of Milpitas storm drain system generated on any developed and undeveloped lands lying within the City. Chapter 16 of the Municipal Code ensures consistency with the requirements of federal and state law, and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

3.9.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to hydrology and water quality are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. The Project could result in significant impacts related to hydrology and water quality, if any of the following would occur:

- Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality;

- Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin;

- Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

  – Result in substantial erosion or siltation on or off site;

  – Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off site;

  – Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

  – Impede or redirect flood flows.

- In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation.

- Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

3.9.4 METHODOLOGY

The analysis of water quality impacts identifies the types of pollutants potentially associated with the Project and considers their effects on water quality. Consideration is given to BMPs, which would serve to minimize pollutants in stormwater runoff. Further, the Project's consistency with relevant regulatory permits/requirements is evaluated to demonstrate how compliance would protect water quality.

As summarized in **Section 3.9.2, Regulatory Framework**, independent of the CEQA process, there is a comprehensive set of regulations implemented at the State and local level to impacts related to storm drainage, urban pollutants, and flood hazards. As such, the analysis presented herein assumes the Project would comply with these regulations.

This discussion of hydrology focuses on the Project Site and the immediate surrounding area downstream. The impact analysis is based on several factors, including the degree to which the Project may change the hydrology of the Project Site and the thresholds of significance for hydrology and water quality.

3.9.5 ENVIRONMENTAL IMPACTS

Impact HYD-1 Would the Project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

As noted in **Section 3.9.2.3, Regional Regulatory Framework**, the Santa Clara Valley Urban Runoff Pollution Prevention Program establishes regulations and includes certain requirements associated with the NPDES permit issued to Milpitas regarding municipal stormwater and urban runoff requirements. During construction of projects in the City, the dischargers, through individual coverage under the State's General Construction NPDES permits, must eliminate non-stormwater discharges to stormwater systems, develop and implement an SWPPP, and monitor discharges to stormwater systems during construction and operation (i.e., the MRP regulatory process).

Construction

The Project would involve the demolition of a 90,000-square-foot existing structure, site preparation, grading, and the construction of new buildings. Demolition of existing structures, removal of existing pavement and concrete replacement, grading, stockpiling of materials, excavation and the import/export of soil and building materials, construction of new structures, and landscaping activities would expose and loosen sediment and building materials, which have the potential to mix with stormwater and urban runoff and degrade surface and receiving water quality.

Additionally, construction generally requires the use of heavy equipment and construction-related materials and chemicals, such as concrete, cement, asphalt, fuels, oils, antifreeze, transmission fluid, grease, solvents, and paints. In the absence of proper controls, these potentially harmful materials could be accidentally spilled or improperly disposed of during construction activities and could wash into and pollute surface waters or groundwater, resulting in a significant impact to water quality.

Pollutants of concern during construction activities generally include sediments, trash, petroleum products, concrete waste (dry and wet), sanitary waste, and chemicals. Each of these pollutants on its own or in combination with other pollutants can have a detrimental effect on water quality. In addition, chemicals, liquid products, petroleum products (such as paints, solvents, and fuels), and concrete-related waste may be spilled or leaked during construction, which would have the potential to be transported via storm runoff into nearby receiving waters and eventually may affect surface or groundwater quality. During construction activities, excavated soil would be exposed thereby increasing the potential for soil erosion and sedimentation to occur. In addition, during construction, vehicles and equipment are prone to tracking soil and/or soil from work areas to paved roadways, which is another form of erosion that could affect water quality.

Each phase of development of the Project would require compliance with applicable regulations to obtain demolition, excavation, grading, or construction permits from the City. The permitting process would ensure each phase of development would be implemented in compliance with the MRP process. To control the impact of erosion, sedimentation, and other pollutants on receiving waters, the SWRCB Construction General Permit (that would be implemented through the City's permitting process), requires the implementation of BMPs to eliminate or reduce the discharge of pollutants in stormwater discharges, and prohibits the discharge of non-storm water from construction sites as these non-storm water discharges are likely to carry pollutants to receiving waters.

In addition, activities subject to the NPDES General Permit for construction must develop and implement a SWPPP, including a site map and description of construction activities. The SWPPP will identify BMPs that will be employed to prevent soil erosion and discharge of other construction—related pollutants, such as petroleum products, solvents, paints, and cement, that could contaminate nearby water resources. A monitoring program is generally required to ensure that BMPs are implemented according to the SWPPP and are effective at controlling discharges of pollutants that are related to storm water. As a result of compliance with NPDES General Permit and specific BMPs that are required, construction impacts related to water quality standards or waste discharge requirements from the Project would be less than significant.

Operation

Intensification of land uses that will occur due to operation of the Project could introduce new or additional pollutants to the existing area. Pollutants associated with the operation of urban uses generally include sediments, petroleum hydrocarbons, pesticides, fertilizers, and heavy metals such as lead, zinc, and copper that could potentially discharge into surface waters by storm drains either directly or during storm water runoff events.

Coyote Creek is located approximately 950 west of the Project Site. As previously discussed, Coyote Creek is identified as an impaired water body on the 2018 Section 303(d) list.[17] Coyote Creek (Santa Clara County) is listed as Category 5 segment, which means it is a water segment where standards are not met and a TMDL is required, but not yet completed, for at least one of the pollutants being listed for this segment. Stormwater runoff may play a role in the water quality impairments described above. Runoff

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17 California State Water Resources Control Board, *2018 California Integrated Report* (Clean Water Act Section 303(d) List and 305(b) Report) – Appendix A: 2018 303(d) List of Impaired Waters, 2021. Available online at: https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2018_integrated_report.html. Accessed November 11, 2022.

that occurs as overland flow across yards, driveways, and public streets is intercepted by the storm water drainage system and conveyed to local drainages before eventually being routed to the Pacific. This storm water can carry pollutants that can enter the local waterways and result in the types of water quality impairments described above. Common sources of storm water pollution in the City include litter, trash, pet waste, paint residue, organic material (yard waste), fertilizers, pesticides, sediments, construction debris, metals from automobile brake pad dust, air pollutants that settle on the ground or attach to rainwater, cooking grease, illegally dumped motor oil, and other harmful fluids.

In recognition of the potential for development to cause potential stormwater pollutant impacts, the Project would be required to implement Source Control and Treatment Control BMPs to reduce the discharge of pollutants to the maximum extent practicable. Treatment Control BMPs would also be required to be incorporated into the design of onsite storm drain systems to treat runoff in accordance with the Standard Urban Water Mitigation Plan (SUSMP) standards and as required by the City.

Chapter 16 of the City's Municipal Code provides regulations and gives legal effect to certain requirements of the Waste Discharge Requirements and National Pollutant Discharge Elimination System permit for the discharge of stormwater runoff from the City's municipal separate storm sewer (MS4), issued by the California Regional Water Quality Control Board, San Francisco Region to the City of Milpitas. These regulations include the following:

- Section XI-16-5 makes it unlawful to discharge non-stormwater or contaminated stormwater into any City storm drain or watercourse.

- Section X-16-6 requires regulated projects to design and construct Low Impact Development source control, site design, and stormwater treatment measures in order to reduce water quality impacts of urban runoff from the entire project site for the life of the project.

- Section XI-16-7 requires that property owners, its administrators, or any other persons, including homeowners' associations, take the necessary actions to ensure that permanent stormwater treatment measures are properly maintained so that they continue to operate as originally designed and approved for the life of the development.

Implementation of site-specific source control and treatment control BMPs in accordance with the City and County construction and stormwater management codes, and the SWMP would reduce these potential impacts related to stormwater quality. Applicable BMPs would be implemented in accordance with regional and local regulatory requirements, including the MRP. Because the Project would not violate any water quality or waste discharge requirements, impacts would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact HYD-2 Would the Project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

Groundwater levels are managed by the California Department of Water Resources to maintain a safe operating yield of groundwater, which includes a sustainable pumping rate that does not exceed the total recharge into the basin. Further, the SCVWD's Groundwater Management Plan describes the District's comprehensive groundwater management framework, including existing and potential actions to achieve basin sustainability goals and ensure continued sustainable groundwater management.

The Project would result in comparable amounts of impervious surfaces as existing conditions. Further, the Project Site is not located within a local groundwater recharge area and no groundwater extraction would occur as part of the Project.

Currently, the City does not use groundwater to meet customer demands under normal conditions. The City has one existing fully developed well, Pinewood Well and two planned or in development wells: Curtis Well and McCandless Well. These wells are located in the southwestern part of the City. The City currently reserves groundwater supply for emergency use in the event that SFPUC and SCVWD cannot deliver contract treated water supplies.[18]

The Project would not result in the need for new or additional groundwater supplies. Therefore, the Project would not result in any groundwater extraction or depletion of groundwater supplies and is not

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18 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

anticipated to interfere with SCVWD's Groundwater Management Plan. Therefore, impacts related to groundwater recharge would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact HYD-3 Would the Project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

(i) result in substantial erosion or siltation on- or off-site;

(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site;

(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

(iv) impede or redirect flood flows?

Erosion and Flooding

Construction

Grading, excavation, and other construction activities associated with the Project could adversely affect water quality due to erosion resulting from exposed soils and the generation of water pollutants, including trash, construction materials, and equipment fluids.

Associated construction activities would be subject to the NPDES Statewide General Construction Activity Stormwater Permit. Construction site operators would be responsible for preparing and

implementing a SWPPP that outlines BMPs to control erosion, sediment release, and otherwise reduce the potential for discharge of pollutants in stormwater, consistent with the requirements of the NPDES Statewide General Construction Permit. Typical BMPs include:

- Utilizing temporary de-silting basins to ensure that surface water flows do not carry significant amounts of onsite soils and contaminants downstream;
- Conducting construction vehicle maintenance in staging areas where appropriate controls have been established to ensure that fuels, motor oil, coolant, and other hazardous materials are not deposited into areas where they may enter surface water and groundwater;
- Restricting the use of chemicals that may be transferred to surface waters by storm water flows or leach to groundwater basins through water percolation into the soil;
- Requiring that permanent slopes and embankments be vegetated following final grading;
- Installation of silt fences, erosion control blankets;
- Proper handling and disposal of wastes; and
- Installation of anti-tracking pads at site exits to prevent off-site transport of soil material.

BMPs would minimize or avoid potential adverse effects associated with drainage pattern alterations, including those associated with infiltration, erosion, and potential for flooding. Compliance with NPDES permit requirements and implementation of BMPs would ensure construction related erosion and siltation and flooding would be less than significant.

Operation

The Project is not anticipated to substantially change the drainage patterns within the Project Site. At completion, the Project Site would be developed with buildings, landscaped areas, roads, and other hardscape improvements; no bare areas of soil would be left vulnerable to erosion. Chapter 16 of the City's Municipal Code provides regulations and gives legal effect to certain requirements of the Waste Discharge Requirements and National Pollutant Discharge Elimination System permit for the discharge of stormwater runoff from the City's municipal separate storm sewer (MS4), issued by the California Regional Water Quality Control Board, San Francisco Region to the City of Milpitas. These regulations include Section XI 16-5 through Section XI-16-7, as detailed above. Compliance with existing State and local regulations would ensure impacts are reduced and impacts would be less than significant.

Stormwater Drainage Systems

Storm water runoff is influenced by rainfall intensity, ground surface permeability, watershed size and shape, and physical barriers. In addition, paved surfaces and drainage conduits can accelerate the velocity of runoff, concentrating peak flows in downstream areas faster than under natural conditions. Significant increases to runoff and peak flow could overwhelm drainage systems and alter flood elevations in downstream locations. Increased runoff velocity can promote scouring of existing drainage facilities, reducing system reliability, and safety. The Project would result in comparable amounts of impervious surfaces as existing conditions. Therefore, the Project is not anticipated to increase demand on the existing stormwater drainage systems. Impacts would be less than significant.

Surface Flows

Ground-disturbing activities during construction of the Project, including but not limited to grading and excavation, could have potential to result in temporarily altered drainage patterns that could redirect surface flows. However, BMPs employed as part of an SWPPP for the Project would include measures to secure disturbed soils and require proper drainage of the Project Site.

During operation of the Project, much of the site would remain impervious (similar to existing conditions) due to the presence of parking areas, walkways, hardscape, and building roofs and roadways. Landscaped areas of the Project would introduce opportunities for infiltration of stormwater runoff and roof discharges, thereby minimizing potential impacts associated with stormwater runoff exiting the area, and potentially improving conditions compared to existing conditions. For these reasons, potential impacts to drainage pattern alterations, including how drainage pattern alterations could affect surface water runoff, erosion/siltation, flooding, and stormwater conveyance facilities would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact HYD-4 In flood hazard, tsunami, or seiche zones, would the Project risk release of pollutants due to Project inundation.

The City of Milpitas is not within a tsunami or seiche hazard area.[19] Therefore, there would be no impacts related to risk of release of pollutants due to inundation from a tsunami or seiche.

However, the Project Site is located within a 100-year FEMA Flood Hazard Zone.[20] The City is a participant in the National Flood Insurance Program (NFIP). The NFIP provides property owners and renters with federally backed flood insurance, reduces flood damage through a mandatory local floodplain management ordinance, and identifies and maps flood hazards. The NFIP requires the City to maintain a floodplain management ordinance based upon current FEMA Flood Insurance Rate Maps (FIRMs). The City's meets this requirement through the implementation of Floodplain Management Regulations specified in Section XI, Chapter 15 of the Milpitas Municipal Code. These maps identify Special Flood Hazard Areas (SFHAs) or areas subject to inundation from a 100-year storm. The Project would be required to comply with applicable regulations relating to the floodplain management regulations which would reduce potential impacts to a less than significant level.

In addition, the Project Site is located near the identified dam inundation area for the Coyote Dam and Reservoir.[21] The SCVWD's Dam Safety Program recognizes the catastrophic nature of potential dam failure and operates a comprehensive dam safety program to protect the public.[22] As such, the Project

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19 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

20 City of Milpitas, Milpitas General Plan Update Environmental Impact Report, Figure 3.9-2, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

21 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, Figure 3.9-3, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

22 City of Milpitas, *Milpitas General Plan Update Environmental Impact Report*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 11, 2022.

Site is not at significant risk from a dam failure, and the Project would not exacerbate or increase any such risk. Impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than significant.

3.9.6 CUMULATIVE IMPACTS

Cumulative development of the Project and other proximal projects would be required to comply with all pertinent regulations, such as the Construction NPDES General Permit, Stormwater Pollution Control Requirements for Construction Activities Cumulative NPDES permitting, and flood hazard development regulations and requirements. Project-specific BMPs (for the Project and any nearby projects) would minimize or avoid potential adverse effects associated with drainage pattern alterations, including those associated with infiltration, erosion, and potential for flooding. Therefore, construction and operational activities would result in less than significant impacts to surface and groundwater quality.

3.9.7 REFERENCES

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3.10 LAND USE AND PLANNING

INTRODUCTION

This section describes the existing land uses in the City, identifies the regulatory framework with respect to regulations that address land use, and evaluates the significance of the potential changes in existing land uses that could result from the implementation of the Project. State CEQA Guidelines Section 15125(d) states that the EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Therefore, it is appropriate to provide the reader with information regarding relevant local and regional planning policies or programs that would be affected by the Project. The information provided below defines relevant City of Milpitas 2040 General Plan (General Plan) policies and an associated consistency analysis. Following this general plan consistency analysis, further analysis is provided regarding consistency with regional plans (i.e., air quality management plan, water quality control plan, regional transportation plan and sustainable communities strategy, and congestion management program).

3.10.1 ENVIRONMENTAL SETTING

3.10.1.1 On-Site Land Uses

The 6.69-acre Project Site located at 1355 California Circle is developed with an approximately 90,000 square-foot industrial office building that is currently vacant. The site is also developed with multiple surface parking spaces on all sides of the existing facility and landscaped areas along the building and site perimeter. The site is accessible from two driveways along California Circle.

Based on the General Plan Land Use Map, the Project Site is currently designated as Neighborhood Commercial Mixed Use (NCMU) within a proposed Specific Plan Overlay. The NCMU land use designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The Milpitas City Council has recently directed staff to remove the requirement for a Specific Plan in the California Circle area, and the proposed Project will include a General Plan text amendment to achieve this purpose. The original language in the General Plan allowed multifamily dwelling units at a rate of 1 unit per 1,500 square feet of new or rehabilitated neighborhood-serving retail and commercial services within the NCMU land use designation. In addition, residential-only projects may be permitted under the land-use designation, provided the project is 100 percent affordable to the "low" and "very low" income categories, in order to increase the stock of affordable housing within the City. The City has determined that these requirements are infeasible, and the NCMU requirements are currently being revised. According to the City's Zoning Map, the Project Site is zoned Industrial Park,

which is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air. Consistent with the new General Plan NCMU land use designation, the Project Site and adjacent parcels will be rezoned to Mixed Use (MXD) to allow a multifamily residential development with a density of 21 to 30 units per acre. Other parcels in the California Circle area will be rezoned MXD Mixed-Use, consistent with current land uses and the NCMU designation under the General Plan.

3.10.1.2 Surrounding Land Uses

Surrounding land uses include commercial and industrial uses to the north, institutional and multi-family residential uses to the east, a vacant and undeveloped property to the south, and Interstate 880 (I-880) to the west. The Coyote Creek Trail is located approximately 0.2 miles west of the Project Site.

According to the General Plan Land Use Map, the parcels located to the north, east, and south of the Project Site are commercial, industrial, and institutional uses designated NCMU, while the multi-family residential uses to the south- and northeast are designated High Density Residential. Based on the current Zoning Map, north, east, and south of the Project Site are industrial uses zoned Industrial and the multi-family residential uses to the south- and northeast are zoned Multi-Family Residential. The City has initiated a comprehensive update of its Zoning Ordinance and Zoning Map for consistency with the new Milpitas 2040 General Plan. As part of this process, several properties on California Circle will be rezoned for consistency with the NCMU General Plan land use designation. The Project Site and adjacent parcels will be rezoned MXD Mixed Use, which will allow multifamily residential development with a density of 21 to 30 units per acre. As noted above, other parcels on California Circle will be rezoned MXD, consistent with current land uses and the NCMU designation under the General Plan.

3.10.2 REGULATORY FRAMEWORK

3.10.2.2 State

General Plans and Land Use Regulations

State planning law (California Government Code Section 65300) requires every city and county in California to adopt a comprehensive, long-term general plan for the physical development of the jurisdiction and of any land outside its boundaries that, in the planning agency's judgment, bears relation to its planning (sphere of influence). A general plan should consist of an integrated and internally consistent set of goals and policies grouped by topic into a set of elements and guided by a jurisdiction-wide vision. State law requires that a general plan address a minimum of seven elements or topics (land use, circulation, housing, conservation, open space, noise, and safety), but allows some discretion on the

arrangement and content. Additionally, each of the specific and applicable requirements in the state planning law should be examined to determine if there are environmental issues within the community that the general plan should address, such as hazards or flooding.

Cities and counties are also required to comply with the Subdivision Map Act (California Code section 66410 *et seq.*). The Subdivision Map Act sets forth the conditions for approval of a subdivision map and requires enactment of subdivision ordinances by which local governments have direct control over the types of subdivision projects to be approved and the physical improvements to be installed.

State Density Bonus Law

The State Density Bonus law (California Government Code Section 65915), signed into law in 1979, requires jurisdictions to provide applicants with a density bonus and incentives or concessions for the production of housing development in which affordable housing is also provided. Eligible projects include housing developments with a minimum of 10 percent housing for lower income households, five percent of the housing for very low-income households or senior citizen housing, and 10 percent of the total dwelling units provided as affordable housing in condominium projects.

Assembly Bill (AB) 2222

On September 27, 2014, former Governor Jerry Brown signed AB 2222, which amended sections of the State Density Bonus Law. AB 2222 requires that density bonus projects resulting in a loss of existing affordable and otherwise locally regulated (i.e., rent-stabilized) housing units replace those units one-for-one. It also extends the affordability period from 30 to 55 years and expands the use of equity sharing in for-sale units.

CEQA Streamlining for Infill Projects Senate Bill 226 (SB 226)

The CEQA Streamlining for Infill Projects (SB 226) sets forth a streamlined review process for infill projects and includes performance standards that will be used to determine an infill project's eligibility for streamlined review. The purpose of SB 226 and updated *State CEQA Guidelines* Section 15183.3 is to streamline the environmental review process by "limiting the topics subject to review at the project level where the effects of infill development have been addressed in a planning level decision or by uniformly applicable development policies." Residential, commercial and retail, public office buildings, transit stations, and schools are eligible for this streamlining provided they meet the following requirements: (1) are located in an urban area on a site that has been previously developed or adjoins existing qualified urban uses on at least 75 percent of the site's perimeter; (2) satisfy the performance standards provided in Appendix M [of CEQA]; and, (3) are consistent with the general use designation, density, building

intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, with some exceptions. In addition, *State CEQA Guidelines* Section 15182, may exempt certain residential, commercial, and mixed-use projects that are consistent with a specific plan from CEQA.

3.10.3 Local and Regional

Association of Bay Area Governments-Plan Bay Area 2050

The Association of Bay Area Governments (ABAG) is an association of local governments and agencies. The ABAG region encompasses the San Francisco Bay Area, which is composed of the nine counties including Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. The Metropolitan Transportation Commission (MTC) is the Metropolitan Planning Organization that provides planning, funding, coordination, and technical assistance to cities, counties, transit agencies, and other partners to improve the Bay Area's transportation system.

Plan Bay Area 2050 is a long-range regional plan adopted by ABAG and the MTC in October 2021. The plan coordinates housing plans, open space conservation efforts, economic development strategies, and transportation investments. One of the main goals of Plan Bay Area 2050 is to reduce greenhouse gas (GHG) emissions from cars and light-duty trucks through 2050 to meet state goals under SB 375. Under SB 375, Metropolitan Planning Organizations such as the MTC must develop a Sustainable Communities Strategy (SCS) as part of the region's Regional Transportation Plan (RTP). Plan Bay Area 2050 functions as both the SCS and the RTP for the region.

City of Milpitas 2040 General Plan

State Law (Government Code Section 65300) requires that each city and county, including charter cities and counties, adopt a comprehensive, integrated, long-term General Plan to direct future growth and development and accommodate potential changes or increases to population and employment. The General Plan is a fundamental policy document that defines how a city should use and manage its resources into the future. State law requires seven General Plan Elements: land use, circulation, housing, conservation, open space, noise, and safety.

The City's current *General Plan* was adopted in March 2021. The *General Plan* serves as a blueprint for the City's planning efforts and vision for the future.

Each element of the *General Plan* contains goals, policies, and actions that apply to all incorporated areas in the City of Milpitas. The *General Plan i*ncludes the following 12 elements:

Land Use: The Land Use Element provides development policies intended to preserve and protect the existing and emerging high-quality family-oriented neighborhoods throughout the City, promote the efficient use of limited land resources, foster strategic land use decisions, and facilitate the use of alternative transportation options, while promoting opportunities for economic development, high-quality local job growth, and fiscal sustainability.

Housing: As mandated by the State, housing elements are updated on an eight-year cycle, separate from the typical general plan update process. The City's 2023-2031 Housing Element Update was adopted January 24, 2023, in response to ABAG's adoption of the 6th cycle Regional Housing Needs Assessment (RHNA) allocation plan. The Housing Element identifies and establishes the City's strategy for the maintenance and development of housing in the City to meet the needs of its existing and future residents. The California Department of Housing and Community Development (HCD) certified the City's 2023-2031 Housing Element Update on May 17, 2023.

Circulation: The Circulation Element provides the framework for decisions concerning the city's multimodal transportation system, which includes roadway, transit, bicycle, pedestrian, and rail modes of travel. The Circulation Element provides for coordination with the Santa Clara Valley Transportation Authority (SCVTA), which serves as the coordinating agency for transportation funding, countywide transportation planning, and public transportation provider for Santa Clara County.

Community Design: The Community Design Element is intended to address the built and natural environment. This includes the image and character of Milpitas' many unique neighborhoods and districts; the quality of buildings, streets, and public spaces; and the community's historical attributes.

Economic Development: The Economic Development Element provides a framework for fostering a healthy local economy in Milpitas. Although the Economic Development Element is not a mandatory component of the *General Plan*, the City seeks to promote economic health as an essential component of maintaining a balanced community, providing goods, services, employment and housing opportunities, which, in turn, help attract and retain commercial, service and industrial-oriented businesses. The Economic Development Element contains the goals, policies and actions that will help sustain and diversify the City's economy, recognizing the importance of supporting local businesses while broadening and expanding the employment base and economic opportunities within the City.

Conservation and Sustainability: The Conservation and Sustainability Element balances the overall vision of the *General Plan* for preserving and improving Milpitas' high living standards and natural resources while simultaneously providing for economic development, balanced growth, sustainability, improved air quality and reduced energy use.

Utilities and Community Services: The Utilities and Community Services Element's purpose is to protect range of infrastructure, utilities, and community services that are integral to providing a high quality of life for residents and businesses for projects.

Safety: The Safety Element provides the framework to reduce risks associated with a range of environmental and human-caused hazards that may pose a risk to life and property in Milpitas. The Safety element evaluates public health and safety hazards that are common within the City and provides policies that can reduce unreasonable risks and minimize potential losses in the event of natural or human caused disasters.

Noise: The Noise Element is a mandatory component of the *General Plan*. The overall purpose of the Noise Element is to address major noise sources and to promote safe and comfortable noise levels throughout Milpitas. The Noise Element contains goals, policies, and actions that seek to reduce community exposure to excessive noise levels through the establishment of noise level standards for a variety of land uses.

Parks, Recreation, and Open Space: The Parks, Recreation, and Open Space Element provides the framework to ensure that all Milpitas residents, employees, and visitors have safe, convenient, and equitable access to a diverse range of outdoor activities, naturalized open space areas, and recreational opportunities.

Community Health and Wellness: The Community Health and Wellness Element addresses the public health and wellness issues within Milpitas. The Community Health and Wellness Element places public health on par with traditional elements in general plans, such as housing and land use, and makes the connections between all subject areas and public health more explicit.

Implementation: The Implementation Plan provides a guide for City officials, Planning Commission, City staff, and the public in developing programs and actions that will implement adopted *General Plan* goals and policies. This element is composed of implementation measures for the City. Each implementation measure is a procedure, program, or technique that requires City action, either alone or in collaboration with non-City organizations or county, state, and federal agencies. Some of the implementation measures are processes or procedures that the City currently administers on an ongoing or annual basis. Completion of the identified measures will be subject to funding availability.

City of Milpitas Zoning Ordinance

Chapter 10 of the Milpitas Municipal Code (Zoning), known as the Zoning Law of the City of Milpitas, implements the land use policies of the *General Plan*. The Zoning Law is detailed with respect to specific

development standards and land use requirements. The City's Zoning Law includes specific standards and development regulations regarding permitted uses, building heights, yard areas, parking requirements, setbacks, and other requirements. The City's Zoning Law includes specific standards and development regulations regarding permitted uses, building heights, yard areas, parking requirements, setbacks, and other requirements. Zoning is used to implement long-term land use policy. In accordance with State requirements, the City's zoning patterns are consistent with Milpitas' Land Use Policy Map. The City initiated a comprehensive update to its current Zoning Ordinance in early 2023. Work on the Comprehensive Zoning Ordinance update is ongoing and will be completed in two phases. Phase 1 will include revisions to the Zoning Map for consistency with the General Plan and to address several new zoning districts called for in the General Plan and the Milpitas Metro Specific Plan. This work is estimated to be completed in early 2024. Phase 2 will entail substantial revisions and reorganization of the Zoning Ordinance text to modernize the language, address recent changes in state law, and streamline processes.

3.10.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to land use and planning are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts if any of the following would occur:

- Physically divide an established community.
- Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

3.10.4 METHODOLOGY

The discussion in this impact section serves two purposes, identifying significant impacts related to land use, and compliance with *State CEQA Guidelines* Section 15125(d), which requires that an EIR include a discussion of any inconsistencies with applicable plans. However, it does not require the EIR to reach a conclusion on whether a conflict exists. Additionally, a conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a "significant environmental effect" as defined by *State CEQA Guidelines* Section 15382. An inconsistency between a proposed project and an applicable plan is a legal determination that may or may not indicate the likelihood of a physical environmental impact. In some cases, an inconsistency may be evidence that an underlying physical impact is significant and adverse. For example, if a proposed project affected agricultural land, one standard for determining whether the

impacts were significant would be to determine whether the project violated a plan or policy protecting agricultural land; the environmental impact, however, would be the physical conversion of agricultural land to non-agricultural uses. Similarly, an excerpt from Section 12.34 of the legal practice guide, Practice under the California Environmental Quality Act by the Continuing Education of the Bar, illustrates the point:

> *…if a project affects a river corridor, one standard for determining whether the impact is significant might be whether the project violates plan policies protecting the corridor; the environmental impact, however, is the physical impact on the river corridor.*

Analysis of conflicts and consistency with applicable plans will be included in this impact section. Under State Planning and Zoning law (Gov't Code §§ 65000, et seq.) strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. A proposed project should be considered consistent with a general plan or elements of a general plan if it furthers one or more policies and does not obstruct other policies. Generally, given that land use plans reflect a range of competing interests, a project should be compatible with a plan's overall goals and objectives but need not be in perfect conformity with every plan policy.

For the purpose of identifying significant impacts related to land use impacts, they can be either direct or indirect. Direct impacts result in division of neighborhoods or communities, such as a community that could be physically divided by the construction of a new road, freeway, or railway that effectively isolates a portion of the community from the remainder of the community; or interference with land use plans, including habitat or wildlife conservation plans that result in significant environmental effects. Land use compatibility is typically addressed based on direct physical environmental impacts – primarily noise and air quality but also aesthetics, traffic, hazards, water quality and other physical environmental issues, i.e., where one use generates physical impacts that could significantly adversely affect another use. These issues are generally addressed through existing regulations and policies and are comprehensively addressed in each environmental issue area in this document and summarized as applicable and appropriate in the discussion of **Impact LAN-2** below. As related to impact analysis, this section focuses on direct land use impacts. Indirect impacts are secondary effects resulting from land use policy implementation and are generally addressed in other topical sections of this EIR. For example, traffic impacts resulting from increased traffic as a result of anticipated development under the Project would be discussed in the **Section 3.14, Transportation**, of this EIR; public service impacts resulting from increased demand from increased development under the Project is discussed in **Section 3.13, Public Services and Recreation,** of this EIR.

3.10.5 ENVIRONMENTAL IMPACTS

Impact LAN-1 Would the Project physically divide an established community?

Factors that could physically divide a community include, but are not limited to:

- Construction of storm channels;
- Construction of utility transmission lines;
- Closing bridges or roadways; and
- Construction of major highways or roadways.

These factors could potentially be physical barriers that change the connectivity between community areas to the extent that people are separated from other areas of the community. The Project Site is currently developed with an existing vacant industrial office building and paved surface parking lot. The proposed change in land use designation, to MXD Mixed Use, is intended to allow for the development of high-density residential uses such as townhomes and multi-family apartments on-site. According to Chapter 10 (Zoning) of the City of Milpitas Municipal Code, the purpose and intent of MXD zones is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. In addition, the MXD district also allows for 100 percent residential projects. The Project would not construct new storm channels or major roadways, nor would the Project close entire roadways or bridges that would physically divide the established community. Although the Project would involve the construction of new electric connections, these lines would be located underground and connect to the existing underground electric lines. Therefore, implementation of the Project would not be substantial to the point where an established community would be divided, and no impacts would occur.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No impact.

Impact LAN-2 Would the Project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

Project implementation would require the following discretionary approvals: General Plan Map Amendment, General Plan Text Amendment, Zoning Map Amendment, Site Development Permit, Conditional Use Permit, Planned Unit Development, Major Tentative Map Subdivision Permit, Tree Removal Permit, and Density Bonus Permit.

General Plan

According to the City's General Plan Land Use Map, the Project Site is designated NCMU, which allows multifamily residential development on a limited basis. Implementation of the Project would require a General Plan Text Amendment to remove specific language that requires the "preparation or adoption of a Specific Plan for the California Circle area". In addition, the Project would include a Zoning Map Amendment to change the Project Site's current Industrial Park Zoning District to Mixed-Use (MXD), consistent with the NCMU land use designation. The MXD district would allow for 100 percent residential projects.

The Project's consistency with the *General Plan* goals and policies is detailed in **Table 3.10-1**, **Project Consistency with City of Milpitas General Plan**. Although the *General Plan* contains numerous goals and policies beyond those discussed in **Table 3.10-1**, those goals and policies are not closely related to the "purpose of avoiding or mitigating an environmental effect" and are therefore not analyzed. As analyzed in **Table 3.10-1**, the Project would be consistent with all applicable goals and policies outlined within the *General Plan*, with the exception of Policies LU 1-1, LU 1-8, LU 4-2, LU 5-2, CD 3-1, CD 3-2, CD 3-3, CD 3-5, CD 3-8, CD 5-1, and CON 7-2.

Table 3.10-1
Project Consistency with City of Milpitas General Plan

General Plan Policy	Project Consistency
Land Use Element	
Goal LU-1: Accommodate a well-balanced mix of land uses that meets the diverse needs of Milpitas residents, businesses, and visitors with places to live, work, shop, be entertained and culturally enriched.	
Policy LU 1-1: Support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development, regional transportation objectives and promote the livability of residential neighborhoods.	**Not Consistent.** The Project would develop several multi-family residential units (in the form of townhomes and apartments) on a parcel that is surrounded by industrial and auto-oriented commercial uses (north and east). The Project Site is located adjacent to the I-880 freeway and withing 0.5 miles of the Newby Island Regional Landfill. Ambient noise and odors in the area are not amenable to quality of life within a residential context. The Project Site is also within 0.5-miles of several institutional facilities, business hotels, and a future public park. The Project would provide private open space and recreational spaces for future residents, but the project is self-contained and would not support a full spectrum of conveniently located commercial, public, and quasi-public uses or enhance business development or regional transportation objectives.
Policy LU 1-3: Maintain a supply of developable lands sufficient to meet desired levels of housing, jobs, and economic needs over the planning period.	**Consistent.** As discussed and analyzed throughout this EIR, the Project would develop a maximum of 206 multi-family housing units (131 townhome units and 75 apartment units), helping the City meet its state-mandated Regional Housing Needs Assessment (RHNA) goals.
Policy LU 1-4: Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offers residents of all income levels, age groups and special needs sufficient housing opportunities and choices for locating in Milpitas.	**Consistent.** The Project would develop a total of 206 new housing units within the 6.69-acre Project Site, which would result in a housing density of 30.4 dwelling units per-acre. Approximately 75 units would be rental units offered at a below-market rate. As discussed in **Section 3.13**, **Public Services and Recreation**, the Project Applicant would allow Milpitas Unified School District Employees (MUSD) first right of refusal for the 75 apartment units. Additionally, the Project would qualify for a State Density Bonus, which would allow for an increase in density.
Policy LU 1-8: Maintain equitable land use patterns to ensure that all residents in neighborhoods have access to community amenities and transportation choices and have safe places to walk and bike.	**Not Consistent.** The Project would provide walkways on-site for pedestrians and bicyclists, as shown in **Tables 2.0-3 and 2.0-4**, parking spaces per residential unit would be provided for the proposed townhome complexes and the apartment complex. The Project Site is located in an area that is not well served by transit or existing community amenities such as neighborhood-serving retail or public parks.
Goal LU-2: Promote land use objectives and development patterns in special planning areas consistent with adopted specific plans, overlay districts, and density bonus provisions.	
Policy LU 2-3: Allow densities and intensities which exceed the generally allowed ranges defined by the underlying land use for projects utilizing Density Bonus provisions (included within the Milpitas Affordable Housing Ordinance Title XII - HOUSING Chapter 1 - AFFORDABLE HOUSING ORDINANCE) including	**Consistent.** The Project includes an apartment complex with over 15 percent of the proposed units being made available at a low-income rental rate. Furthermore, the Project would adhere to all applicable requirements with Title XII of the Milpitas Affordable Housing Ordinance. No proposed

General Plan Policy	Project Consistency
bonuses for senior housing, affordable housing, and for projects within designated overlay districts included in Milpitas Municipal Code Section 12 - Overlay Districts and Standards.	Overlay District is included as part of the Project.
Goal LU-4: Coordinate and integrate land use and transportation objectives.	
Policy LU 4-2: Emphasize efforts to reduce regional vehicle miles traveled by supporting land use patterns and site designs that promote active modes of transportation, including walking, biking, and public transit.	**Consistent.** The Project Site is located in an area with limited access to public transit and connections to pedestrian and bike trails. Primary access to the site will be by personal vehicles, which will increase vehicle miles traveled. However, the Project would retain the existing sidewalks located along the eastern perimeter of the Project Site and would include new internal walkways and bike racks for residents.
Policy LU 4-4: Encourage new development to facilitate pedestrian, bicycle and transit access through techniques such as minimizing building separation from public sidewalks; providing safe, direct, accessible, convenient, and pleasant pedestrian connections; including secure and convenient bike storage; and orienting building entrances to transit service.	**Consistent.** The Project would maintain the existing sidewalks at the Project Site and would also provide bike racks on-site to accommodate pedestrians and bicyclists. The Project Site has also been designed to retain an existing pedestrian crosswalk on California Circle, which will provide pedestrian access to nearby walking trails and a future public park.
Goal LU-5: Ensure that new development is compatible with existing development in order to maintain a high quality of life for residents, while supporting successful business operations.	
Policy LU 5-2: Prohibit incompatible uses and inappropriate development in and near residential neighborhoods. As feasible, promote gradual transitions from high density development to surrounding low density neighborhoods in both building forms and land use.	**Not Consistent.** The Project Site is immediately adjacent to the I-880 freeway and within 0.5 miles of the Newby Island Regional Landfill. Residential land uses are generally considered to be incompatible and inappropriate near these uses. The Project includes the development of townhomes and an apartment complex. These uses are similar to the existing multi-family residential units located southeast and northeast of the Project Site. Single-family residential neighborhoods are located approximately 0.20 miles south of the Project Site, along Milmont Drive (which transitions into California Circle. While the pattern of residential development in this area is not continuous, the Project would help provide a gradual transition from non-residential to residential land uses.
Policy LU 5-3: Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance as applied through the zoning district for all properties within the City.	**Consistent.** As shown in **Table 3.10-2**, **Project Consistency with Mixed Use (MXD) Zone**, the Project would be inconsistent with the heigh limits established for mixed-use developments within the City's Municipal Code. However, the Project would also be zoned with a Planned Unit Development (PUD). The PUD would void the Project's inconsistencies with the City's development standards for mixed-use zoning, The Project also includes a Density Bonus Permit, which makes the project eligible for waivers and concessions from certain development and design standards, including building height.

General Plan Policy	Project Consistency
Policy LU 5-5: Require that new residential development be designed to protect residents from potential conflicts with adjacent land uses, and other features including rail corridors, high-voltage power lines and high-volume roadways.	**Consistent.** The Project is located immediately adjacent to Interstate 880 (I-880), a high-volume roadway. The Project would include installation of an eight-foot soundwall between the Project and Interstate 880 (I-880) to serve as a barrier between future residences and (I-880). Potential impacts to future residents under future conditions under the Project are analyzed throughout this EIR. As discussed in various sections of this EIR, implementation of the Project with recommended mitigation measures would address significant and unavoidable impacts to future residents in relation to air quality, noise, and traffic impacts.
Community Design Element	
Goal CD-2: Ensure project designs reinforce a sense of place, display design excellence, and are cohesive and sensitive to the surrounding build environment and natural landscape.	
Policy CD 2-7: Include design elements during the development review process that address security, aesthetics and safety. Safety issues include, but are not limited to, minimum clearance around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular, bicycle, and pedestrian facilities and other standards set forth in local, state, and federal regulations.	**Consistent.** As discussed in **Section 2.0**, **Project Description**, internal private streets would be constructed within the proposed townhome community for vehicular circulation and to provide access to each townhome. These private streets would be able to accommodate emergency service vehicles, such as fire trucks owned by the City. The proposed apartment parking structure would also provide adequate and safe circulation for vehicles. Parking spaces would be provided per residential unit on-site. Additionally, Patterned walkways would also be provided within the townhome community to ensure there is adequate pedestrian circulation on-site for residents. The proposed townhomes would install external lighting structures that would be mounted to each building to provide lighting and security to the proposed paseos, outdoor recreation area and outdoor parking spaces. The proposed apartment complex would also install mounted lighting structures. Furthermore, site plans for the Project would be reviewed by the City and the Milpitas Fire Department (MFD) to ensure that fire protection measures and building safety measures would be implemented.
Policy CD 2-8: Minimize the visual impact of wireless telecommunication facilities by designing them as an integral architectural feature to a site or structure.	**Consistent.** The Project would introduce new underground telecommunication lines for the proposed townhomes and apartment complex. The telecommunication lines would be similar to the existing underground lines adjacent to the western perimeter of the Project Site.
Goal CD-3: Maintain and enhance the character and distinct identities of Milpitas' residential neighborhoods and commercial, mixed-use, and employment districts and centers.	
Policy CD 3-1: Strengthen the positive qualities of the City's neighborhoods, districts, and centers.	**Consistent.** According to the General Plan, the Project Site is located within a Specific Plan Overlay zone. Specifically, the General Plan indicates that the Project Site is located within the "California Circle Specific Plan Overlay". The Project would include a General Plan Text Amendment that would remove specific language that requires the "preparation or adoption of a Specific Plan". The Project would consist strictly of multi-family residential uses and would not incorporate mixed-uses. Existing residential development in the surrounding area is not continuous and does not strengthen the quality of the district or nearby neighborhoods.

General Plan Policy	Project Consistency
Policy CD 3-2: Support the development and preservation of unique neighborhoods, districts, and centers that exhibit a special sense of place and quality of design.	**Not Consistent.** Neither the General Plan nor the City's Municipal Code provide architectural distinctions for the California Circle Specific Plan Overlay zone. However, the Project would be incompatible with the existing surrounding industrial uses. Additionally, the proposed architectural design, and building material for the Project would be incompatible with the design of the surrounding multi-family residential uses.
Policy CD 3-3: Ensure that new development and redevelopment reinforces desirable elements of its neighborhood, district, or center, including architectural style, scale, and setback patterns.	**Not Consistent.** As shown in **Table 3.10-2** below, the Project Site would be inconsistent with certain designed standards for all structures zoned MXD Mixed Use by the City, such as height, scale, and setbacks. However, the Project's proposed PUD and State Density Bonus would provide the Project with opportunities to receive certain incentives or concessions.
Policy CD 3-5: Ensure that new residential development and substantial additions are designed to maintain and support the existing character and development pattern of the surrounding neighborhood, especially in historic neighborhoods and neighborhoods with consistent design characteristics.	**Not Consistent.** Please refer to responses to Policies CD-3-1 through CD 3-3. It should be noted that the City has not designated the Project Area as a historic neighborhood.
Policy CD 3-8: Ensure that new residential developments in and adjacent to the city's districts are designed to blend with existing building forms. Considerations for residential developments should include the following: a.) Ensure that development projects with more than 2 units consist of detached units with one and two-story building elements, when located in a predominantly single-family residential neighborhood. b.) Ensure residential unit entries face the public street. c.) Ensure that new development is designed to blend in with the existing building patterns of the neighborhood. For example, if the majority of the garages on the street are at the rear of the site, the new building should be designed to accommodate a rear garage. d.) Ensure that properties designated for non-residential uses within residential areas retain the residential character and scale of development characteristic of the surrounding residential neighborhood. The development is to provide sufficient, safe pedestrian and bicycle access into and throughout the site, on-site parking, human scaled lighting and landscape screening to minimize the commercial appearance of the use.	**Not Consistent.** The Project Site is not located within a single-family residential neighborhood. The majority of the residential units within the proposed townhomes and apartment complex would not face any public streets, such as California Circle. Although the Project would be similar in use to the multifamily residential use located in the east, the proposed apartment complex would be greater in height and size and the Project would have a higher density compared to these uses. Additionally, unlike existing residences within the Project Area (uses within an approximately 0.25-mile radius from the Project Site), the Project would be the only residential use adjacent to I-880. Further, the Project would still be incompatible with the industrial uses to the north and east.
Policy CD-10: Design multi-family residential, mixed use, commercial, and employment-generating development in neighborhoods, districts, and centers to: a.) Include open space and/or recreational amenities to provide visual relief from development, form pedestrian and bicyclist linkages to adjacent uses and other portions of the neighborhood, district, or center, and serve as buffers between uses, where necessary; b.) Locate building access points along sidewalks, pedestrian areas, and bicycle routes, and include amenities that encourage pedestrian activity; c.) Create a human-scale ground-floor environment that includes public open areas that separate pedestrian space from auto	**Consistent.** The Project would provide open space and recreational amenities on-site with an outdoor recreational area that consists of an outdoor playground, two turf areas, picnic tables with a sail structure providing shade, a bench, and bike racks for bicyclists. The proposed outdoor recreational area would be visible for pedestrians, bicyclists, and motorists travelling along California Circle. The Project would also include several walkways and two walking paseos that provide pedestrian amenities (i.e., benches). Pedestrian and bicycle access to the Project Site would be provided along California Circle. Pedestrian access on-site would be provided to each townhome building and the proposed apartment complex. Additionally, pedestrian and bicycle routes would be provided via walkways and

General Plan Policy	Project Consistency
traffic, or where these intersect, give special regard to pedestrian safety; and d.) Provide comfortable pedestrian amenities, such as quality seating areas, lighting, and wide, shaded paths, along with specialized and engaging design features, such as interesting fountains or public art to draw and maintain people's attention.	sidewalks. Refer to response to Policy CD 2-7 regarding the proposed lighting fixtures for the Project. The Project will include a direct connection to an existing pedestrian crosswalk on California Circle, and the primary driveway will be located away from the crosswalk to enhance pedestrian safety.
Goal CD-5: Provide appropriate transitions between land uses to avoid conflicts and perpetuate the community's harmonious character.	
Policy CD 5-1: Design new development to reflect the character of the predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.	**Inconsistent.** As shown below in **Table 3.10-2**, **Project Consistency with Mixed Use (MXD) Zone**, the Project would be inconsistent with certain designed standards for structures zoned Mixed Use, including height and front yard setbacks. However, the Project's proposed PUD and State Density Bonus would provide the Project with opportunities to receive certain incentives or concessions.
Policy CD 5-7: Encourage the use of creative landscape design to create visual interest and reduce conflicts between different land uses.	**Consistent.** The Project would implement additional ornamental landscaping in the form of grasses, planting, and shrubs as well as trees along the eastern perimeter of the Project Site compared to existing conditions, thereby enhancing the visual quality of the Project Site from public viewpoints along California Circle.
Policy CD 5-8: Require setbacks and other design elements to buffer residential units to the extent possible from the impacts of abutting roadway, commercial, and industrial uses.	**Consistent.** The proposed ornamental landscaping detailed in the response to Policy CD 5-7 would serve as a buffer between the residential units and California Circle. Grasses and trees would be planted along the northern and western perimeter to serve as a natural buffer between residential units and industrial uses and I-880, respectively. Additionally, an eight-foot high soundwall would be installed along the western perimeter to serve as a buffer between residential units and I-880.
Policy CD 5-9: Avoid the blocking of public views and access by solid walls. Where solid walls are necessary, require that they be articulated through the use of color, material, and/or surface depth changes and/or screened by landscaping to avoid appearing blank.	**Consistent.** No solid walls would be installed at the Project frontage. The proposed soundwall installed along the western perimeter of the Project Site would serve as a sound barrier between the proposed residences and I-880. The soundwall would meet the City's required maximum height of eight feet in height and would not obstruct public views.
the Policy CD 5-10: Use natural features as buffers between incompatible land uses.	**Consistent.** Refer to response to Policy CD 5-8.
Conservation Element	
Goal CON-1: Ensure a sustainable future for the City of Milpitas by promoting a carbon free energy future that increases renewable resources, conservation, and efficiency throughout the city.	
Policy CON 1-1: Ensure that new development is consistent with the energy objectives and targets identified by the City's Climate Action Plan (CAP).	**Consistent.** As part of **Mitigation Measure MM GHG-1** in **Section 3.6**, **Greenhouse Gas**, the Project Applicant would demonstrate compliance with relevant and applicable measures of the CAP through completion of the City's CAP development checklist.
Policy CON 1-2: Ensure all development projects comply with the mandatory energy efficiency requirements of the California Green Building Standards Code (CALGreen).	**Consistent.** As discussed in **Section 3.6**, **Greenhouse Gas**, The Project would demonstrate compliance with the current CALGreen standards and the City's Green Building Regulations.

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Policy CON 1-9: Encourage site planning and building techniques that promote energy conservation. Where feasible, encourage projects to take advantage of shade, prevailing winds, landscaping, sunscreens, building orientations, and material choices that reduce energy use.	**Consistent.** See response to **Policy CON 1-2**. The Project would include three electric vehicle charging stations at the northeastern parking lot area. Additionally, the Project would be Build it Green or LEED for Homes certified.
Goal CON-3: Protect and maintain waterways and other sensitive habitat for plant and animal species throughout Milpitas and to protect the health of the San Francisco Bay.	
Policy CON 3-3: Limit the disturbance of natural water bodies and drainage systems in Milpitas by conserving natural open space areas, protecting channels, and minimizing the impacts and pollutants from stormwater and urban runoff.	**Consistent.** As concluded in **Section 3.15**, **Utilities and Service System**, the Project would result in comparable amounts of impervious surfaces as existing conditions.
Policy CON 3-8: Encourage private and public development that is consistent with the City's Green Stormwater Infrastructure Plan and incorporate natural processes for stormwater drainage, groundwater recharge and flood management.	**Consistent.** As concluded in **Section 3.9**, **Hydrology and Water Quality**, the proposed on-site stormwater drainage system would be consistent with the City's Stormwater Plans. The Project Site would not utilize groundwater for groundwater recharge and would comply with all applicable regulatory requirements regarding flood management. Furthermore, the Project would implement the applicable best management practices (BMPs) to control stormwater runoff during the construction activities and operations.
Goal CON-4: Preserve and protect prehistoric, historic, archaeological, and paleontological resources in Milpitas.	
Policy CON 4-2: If found during construction, ensure that human remains are treated with sensitivity and dignity, and ensure compliance with the provisions of California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.	**Consistent.** As discussed in **Section 3.4**, **Cultural Resources**, in the event that human remains are discovered on-site during excavation activities, these activities within close proximity to the find must cease until the Santa Clara County coroner has investigated the find and appropriate recommendations have been made for the treatment and disposition of the remains. Remains would be properly treated in accordance with State of California Public Resources Health and Safety Code Section 7050.5-7055. The Project would comply with Section 5097.98 of the California Public Resources Code and notify the County Coroner and the Native American Heritage Commission (NAHC) if any Native American human remains are discovered.
Policy CON 4-4: Consistent with State, local, and tribal intergovernmental consultation requirements such as SB 18 and AB 52, the City shall consult as necessary with Native American tribes that may be interested in proposed new development and land use policy changes.	**Consistent.** As discussed in **Section 3.4**, **Cultural Resources**, a sacred land files search request was sent to the NAHC by the City per SB 18. A list of Native American individuals and tribal organizations for tribal was provided by the NAHC on December 11, 2022, and the City sent notification letters to each of the NAHC individuals and tribal organizations per SB 18 and AB 52.
Goal CON-7: Implement a proactive approach to maintain and improve air quality within Milpitas and the region	
Policy CON 7-2: Minimize exposure of the public to toxic or harmful air emissions and odors through requiring an adequate buffer or setback distance between residential and other sensitive land uses and land uses that typically generate air pollutants, toxic air contaminants, or obnoxious fumes or odors, including but not limited to industrial, manufacturing, and processing facilities, high-volume roadways, and industrial rail lines. New sensitive receptors, such as residences (including residential care and assisted living facilities for the elderly), childcare centers, schools, playgrounds, churches, and medical facilities shall be	**Not Consistent.** As discussed in **Section 3.2**, **Air Quality**, Project implementation would not have the potential to cause or contribute to an exceedance of the existing non-attainment pollutants within the region (California one-hour or eight-hour CO standards). However, the proposed townhomes and apartment complex would introduce new sensitive receptors that would be exposed to nearby sources of air pollution odors. These sources would include the light-duty and heavy-duty vehicles travelling along I-880 and odors emitted from the Newby Island Regional Landfill, located less than 0.5

General Plan Policy	Project Consistency
located away from existing point sources of air pollution such that excessive levels of exposure do not result in unacceptable health risks. Compliance shall be verified through the preparation of a Health Risk Assessment when deemed necessary by the Planning Director.	miles northwest of the Project Site.
Policy CON 7-4: Require projects to adhere to the requirements of the Bay Area Air Quality Management District (BAAQMD).	**Consistent.** As discussed in **Section 3.2**, **Air Quality**, the Project would not conflict with the policies and guidelines set forth by the Bay Area 2017 Clean Air Plan, adopted by the BAAQMD.
Policy CON 7-7: Comply with regional, state, and federal standards and programs for control of all airborne pollutants and noxious odors, regardless of source.	**Consistent.** As stated, the Project would not conflict with the Bay Area 2017 Clean Air Plan. As discussed in **Section 3.2**, **Air Quality**, the Project would not conflict with the implementation actions set forth by the Bay Area Air Quality Management Plan (AQMD).
Safety Element	
Goal SA-1: Minimize community exposure to geologic and seismic hazards.	
Policy SA 1-2: Ensure that all new development and construction is in conformance with all applicable building standards related to geologic and seismic safety.	**Consistent.** As discussed in **Section 3.7, Geology and Soils**, development of the Project would be constructed in consistency with the applicable 2019 California Building Code (2019 CBC) and the Seismic Hazards Mapping Act.
Policy SA 1-5: Require an erosion and sediment control plan prepared by a civil engineer, or other professional who is qualified to prepare such a plan, as part of any grading permit application for new development. The erosion and sediment control plan shall delineate measures to appropriately and effectively minimize soil erosion and sedimentation.	**Consistent.** As detailed in **Section 3.7, Geology and Soils**, the Project Applicant would implement a Stormwater Pollution Prevention Plan (SWPPP) that would describe the site's existing conditions, the proposed erosion and sediment controls, runoff water quality monitoring, means of waste disposal, implementation of approved local plans, control of construction sediment and erosion control measures, maintenance responsibilities, and non-stormwater management controls.
Goal SA-2: Reduce risks to life, property, and public services associated with flooding.	
Policy SA 2-3: Require all development projects to demonstrate how storm water runoff will be detained or retained on-site, treated, and/or conveyed to the nearest drainage facility as part of the development review process. Project applicants shall demonstrate that project implementation would not result in increases in the peak flow runoff to adjacent lands or drainage facilities that would exceed the design capacity of the drainage facility or result in an increased potential for off-site flooding.	**Consistent.** As discussed in **Section 3.9**, **Hydrology and Water Quality**, proposed stormwater drainage facilities associated with the Project would be similar to the existing on-site drainage facilities, in that the proposed stormwater drainage facilities would result in comparable amounts of impervious surfaces as existing conditions.
Policy SA 2-4: Ensure that construction activities and new development will not result in the creation of adverse, flood-related impacts to existing properties and/or flood control and drainage structures.	**Consistent.** As discussed in **Section 3.9**, **Hydrology and Water Quality**, the Project would comply with the applicable requirements of the National Pollutant Discharge Elimination System (NPDES) and obtain a General Permit for construction. In doing so, the Project Applicant would be required to implement a Storm Water Pollution Prevention Plan (SWPPP) that would identify the proposed Best Management Plan practices that would minimize the stormwater runoff that would occur during Project construction.

General Plan Policy	Project Consistency
Noise Element	
Goal N-1: Preserve a nuisance-free noise environment for existing and future land uses by minimizing exposure to harmful and excessive noise levels.	
Policy N 1-2: Require new development to mitigate excessive noise to the standards indicated in Tables N-1 and N-2 through best practices, including building location and orientation, building design features, placement of noise-generating equipment away from sensitive receptors, shielding of noise-generating equipment, placement of noise-tolerant features between noise sources and sensitive receptors, and use of noise-minimizing materials.	**Consistent.** As discussed in **Section 3.11**, **Noise and Vibration**, on-site stationary noise sources emitted from the Project would not have the potential to exceed the ambient noise levels noise outlined in Table N-1 of the City's General Plan.
Policy N 1-4: Ensure that new development does not result in indoor noise levels exceeding 45 dBA Ldn for residential uses by requiring the implementation of construction techniques and noise reduction measures for all new residential development.	**Consistent.** As discussed in **Section 3.11**, **Noise and Vibration**, the Project's indoor noise-levels would be reduced to approximately 39.3 to 44.3 dBA Ldn upon completion of construction.
Parks, Recreation, and Open Space Element	
Goal PROS-1: Provide a diversified and high-quality public park and trail system that provides recreational opportunities for all residents.	
PROS 1-4 Park land acreage dedications and/or equivalent in-lieu fees shall be required for new development in accordance with the following standards: • For areas outside of a Specific Plan, require land dedication or in lieu fees equivalent to the 5 acre/1,000resident standard, but allow credit for private recreation space for up to 2 acres/1,000 residents for private open space. Private recreation credit will be given at the discretion of the City and pursuant to the criteria specified in the City's Subdivision Regulations (Title XI, Chapter 1, Section 9.08 of the Milpitas Municipal Code). • For areas within a Specific Plan, require land dedication or in-lieu fees equivalent to the park land standard established in the relevant Specific Plan, allowing credit for private recreation space for up to 1.5 acres/1,000 residents for private recreation space. Private recreation credit will be given at the discretion of the City and pursuant to the criteria specified in the City's Subdivision Regulations (Title XI, Chapter 1, Section 9.08 of the Milpitas Municipal Code).	**Consistent.** The Project Applicant would pay the required in lieu fees equivalent based on the current acre/resident standard, per City regulations.
Community Health and Wellness	
Goal CHW-4: Protect the diversity, safety, and beauty of the City's neighborhoods	
Policy CHW 4-1: Ensure that there is a diversity of housing types to accommodate all income levels and provide housing for very low and extremely low-income populations in areas with high accessibility to public transportation.	**Consistent.** The Project would provide a minimum of 20 rental units within the proposed apartment complex that would accommodate low-income populations. These units would be priced at a low-income rental rate as established by the City.

As shown in **Table 3.10-1**, due to the existing surrounding land uses of the Project Site, the Project would be inconsistent with several policies within the Community Design Element and regarding neighborhood

characteristics and design and policies within the Conservation Element regarding new exposures to air pollutants for sensitive receptors.

Zoning Ordinance

As discussed, the Project Site is zoned Industrial Park. This Industrial Park zone allows for a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air in a park-like setting. Implementation of the Project would require a zone change via a Zone Map Amendment from Industrial Park to Mixed Use (MXD), with a Planned Unit Development (PUD). According to Chapter 10 (Zoning) of the City of Milpitas Municipal Code, the purpose and intent of MXD zones is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. It is intended that the residential and commercial uses allowed in the MXD district would provide for an "around-the-clock-environment" with urban open areas that serve multiple purposes and can be used for special events. In addition, the MXD district also allows for 100 percent residential projects. **Table 3.10-2**, **Project Consistency with Mixed Use(MXD) Zone** analyzes the Project's consistency with the development standards for multi-family residential uses in MXD zones.

Table 3.10-2
Project Consistency with Mixed Use (MXD) Zone

MXD Zone Development Standards	Requirement	Proposed Townhomes	Proposed Apartment	Does the Project Satisfy the Requirement?
Non-residential lot area minimum	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Not Applicable (N/A)		**N/A**
Density, maximum	30 units per gross acre	30.4 units per gross acre		**No**
Front yard Setback, minimum, maximum (ft.)	8,15 from the back of sidewalk	24	30	**No**
Side yard setback (Interior), minimum (ft.)	Single Story: One side 5 ft., total both sides 12 ft. Two-2.5 story: One side 10 ft., total both sides 25 ft. Three-3.5 story: One side 12 ft., total both sides 30 ft.	Seven plex townhomes: 19 ft N/A for twelve-plex townhomes, which are four stories	N/A (apartment complex is five stories)	**Yes**
Street side yard Setback, minimum, maximum (ft.)	8,15 from the back of sidewalk	N/A	N/A	**N/A**
Rear yard setback, minimum (ft.)	10.	35 feet	N/A (apartment complex is not located within the rear of the Project Site)	**Yes**
Building Height, maximum (ft.)	Principal building: 3 stories (45 ft.)	Seven-plex: 39.6 ft. Twelve-plex: 51 ft.	77 ft.	**No**
Minimum Parking Spaces	Refer to **Section 2.0, Project Description.**	Refer to **Section 2.0, Project Description.**	Refer to **Section 2.0, Project Description.**	**Yes**
All residential projects outside a Specific Plan area shall comply with the park land dedication provisions provided in Section 9.06 (Amount of Park Land to be Dedicated) of the Milpitas Subdivision Ordinance.		See Section 3.13, Public Services and Recreation, the Project would comply with all provisions outlined in Section 9.06 of the Milpitas Subdivision Ordinance		**Yes**

Note :ft. = feet.
Source:
1 City of Milpitas Code, Section. XI-10-6.04 - Mixed Use Zone General Development Standards.
2 Pulte Group, 2023.

As shown in **Table 3.10-2**, the Project would remain inconsistent with several of the development standards for MXD zones, including the front yard setback, height, and density requirement. Additionally, the Project would be inconsistent with certain design standards for residential zones, such as the City's trash enclosure requirement.

As stated, the Project proposes to implement a PUD for the Project Site. According to Section XI-10-54.07 (Planned Unit Development) of the City's Municipal Code, PUD zones are intended to allow diversification in the relationships of various buildings, structures, and open spaces in planned building groups and the allowable heights of said buildings and structures, while ensuring substantial compliance to the development standards and regulations outlined in the Municipal Code. The Project would construct multiple multi-family residential buildings that are diverse in height and size. Further, the Project would meet the minimum standard requirements to be zoned with a PUD, as outlined in Section XI-10-54.07 (Planned Unit Development). Per Section XI-10-54.07 standards, the Project Applicant would submit the appropriate application and project plans to the City of Milpitas Planning Commission and the City Council. Upon approval of the City Council, the Project's inconsistencies with the development standards for MXD zones would be voided, and the Project would be considered consistent with the City's Municipal Code.

Plan Bay Area 2050

Table 3.10-3, Project Consistency with Plan Bay Area 2050 Strategies, provides an assessment of the Project's relationship to the strategies detailed in the Plan Bay Area 2050. These strategies are directed towards housing, transportation, the economy, and the environment. As demonstrated, the Project is consistent with all applicable strategies outlined in the Plan Bay Area 2050.

Table 3.10-3
Project Consistency with Plan Bay Area 2050 Strategies

Strategy	Project Compliance with Strategy
Housing Strategies	
H1. Further strengthen renter protections beyond state law. Building upon recent tenant protection laws, limit annual rent increases to the rate of inflation, while exempting units less than 10 years old.	**Not Applicable.** This strategy limits the annual rent increases in the region to occur with the rate of inflation. The Project would not interfere with this strategy and would be exempt since the units are less than 10 years old.
H2. Preserve existing affordable housing. Acquire homes currently affordable to low and middle-income residents for preservation as permanently deed-restricted affordable housing	**Not Applicable.** This strategy is intended for existing affordable housing units. The Project would not directly interfere with this strategy. Rather, the Project would introduce additional affordable housing units to the City that would be offered at the low-income rental rate.
H3. Allow a greater mix of housing densities and types in Growth Geographies. Allow a variety of housing types at a range of densities to be built in Priority Development Areas, select Transit-Rich Areas and select High-Resource Areas.	**Not Applicable.** This strategy is intended for residential development located within an identified Priority Development Area, Transit Rich Area, or High Resource Area. Under the definitions outlined in the Plan Bay Area 2050, the Project Site is not located within a Priority Development Area, Transit Rich Area, or High Resource Area.

Strategy	Project Compliance with Strategy
H4. Build adequate affordable housing to ensure homes for all. Construct enough deed restricted affordable homes to fill the existing gap in housing for the unhoused community and to meet the needs of low-income households.	**Consistent**. The Project would involve the development of a 75-unit apartment complex, in which all rental units would be offered at below market rate rental prices. Additionally, 20 of the 75 rental units would be offered at a low-income rental rate.
H5. Integrate affordable housing into all major housing projects. Require a baseline of 10-20% of new market-rate housing developments of five units or more to be affordable to low-income households.	**Consistent**. See response to Strategy H4.
H6. Transform aging malls and office parks into neighborhoods. Permit and promote the reuse of shopping malls and office parks with limited commercial viability as neighborhoods with housing for residents at all income levels.	**Not Applicable.** This strategy is intended for specific commercial uses (i.e., shopping malls, office parks). The Project Site is not designated by the General Plan or zoned by the City for commercial uses. Further, the Project would not demolish or introduce any commercial uses.
H7. Provide targeted mortgage, rental and small business assistance to Equity Priority Communities. Provide assistance to low-income communities and communities of color to address the legacy of exclusion and predatory lending, while helping to grow locally owned businesses.	**Not Applicable.** This strategy is intended to increase the financial support to the local businesses of low-income communities and communities of color. The Project would not interfere with this strategy.
H8. Accelerate reuse of public and community-owned land for mixed-income housing and essential services. Help public agencies, community land trusts and other non-profit landowners accelerate the development of mixed-income affordable housing.	**Not Applicable**. This strategy is specific to properties that are publicly-or-community owned. The Project Site is privately owned.
Economic Strategies	
EC1. Implement a statewide universal basic income. Provide an average $500 per month payment to all Bay Area households to improve family stability, promote economic mobility and increase consumer spending.	**Not Applicable.** This strategy requires a monthly payment of $500 to be established for all area households. The Project would not interfere with this strategy. The Project would result in additional housing units in the Bay Area for households.
EC2. Expand job training and incubator programs. Fund assistance programs for establishing new businesses, as well as job training programs, primarily in historically disinvested communities.	**Not Applicable.** This strategy involves funding assistance for new businesses. The Project proposes multiple residential developments and would not interfere with this strategy.
EC3. Invest in high-speed internet in underserved low-income communities. Provide direct subsidies and construct public infrastructure to ensure all communities have affordable access to high-speed internet.	**Consistent.** This strategy would provide internet access to low-income communities. The Project would not directly interfere with this strategy. Additionally, as discussed in **Section 3.16**, **Utilities and Service Systems**, the Project would not significantly impact telecommunication services in the Project Area.
EC4. Allow greater commercial densities in Growth Geographies. Allow greater densities for new commercial development in select Priority Development Areas and Transit-Rich Areas to encourage more jobs to locate near public transit.	**Not Applicable.** This strategy is intended for new commercial development. The Project would introduce residential development and would not directly interfere with this strategy.
EC5. Provide incentives to employers to shift jobs to housing-rich areas well served by transit. Provide subsidies to encourage employers to relocate offices to housing-rich areas near regional rail stations.	**Not Applicable.** Although the Project Site is located within 0.5 miles of single-family, and multi-family residential uses, it is not located within close proximity to transit (i.e., within a 0.5-mile distance from the nearest regional rail station).
EC6. Retain and invest in key industrial lands. Implement local land use policies to protect key industrial lands, identified as Priority Production Areas, while funding key infrastructure improvements in these areas.	**Not Applicable.** This strategy is intended for industrial lands identified locally as a Priority Production Area. There are no Priority Production Areas identified by the City of Milpitas.

Strategy	Project Compliance with Strategy
Transportation Strategies	
T1. Restore, operate and maintain the existing system. Commit to operate and maintain the Bay Area's roads and transit infrastructure while reversing pandemic-related cuts to total transit service hours.	**Not Applicable.** This strategy is intended for the Bay Area transit system. The Project Site is not located within close proximity to any light-rail or regional systems, and California Circle is not located within any local or regional bus routes. Thus, the Project would not interfere with this strategy.
T2. Support community-led transportation enhancements in Equity Priority Communities. Provide direct funding to historically marginalized communities for locally identified transportation needs.	**Not Applicable.** This strategy is intended for local municipalities. The Project Area has not been identified by the City to have historically marginalized communities.
T3. Enable a seamless mobility experience. Eliminate barriers to multi-operator transit trips by streamlining fare payment and trip planning while requiring schedule coordination at timed transfer hubs.	**Not Applicable.** This strategy refers to streamlining fare payments and trip planning. The Project would not interfere with this strategy.
T4. Reform regional transit fare policy. Streamline fare payment and replace existing operator specific discounted fare programs with an integrated fare structure across all transit operators.	**Not Applicable.** This strategy refers to regional transit fare policies. The Project would not interfere with this strategy.
T5. Implement per-mile tolling on congested freeways with transit alternatives. Apply a per-mile charge on auto travel on select congested freeway corridors where transit alternatives exist, with discounts for carpoolers, low-income residents, and off-peak travel; and reinvest excess revenues into transit alternatives in the corridor.	**Not Applicable.** This strategy would implement tolling within freeway corridors. The Project would not interfere with this strategy.
T6. Improve interchanges and address highway bottlenecks. Rebuild interchanges and widen key highway bottlenecks to achieve short- to medium-term congestion relief.	**Not Applicable.** This strategy is intended for freeways and highways. The Project would not interfere with this strategy.
T7. Advance other regional programs and local priorities. Fund regional programs like motorist aid and 511 while supporting local transportation investments on arterials and local streets	**Not Applicable.** This strategy is directed towards funding regional programs. The Project would not interfere with this strategy.
T9. Advance regional Vision Zero policy through street design and reduced speeds. Reduce speed limits to between 20 and 35 miles per hour on local streets and 55 miles per hour on freeways, relying on design elements on local streets and automated speed enforcement on freeways.	**Not Applicable.** This strategy would reduce speed limits for local streets. The Project would not directly interfere with this strategy.
T10. Enhance local transit frequency, capacity and reliability. Improve the quality and availability of local bus and light rail service, with new bus rapid transit lines, South Bay light rail extensions, and frequency increases focused in lower-income communities.	**Not Applicable**. This strategy would increase the availability of local bus and light rail services to residents. The Project would not directly interfere with this strategy.
T11. Expand and modernize the regional rail network. Better connect communities while increasing frequencies by advancing the Link21 new transbay rail crossing, BART to Silicon Valley Phase 2, Valley Link, Caltrain Downtown Rail Extension and Caltrain/High-Speed Rail grade separations, among other projects.	**Not Applicable.** This strategy is intended for regional rail transit services. The Project would not directly interfere with this strategy.

Strategy	Project Compliance with Strategy
T12. Build an integrated regional express lanes and express bus network. Complete the buildout of the regional express lanes network to provide uncongested freeway lanes for new and improved express bus services, carpools and toll-paying solo drivers.	**Not Applicable.** This strategy is intended for regional rail transit services. The Project would not directly interfere with this strategy.
Environmental Strategies	
EN1. Adapt to sea level rise. Protect shoreline communities affected by sea level rise, prioritizing low-cost, high-benefit solutions and providing additional support to vulnerable populations.	**Not Applicable.** The Project Site is not located within an area that is identified locally or regionally as a coastline community.
EN2. Provide means-based financial support to retrofit existing residential buildings. Adopt building ordinances and incentivize retrofits to existing buildings to meet higher seismic, wildfire, water and energy standards, providing means-based subsidies to offset associated costs.	**Not Applicable.** This strategy is intended for existing buildings. The Project would demolish the existing building on-site and construct new residential buildings that would be consistent with the resiliency and safety standards outlined in the City's Municipal Code and the California Building Code (CBC) (see **Section 3.7, Geology and Soils**).
EN3. Fund energy upgrades to enable carbon neutrality in all existing commercial and public buildings. Support electrification and resilient power system upgrades in all public and commercial buildings.	**Not Applicable.** This strategy is primarily for public and commercial buildings. The Project involves private multi-family residential buildings. Thus, the Project would not directly interfere with this strategy.
EN4. Maintain urban growth boundaries. Using urban growth boundaries and other existing environmental protections, focus new development within the existing urban footprint or areas otherwise suitable for growth, as established by local jurisdictions.	**Consistent.** The Project would be located within an established urbanized environment and the existing Project Site is developed with a currently vacant industrial office building, associated surface parking spaces, and landscaping.
EN5. Protect and manage high-value conservation lands. Provide strategic matching funds to help conserve and maintain high-priority natural and agricultural lands, including but not limited to, Priority Conservation Areas and wildland-urban interface areas.	**Not Applicable.** This strategy is intended for areas of primarily natural and agricultural uses, such as Priority Conservation Areas and wildland-urban interface areas. As discussed in **Section 3.3**, **Biological Resources** and **Section 5.0, Effects Found Not To Be Significant**, the Project Site is located in a heavily disturbed and developed area, and is not located within an identified natural resource, agricultural, or wildland-urban interface area. Therefore, the Project would not directly interfere with this strategy.
EN6. Modernize and expand parks, trails and recreation facilities. Invest in quality parks, trails and open spaces that provide inclusive recreation opportunities for people of all backgrounds, abilities and ages to enjoy.	**Not Applicable.** This strategy is intended for parks, trails, and recreation facilities. There are no existing parks, trails, or recreational facilities on site, nor would the Project convert any of these types of facilities. Therefore, the Project would not directly interfere with this strategy.
EN7. Expand commute trip reduction programs at major employers. Set a sustainable commute target for major employers as part of an expanded Bay Area Commuter Benefits Program, with employers responsible for funding incentives and disincentives to shift auto commuters to any combination of telecommuting, transit, walking and/or bicycling	**Not Applicable.** This strategy is intended for major employers and existing commuter programs. The Project would not interfere with this strategy.
EN8. Expand clean vehicle initiatives. Expand investments in clean vehicles, including more fuel-efficient vehicles and electric vehicle subsidies and chargers.	**Consistent.** The Project would provide approximately four electric vehicle parking spaces within the proposed apartment complex community.

Strategy	Project Compliance with Strategy
EN9. Expand transportation demand management initiatives. Expand investments in programs like vanpools, bikeshare, carshare and parking fees to discourage solo driving.	**Not Applicable.** This strategy is intended for transportation demand management program. The Project would not directly interfere with this strategy.

Source:

[1] *Plan Bay Area 2050*

Conclusion

The Project would remain consistent with all applicable strategies that are outlined in the Plan Bay Area 2050. However, based on the analysis, the Project would be inconsistent with several General Plan policies for multi-family residential uses; specifically, policies CD 3-1, CD 3-2, CD 3-3, CD 3-5, CD 3-8, and CD 5-1. A conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency would result in an adverse physical change to the environment that is a "significant environmental effect" as defined by Section 15382 of the CEQA Guidelines. An inconsistency between a proposed project and an applicable plan is a legal determination that may or may not indicate the likelihood of a physical environmental impact. In some cases, an inconsistency may be evidence that an underlying physical impact is significant and adverse. The Project's inconsistencies with the specified Community Design Element policies of the *General Plan* are primarily inconsistencies with the neighborhood character and features of the existing Project Area. The *General Plan* does not specify the intended neighborhood character for the existing Project Area. As such, the Project would not result in an adverse physical change to the environment that would be a significant environmental effect.

Further, the Project would implement a zone change to replace the Project Site's current Industrial Park Zoning District to an MXD Zoning District. The Project would also establish a PUD to the Project Site's zoning. Although the proposed developments would be inconsistent with multiple development design standards that are specified for MXD zoning (see **Table 3.10-2**), implementation of the PUD would void the Project's inconsistencies with the City's development standards for MXD zoning. Therefore, implementation of the Project would not conflict with the local policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect, and impacts would be less than significant.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

3.10.6 CUMULATIVE IMPACTS

As discussed in **Section 2.0, Project Description**, the Project proposes to develop a total of approximately 206 residential units, of which 131 of the units would be provided by townhomes, 75 of the units would be within an apartment complex.

General Plan Consistency

Related development Projects within the City would undergo a similar plan review process to determine potential land use planning policy and regulation conflicts. Each cumulative project would be analyzed independent of other projects, within the context of their respective land use and regulatory setting. As part of the review process, each project would be required to demonstrate compliance with the provisions of the applicable land use designation(s).

Upon approval of the required discretionary approvals of the *General Plan* Text Amendment, specific language that requires the "preparation or adoption of a Specific Plan for the California Circle area" would be removed. In addition, the Project would include a Zoning Map Amendment to change the Project Site's current Industrial Park Zoning District to Mixed-Use (MXD), consistent with the NCMU land use designation. Given the location of the Project Site and its immediate surrounding land uses, the Project would be inconsistent with multiple *General Plan* policies for new development regarding community design. Specifically, the Project would be inconsistent with neighborhood character and design policies. However, these inconsistencies would not result in an adverse physical change to the environment that would be a significant environmental effect and would not result in significantly adverse effects under CEQA. Therefore, the Project would not result in cumulatively considerable impacts.

Zoning Ordinance

Future cumulative projects would undergo a similar plan review process to determine potential inconsistencies with the Zoning Ordinance, within the context of their respective zoning and regulatory

setting. Similar to land use consistency, each Project would be required to demonstrate compliance with the provisions of the applicable zoning district(s).

Similar to the proposed approvals for the City's *General Plan*, the Project would also require discretionary approvals to change the zoning of the Project site from Industrial Park to MXD zone with a PUD. With approval of the Milpitas City Council, implementation of the PUD to the Project Site would allow for the Project's inconsistencies with MXD development standards. Thus, the Project would be consistent with the City's Municipal Code and would not result in cumulatively considerable impacts.

Plan Bay Area 2050

ABAG would review environmental documents for regionally significant projects for their consistency with the adopted Plan Bay Area 2050. ABAG refers to *State CEQA Guidelines* Section 15206, Projects of Statewide, Regional or Areawide Significance, in determining whether a project meets the criteria to be deemed regionally significant. Each cumulative project would be evaluated on a project-by-project basis, to determine its regional significance, if any. As stated, the project would be consistent with the Plan Bay Area 2050 strategies. As stated, the Project would be consistent with all applicable Plan Bay Area 2050 strategies. Therefore, the Project would not cumulatively contribute to impacts resulting from inconsistencies with the Plan Bay Area 2050.

3.10.7 REFERENCES

California Air Resources Board. "Sustainable Communities." Available online at: https://www.arb.ca.gov/cc/sb375/sb375.htm, accessed October 2, 2019.

City of Milpitas. *General Plan 2040*. Available online at: https://www.milpitas.gov/wp-content/uploads/2021/05/Milpitas-General-Plan-Final_Online-Version.pdf, accessed May 4, 2023.

City of Milpitas. *Code of Ordinances.* Available online at: https://library.municode.com/ca/milpitas/codes/code_of_ordinances, accessed May 4, 2023.

3.11 NOISE AND VIBRATION

INTRODUCTION

The purpose of this section is to evaluate the potential for noise and groundborne vibration impacts resulting from the Project. This section includes an evaluation of potential impacts associated with substantial temporary and permanent increases in ambient noise levels in the vicinity of the Project Site; exposure of people in the vicinity of the Project Site to excessive noise or groundborne vibration levels; and whether exposure is in excess of any applicable standards. Mitigation measures intended to reduce noise and vibration impacts are proposed, where appropriate, to avoid or reduce potentially significant impacts of the Project. Noise data and modeling conducted for the Project is contained within ***Appendix 3.11, Noise and Vibration Data,*** *of this EIR.*

3.11.1 FUNDAMENTALS OF NOISE AND VIBRATION

3.11.1.1 Characteristics of Noise

Noise is usually defined as unwanted sound that is an undesirable byproduct of society's normal day-to-day activities. Sound becomes unwanted when it interferes with normal activities, when it causes actual physical harm, and/or when it has adverse effects on health. Noise is measured on a logarithmic scale of sound pressure level known as a decibel (dB). The human ear does not respond uniformly to sounds at all frequencies. For example, the human ear is less sensitive to low and high frequencies than medium frequencies, which more closely correspond with human speech. In response to the sensitivity of the human ear to different frequencies, the A-weighted noise level (or scale), which corresponds better with people's subjective judgment of sound levels, has been developed. This A-weighted sound level, referenced in units of dBA, is measured on a logarithmic scale such that a doubling of sound energy results in a 3 dBA increase in noise level. Typically, changes in a community noise level of less than 3 dBA are not noticed by the human ear.[1] Changes from 3 to 5 dBA may be noticed by some individuals who are sensitive to changes in noise. A greater than 5 dBA increase is readily noticeable, while the human ear perceives a 10 dBA increase in sound level to be a doubling of sound.

On the A-weighted scale, the range of human hearing extends from approximately 3 to 140 dBA. **Table 3.11-1, A-Weighted Decibel Scale**, provides examples of A-weighted noise levels from common sources. Noise sources occur in two forms: (1) point sources, such as stationary equipment or individual motor vehicles; and (2) line sources, such as a roadway with a large number of point sources (motor vehicles).

1 California Department of Transportation. *Technical Noise Supplement to the Traffic Noise Analysis Protocol*. 2013. Available online at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf, accessed March 14, 2023.

Sound generated by a point source typically diminishes (attenuates) at a rate of 6 dBA for each doubling of distance from the source to the receptor at acoustically "hard" sites and 7.5 dBA at acoustically "soft" sites.[2,3] For example, if a noise source produces a noise level of 89 dBA at a reference distance of 50 feet, the noise level would be 83 dBA at a distance of 100 feet from the noise source, 77 dBA at a distance of 200 feet, and so on. Noise generated by a mobile source will decrease by approximately 3 dBA over hard surfaces and 4.5 dBA over soft surfaces for each doubling of distance.[4]

Table 3.11-1
A-Weighted Decibel Scale

Typical A-Weighted Sound Levels	Sound Level (dBA, Leq)
Threshold of Pain	140
Jet Takeoff at 100 Meters	125
Jackhammer at 15 Meters	95
Heavy Diesel Truck at 15 Meters	85
Conversation at 1 Meter	60
Soft Whisper at 2 Meters	35

Source: United States Occupational Safety & Health Administration, Noise and Hearing Conservation Technical Manual, 1999.

Sound levels also can be attenuated by man-made or natural barriers (e.g., sound walls, berms, and ridges), as well as elevational differences. Noise is most audible when traveling by direct line-of-sight, an uninterrupted visual path between the noise source and noise receptor. Barriers, such as walls or buildings that break the line-of-sight between the source and the receiver, can greatly reduce noise levels from the source since sound can only reach the receiver by diffraction. However, if a barrier is not high or long enough to break the line-of-sight from the source to the receiver, its effectiveness is greatly reduced.

2 Federal Highway Administration. *Highway Traffic Noise: Analysis and Abatement Guidance.* 2011. Available online at: https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/revguidance.pdf, accessed March, 14, 2023.

3 Examples of "hard" or reflective sites include asphalt, concrete, and hard and sparsely vegetated soils. Examples of acoustically "soft" or absorptive sites include soft, sand, plowed farmland, grass, crops, heavy ground cover, etc.

4 Federal Highway Administration. *Highway Traffic Noise: Analysis and Abatement Guidance.* 2011. Available online at: https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/revguidance.pdf, accessed March, 14, 2023.

3.11.1.2 Sound Rating Scales

Various rating scales approximate the human subjective assessment to the "loudness" or "noisiness" of a sound. Noise metrics have been developed to account for additional parameters, such as duration and cumulative effect of multiple events. Noise metrics are categorized as single event metrics and cumulative metrics, as summarized below.

In order to simplify the measurement and computation of sound loudness levels, frequency weighted networks have obtained wide acceptance. The A-weighted scale, discussed above, has become the most prominent of these scales and is widely used in community noise analysis. Its advantages are that it has shown good correlation with community response and is easily measured. The metrics used in this analysis are all based upon the dBA scale.

Equivalent Noise Level

Equivalent Noise Level (Leq) is the sound level corresponding to a steady-state A-weighted sound level containing the same total energy as several single event noise exposure level events during a given sample period. Leq is the "acoustic energy" average noise level during the period of the sample. It is based on the observation that the potential for noise annoyance is dependent on the total acoustical energy content of the noise. The equivalent noise level is expressed in units of dBA. Leq can be measured for any period, but is typically measured for 15 minutes, 1 hour, or 24 hours. Leq for a 1-hour period is used by the Federal Highway Administration (FHWA) for assessing highway noise impacts. Leq for 1 hour is referred to as the Hourly Noise Level (HNL) in the California Airport Noise Regulations and is used to develop Community Noise Equivalent Level values for aircraft operations. Construction noise levels and ambient noise measurements in this section use the Leq scale.

Community Noise Equivalent

Community Noise Equivalent Level (CNEL) is a 24-hour, time-weighted energy average noise level based on the A-weighted decibel. It is a measure of the overall noise experienced during an entire day. The term "time-weighted" refers to the penalties attached to noise events occurring during certain sensitive periods. In the CNEL scale, 5 dB are added to measured noise levels occurring between the hours of 7:00 P.M. and 10:00 P.M. For measured noise levels occurring between the hours of 10:00 P.M. and 7:00 A.M., 10 dB are added. These decibel adjustments are an attempt to account for the higher sensitivity to noise in the evening and nighttime hours and the expected lower ambient noise levels during these periods.

Day-Night Average Noise Level

The day-night average sound level (Ldn) is another average noise level over a 24-hour period. Noise levels occurring between the hours of 10:00 P.M. and 7:00 A.M. are increased by 10 decibels (dB). This noise is weighted to consider the decrease in community background noise of 10 dBA during this period. Noise levels measured using the Ldn scale are typically similar to CNEL measurements.

3.11.1.3 Adverse Effects of Noise Exposure

Noise is known to have several adverse effects on humans, which has led to laws and standards being set to protect public health and safety, and to ensure compatibility between land uses and activities. Adverse effects of noise on people include hearing loss, communication interference, sleep interference, physiological responses, and annoyance. Each of these potential noise impacts on people is briefly discussed in the following narrative.

Hearing Loss

Hearing loss is generally not a community noise concern, even near a major airport or a major freeway. The potential for noise-induced hearing loss is more commonly associated with occupational noise exposures in heavy industry, very noisy work environments with long-term exposure, or certain very loud recreational activities (e.g., target shooting and motorcycle or car racing). The Occupational Safety and Health Administration (OSHA) identifies a noise exposure limit of 90 dBA for 8 hours per day to protect from hearing loss (higher limits are allowed for shorter duration exposures). Noise levels in neighborhoods, even in very noisy neighborhoods, are not sufficiently loud enough to cause hearing loss.

Communication Interference

Communication interference is one of the primary concerns in environmental noise. Communication interference includes speech disturbance and intrusion with activities such as watching television. Noise can also interfere with communications such as within school classrooms. Normal conversational speech is in the range of 60 to 65 dBA and any noise in this range or louder may interfere with speech.

Sleep Interference

Noise can make it difficult to fall asleep, create momentary disturbances of natural sleep patterns by causing shifts from deep to lighter stages, and cause awakening. Noise may even cause awakening that a person may or may not be able to recall.

Physiological Responses

Physiological responses are those measurable effects of noise on people that are realized as changes in pulse rate, blood pressure, and other physical changes. Studies to determine whether exposure to high noise levels can adversely affect human health have concluded that, while a relationship between noise and health effects seems plausible, there is no empirical evidence of the relationship.

3.11.1.4 Characteristics of Vibration

Vibration consists of waves transmitted through solid material. Groundborne vibration propagates from a source through the ground to adjacent buildings by surface waves. Vibration may comprise a single pulse, a series of pulses, or a continuous oscillatory motion. The frequency of a vibrating object describes how rapidly it is oscillating and is measured in hertz (Hz). Most environmental vibrations consist of a composite, or "spectrum" of many frequencies, and are generally classified as broadband or random vibrations. The normal frequency range of most groundborne vibration that can be felt generally starts from a low frequency of less than one Hz to a high of about 200 Hz. Vibration is often measured in terms of the peak particle velocity (PPV) in inches per second (in/sec) when considering impacts on buildings or other structures, as PPV represents the maximum instantaneous peak of vibration that can stress buildings. Because it is a representation of acute vibration, PPV is often used to measure the temporary impacts of short-term construction activities that could instantaneously damage existing structures. Vibration is often also measured by the Root Mean Squared (RMS) because it best correlates with human perception and response. Specifically, RMS represents "smoothed" vibration levels over an extended period of time and is often used to gauge the long-term chronic impact of a project's operation on the adjacent environment. RMS amplitude is the average of a signal's squared amplitude. It is most commonly measured in decibel notation (VdB).

Vibration energy attenuates as it travels through the ground, causing the vibration amplitude to decrease with distance away from the source. High frequency vibrations reduce much more rapidly than low frequencies, so that in the far-field from a source, the low frequencies tend to dominate. Soil properties also affect the propagation of vibration. When groundborne vibration interacts with a building, there is usually a ground-to-foundation coupling loss (i.e., the foundation of the structure does not move in sync with the ground vibration), but the vibration can also be amplified by the structural resonances of the walls and floors. Vibration in buildings is typically perceived as rattling of windows or items on shelves, or the motion of building surfaces. At high levels, vibration can result in damage to structures.

Manmade groundborne vibration is generally limited to areas within a few hundred feet of certain types of construction activities, especially pile driving. Road vehicles rarely create enough groundborne

vibration to be perceptible to humans unless the road surface is poorly maintained and there are potholes or bumps. If traffic induces perceptible vibration in buildings, such as window rattling or shaking of small loose items (typically caused by heavy trucks in passing), then it is most likely an effect of low-frequency airborne noise or ground characteristics.

3.11.2 ENVIRONMENTAL SETTING

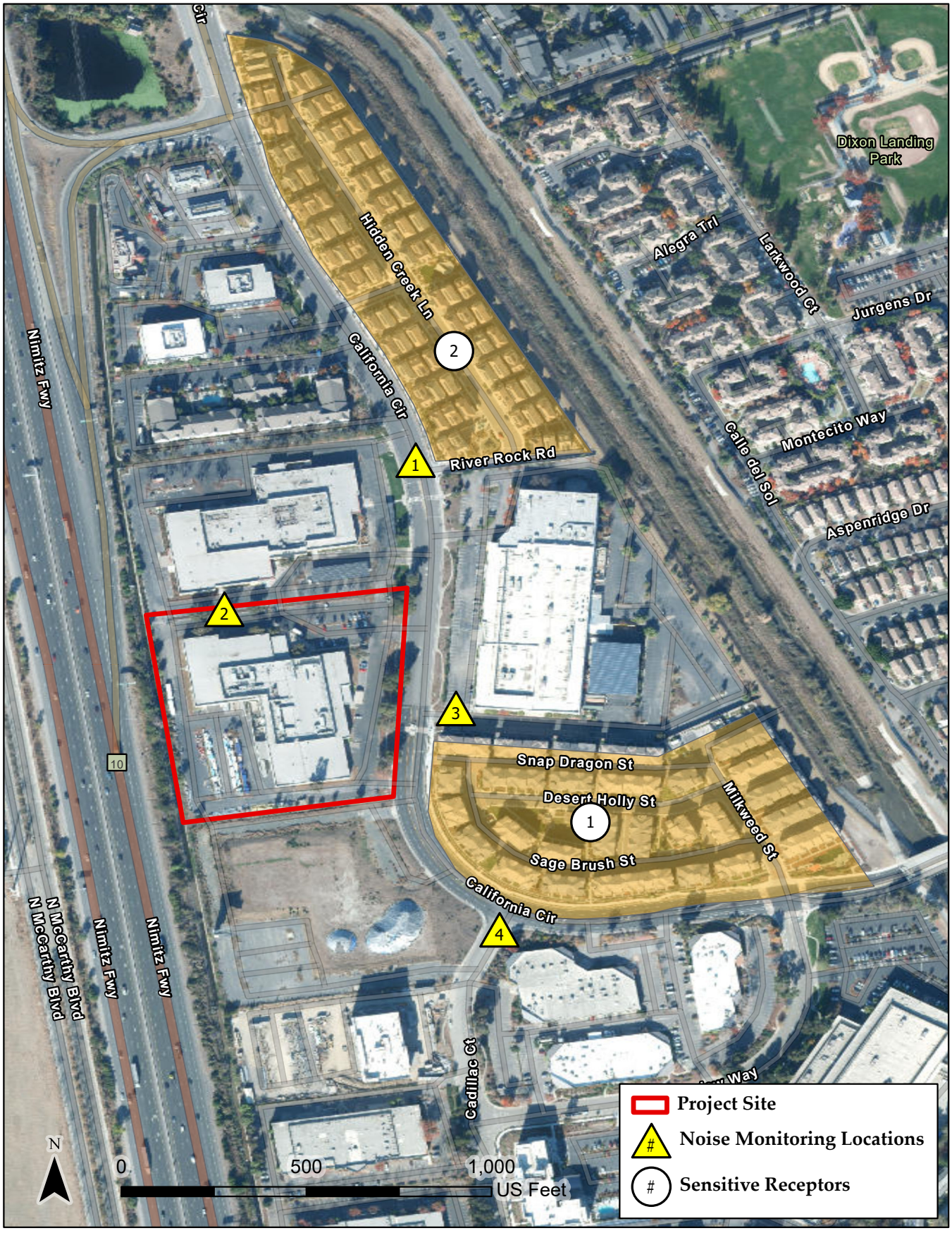
3.11.2.1 Existing Ambient Noise Levels

To establish baseline noise conditions, existing noise levels were monitored at four locations in the vicinity of the Project Site. The locations of the noise measurements are depicted in **Figure 3.11-1, Noise Monitoring and Sensitive Receptor Location Map**. The noise survey was conducted in July 2022 using the Larson Davis SoundTrack LxT (Type 1) sound level meter, which conforms to industry standards set forth in ANSI S1.4-1983 (R2006) – Specification for Sound Level Meters/Type 1. This instrument was calibrated and operated according to the manufacturer's written specifications. At the measurement sites, the microphone was placed at a height of approximately five feet above grade. The results of the measurements are summarized in **Table 3.11-2, Existing Noise Levels in the Vicinity of the Project Site**. As shown in **Table 3.11-2**, the ambient noise levels ranged from 61.8 dBA Leq to 66.3 dBA Leq in the vicinity of the Project Site. In addition, based on the measurement data collected at Location 2 (located on the northern boundary of the Project Site), the existing on-site noise level for the Project Site is 69.3 dBA Ldn. See **Appendix 3.11** to this EIR for the noise monitoring data.

Table 3.11-2
Existing Noise Levels in the Vicinity of the Project Site

Noise Monitoring Locations	Primary Noise Sources	Noise Levels (dBA)		
		Leq	Lmin	Lmax
1. 1501 California Circle	Neighborhood Traffic, I-880 Traffic	61.8	57.0	73.4
2. 1421 California Circle	Neighborhood Traffic, I-880 Traffic, Parking Noise	62.9	52.7	77.6
3. 1430 California Circle	Neighborhood Traffic, I-880 Traffic	66.3	54.8	84.2
4. Intersection of California Circle and Cadillac Court	Neighborhood Traffic, I-880 Traffic	63.3	55.6	79.5

*Source: Impact Sciences, Inc., July 2022. See **Appendix 3.11**.*



SOURCE: Esri, 2022

FIGURE **3.11-1**

IMPACT SCIENCES

Noise Monitoring and Sensitive Receptor Location Map

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3.11.2.2 Existing Modeled Roadway Noise Levels

Existing roadway noise levels were calculated for primary roadway segments located in the vicinity of the Project Site. The roadways selected are representative of the segments that would be most impacted by an increase in traffic according to the Project's Transportation Analysis included as **Appendix 3.14** to this Draft EIR.

Calculations of the existing roadway noise levels are based on the Federal Highway Administration Highway Noise Prediction Model (FHWA-RD-77-108) and traffic volumes from the Project's Transportation Analysis.[5] The model calculates the average noise level at specific locations based on traffic volumes, average speeds, roadway geometry, and site environmental conditions. The average vehicle noise rates (energy rates) utilized in the FHWA Model have been modified to reflect average vehicle noise rates identified for California by Caltrans. The Caltrans data show that California automobile noise is 0.8 to 1.0 dBA higher than national levels and that medium and heavy truck noise is 0.3 to 3.0 dBA lower than national levels. The average daily noise levels along study area roadway segments are presented in **Table 3.11-3, Existing Roadway Noise Levels**.

Table 3.11-3
Existing Roadway Noise Levels

Roadway	Roadway Segment	Existing Land Uses Along Segment	dBA Ldn
Dixon Landing Road	West of NB I-880 Ramps	Open Space, Commercial, Industrial	70.0
	East of NB I-880 Ramps	Open Space, Residential, Commercial, Industrial	71.1
California Circle	North of NB I-880 Ramps	Open Space, Residential	65.9
	South of NB I-880 Ramps	Residential, Commercial, Industrial	63.7

Source: Impact Sciences, March 2023. See Appendix 3.11.
Traffic data: Traffic information from Transportation Analysis, see Appendix 3.14.

3.11.2.3 Existing Groundborne Vibration

The main sources of groundborne vibration near the Project Site are heavy-duty vehicular travel (e.g., refuse trucks, delivery trucks, and transit buses) on local roadways and I-880. Trucks and buses typically generate groundborne vibration velocity levels of around 63 VdB at 50 feet, and these levels could reach 72 VdB where trucks and buses pass over bumps in the road.[6] In terms of PPV levels, a heavy-duty

5 See **Appendix 3.11** for roadway noise calculations.

6 Federal Transit Administration. *Transit Noise and Vibration Impact Assessment Manual*. 2018. Available online at: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, accessed March, 14, 2023.

vehicle traveling at a distance of 50 feet can result in a vibration level of approximately 0.001 inch per second.

3.11.2.4 Noise Sensitive Receptors

Noise-sensitive land uses are generally considered to include those uses where noise exposure could result in health-related risks to individuals, as well as places where quiet is an essential element of their intended purpose. Residential dwellings are of primary concern because of the potential for individuals to be exposed to increased and prolonged exposure to both interior and exterior noise levels. According to the City's Noise Element, noise-sensitive uses include schools, hospitals, libraries, care facilities, and residential areas.[7] The closest noise-sensitive receptors to the Project Site include (1) residences to the east (approximately 100 feet) and (2) residences to the northeast (approximately 370 feet). See **Figure 3.11-1, Noise Monitoring and Sensitive Receptor Location Map.**

3.11.3 REGULATORY FRAMEWORK

3.11.3.1 Federal Laws and Regulations

Currently, no federal noise standards regulate environmental noise associated with short-term construction or the long-term operations of development projects.

Federal Transit Administration Vibration Guidance

The Federal Transit Administration (FTA) has published guidance relative to vibration impacts. Construction vibration damage criteria are assessed based on structural category (e.g., reinforced-concrete, steel, or timber). The FTA guidelines consider 0.2 inch/sec PPV to be the significant impact level for non-engineered timber and masonry buildings. Structures or buildings constructed of reinforced concrete, steel, or timber have a vibration damage criterion of 0.5 inch/sec PPV pursuant to FTA guidelines.[8] The FTA guidelines include a table showing the vibration damage criteria based on structural category and is presented below in **Table 3.11-4, Construction Vibration Damage Criteria.**

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7 City of Milpitas, *General Plan Noise Element*, see Policy N 1-5.

8 Federal Transit Administration. *Transit Noise and Vibration Impact Assessment Manual*. 2018. Available online at: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, accessed March, 14, 2023.

Table 3.11-4
Construction Vibration Damage Criteria

Building/Structural Category	PPV, in/sec
I. Reinforced-concrete, steel, or timber (no plaster)	0.5
II. Engineered concrete and masonry (no plaster)	0.3
III. Non-engineered timber and masonry buildings	0.2
IV. Buildings extremely susceptible to vibration damage	0.12

Source: Federal Transit Administration. 2018. Transit Noise and Vibration Impact Assessment Manual.

3.11.3.2 State Laws and Regulations

Title 24, California Code of Regulations

The California Noise Insulation Standards of 1988 (California Code of Regulations Title 24, Section 3501 et seq.) require that interior noise levels from the exterior sources not exceed 45 dBA Ldn/community noise equivalent level (CNEL)[9] in any habitable room of a multi-residential use facility (e.g., hotels, motels, dormitories, long-term care facilities, and apartment houses and other dwellings, except detached single-family dwellings) with doors and windows closed. Where exterior noise levels exceed 60 dBA CNEL/Ldn, an acoustical analysis is required to show that the building construction achieves an interior noise level of 45 dBA CNEL/Ldn or less. Compliance is required for newly constructed buildings and additions and alterations to existing buildings.

3.11.3.3 Local Plans and Policies

City of Milpitas 2040 General Plan

The Noise Element of the *General Plan* contains goals, policies, and actions that seek to reduce community exposure to excessive noise levels through the establishment of noise level standards for a variety of land uses. The Noise Element includes information on existing and projected noise conditions with policies and programs to maintain or reduce noise from transportation, land use operations and single-event noise. Applicable Goals, Policies and Actions[10] include:

9 Measurements are based on Ldn or CNEL.

10 City of Milpitas, *General Plan 2040,* adopted March 9, 2021. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/60906e6349539311604cae70/1620078198914/Milpitas+General+Plan_Final_online+version.pdf, accessed March 14, 2022.

Goal N-1: Preserve a nuisance-free noise environment for existing and future land uses by minimizing exposure to harmful and excessive noise levels.

Policy N 1-1: Consider the noise compatibility of existing and future development when making land use planning decisions. Require development and infrastructure projects to be consistent with the land use compatibility standards contained in Tables N-1 and N-2 to ensure acceptable noise exposure levels for existing and future development.

Policy N 1-2: Require new development to mitigate excessive noise to the standards indicated in Tables N-1 and N-2 through best practices, including building location and orientation, building design features, placement of noise-generating equipment away from sensitive receptors, shielding of noise-generating equipment, placement of noise-tolerant features between noise sources and sensitive receptors, and use of noise-minimizing materials.

Policy N 1-3: Use sound walls for sound attenuation only when other measures are not practical, or when recommended by an acoustical expert as part of a mitigation measure. Sound walls shall be designed to be aesthetically pleasing, and should incorporate features such as vegetation, variations in color and texture, artwork, and other features deemed appropriate by the City.

Policy N 1-4: Ensure that new development does not result in indoor noise levels exceeding 45 dBA Ldn for residential uses by requiring the implementation of construction techniques and noise reduction measures for all new residential development.

Policy N 1-5: Require acoustical studies for new discretionary developments and transportation improvements that have the potential to affect existing noise-sensitive uses such as schools, hospitals, libraries, care facilities, and residential areas; and for projects that would introduce new noise-sensitive uses into an area where existing noise levels may exceed the thresholds identified in this element.

Policy N 1-6: For projects that are required to prepare an acoustical study to analyze noise impacts, the following criteria shall be used to determine the significance of those impacts:

Stationary and Non-Transportation Noise Sources

- A significant impact will occur if the project results in an exceedance of the noise level standards contained in this element. In instances where the ambient noise level is already above the standards contained in this element, a significant impact will occur if the project will result in an increase in ambient noise levels by more than 3 dB. This does not apply to temporary construction activities.

Transportation Noise Sources

- Where existing traffic noise levels are 60 dB Ldn or less at the outdoor activity areas of noise-sensitive uses, a +5 dB Ldn increase in roadway noise levels will be considered significant;

- Where existing traffic noise levels are greater than 60 dB Ldn and up to 65 dB Ldn at the outdoor activity areas of noise-sensitive uses, a +3 dB Ldn increase in roadway noise levels will be considered significant; and

- Where existing traffic noise levels are greater than 65 dB Ldn at the outdoor activity areas of noise-sensitive uses, a +1.5 dB Ldn increase in roadway noise levels will be considered significant.

Policy N 1-7: Support noise-compatible land uses along Interstates 680 and 880, Highway 237, and other high-volume roadways.

Policy N 1-8: Require construction activities to comply with standard best practices to reduce noise exposure to adjacent sensitive receptors.

Policy N 1-12: Require non-transportation related noise from site specific noise sources to comply with the standards shown in Table N-2.

Policy N 1-13: Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent sensitive uses through the enforcement of the City's noise standards.

Applicable Actions in Support of Goal N-1

Action N-1a: Require that new development projects are reviewed for compliance with the noise requirements established in this element, including the standards established in Tables N-1 and N-2, prior to project approval.

Action N-1b: Require acoustical studies for new development projects which have the potential to generate noise impacts which exceed the standards identified in this element. The studies shall include representative noise measurements, estimates of existing and projected noise levels, and mitigation measures necessary to ensure compliance with the noise standards included in this element. Studies shall be conducted by a qualified acoustical professional.

Action N-1c: Require developers to prepare a construction management/noise mitigation plan that defines best management practices to reduce construction noise, and includes proposed truck routes (that comply with Section 12 V-100-12.05 - Truck Routes of the Milpitas Municipal Code) as part of the entitlement process.

Action N-1d: During the environmental review process, determine if proposed construction will constitute a significant impact on nearby sensitive receptors and, if necessary, require mitigation measures in addition to the standard best practice controls. Suggested best practices for control of construction noise include:

- Noise-generating construction activities, including truck traffic coming to and from the construction site for any purpose, shall be limited to between the hours of 7:00 am and 7:00 pm. No construction shall occur on National holidays.
- All equipment driven by internal combustion engines shall be equipped with mufflers, which are in good condition and appropriate for the equipment.
- The construction contractor shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists.
- At all times during project grading and construction, stationary noise-generating equipment shall be located as far as practicable from sensitive

receptors and placed so that emitted noise is directed away from residences.

- Unnecessary idling of internal combustion engines shall be prohibited for a duration of longer than five minutes.
- Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction activities, to the extent feasible.
- Neighbors located adjacent to the construction site shall be notified of the construction schedule in writing.
- The construction contractor shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall be responsible for determining the cause of the noise complaint (e.g., starting too early, poor muffler, etc.) and instituting reasonable measures as warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.

Table 3.11-5
Noise and Land Use Compatibility Guidelines (City of Milpitas Noise Element)

Land Use Category	Exterior Noise Exposure (Ldn)					
	55	60	65	70	75	80
Single-Family Residential						
Multi-Family Residential, Hotels, and Motels						
Outdoor Sports and Recreation, Neighborhood Parks, and Playgrounds						
Schools, Libraries, Museums, Hospitals, Personal Care, Public Assembly						
Office Buildings, Business Commercial, and Professional						
Industrial						

Normally Acceptable - Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special insulation requirements.

Conditionally Acceptable - Specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features included in the design.

Unacceptable - New construction or development should generally not be undertaken because mitigation was found to be infeasible to comply with noise element policies.

**Please note that these guidelines are general and may not apply to specific sites.*
Source: City of Milpitas. General Plan Noise Element. Table N-1.

City of Milpitas Municipal Code

Chapter 213, Noise Abatement, of Title V – PUBLIC HEALTH, SAFETY AND WELFARE, of the City of Milpitas Municipal Code (MMC) sets noise standards for construction and operation activities as follow:[11]

11 City of Milpitas. *Municipal Code*. Available online: https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITVPUHESAWE_CH213NOAB_213-3UNCRPEDINO accessed May 23, 2023.

V-213-3 - Unlawful to Create or Permit Disturbing Noise

(a)Residential Zone Regulations.

3.01 Except as permitted in Section V-213-3(b), it shall be unlawful for any person in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained, or permitted any Disturbing Noise that increases the noise exposure level by three dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.

3.02 Except as permitted in Section V-213-3(b), it shall be unlawful for any person who owns, possesses, or controls any real property in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained or permitted any Disturbing Noise that increases the noise exposure level by three dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.

3.03 Notwithstanding any other provision of this Chapter and in addition thereto, it is unlawful for any person or any person who owns, possesses, or controls real property in any district zoned for residential use (under provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit, or cause to be made, continued, maintained or permitted any Disturbing Noise. It shall be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 10:00 p.m. to 7:00 a.m. from a distance of 50 feet from the property line of the noise source or from a distance of 100 feet from any nonstationary noise source. It shall also be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 7:01 a.m. to 9:59 p.m. from a distance of 100 feet from the property line of the noise source or any nonstationary noise source.

3.04 The above prohibition against making, continuing, maintaining or permitting any Disturbing Noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector beginning at 6:00 a.m.

(b)Outdoor Music Regulations for Commercial and Mixed Use Zones.

3.05 Outdoor music shall be permitted on real property in the C1, C2, TC, MXD, MXD2, and MXD3 zoning districts (per Chapter 10, Title XI of the Milpitas Municipal Code) as an accessory use to a restaurant or bar that is a principal permitted use or approved conditional use. Outdoor music shall be permitted between the hours of 9:00 a.m. and 11:00 p.m.

3.06 Except as provided below in Subsection V-213-3(b) 3.06(1), noise levels for outdoor music as an accessory use shall not exceed 70-90 dB measured from the property line of the parcel on which the outdoor music occurs. See also "Table XI-10-5.02-1 - Commercial Zone Uses" in Title XI, Chapter 10, Section 5.02 and "Table XI-10-6.02-1 - Mixed Use Zone Uses" in Title XI, Chapter 10, Section 6.02.

(1)For any parcel in a C1, C2, TC, MXD, MXD2, or MXD3 zoning district that is located within 100 feet of a parcel in a R1 or R2 zoning district, noise levels for outdoor music as an accessory use shall not exceed 65 dB measured from the property line of the parcel on which the outdoor music occurs.(2)For residential uses in the MXD, MXD2, and MXD3 zoning districts, it is recognized that ambient noise from outdoor music that is permitted as an accessory use to a restaurant or bar is a normal condition inherent to a mixed-use, urban living environment; therefore accessory outdoor music at a restaurant or bar shall not be subject to the noise restrictions in Section V-213-3(a) 3.01 and 3.02 in the case of residential uses in the MXD, MXD2, and MXD3 zones.

(c)Site Construction Regulations.

3.07 No person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including, delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends. No construction work shall be conducted or performed on the holidays indicated in Section V-213-2-2.05 of this Chapter.

3.08 Exemption from Off-Site Construction Regulations. Exempt from the Off-Site Construction Regulations of this article are as follows:

(1)Emergency construction and repair that is necessary for protection of life and property,(2)Operation preempted from local regulation by state law, such as construction of public school buildings,(3)Furnishing utility-type service including construction and maintenance of utility facilities,(4)Any work on an existing single-family or duplex (two-family) dwelling undertaken by the property owner,(5)Operation to construct and maintain facilities within the public right-of-way as deemed necessary by the Public Works Director, and(6)Any other circumstances where the City Manager deems that an exemption would be appropriate.

3.11.4 THRESHOLDS OF SIGNIFICANCE

Pursuant to Appendix G of the *State CEQA Guidelines*, potentially significant noise and vibration impacts would occur if implementation of the Project would result in:

- Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.
- Generation of excessive groundborne vibration or groundborne noise levels.
- For a project located within the vicinity of a private airstrip or 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, would the project expose people residing or working in the project area to excessive noise levels.

Noise Thresholds

Chapter 213 of the City's Municipal Code prohibits construction activities outside of the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends, and on holidays except during emergencies. Because the City does not have construction noise level limits during the allowed construction hours, construction noise is assessed using criteria from the FTA's *Transit Noise and Vibration Impact Assessment Manual (*2018). Based on Table 7-3 (Detailed Analysis Construction Noise Criteria) therein, this analysis utilizes an 80 dBA Leq (1-hour) daytime construction threshold for residential uses. As Project construction would occur during daytime hours (i.e., 7:00 a.m. to 7:00 p.m.) and the nearest sensitive receptors are residential uses, this threshold is appropriate for the Project.

With respect to operations, this analysis utilizes the Stationary and Non Transportation Noise Sources and Transportation Noise Sources thresholds established in Policy N 1-6 of the City's Noise Element (described above in **Section 3.11.3.3, Local Plans and Policies**).

Vibration Thresholds

The *State CEQA Guidelines* nor the City have defined levels at which groundborne vibration or groundborne noises are considered "excessive." Thus, in terms of construction-related vibration impacts on buildings, the adopted guidelines and recommendations by the FTA to limit groundborne vibration based on the age and/or condition of the structures that are located in close proximity to construction activity are used in this analysis to evaluate potential groundborne vibration impacts. Based on the FTA criteria, construction impacts relative to groundborne vibration would be considered significant if the following were to occur:

- Project construction activities would cause a PPV groundborne vibration level to exceed 0.5 inches per second at any building that is constructed with reinforced-concrete, steel, or timber;
- Project construction activities would cause a PPV groundborne vibration level to exceed 0.3 inches per second at any engineered concrete and masonry buildings;
- Project construction activities would cause a PPV groundborne vibration level to exceed 0.2 inches per second at any non-engineered timber and masonry buildings; or
- Project construction activities would cause a PPV ground-borne vibration level to exceed 0.12 inches per second at any historical building or building that is extremely susceptible to vibration damage.

In terms of groundborne vibration impacts associated with human annoyance, this analysis uses the FTA's vibration impact thresholds for sensitive buildings, residences, and institutional land uses under

conditions where there are a frequent number of events per day, which would provide for the most conservative vibration analysis. These thresholds are 65 VdB at buildings where vibration would interfere with interior operations, 72 VdB at residences and buildings where people normally sleep, and 75 VdB at other institutional buildings.[12] The 65 VdB threshold applies to typical land uses where vibration would interfere with interior operations, including vibration-sensitive research and manufacturing facilities, hospitals with vibration-sensitive equipment, and university research operations. Vibration-sensitive equipment includes, but is not limited to, electron microscopes, high-resolution lithographic equipment, and normal optical microscopes. The 72 VdB threshold applies to all residential land uses. The 75 VdB threshold applies to institutional land uses such as schools, churches, other institutions, and quiet offices that do not have vibration-sensitive equipment, but still have the potential for activity interference.

3.11.5 METHODOLOGY

Noise levels associated with Project-related construction activities were calculated using the FHWA Roadway Construction Noise Model (RCNM). Noise levels were compared to the threshold identified above. The analysis does not account for attenuation from intervening structures between construction equipment and receivers and or for soft-site attenuation.

An analysis of traffic noise was conducted to determine if the Project would have a perceptible increase in traffic-related noise. Studies have shown that a 3 dBA increase in sound level pressure is barely detectable by the human ear. A 3 dBA increase in roadway noise levels requires an approximate doubling of roadway traffic volume, assuming that travel speeds and fleet mix remain constant.[13]

Construction activities have the greatest potential to generate groundborne vibration affecting nearby receivers. Since groundborne vibration could cause physical damage to structures, vibration impacts were modeled based on the distance from the location of vibration-intensive construction activities, conservatively assumed to be at edge of a development area to the edge of nearby structures.

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12 Federal Transit Administration. *Transit Noise and Vibration Impact Assessment Manual*. 2018. Available online at: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, accessed March 14, 2023.

13 California Department of Transportation. *Technical Noise Supplement to the Traffic Noise Analysis Protocol.* 2013. Available online at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf, accessed March, 14, 2023.

3.11.5 ENVIRONMENTAL IMPACTS

Impact NOI-1 Would the Project generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Land Use Compatibility

While agencies subject to CEQA are not required to analyze or mitigate the impact of existing environmental conditions on a project's future users or residents, the following discussion associated with the placement of future residences on the Project Site is included for informational purposes. As discussed previously, based on the measurement data collected at Location 2 (located on the northern boundary of the Project Site), the existing on-site noise level for the Project Site is 69.3 dBA Ldn, primarily due to the vehicle traffic along I-880 Freeway. And, **Table 3.11-7, Project Traffic Noise,** indicates noise levels for the Project Site fronting California Circle would reach up to 66.1 dBA Ldn. As such, future residences at the Project Site would experience exterior noise levels that are considered conditionally acceptable for multi-family residential uses per the City of Milpitas Noise Element (see **Table 3.11-5** herein). According to the City's Noise Element, conditionally acceptable means a specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features are included in the design. With respect to acceptable interior noise levels, consistent with State and City standards, all habitable spaces associated with the Project would be required to provide indoor noise levels of 45 dBA Ldn or less. Exterior-to-interior noise reduction of newer residential buildings can reach between 25 and 30 dBA, depending on the type of building materials and methods used. This is based in part on mandatory compliance with CCR Title 24 Part 6: California's Energy Efficiency Standards for Residential Buildings, which requires substantial building insulation, improving exterior-to-interior noise reductions.[14] As the existing exterior on-site noise level for the Project Site is 69.3 dBA Ldn, exterior-to-interior noise reductions from current construction standards would reduce interior noise levels to approximately 39.3 to 44.3 dBA Ldn, ensuring the Project is consistent with interior noise level standards.

Construction Noise

Construction activities associated with the Project would result in temporary noise level increases in the vicinity of the Project Site on an intermittent basis and, as such, would expose nearby sensitive receptors

[14] See also *Federal Highway Administration, Highway Traffic Noise Analysis and Abatement Guidance, December 2011*, which states light frame buildings with single-glazed windows can reduce exterior noise transmission by approximately 25 dBA, and double-glazed windows by approximately 35 dBA.

to increased noise levels. The increase in noise at off-site sensitive receptors during construction of each phase of construction under the Project would be temporary in nature and would not generate continuously high noise levels, although occasional single-event disturbances from construction would occur. Construction noise would typically be higher during the heavier periods of initial construction (i.e., demolition and grading work) and reduced in the later construction phases (i.e., interior building construction) because the physical structure of the buildings would break line-of-sight noise transmission from the construction area to the nearby sensitive receivers. Noise levels would fluctuate depending on the construction phase, equipment type and duration of use, distance between the noise source and receivers, and presence or absence of intervening structures, terrain, or other noise attenuation barriers.

As documented in **Section 2.6**, construction will proceed in two phases. The noise levels would be highest during the following activities: Phase One - demolition of the existing structures on-site (one month), and the grading (one month), construction (12 months). Phase Two - construction (24 months) and painting (two months).

Table 3.11-6, Estimated Construction Noise Levels, shows the maximum expected noise levels at sensitive receptors in the vicinity of the Project Site. The analysis shows the maximum noise levels from the use of equipment anticipated to be used during demolition, grading, building construction, architectural coating, and paving.

Table 3.11-6
Estimated Construction Noise Levels

Sensitive Land Uses	Distance to Project Site (feet)	Estimated Peak Construction Noise Levels [dBA]	Exceed FTA Threshold of 80 dBA Leq?
1. Residences to the east	100	77.1	No
2. Residences to the northeast	370	65.7	No

Source: Impact Sciences, March 2023. See Appendix 3.11 for equipment noise data sheets and assumptions.

As shown in **Table 3.11-6**, construction activity would generate noise levels of up to 77.1 dBA Leq at the nearest sensitive receptor (Sensitive Receptor No. 1). As such, temporary construction noise would not exceed the FTA's 80 dBA Leq daytime construction threshold for residential uses. Furthermore, the Project would be consistent with Chapter 213 of Title V of the City's Municipal Code, which prohibits construction activities outside of the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends, and on holidays except during emergencies. It should also be noted that the Project would be required to comply

with Noise Element Action N-1d, which requires the Project Applicant to implement standard best practices to limit construction noise levels to the extent feasible. See Action N-1d (pages 3.11-13 to 3.11-14 herein) for suggested best practices for control of construction noise as identified in Noise Element Action N-1d. Notwithstanding the implementation of best practices, because the Project would be consistent with the construction hours identified in the City's Municipal Code and because Project construction noise would not exceed the FTA's 80 dBA Leq daytime construction threshold at residential uses, impacts would be less than significant.

Level of Significance Before Mitigation

Construction noise impacts would be less than significant.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Construction noise impacts would be less than significant.

Operational Noise

Traffic Noise

The Project would increase the number of vehicle trips within the vicinity of the Project Site which would increase traffic noise on roadways. To determine whether the Project would create traffic noise resulting in a significant noise increase, existing and potential future noise levels were calculated based on the FHWA Traffic Noise Model consistent with the Project's Transportation Analysis (see **Appendix 3.11**). The noise increases between the Existing and Existing Plus Project scenarios are shown in **Table 3.11-7**, **Project Traffic Noise**.

Table 3.11-7
Project Traffic Noise

Roadway	Roadway Segment	dBA Ldn		
		Existing	Existing Plus Project	Project Increase
Dixon Landing Road	West of NB I-880 Ramps	70.0	70.1	0.1
	East of NB I-880 Ramps	71.1	71.1	0.0
California Circle	North of NB I-880 Ramps	65.9	66.1	0.2
	South of NB I-880 Ramps	63.7	64.0	0.3

Sources: Impact Sciences, March 2023. Traffic count information from Project's Transportation Analysis (see Appendix 3.14). ***Appendix 3.11*** *for noise calculations.*

As shown in **Table 3.11-7**, **Project Traffic Noise**, the Project would increase local traffic noise levels by a maximum of 0.3 dBA Ldn along California Circle, south of the northbound I-880 on- and off-ramps. As discussed previously, where existing traffic noise levels are greater than 60 dBA Ldn and up to 65 dBA Ldn at the outdoor activity areas of noise-sensitive uses, a +3 dBA Ldn increase in roadway noise levels would be considered significant. And, where existing traffic noise levels are greater than 65 dBA Ldn at the outdoor activity areas of noise-sensitive uses, a +1.5 dBA Ldn increase in roadway noise levels would be considered significant. Because the Project would increase local traffic noise levels by a maximum of 0.3 dBA Ldn along any segment, these thresholds would not be exceeded and impacts with respect to operational traffic noise would be less than significant.

On-Site Noise

Operation of the Project would generate on-site noise from HVAC equipment, delivery trucks, trash hauling trucks, parking and typical noise associated with residential uses. Noise from HVAC equipment serving the Project would typically generate noise in the range of 60 to 70 dBA Leq at a reference distance of 15 feet from the source.[15] As discussed previously, noise-sensitive receptors are located at least 100 feet from the Project Site and noise from HVAC equipment would attenuate at a rate of approximately 6 dBA per doubling of distance from the source (i.e., 50 to 60 dBA Leq at 50 feet). As shown in **Table 3.11-2**, ambient noise levels in the Project Site vicinity were measured between 61.8 and 66.3 dBA Leq. Based on estimated noise levels between 50 to 60 dBA Leq at 50 feet for HVAC equipment, noise levels from such equipment would not exceed ambient noise levels at off-site sensitive receptors. Furthermore, HVAC

15 Illingworth & Rodkin. *Environmental Noise Assessment for Wal-Mart Expansion, Williamson Ranch Plaza – Antioch, California*. Available at: https://www.antiochca.gov/fc/community-development/planning/Walmart/DEIR-VOLII-APPENDICES-C-H/Appendix%20G%20Noise%20Assessment.pdf Accessed on March, 14, 2023.

units are traditionally rooftop-mounted and/or shielded from surrounding land uses, serving to block line-of-sight noise transmission to sensitive receptors.

Other operational noise sources are associated with on-site parking and vehicle circulation, including delivery trucks and trash-hauling trucks. While the Project is residential, there is potential for intermittent truck trips associated with consumer goods deliveries. However, noise associated with commercial delivery and trash-hauling trucks would be intermittent and are also a common existing occurrence in the vicinity of the Project Site due to existing residential, industrial and commercial uses. The average noise level for a single idling truck is generally 70 dBA at a distance of 25 feet.[16] This would attenuate to approximately 58 dBA at 100 feet from the source, the location of the nearest sensitive receptor. As shown in **Table 3.11-2**, ambient noise levels in the Project Site vicinity were measured between 61.8 and 66.3 dBA Leq. Based on estimated noise levels of 58 dBA Leq, noise levels from delivery and trash trucks would not exceed ambient noise levels at off-site sensitive receptors.

Various noise events would occur periodically from the Project's parking uses. Such periodic events would include activation of car alarms, sounding of car horns, slamming of car doors, engine revs, and tire squeals. It should be noted that the existing urban environment of the Project Site currently generates noise levels associated with these parking and vehicular noise sources. Although the Project would increase the number of vehicles parking in the area, the types of noise would be similar to those currently occurring in the vicinity of the Project Site. Automobile movements would comprise the most continuous noise source and would generate a noise level of approximately 65 dBA at a distance of 25 feet. Car alarm and horn noise events generate sound levels as high as 75 dBA at a reference distance of 25 feet, however these noise sources would be sporadic. Peak parking-related noise levels would attenuate to approximately 63 dBA at 100 feet from the source, the location of the nearest sensitive receptor. As shown in **Table 3.11-2**, ambient noise levels at the nearest sensitive receptor were measured at 66.3 dBA Leq (Noise Monitoring Location 3). Based on estimated noise levels of 63 dBA Leq, on-site parking and vehicular noise would not exceed ambient noise levels at off-site sensitive receptors.

As discussed previously, stationary and non-transportation noise sources could result in a potentially significant impact if the Project increases ambient noise levels by more than 3 dBA. As shown above, the Project's on-site stationary and non-transportation noise sources would not have the potential to exceed ambient noise levels in the vicinity of the Project Site. As such, on-site operational noise impacts from Project implementation would be less than significant and no mitigation measures are required.

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16 City of San José. *Loading Dock Noise Study*, prepared by Charles M. Salter Associates, Inc. 2014. Available online at: https://www.sanjoseca.gov/home/showdocument?id=20339, Accessed on March 14, 2023.

Level of Significance Before Mitigation

Operational noise impacts would be less than significant.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Operational noise impacts would be less than significant.

Impact NOI-2 Would the Project generate excessive groundborne vibration or groundborne noise levels?

Construction activities associated with the Project would intermittently generate vibration in the Project Site vicinity when it reaches building walls and floors of sensitive receptors. Vibration-generating equipment could include bulldozers and loaded trucks to move materials and debris, jackhammers to break apart concrete, and caisson drills for foundations. **Table 3.11-8, Vibration Source Levels for Construction Equipment**, identifies vibration velocity levels for equipment at various distances from the source.

Table 3.11-8
Vibration Source Levels for Construction Equipment

	Approximate PPV (in/sec)					Approximate RMS (VdB)				
Equipment	**25 Feet**	**50 Feet**	**60 Feet**	**75 Feet**	**100 Feet**	**25 Feet**	**50 Feet**	**60 Feet**	**75 Feet**	**100 Feet**
Large Bulldozer	0.089	0.031	0.024	0.017	0.011	87	78	76	73	69
Caisson Drilling	0.089	0.031	0.024	0.017	0.011	87	78	76	73	69
Loaded Trucks	0.076	0.027	0.020	0.015	0.010	86	77	75	72	68
Jackhammer	0.035	0.012	0.009	0.007	0.004	79	70	68	65	61
Small Bulldozer	0.003	0.001	0.0008	0.0006	0.0004	58	49	47	44	40

Source: Federal Transit Administration, Transit Noise and Vibration Impact Assessment Manual, 2018.

With respect to human annoyance, the FTA thresholds are 80 VdB at residences and buildings where people normally sleep. With respect to building damage, the FTA guidelines consider 0.12 inch/sec PPV

to be the significant impact level for buildings extremely susceptible to vibration damage, 0.2 inch/sec PPV to be the significant impact level for non-engineered timber and masonry buildings, 0.3 inch/sec PPV to be the significant impact level for engineered concrete and masonry, and 0.5 inch/sec PPV to be the significant impact level for reinforced-concrete, steel or timber.

Based on **Table 3.11-8**, construction equipment could reach vibration levels of 69 VdB at 100 feet, which is the distance to the nearest sensitive receptor (residential uses to the east). As such, the 80 VdB residential annoyance threshold would not be exceeded. It should also be noted that construction-related vibration levels experienced would be temporary and intermittent and the Project would be consistent with Title V, Chapter 213 of the City's Municipal Code, which prohibits construction activities outside of the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends, and on holidays except during emergencies. As such, construction vibrations would not disturb residences during sensitive nighttime hours. Therefore, temporary construction vibration would not exceed human annoyance thresholds, and this impact would be less than significant.

Based on **Table 3.11-8**, construction equipment would reach a maximum of 0.017 PPV (in/sec) at 75 feet, which is the distance to the nearest off-site building to the north of the Project Site. These vibration levels would not exceed the most conservative 0.12 inch/sec PPV threshold for buildings extremely susceptible to vibration damage. As such, construction-related vibration impacts with respect to building damage would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

Impact NOI-3 For a project located within the vicinity of a private airstrip or 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, would the Project expose people residing or working in the project area to excessive noise levels?

The Project Site is not located in the vicinity of a private airstrip or airport land use plan. The closest airport to the Project Site is the Norman Y. Mineta San Jose International Airport located approximately 5.4 miles southwest of the Project Site. Additionally, the Project Site is located outside of the Airport Influence Area of the *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan*.[17] Therefore, the Project would not expose residents at the Project Site to excessive airport-related noise levels. No impact would occur in this regard.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

No Impact.

3.11.6 CUMULATIVE IMPACTS

3.11.6.1 Construction

Construction activities associated with the Project may overlap with construction activities for other development projects that are in the vicinity of the Project Site. Typically, if a development site is 500 feet or more away from another site, then noise levels would have attenuated to a point that they would not combine to produce a cumulative noise impact. Therefore, construction noise levels would potentially become cumulative if two development sites were to have construction occurring within 500 feet of each other. The nearest related project to the Project Site is located approximately 30 feet to the south at 1301 California Circle (City Project No. P-SD16-0003). There are no additional related projects located within

[17] Walter B. Windus PE, Aviation Consultant, *Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan, Figure 8 "Airport Influence Area, November 16, 2016.*

500 feet of the Project Site. The CEQA clearance for the related project located at 1301 California Circle[18] was completed in 2018,[19] and the construction timing is unknown at this time. As the construction schedule for this related project is unknown, it would be speculative to quantitatively analyze the potential for construction noise levels to overlap and combine with the Project. The Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the related project identified a mitigation measure that would ensure construction noise impacts would be less than significant. Furthermore, like the Project, all related projects in the City would be required to comply with Title V, Chapter 213 of the City's Municipal Code, which prohibits construction activities outside of the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends, and on holidays except during emergencies. And, like the Project, all related projects would be required to comply with Noise Element Action N-1d, which requires project applicants to implement standard best practices to limit construction noise levels to the extent feasible. Because the Project and the related project would not generate significant impacts at the project-level, and because all projects within the City would be required to comply with local codes and policies ensuring minimization of construction related noise levels, cumulative construction noise impacts would be less than significant.

3.11.6.2 Operation

Noise levels associated with on-site sources are localized to a project site and sensitive receptors within the immediate vicinity. The nearest related project to the Project Site is located approximately 30 feet to the south at 1301 California Circle (City Project No. P-SD16-0003). There are no additional related projects located within 500 feet of the Project Site. The related project is the development of a Hilton Home2 Suites hotel on a 3.2-acre parcel of a 6.3-acre property. The hotel includes 150 rooms in a 5-story structure, with building footprint of 21,988 sf. The hotel will be surrounded by landscaping and surface parking, with 204 parking spaces. The project involves a minor subdivision of the property into two parcels. The second parcel would not be developed at this time. Home2 Suites is an all-suite extended-stay hotel concept developed by Hilton Hotels.. The IS/MND prepared for the related project concluded operational noise impacts would be less than significant, and no mitigation measures were required for on-site noise sources. Because the Project would not have the potential to substantively increase ambient noise levels from on-site sources, and because impacts for the related project would be less than significant without

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18 Development of a Hilton Home2 Suites hotel on a 3.2-acre parcel of a 6.3-acre property. The proposed hotel would include 150 rooms in a 5-story structure, with building footprint of 21,988 sf. The hotel would be surrounded by landscaping and surface parking, with 204 parking spaces. The project involves a minor subdivision of the property into two parcels. The second parcel would not be developed at this time. Home2 Suites is an all-suite extended-stay hotel concept developed by Hilton Hotels.

19 City of Milpitas Planning Department, *Notice of Completion*, February 27, 2018; Available online at: https://www.milpitas.gov/wp-content/uploads/2018/01/Notice-of-Completion-Home2.pdf. March 14, 2023.

mitigation, cumulative impacts associated with on-site noise sources would be less than significant. With respect to traffic noise levels, the Project would increase local traffic noise levels by a maximum of 0.3 dBA Ldn along California Circle, substantially below the 3 dBA threshold of significance. With respect to cumulative traffic noise, a 3 dBA increase in roadway noise levels requires an approximate doubling of roadway traffic volume, assuming that travel speeds and fleet mix remain constant.[20] As shown in **Appendix 3.14**, the existing ADT for California Circle ranges from 7,610 to 12,840. The Project would add 1,012 daily trips and according to the related project's IS/MND, the related project would add 1,226 daily trips to California Circle. This constitutes a maximum of approximately 29 percent of the existing ADT. Thus, under cumulative conditions, there would be no potential to double (i.e., 100 percent increase) existing traffic volumes and roadway noise levels would not have the potential to increase by more than 3 dBA. As such, cumulative impacts associated with traffic noise would be less than significant.

3.11.7 REFERENCES

California Department of Transportation. *Technical Noise Supplement to the Traffic Noise Analysis Protocol*. 2013. Available online at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf, accessed March 14, 2023.

City of Milpitas, *General Plan 2040,* adopted March 9, 2021*.* Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/60906e6349539311604cae70/1620078198914/Milpitas+General+Plan_Final_online+version.pdf, accessed March 14, 2023.

City of Milpitas. *General Plan Noise Element*, see Policy N 1-5.

City of Milpitas. *Municipal Code.* Available online: https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITVPUHESAWE_CH213NOAB_213-1DEIN, accessed March, 14, 2023.

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City of San José. *Loading Dock Noise Study*, prepared by Charles M. Salter Associates, Inc. 2014. Available at: https://www.sanjoseca.gov/home/showdocument?id=20339 Accessed on March 14, 2023.

Federal Highway Administration. *Highway Traffic Noise: Analysis and Abatement Guidance.* 2011. Available online at: https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/revguidance.pdf, accessed March, 14, 2023.

[20] California Department of Transportation. *Technical Noise Supplement to the Traffic Noise Analysis Protocol.* 2013. Available online at: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf, accessed March, 14, 2023.

Federal Transit Administration. *Transit Noise and Vibration Impact Assessment Manual.* 2018. Available online at: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, accessed March, 14, 2023.

Illingworth & Rodkin. *Environmental Noise Assessment for Wal-Mart Expansion, Williamson Ranch Plaza – Antioch, California*. Available at: https://www.antiochca.gov/fc/community-development/planning/Walmart/DEIR-VOLII-APPENDICES-C-H/Appendix%20G%20Noise%20Assessment.pdf, Accessed on March, 14, 2023.

3.12 POPULATION AND HOUSING

INTRODUCTION

This section identifies the regulatory framework with respect to regulations that addresses population and housing and evaluates the significance of the potential changes that could result from implementation of the Project. In addition, to reduce impacts, mitigation measures are included when applicable. Sources of information used in this section include the City of Milpitas 2040 General Plan and the 6th Housing Element contained therein. Information was also obtained from the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), City of Milpitas, the State of California Employment and Development (EDD) employment estimates, the State of California Department of Finance (DOF) population and housing estimates, and the United States (U.S.) Census Bureau population and housing data.

3.12.1 EXISTING CONDITIONS

3.12.1.1 Demographic Forecasts

Population, housing, and employment numbers for cities and counties are provided by three standard sources: the U.S. Census Bureau, the California DOF, and ABAG. Since these three organizations use different methods of data collection and calculation, they do not always arrive at the exact same results. For purposes of this section, the term "households" refers to occupied dwelling units, as defined in the U.S. Census. Therefore, household counts do not include all inhabitable dwelling units existing within the City.

The U.S. Census Bureau decennial census occurs every 10 years in the years ending in zero to count the population and housing units in the entire United States. While its primary purpose is to provide the population counts that determine how seats in the U.S. House of Representatives are apportioned, the census data forms the basis for which most demographic projections are calculated. The most recent census for which data is available was collected in 2020. The 2020 national census data, which was compiled using answers to surveys sent to all households within the United States, are provided for the nation, all states, and all counties, as well as each individual city. Additionally, the U.S. Census conducts the American Community Survey annually, to provide updated data estimates between its decennial censuses.

The DOF publishes population and housing estimates, updated yearly, for the state's counties and cities. The DOF estimates population growth based on census data and growth calculations.

The ABAG has adopted population, dwelling unit, household, and employment forecasts for the nine-county Bay area region. The Bay area region includes all the cities and unincorporated areas in Santa Clara County. These growth forecasts, which are based on U.S. Census data, were developed by ABAG staff with input from the planning staffs of the County and each pertinent city and are used for regional planning efforts including the Plan Bay Area 2050. Plan Bay Area 2050 is the region's long-range strategic plan focused on the interrelated elements of housing, the economy, transportation and the environment.

Under Plan Bay Area 2050, the nine-county Bay Area region is divided into 34 subcounty areas, called "super districts." These super districts include combinations of different cities, towns and unincorporated areas that allow the public to see the more localized growth pattern in Plan Bay Area 2050. The City of Sunnyvale and the relevant section of the City of Milpitas (the area where the Project site is located) are located in Super District 9, "North Santa Clara County" within the Plan Bay Area 2050. In addition to Sunnyvale and Santa Clara, Super District 9 also includes portions of the cities of Mountain View, Santa Clara, San Jose, and Palo Alto, as well as some unincorporated areas in Santa Clara County. However, these Super Districts do not provide accurate data regarding the projected population, housing, and employment trend of the City of Milpitas on a jurisdictional level. Therefore, for the purposes of this Project's analysis, the previously prepared long-range strategic plan under ABAG, Plan 2040, is utilized to estimate the City's and County's growth trends.

3.12.1.2 Population

According to the U.S. Census, the City of Milpitas' population increased from 66,790 persons in 2010 to 80,273 persons in 2022.[1] Between the years 2022 and 2040, the City is projected to experience a population increase from 80,839 in 2022 to 103,970 in 2040. This represents a 22 percent increase in City population from 2010 to 2022. Additionally, the County of Santa Clara experienced a population increased from 1,781,642 persons in 2010 to 1,936,259 persons in 2020.[2] Between the years 2022 and 2040, the County is projected to experience a population increase of 558,846 persons with a population increase from 1,936,259 to 2,495,105. Similar to the City's population growth, this accordingly represents an approximate 22 percent increase in the County population from 2022 to 2040. **Table 3.12-1, Population Growth Trends,** shows Milpitas' and the County's population in 2010, 2022, and 2040.

1 U.S. Census Bureau, "City of Milpitas Population Data." Available online at: https://data.census.gov/cedsci/table?q=Milpitas%20city,%20California&tid=DECENNIALPL2020.P1, accessed October 14, 2022.

2 U.S. Census Bureau, "Santa Clara County Population Data." Available online at: https://data.census.gov/cedsci/all?q=Santa%20Clara%20County,%20California, accessed October 14, 2022.

Table 3.12-1
Population Growth Trends

Jurisdiction	2010	2022	2040	Population Change 2022-2040	Percent Change 2022-2040
Milpitas	66,790	80,839	103,970	23,131	22%
County of Santa Clara	1,781,642	1,936,259	2,495,105	558,846	22%

Source: U.S. Census Bureau. City of Milpitas Population Data. Available online at: https://data.census.gov/cedsci/table?q=Milpitas%20city,%20California&tid=DECENNIALPL2020.P1.
US Census Bureau. Santa Clara County 2010 Population Data. Available online at: https://data.census.gov/cedsci/table?q=Santa%20Clara%20County,%20California&tid=DECENNIALPL2010.P1, accessed October12, 2022.
California Department of Finance, Table 2: E-5 City/County Population and Housing Estimates, 1/1/2022, https://dof.ca.gov/forecasting/demographics/estimates/e-5-population-and-housing-estimates-for-cities-counties-and-the-state-2020-2022/, accessed October12, 2022.
Association of Bay Area Governments, Projections 2040, http://projections.planbayarea.org/, accessed October 12, 2022.

3.12.1.3 Housing

The City of Milpitas 2023-2031 Housing Element provides an inventory of the existing housing stock in the City. Based on this inventory the number of households increased by 19 percent between the years 2010 and 2019.[3] Between the years 2021 and 2022, a total of 2,758 housing units were constructed within the City.[4]

There are a total of 25,581 housing units in the City of Milpitas. The housing stock consists of approximately 70 percent single-family units (53 percent detached and 17 percent attached), 28 percent are multi-family units, and three percent as mobile homes.[5]

3 City of Milpitas, *2023-2031 Housing Element of the General Plan*. Available online at: https://milpitashousingelement.com/hcd-review-draft/, accessed October 3, 2022.

4 City of Milpitas, *2023-2031 Housing Element of the General Plan*. Available online at: https://milpitashousingelement.com/hcd-review-draft/, accessed October 3, 2022.

5 California Department of Finance. *E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark.* Accessible online at: http://dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed October 3, 2022.

Table 3.12-2
Existing (2022) Housing for the City of Milpitas and County of Santa Clara

Unit Type	City of Milpitas	County of Santa Clara
Single-Family Detached	13,496	358,546
Single-Family Attached	4,364	67,919
Two to Four	1,665	51,242
Five or More	5,577	199,554
Mobile Homes	478	19,231
Total (Units)	**25,581**	**696,489**
Average Household Size	3.18	2.81
Vacancy Rate	3.3%	5.0%

Source:
[1] California Department of Finance. E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark. Available online at: http://dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed October 6,2022.

The City's population currently[6] makes up about four percent of the countywide population and the City's housing units make up approximately 0.68 percent of the County's total housing units. The average number of persons per household in Milpitas in 2022 is 3.18 persons per household. This is approximately 89 percent higher than the countywide average of 2.81 persons per household.[7] **Table 3.12-3**, **Projected Housing for the City of Milpitas and County of Santa Clara**, details the ABAG/MTC's projected local and regional increases in total housing units for the City and County.

6 City of Milpitas. Environmental Impact Report for the General Plan Update. Dated November 2, 2020, Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed September 15, 2022.

7 California Department of Finance. E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark, accessible online at: http://dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed October 6,2022.

Table 3.12-3
Projected Housing for the City of Milpitas and County of Santa Clara

	City of Milpitas	County of Santa Clara
Total Housing Units (2040)	30,430	860,810
Projected Increase Between 2022 and 2040	4,849	164,321
Projected Increase Between 2022 and 2040 (%)	19%	24%

Source: ABAG/MTC. Plan Bay Area, Projections 2040 Available online at: http://mtcmedia.s3.amazonaws.com/files/Projections_2040-ABAG-MTC-web.pdf, accessed October 6, 2022.

3.12.1.4 Employment Growth

Over the past 10 years, the City of Milpitas has experienced an overgrowth in employment. According to the California Employment Development Department, between January 2010 to September 2021, the unemployment rate in Milpitas decreased by 8.4 percentage points.[8] The predominant job sectors within the City include the Manufacturing, Wholesale, and Transportation industries.[9] Nearby manufacturing companies within the City include Integrated Manufacturing Technologies, located 0.4 miles west of the Project Site.

Table 3.12-4, **Current Employment Data of the City of Milpitas, County of Santa Clara, and Neighboring Cities**, shows the employment statistics of the City of Milpitas compared to neighboring cities and the County of Santa Clara. As shown, the current unemployment rate of the City is 2.5 percent. The City is experiencing an unemployment rate lower than the neighboring City of Fremont (2.6 percent) and a similar rate as the City of San Jose (2.5 percent). In contrast the County of Santa Clara as a whole is currently experiencing a lower unemployment rate of 2.3 percent.

8 California Employment Development Department. "Unemployment Rates (Labor Force) 2010." Available online at: https://www.labormarketinfo.edd.ca.gov/cgi/dataanalysis/labForceReport.asp?menuchoice=LABFORCE, accessed November 14, 2022.

9 City of Milpitas. *Environmental Impact Report for General Plan Update.* November 2, 2020, Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed September 15, 2022.

Table 3.12-4
2022 Employment Data of the City of Milpitas, County of Santa Clara, and Neighboring Cities

	City of Milpitas	City of Fremont	City of San Jose	County of Santa Clara
Labor Force	41,600	117,400	558400	1,059,600
Employed Persons	40,600	114400	544700	1,035,000
Unemployed Persons	1,000	3,000	13700	24,600
Unemployment Rate (%)	2.5	2.6	2.5	2.3

Note: Employment information for Cities of Milpitas, Fremont, San Jose, and the County of Santa Clara is based on the available employment data based on the year 2022.
Source:
[1] California Employment Development Department. Labor Force and Unemployment Rate for Cities and Census Designated Places, Available at: https://www.labormarketinfo.edd.ca.gov/data/labor-force-and-unemployment-for-cities-and-census-areas.htm. Accessed October 14, 2022.

3.12.1.5 Job to Housing Ratio

The jobs-housing ratio is a general measure of the total number of jobs and housing units in a defined geographic area, without regard to economic constraints or individual preferences. The balance of jobs and housing in an area, in terms of the total number of jobs and housing units as well as the type of jobs versus the price of housing, has implications for mobility, air quality, and the distribution of tax revenues. The jobs housing ratio is one indicator of a Project's effect on growth and quality of life in the Project area. Jobs-rich and high-resource cities are those with a job-housing ratio greater than 1.75. [10] The ABAG/MTC analyzes the jobs and housing trends of each City within the region and applies the jobs-housing ratio at the regional and subregional levels to analyze the fit between jobs, housing, and infrastructure, and aims to address any imbalances that may be occurring within a local jurisdiction, sub-region, or region.

According to the Plan Bay Area 2050, the City of Milpitas is considered as a jobs-rich and high-resource cities, with a jobs-to-housing ratio of 1.83.[11, 12]

3.12.1.6 Regional Housing Needs Assessment

The Regional Housing Needs Assessment (RHNA) is a requirement of state housing law and is a process that determines projected and existing housing needs for all jurisdictions (city or unincorporated county)

10 ABAG/MTC, *Plan Bay Area 2050: Forecasting and Modeling Report*. Available online at: https://www.planbayarea.org/sites/default/files/documents/Plan_Bay_Area_2050_Forecasting_Modeling_Report_October_2021.pdf, accessed October 4, 2022.

11 Economic & Planning Systems, Inc., Table 4, Service Population Factors based on Resident to Employee Equivalencies Preliminary Draft: 1355 California Circle Fiscal Impact Analysis. Dated November 2, 2022.

12 Jobs-to-Housing ratio is calculated using total jobs over total housing units (46,689/ 25,581) from Table 4, Service Population Factors based on Resident to Employee Equivalencies.

in California. The process to determine a RHNA allocation is conducted by a council of governments, such as ABAG, every eight (8) years. Every jurisdiction must plan for its RHNA allocation in its housing element of its General Plan by ensuring there is enough sites and zoning to accommodate their RHNA allocation. Many jurisdictions use the housing element as an opportunity to complement their economic development, open space, and sustainability goals with their housing goals. Once updated, housing elements are reviewed by the California Department of Housing and Community Development (HCD) and must be adopted by the jurisdiction.

The most recent RHNA allocation for the ABAG region, or the 6th cycle RHNA was adopted in March 2021. The 6th cycle covers the ABAG regional planning period from 2023 to 2031 and the Housing Element planning period 2023 to 2031. The RHNA Allocation Plan projects the need for an additional 6,713 residential units within the City of Milpitas by 2029. The breakdown of the 2023-to-2031-unit allocation by income level is shown in **Table 3.12-5, City of Milpitas 2023-2031 Regional Housing Needs Assessment Allocation**.

Table 3.12-5
City of Milpitas 2023-2031 Regional Housing Needs Assessment Allocation

Total	Very-low Income	Low Income	Moderate Income	Above-moderate Income
6,713	1,685	970	1,131	2,927

Source: ABAG, Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031.

3.12.2 REGULATORY FRAMEWORK

3.12.2.1 Federal Regulations

Federal Uniform Act (URA) (1970)

The Federal Uniform Act (Uniform Relocation Assistance and Real Property Acquisition Policies Act; 42 U.S. Code [USC] 61), passed by Congress in 1970, is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects.

Department of Housing and Urban Development Act

The Department of Housing and Urban Development Act created the U.S. Department of Housing and Urban Development (HUD) as a Cabinet-level agency. HUD is responsible for national policy and programs that address housing needs in the U.S. HUD is responsible for enforcing fair housing laws. HUD plays a major role in supporting homeownership by underwriting homeownership for lower- and moderate-income families through its mortgage insurance programs.

Fair Housing Act (Title VIII of the Civil Rights Act of 1968)

The Fair Housing Act, as amended in 1988, prohibits discrimination on the basis of race, religion, sex, disability, family status, and national origin. HUD is charged with enforcing the Fair Housing Act. On February 9, 2023, HUD published in the Federal Register a Notice of Proposed Rulemaking (NPRM) entitled "Affirmatively Furthering Fair Housing" (AFFH). The proposed rule would implement the Fair Housing Act's statutory mandate to further fair housing, which directs HUD to ensure that there are proactive measures implemented by the agency to take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination.

Fixing America's Surface Transportation Act (FAST)

The Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94), enacted in 2015, builds on the changes to federal transportation planning law made by MAP-21. It was the first long-term surface transportation authorization enacted in a decade that provides long-term funding certainty for surface transportation. The FAST Act authorizes $305 billion over fiscal years 2016 through 2020 for highway improvements, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology, and statistics programs. The FAST Act maintains the focus on safety, keeps intact the established structure of the various highway-related programs, continues efforts to streamline project delivery, and provides a dedicated source of federal dollars for freight projects.

Federal planning regulations, Title 23 CFR 450.322(e)

This federal regulation requires that in development of the regional transportation plan that the metropolitan planning organization (MPO) validate data utilized in preparing other existing modal plans (such as transit providers long range plans) for providing input to the regional transportation plan. In updating the plan, the MPO shall base the update on the latest available estimates and assumptions for

population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

3.12.2.2 State Regulations

1969 California Housing Element Law

The California Housing Element Law (California Government Code §65300) requires ABAG and other regional councils of government in California to determine the existing and projected regional housing needs for persons at all income levels. According to California Government Code §65300, each governing body of a local government in California is required to adopt a comprehensive, long-term general plan for the physical development of the city, city and county, or county. The California Housing Element Law, enacted in 1969, mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community as part of the housing element, one of the seven mandated elements of the local general plan. The California Housing Element Law is implemented by the California Department of Housing and Community Development (HCD), which is responsible for reviewing local governments' housing elements for compliance with state law and providing written comments to the local governments. Using the information provided by local governments in its Housing Element, the HCD determines the regional housing need for each county and allocates funding to meet this need to the council of governments for distribution to its jurisdictions. The HCD also oversees distribution of funding related to the regional housing need by the council of governments to the local governments to ensure that funds are appropriately allocated. The requirements for the Housing Element are delineated in California Government Code Section 65580–65589.9.

Senate Bill 375 - The Sustainable Communities and Climate Protection Act of 2008

Senate Bill 375 (SB 375) focuses on aligning transportation, housing, and other land uses to achieve regional greenhouse gas (GHG) emission reduction targets established under the California Global Warming Solutions Act, also known as Assembly Bill No. 32 (AB 32). SB 375 requires California Metropolitan Planning Organizations to develop a Sustainable Communities Strategy (SCS) as part of the RTP, with the purposes of identifying policies and strategies to reduce per capita passenger vehicle-generated GHG emissions. In application, the SCS must identify the general location of land uses, residential densities, and building intensities within the region; identify areas within the region sufficient to house all the population of the region; identify areas within the region sufficient to house an eight-year projection of the regional housing need; identify a transportation network to service the regional transportation needs; gather and consider the best practically available scientific information regarding resources areas and farmland in the region; consider the state housing goals; set forth a forecasted

development pattern for the region; and allow the regional transportation plan to comply with the federal Clean Air Act (CAA) of 1970 (42 USC. § 7401 *et seq.*) (Gov. Code, § 65080, subd. (b)(F)(2)(B)), of which, when integrated with the transportation network, and other transportation measures and policies will reduce the GHG from automobiles and light duty trucks to achieve, if there is a reasonable way to do so, the GHG emission reduction targets approved by the California Air Resources Board (CARB). If the SCS does not achieve the GHG emission targets set by ARB, an Alternative Planning Strategy (APS) must be developed to demonstrate how the targets could be achieved.

SB 375 also imposes a number of new requirements on the regional housing needs process. Prior to SB 375, the regional transportation plan and regional housing needs processes were not required to be coordinated. SB 375 now synchronizes the schedules of the regional housing needs allocation (RHNA), and regional transportation plan processes every eight years (the next RHNA update, the 6th cycle, will occur after the 2022 RTP). The RHNA, which is developed after the regional transportation plan, must also allocate housing units within the region consistent with the development pattern included in the SCS. Previously, the RHNA determination was based on population projections produced by the Department of Finance. SB 375 requires the determination to be based upon population projections by the Department of Finance and regional population forecasts used in preparing the regional transportation plan. If the total regional population forecasted and used in the regional transportation plan is within a range of 1.5 percent (previously 3 percent) of the regional population forecast completed by the Department of Finance for the same planning period, then the population forecast developed by the regional agency and used in the regional transportation plan shall be the basis for the determination. If the difference is greater than 1.5 percent, then the two agencies shall meet to discuss variances in methodology and seek agreement on a population projection for the region to use as the basis for the RHNA determination. If no agreement is reached, then the basis for the RHNA determination shall be the regional population projection created by the Department of Finance.

Existing law requires local governments to adopt a housing element as part of their general plan. Unlike the rest of the general plan, where updates sometimes occur at intervals of 20 years or longer, under previous law the housing element was required to be updated as frequently as needed and no less than every five years. Under SB 375, this period has been lengthened to eight years and timed so that the housing element period begins no less than 18 months after adoption of the regional transportation plan, to encourage closer coordination between the housing and transportation planning. SB 375 also changes the implementation schedule required in each housing element. Previous law required the housing element to contain a program which set forth a five-year schedule to implement the goals and objectives of the housing element. The new law instead requires this schedule of actions to occur during the eight-year housing element planning period and requires each action to have a timetable for implementation.

Regional Housing Needs Assessment

As discussed above, State law requires preparation of a Regional Housing Needs Assessment (RHNA) allocation plan every eight years. The RHNA is a key tool for ABAG and its member local governments to plan for this growth. The RHNA quantifies the regional need for housing that is allocated to each jurisdiction for a certain planning period (the current forecast extends through 2029). Communities then plan, consider, and decide how they will address this need through the process of completing the Housing Elements of their General Plans. The RHNA does not necessarily encourage or promote growth, but rather allows communities to plan for projected growth, so that they can identify adequate sites for potential new housing, improve the projected jobs-housing ratio, and avoid potential adverse impacts on the environment.

This region's RHNA allocation plan is developed every eight years by ABAG after preparation of the RTP, as mandated by state law, to allocate a portion of housing needs to each local jurisdiction in the region. It consists of two measurements of housing need: (1) existing need and (2) future need for each Area Median Income (AMI) category (very-low income, low-income, moderate, and above-moderate income).

The existing need assessment is based on data from the most recent U.S. Census to measure ways in which the housing market is not meeting the needs of current residents. These variables include the number of low-income households paying more than 30 percent of their income for housing, as well as severe overcrowding.

The future need for housing is determined primarily by the forecasted growth in households in a community, based on historical growth patterns, job creation, household formation rates, and other factors to estimate how many households will be added to each community over the projection period. The housing need for new households is then adjusted to account for an ideal level of vacancy needed to promote housing choice, maintain price competition, and encourage acceptable levels of housing upkeep and repair. The RHNA also accounts for units expected to be lost due to demolition, natural disaster, or conversion to non-housing uses.

Finally, the RHNA considers how each jurisdiction might grow in ways that will decrease the concentration of low-income households in certain communities. The need for new housing is distributed among income groups so that each community moves closer to the regional average income distribution.

California Department of Housing and Community Development

State Housing Law (Government Code Section 65580) requires local government plans to address the existing and projected housing needs of all economic segments of the community through their housing elements. The housing element is one of seven state-mandated elements that every General Plan must contain, and it is required to be updated every eight years and determined legally adequate by the state. The purpose of the housing element is to identify the community's housing needs, state the community's goals and objectives with regard to housing production, rehabilitation, and conservation to meet those needs. In addition, the Housing Element defines the related policies and programs that the community will implement in order to achieve the stated goals and objectives. This would be accomplished through the allocation of regional housing needs consistent with the SCS.

Senate Bill 2

SB 2 (Chapter 633, Statutes of 2007) strengthens state housing element law (Government Code Section 65583) by ensuring that every jurisdiction identifies potential sites where new emergency shelters can be located without discretionary review by the local government. It also increases protections for providers seeking to open a new emergency shelter, transitional housing, or supportive housing development, by limiting the instances in which local governments can deny such developments.

California Relocation Assistance Act

The California Relocation Assistance Act (Government Code Section 7260 *et seq.*) establishes uniform policies to provide for the fair and equitable treatment of people displaced from their homes or businesses as a direct result of state and/or local government projects or programs. The California Relocation Assistance Act requires that comparable replacement housing be made available to displaced persons within a reasonable period of time prior to the displacement. Displaced persons or businesses are assured payment for their acquired property at fair market value. Relocation assistance in the form of advisory assistance and financial benefits would be provided at the local level. This includes aid in finding a new home location, payments to help cover moving costs, and additional payments for certain other costs.

Zenovich–Moscone–Chacon Housing and Home Finance Act of 1975

In response to state population and household growth, and to ensure the availability of affordable housing for all income groups, the State Department of Housing and Community Development (HCD) is responsible for determining the regional housing need for all jurisdictions in California.

Senate Bill 535 - California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund (GGRF)

SB 535 was signed into law by Governor Brown on September 30, 2012. This bill sets aside cap and trade revenues to mitigate climate change in disadvantaged communities. The California EPA is the responsible agency for identifying disadvantaged communities for potential investment. The California Department of Finance must allocate 25 percent of the available moneys in the GGRF to projects that benefit disadvantaged communities and a minimum of 10 percent to projects located within disadvantaged communities.

Homeowners and Private Property Protection Act

In 2008, California voters approved Proposition 99, the Homeowners and Private Property Protection Act, which amended the California Constitution so that local governments are prohibited from using eminent domain authority to acquire an owner-occupied residence for the purposes of conveying it to a private recipient, with limited exceptions. Proposition 99 applies only to owner-occupied residences, but cities may still use eminent domain authority to convey multi-family and non-residential property to other private parties.

3.12.2.3 Local and Regional

Plan Bay Area 2050

ABAG is an association of local governments and agencies that serves as a Metropolitan Planning Organization, Regional Transportation Planning Agency, and Council of Governments. The ABAG region encompasses nine counties (Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma) and 101 cities. ABAG is responsible for developing long-range regional transportation plans, regional housing needs allocations and a portion of the Bay Area Air Quality management plans.

ABAG shares many of the same planning goals and initiatives with the Metropolitan Transportation Commission (MTC) and are currently working together on long range plans for the region-such as Plan Bay Area 2050. Plan Bay Area 2050 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation related pollution and GHG emissions in the Bay Area. Plan Bay Area 2050 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas (PDAs). ABAG develops the Regional Housing Needs Allocation for each city and county within the nine-county San Francisco Bay Area, based on statewide goals. ABAG also develops forecasts for population, households, and economic activity in the Bay Area. ABAG, MTC, and

local jurisdiction planning staff created the Regional Forecast of Jobs, Population, and Housing which is an integrated land use and transportation plan through the year 2040. It should be noted that the Regional Forecast of Jobs, Population, and Housing is based on the land use and transportation plan outlined in ABAG's previous long-range plan, Plan Bay Area 2040, which was adopted in 2017.

City of Milpitas 2040 General Plan

General plans can be described as a city or county's "blueprint" for future development. It represents the community's view of its future; a constitution made up of the goals and policies upon which the city council, board of supervisors, or planning commission will base their land use decisions. To illustrate its importance, all subdivisions, public works projects, and zoning decisions (except in charter cities) must be consistent with the general plan. If inconsistent, they must not be approved.

The *General Plan* is a policy document with planned land use maps and related information that are designed to give long-range guidance to City officials making decisions affecting the growth and resources of Milpitas. This document helps to ensure that day-to-day decisions are in conformance with the long-range program designed to protect and further the public interest related to the City of Milpitas' growth and development. The General Plan also serves as a guide to the private sector of the economy in relating its development initiatives to the public plans, objectives, and policies of the City.

Goals and policies from the *City of Milpitas 2040 General Plan* that relate to the Project include the following:

Goal LU-1: Accommodate a well-balanced mix of land uses that meets the diverse needs of Milpitas residents, businesses, and visitors with places to live, work, shop, be entertained and culturally enriched.

Policy LU 1-3: Maintain a supply of developable lands sufficient to meet desired levels of housing, jobs, and economic needs over the planning period.

Policy LU 1-4: Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offers residents of all income levels, age groups and special needs sufficient housing opportunities and choices for locating in Milpitas.

City of Milpitas 2023-2031 Housing Element

The purpose of a housing element is to set forth policies and programs to encourage and facilitate housing development and preservation. Some of the State-required issues to be analyzed in a housing

element include affordability, overcrowding, overpayment, governmental constraints, and opportunities for housing for people with disabilities and those experiencing homelessness. The City of Milpitas 2023-2031 Housing Element (Housing Element) was certified by the Milpitas City Council on May 17, 2023.[13] The Housing Element includes data demonstrating housing issues and trends in Milpitas, an inventory of resources pertaining to the existing conditions of the City, and specific housing goals, policies, and objectives. The Housing Element includes the following goals, objectives, and policies relevant to the Project.

Goal HE-1: Maintain adequate sites to accommodate the City's share of the regional housing need, including sites that are appropriate for the development of housing affordable to extremely low, very low-, low-, moderate-, and above moderate-income households through appropriate land use and zoning.

Policy HE 1.1: Monitor residential development projects to ensure there is an adequate level of remaining development capacity through the housing sites inventory.

Policy HE 1.3: Require new residential development projects and mixed-use development projects with a residential component to meet or exceed minimum residential densities to ensure efficient use of remaining land available.

Policy HE 1.8: Regularly review the land use designations and zoning districts to encourage a variety of housing types to be developed at a range of densities to equitably serve varying household types.

3.12.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to population and housing are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Approval and/or implementation of the 1355 California Circle Project could result in significant impacts due to the unplanned changes in population and housing, if any of the following would occur:

- Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through the extension of roads or other infrastructure).

[13] City of Milpitas, *2023-2031 Housing Element of the General Plan* (certified). Available online at: https://milpitashousingelement.com/wp-content/uploads/2023/05/Milpitas_HE_HCD_Draft_2023_05.pdf, accessed June 15, 2023.

- Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere.

3.12.4 METHODOLOGY

The analysis assesses the potential impacts to population, housing, and employment resources that could result from implementation of the Project.

Impacts are assessed from both proposed land use and proposed transportation changes. To calculate the potential population growth that would result from the Project, this analysis considers the anticipated number of new units that would be constructed and the number of people that could potentially reside in these units based on the average vacancy rate and household size in the City and Project Area. Vacancy rates and household sizes can vary based on economic conditions and other factors. The number of vacant units and household sizes used in this analysis are provided in **Table 3.12-2.**

3.12.5 ENVIRONMENTAL IMPACTS

Impact POP-1 Would the Project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through the extension of roads or other infrastructure)?

Population and Housing

A project could induce population growth in an area either directly, through the development of new residences or businesses, or indirectly, through the extension of roads or other infrastructure. The Project involves the development of 206 housing units comprised of 35 dwelling units of seven-plex townhomes, 96 dwelling units of twelve-plex townhomes, and a 75-unit apartment complex on-site. Therefore, the Project would result in direct population growth.

Based on the City's average household size of 3.18 persons per household, the proposed seven-plex townhomes would introduce up to 111 residents, the proposed twelve-plex townhomes would introduce up to 305 residents and the proposed apartment complex would introduce up to 239 residents, totaling to approximately 655 new residents the City. Accordingly, the Project would represent 0.6 percent of the City's anticipated population growth between 2022 and 2040, and the Project would represent 0.02 percent of the County's anticipated population growth between 2022 and 2040. **Table 3.12-6, Population and Housing Increase Associated with the Proposed Project,** details how the Project would increase housing and population in the City and County.

Conservatively, assuming that all 655 Project-generated residents would relocate from outside of the City, potential population growth associated with the Project would represent 0.8 percent of the City's estimated population in 2022 of 80,839. Therefore, the Project would not induce substantial unplanned population growth.

Table 3.12-6
Population and Housing Increase Associated with the Proposed Project

Population		
	City of Milpitas	County of Santa Clara
Existing (2022)	80,839	1,936,259
Projected Population (2040)	103,970	2,495,105
Net Increase from Project	655	655
Projected Population (2040) with Project	104,625	2,495,760
Percent Increase (in %)	3%	0.11%
Housing Units		
	City of Milpitas	County of Santa Clara
Existing (2022)	25,581	696,489
Projected Number of Housing Units (2040)	30,430	860,810
Net Increase from Project	206	206
Projected Housing Units (2040) with Project	30,636	861,016
Percent Increase (in %)	4%	0.12%

Potential population growth impacts are also assessed based on a Project's consistency with adopted plans that have addressed growth management from a local and regional standpoint. In this case, potential population growth is assessed based on the Project's consistency with the local and regional population growth trends that are outlined in the adopted Plan 2040 prepared jointly by ABAG/MTC. The projected increases in population and housing detailed in **Table 3.12-6** would account for approximately three percent of the City's projected population increase by the year 2040 (23,131 persons) and less than one percent of the County's projected population increase by the year 2040 (558,846 population). Thus, the Project's projected increases in population and housing are accounted for in the increases projected by ABAG/MTC for the 2040 horizon. Regionally, the Project would account for less than one percent of the County's projected increase in the number of housing units (164,321 housing units), and approximately four percent of the City's projected increase in the number of housing units (4,489 housing units).

It should also be noted that the Project is located in an urban area with existing infrastructure that can support the proposed infill development. All proposed infrastructure improvements (i.e., sewer, water, and storm drains) would be located on-site to support anticipated growth generated by the Project. The potential physical environmental impacts of such improvements are analyzed in **Section 3.15, Utilities and Service Systems**. No additional infrastructure improvements (e.g., roadways and other utilities) would be implemented that could indirectly induce population growth elsewhere in the City.

The Project Site currently has a land use designation of Neighborhood Commercial Mixed Use (NCMU) within the California Circle Specific Plan Overlay and is zoned Industrial Park. A General Plan Text Amendment (GPA) is requested as part of the Project, to remove specific language from Action LU-2b. The Project Site's land use designation as NCMU would be maintained; however, a zone change is proposed to change the Project Site's current zoning from Industrial Park (MP) to Mixed Use (MXD). Additionally, the Project proposes to establish the Project Site as a Planned Unit Development (PUD). Given the proposed zone change from industrial to mixed use, the Project includes unplanned population growth outside the scope of the General Plan and ABAG/MTC projections. However, the environmental impacts of such unplanned population growth are evaluated, planned for, and mitigated as part of the Project throughout this EIR. Additionally, implementation of the Project would not induce indirect unplanned population growth.

Further, the Project would accommodate the RHNA by permitting a multi-family housing development, (the proposed apartment complex). As discussed in **Section 2.0**, **Project Description**, the proposed apartment complex building would provide 75 units that would be offered at "below market rate" (BMR) rental prices. It is anticipated that, of these 75 BMR units, a minimum of 20 units would be offered at the City's established "low-income rental rate" with the remaining units being offered at a "moderate rental rate" (MRR) rental prices. The RHNA for the City is 970 units as shown in **Table 3.12-4, City of Milpitas 2023-2031 Regional Housing Needs Assessment Allocation**. The Project would produce 20 units offered at "low-income rental rate" and would assist the City in meeting its RHNA.

Jobs-Housing Balance

As shown in **Table 3.12-7**, **Projected Jobs-Housing Balance**, Project implementation would reduce the City's current jobs-housing ratio from 1.83 to 1.81. Thus, the Project would improve the City's jobs-housing ratio by introducing more housing in a job-rich jurisdiction. Furthermore, the Project would introduce housing nearby major manufacturing centers (i.e., Integrated Manufacturing Technologies)

Table 3.12-7
Projected Jobs-Housing Balance

	Housing	Employment	Jobs-Housing Ratio
Existing (2022)	25,581	40,600	1.81
Net Increase from Project	206	N/A	N/A
Total	25,787	40,600	1.81

Notes N/A = Not Applicable

Sources:

[1] *California Department of Finance. E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark. Available online at: http://dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed October 6,2022.*

[2] *Economic & Planning Systems, Inc. Table 4, Service Population Factors based on Resident to Employee Equivalencies Preliminary Draft: 1355 California Circle Fiscal Impact Analysis. Dated November 2, 2022.*

In conclusion, the Project would not induce substantial unplanned population growth exceeding existing local conditions (0.8 percent increase over the City's estimated 2022 population) or regional projections (0.03 percent of the City's projected 2040 population). Rather, the Project would assist the City in meeting its targeted number of required residential units allocated for low-income households per state housing law (RHNA). Further, the Project would help improve the City's job-housing balance by providing additional housing to the jobs-rich and high-resource City. Therefore, the Project would result in less than significant impacts.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact

Impact POP-2 Would the Project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

The Project would demolish a currently unoccupied industrial office building and construct multi-family housing units in the form of seven-plex and twelve-plex townhomes, and an apartment building. Thus, the Project would not displace substantial numbers of existing people or housing, and no impacts would occur.

Level of Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No Impact

3.12.6 CUMULATIVE IMPACTS

As discussed in **Section 2.0**, **Project Description**, the Project would construct approximately 206 housing units in the form of seven-plex townhomes, twelve-plex townhomes, and an apartment building complex. Assuming that all new residents living in these housing units have relocated from outside the City, the Project would result in direct population growth. However, this Project-generated population growth would represent less than one percent of the City's existing population. Additionally, this projected growth in population and housing would remain within the scope of the ABAG/MTC's local and regional population and housing projections. A GPA and ZTA would be proposed for the Project Site to allow for high-density residential development. Additionally, the Project would assist the City in meeting its targeted number of required residential units allocated for low-income households per state housing law (RHNA) by allocating 20 units of the 75-unit apartment building for low-income households.

Similar projects would be reviewed by the City and required to show consistency with adopted State and City plans and policies to minimize the effect of potential population and housing growth on the environment. The City would also continue to monitor the extent of residential and nonresidential development applications on a case by case basis and monitor employment growth and housing

production in order to enhance the jobs-housing balance in the City. Overall, the Project would not result in cumulatively considerable impacts in this regard, and impacts would be less than significant.

3.12.7 REFERENCES

ABAG/MTC. *Plan Bay Area 2050: Forecasting and Modeling Report.* Available online at https://www.planbayarea.org/sites/default/files/documents/Plan_Bay_Area_2050_Forecasting_Modeling_Report_October_2021.pdf, accessed October 4, 2022.

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Association of Bay Area Governments. *Projections 2040*. Available online at: http://projections.planbayarea.org/, accessed October 12, 2022.

Association of Bay Area Governments. Plan Bay Area 2040 Final Plan. Available online at: http://2040.planbayarea.org/, accessed June 15, 2023.

California Employment Development Department. "Unemployment Rates (Labor Force) 2010." Available online at: https://www.labormarketinfo.edd.ca.gov/cgi/dataanalysis/labForceReport.asp?menuchoice=LABFORCE, accessed November 14, 2022.

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California Department of Finance. "E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019 with 2010 Census Benchmark." Accessible online at: http://dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed October 3, 2022.

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City of Milpitas, *2023-2031 Housing Element of the General Plan* (certified). Available online at: https://milpitashousingelement.com/wp-content/uploads/2023/05/Milpitas_HE_HCD_Draft_2023_05.pdf, accessed June 15, 2023.

Economic & Planning Systems, Inc. Table 4, Service Population Factors based on Resident to Employee Equivalencies Preliminary Draft: 1355 California Circle Fiscal Impact Analysis. Dated November 2, 2022.

U.S. Census Bureau. "City of Milpitas Population Data." Available online at: https://data.census.gov/cedsci/table?q=Milpitas%20city,%20California&tid=DECENNIALPL2020.P1, accessed October 14, 2022.

U.S. Census Bureau. "Santa Clara County Population Data." Available online at: https://data.census.gov/cedsci/all?q=Santa%20Clara%20County,%20California, accessed October 14, 2022.

3.13 PUBLIC SERVICES AND RECREATION

INTRODUCTION

This section describes the existing public services within the City, identifies the regulatory framework with respect to regulations that address public services, and evaluates the significance of the potential changes to public services that could result from implementation of the Project. In addition, to reduce impacts, mitigation measures are included when applicable. The public services evaluated in this section include Fire Services, Police Services, Educational Facilities, Recreational Facilities, and Library Services.

3.13.1 FIRE PROTECTION

3.13.1.1 Environmental Setting

Fire protection and other related services to the Project Site are provided by the Milpitas Fire Department (MFD). There are four fire stations in the City. The MFD offers fire protection and emergency services to the City of Milpitas, including fire suppression services, emergency medical services, rescue services, hazardous and toxic materials emergency response, coordination of City-wide disaster response efforts, enforcement of fire and life safety codes, enforcement of State and Federal hazardous materials regulations, and investigation of fire cause, arson and other emergency events for reason and origin.[1] A subgroup of the MFD, called the Bureau of Fire Prevention, has the responsibility and authority to enter, investigate, and perform routine fire inspections of all buildings, structures, and properties in the City with the exception single and multi-family dwellings in which the owner of the property resides.[2] The Bureau of Fire Prevention is currently staffed with one Fire Marshal, one Assistant Fire Marshal, two Plan Check Engineers, two Fire Prevention Inspectors, three Hazardous Materials Inspectors, and Public Education Lieutenant. The closest fire station to the Project Site is Fire Station 3, located approximately 0.55 miles east of the Project Site at 45 Midwick Drive. Fire Station 3 is staffed with three professional firefighters 24 hours a day. Various fire protection and rescue equipment is provided for firefighters at Fire Station 3, such as ground ladders, hose, and various rescue tools. Currently, Fire Station 3's target response time is 7 minutes and 30 seconds from call to arrival.[3]

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1 City of Milpitas, "Fire," Available online at: https://www.milpitas.gov/milpitas/departments/fire/, accessed May 5, 2023

2 City of Milpitas, "Fire Prevention," Available online at: https://www.milpitas.gov/milpitas/departments/fire/fire-prevention/, accessed May 5, 2023.

3 Milpitas Fire Department. Email correspondence. January 4, 2023.

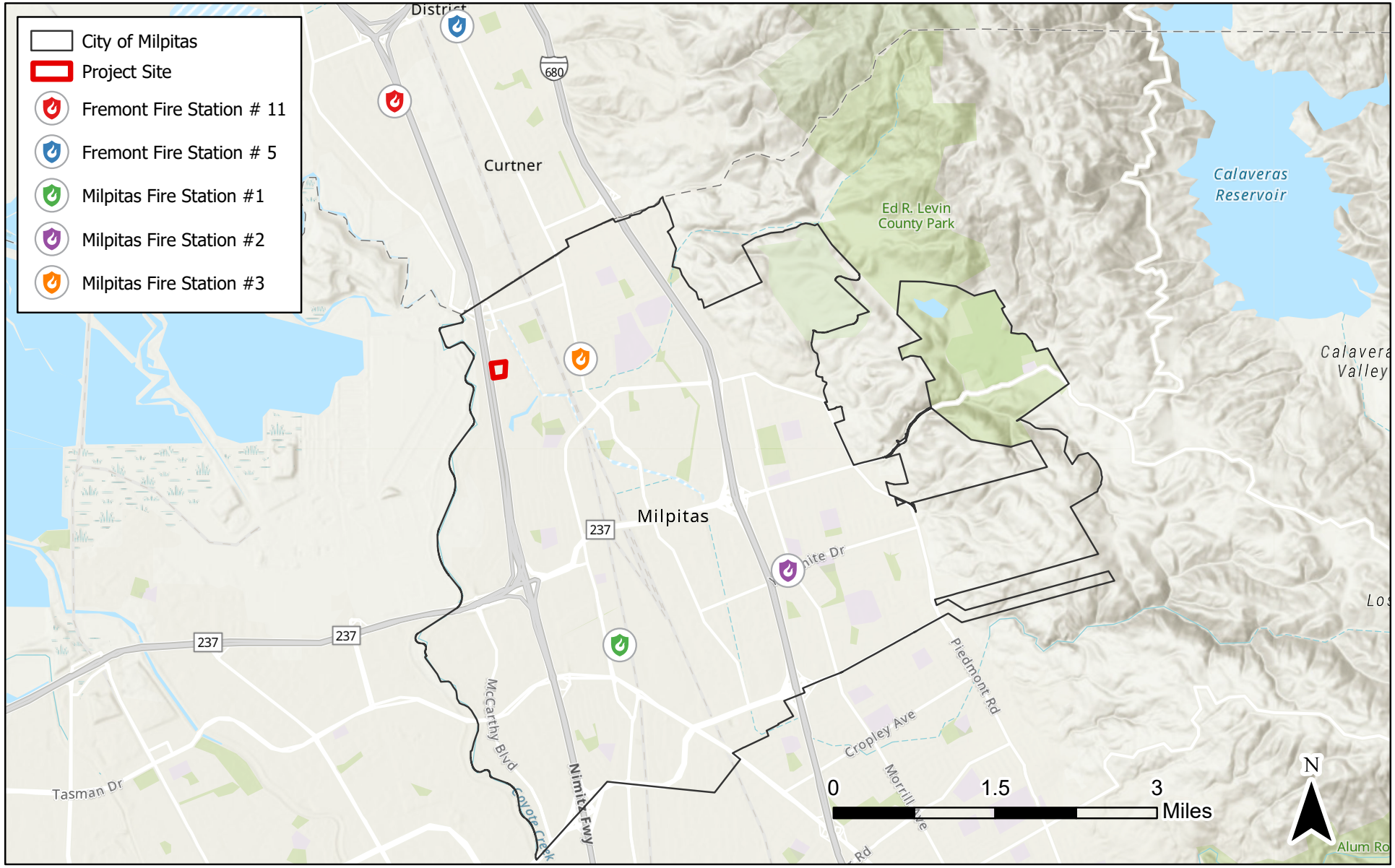
The Project Site is located within the northwestern corner of the City and approximately 0.45 miles south of the jurisdictional boundary between the City of Milpitas and the City of Fremont. Under a current Mutual Aid Agreement with the MFD,[4] the City of Fremont Fire Department (FFD) may also provide emergency and fire suppression services through local dispatch centers.[5] The FFD operates through 11 located fire stations in the City of Fremont, all of which provide emergency services through 13 in-service fire companies.[6] The FFD target emergency response times for all incidents is 90% under two minutes.[7] The closest FFD fire stations to the Project Site are Fire Station 5 and 11. Both are located approximately 2.4 miles north of the Project Site at 47200 Lakeview Boulevard and 55 Hackamore Lane, respectively, in the City of Fremont (see **Figure 3.13-1, Cities of Milpitas and Fremont Fire Stations).**

4 Joel Gozun, Milpitas Fire Department. Email Correspondence, January 4, 2023.

5 City of Fremont. "City of Fremont Fire Department." Available online at: https://www.fremont.gov/government/departments/fire,accessed November 16, 2022.

6 City of Fremont. "City of Fremont Fire Department." Available online at: https://www.fremont.gov/government/departments/fire,accessed November 16, 2022.

7 Zoraida Diaz, Deputy Fire Chief. Fremont Fire Department Email Correspondence. November 16, 2022.



SOURCE: Esri, 2022

FIGURE **3.13-1**

IMPACT SCIENCES

Cities of Milpitas and Fremont Fire Stations

1451.001•11/22

3.13.1.2 Regulatory Framework

Federal

Federal Emergency Management Act (FEMA)

In March 2003, the Federal Emergency Management Agency (FEMA) became part of the U.S. Department of Homeland Security. FEMA's continuing mission within the new department is to lead the effort to prepare the nation for all hazards and effectively manage federal response and recovery efforts following any national incident. FEMA also initiates proactive mitigation activities, trains first responders, and manages the National Flood Insurance Program and the U.S. Fire Administration

Disaster Mitigation Act of 2000

The Disaster Mitigation Act of 2000 (42 U.S.C. § 5121 note) was signed into law to amend the Robert T. Stafford Disaster Relief Act of 1988 (42 U.S.C. §5121-5207). Among other things, this new legislation reinforces the importance of pre-disaster infrastructure mitigation planning to reduce disaster losses nationwide and is aimed primarily at the control and streamlining of the administration of federal disaster relief and programs to promote mitigation activities. Some of the major provisions of the Act include:

- funding pre-disaster mitigation activities;
- developing experimental multi-hazard maps to better understand risk;
- establishing state and local government infrastructure mitigation planning requirements;
- defining how states can assume more responsibility in managing the Hazard Mitigation Grant Program (HMGP); and
- adjusting ways in which management costs for projects are funded.

The mitigation planning provisions outlined in Section 322 of the Act establish performance-based standards for mitigation plans and requires states to have a public assistance program (Advance Infrastructure Mitigation—AIM) to develop county government plans. The consequence for counties that fail to develop an infrastructure mitigation plan is the chance of a reduced federal share of damage assistance from 75 percent to 25 percent if the damaged facility has been damaged on more than one occasion in the preceding ten-year period by the same type of event.

Federal Fire Safety Act

The Federal Fire Safety Act (FFSA) of 1992 is significantly different from other laws affecting fire safety as the Law applies to federal operations, and there is no requirement for local action unless a private building owner leases space to the federal government. The Federal Fire Safety Act (FFSA) requires federal agencies to provide sprinkler protection in any building, whether owned or leased by the federal government that houses at least 25 federal employees during the course of their employment.

State

California Fire Code

Title 24, Part 9 of the California Code of Regulations (CCR) is the California Fire Code. Title 24, Part 9 of the CCR refers to the California Building Code (CBC), The CBC sets forth regulations regarding building standards, fire protection and notification systems, fire protection devices such as fire extinguishers and smoke alarms, high-rise building standards, and fire suppression training. The 2022 California Fire Code is the incorporation of the 2018 International Fire Code of the International Code Council with necessary California amendments. Development under the proposed Project would be subject to applicable regulations of the California Fire Code.

Title 8 California Code of Regulations Sections 1270 and 6773. In accordance with C.C.R., Title 8 Sections 1270 "Fire Prevention" and 6773 "Fire Protection and Fire Equipment," the California Occupational Safety and Health Administration (Cal OSHA) has established minimum standards for fire suppression and emergency medical services. The standards include, but are not limited to, guidelines on the handling of highly combustible materials, fire hosing sizing requirements, restrictions on the use of compressed air, access roads, and the testing, maintenance, and use of all firefighting and emergency medical equipment.

Uniform Fire Code

The Uniform Fire Code (UFC) contains regulations relating to construction, maintenance, and use of buildings. Topics addressed in the code include fire department access, fire hydrants, automatic sprinkler systems, fire alarm systems, fire and explosion hazards safety, hazardous materials storage and use, provisions intended to protect and assist fire responders, industrial processes, and many other general and specialized fire-safety requirements for new and existing buildings and the surrounding premises.

California Health and Safety Code

State fire regulations are set forth in Sections 13000 *et seq.* of the California Health and Safety Code, which includes regulations for building standards (as set forth in the California Building Code), fire protection and notification systems, fire protection devices, and fire suppression training.

Mutual Aid Agreements (MAA)

The Emergency Managers Mutual Aid (EMMA) system is a collaborated effort between city and county emergency managers in the Office of Emergency Services (OES) in the coastal, southern, and inland regions of the state. EMMA provides service in the emergency response and recovery efforts at the Southern Regional Emergency Operations Center (REOC), local Emergency Operations Centers (EOCs), the Disaster Field Office (DFO), and community service centers. The purpose of EMMA is to support disaster operations in affected in affected jurisdictions by providing professional emergency management personnel. In accordance with the Master Mutual Aid Agreement, local and state emergency managers have responded in support of each other under a variety of plans and procedures.

California Code of Regulations Division 2 Section 16

The State of California passed legislation creating the California Emergency Management Agency (Cal EMA) and authorizing it to prepare a Standard Emergency Management System (SEMS) program, which sets forth measures by which a jurisdiction should handle emergency disasters. Non-compliance with SEMS could result in the State withholding disaster relief from the non-complying jurisdiction in the event of an emergency disaster.

Cal EMA serves as the lead state agency for emergency management in the state. Cal EMA coordinates the state response to major emergencies in support of local government. The primary responsibility for emergency management resides with local government. Local jurisdictions first use their own resources and, as they are exhausted, obtain more from neighboring cities and special districts, the county in which they are located, and other counties throughout the state through the statewide mutual aid system.

Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* includes goals, policies, and standards related to the emergency preparedness measures and emergency services provided by the City as set forth in the Safety Element. The Safety Element provides the framework to reduce risks associated with a range of environmental and human-caused hazards that may pose a risk to life and property in Milpitas.

The Safety Element states the following relevant goals and policies:

Goal SA-3: Enhance safety throughout the community by ensuring emergency preparedness.

Policy SA 3-6: Maintain effective mutual aid agreements for fire, medical response, and other functions as appropriate.

Goal SA-4: Maintain a safe community by providing, efficient and high-quality police, fire, and emergency services.

Policy SA 4-1: Provide adequate funding for police and fire facilities and personnel to accommodate existing and future citizens' needs to ensure a safe and secure environment for people and property throughout the city.

Policy SA 4-10: Ensure that adequate water supplies are available for fire suppression throughout the city. Require development to construct and fund all fire suppression infrastructure equipment needed to provide adequate fire protection services to new development.

City of Milpitas Municipal Code

Title II, Building Regulations, of the City's Municipal Code outlines the City's regulations related to the demolition and construction of new building structures, as well as the modification of existing building structures. Specifically, Chapter 3, Building Code, and Chapter 3.5, Residential Code of Title II, requires new development to comply with the latest adopted State construction codes, including the California Building Code (CBC).

3.13.1.3 Thresholds of Significance

The following thresholds for determining the significance of impacts related to fire and emergency response services are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts due to the use of fire services, if any of the following would occur:

- Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection.

3.13.1.4 Methodology

The need for, or deficiency in, adequate fire and emergency response services in and of itself is not a CEQA impact, but a social or economic impact. (*City of Hayward v. Boardd of Trustees* (2015) 242 Cal.App. 4th 833, 843.) To the extent that the Project causes a need for additional fire and emergency response services, resulting in the construction of new facilities or additions to existing facilities, the potential impact to the environment from that construction would be considered a CEQA impact that needs to be assessed in this EIR. Any discussion in this EIR that relates solely to the level of fire and life safety services provided to the residents or users of the Project and its surrounding community, including any existing or future needs and deficiencies, is for informational purposes only. The ultimate determination of whether there is a significant impact related to fire and emergency response services is based on whether a significant impact will result from the construction of new facilities.

3.13.1.5 Environmental Impacts

Impact PS-1 Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered fire protection facilities, need for new or physically altered fire protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?

Construction

Implementation of the Project would require demolition of the existing vacant industrial office and associated surface parking areas for the and construction of the proposed seven-plex townhomes, twelve-plex townhomes, and apartment complex building. Construction activities would be subject to compliance with the latest adopted applicable State and local regulations in place to reduce risk of fire, such as installation of a temporary construction fencing to restrict site access and maintenance of a clean construction site. Specifically, construction would be subject to Title II, Chapter 3 (Building Code) of the City's Municipal Code. Additionally, the Project would be subject to regulations outlined in the CFC, such as the access requirements and fire safety precautions associated with construction activities. Project compliance with applicable State and local regulations related to fire protection would result in less than significant construction related impacts and no mitigation measures are required.

Operation

The Project would introduce 206 multi-family dwelling units and would introduce up to approximately 655 new residents as discussed in **Section 3.12, Population and Housing**. Therefore, the

Project would generate an increase in demand for fire protection and emergency medical services. However, as discussed in **Section 3.12, Population and Housing,** the projected number of residents generated by the Project would account for a nominal three percent of the City's projected population increase by the year 2040 and less than one percent the County's projected population increase by the year 2040. Accordingly, the Project's projected increases in population are accounted for in the increases projected by the Association of Bay Area Governments (ABAG) and the City for the 2040-year horizon. Therefore, the Project is not expected to result in delays to the MFD's or the FFD's target emergency response times.[8,9] Additionally, the Project would not result in the need for new or physically altered facilities within either fire department.[10,11]

The Project would be designed in accordance with applicable design standards outlined in the 2022 CBC, Chapter 9, *Fire Protection and Life Safety Systems.* The Project would also be designed in accordance with the City's Municipal Code, Chapter 300, *Fire Code*, which adopts by reference the 2022 editions of California Fire Code and the California Fire Code, by reference. The California Fire Code includes fire safety-related building standards for construction, access, water mains, fire flows, and hydrants. Further, the City and the MFD would review and approve the proposed Fire Department access plan for Project to ensure that fire trucks operated by the MFD would be capable of entering and circulating the Project Site (see **Figure 2.0-6**, **Fire Department Access Plan**).

Potable water would be used for fire suppression and provided by two suppliers, the San Francisco Public Utilities Commission (SFPUC) and Valley Water (formerly Santa Clara Valley Water District). The Project would install three new fire hydrants on-site, and the existing three fire hydrants along California Circle would be utilized by MFD for the new development. Lastly, as a standard condition of approval, the Project Applicant would apply for all applicable permit fees to the MFD prior to construction.

In conclusion, the Project would adhere to the latest adopted State and local design standards to ensure fire protection safety. As discussed above, the increase in population generated by the Project has been accounted for in City and regional populations projections, thus, this population increase has been accounted for in regional and local government agencies' anticipated demand for public services. Therefore, the increase in demand for MFD and FFD services would not result in delays to the either fire department's target response times, nor would the Project require the construction of new fire

8 Joel Gozun, Milpitas Fire Department. Email Correspondence, January 4, 2023.

9 Zoraida Diaz, City of Fremont Fire Department. Email Correspondence, November 16, 2022.

10 Joel Gozun, Milpitas Fire Department. Email Correspondence, January 4, 2023.

11 Zoraida Diaz, City of Fremont Fire Department. Email Correspondence, November 16, 2022.

protection facilities or expansion of existing fire protection facilities. Therefore, the Project would result in a less than significant impact in this regard.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

3.13.1.6 Cumulative Impacts

Cumulative development projects within the MFD's service area in City would have the potential to result in the need for additional MFD resources (i.e., additional staffing, equipment, expanded/new facilities). However, cumulative projects would be subject to all applicable laws, ordinances, and regulations in place for fire protection and emergency services. Development occurring within the City would be required to demonstrate compliance with all applicable regulations, including the 2022 CBC, Chapter 9, *Fire Protection and Life Safety* Systems and the City's Municipal Code, Chapter 300, *Fire Code* requirements regarding construction, access, water mains, fire flows, and hydrants. Cumulative projects would be reviewed by the City and the MFD to determine specific fire requirements (e.g., fire hydrant spacing, sprinkler requirements in certain types of construction, safe vehicular access for evacuation or response, and ensuring the development does not negatively impact response times) applicable to the specific development and to ensure compliance with all applicable requirements as discussed.

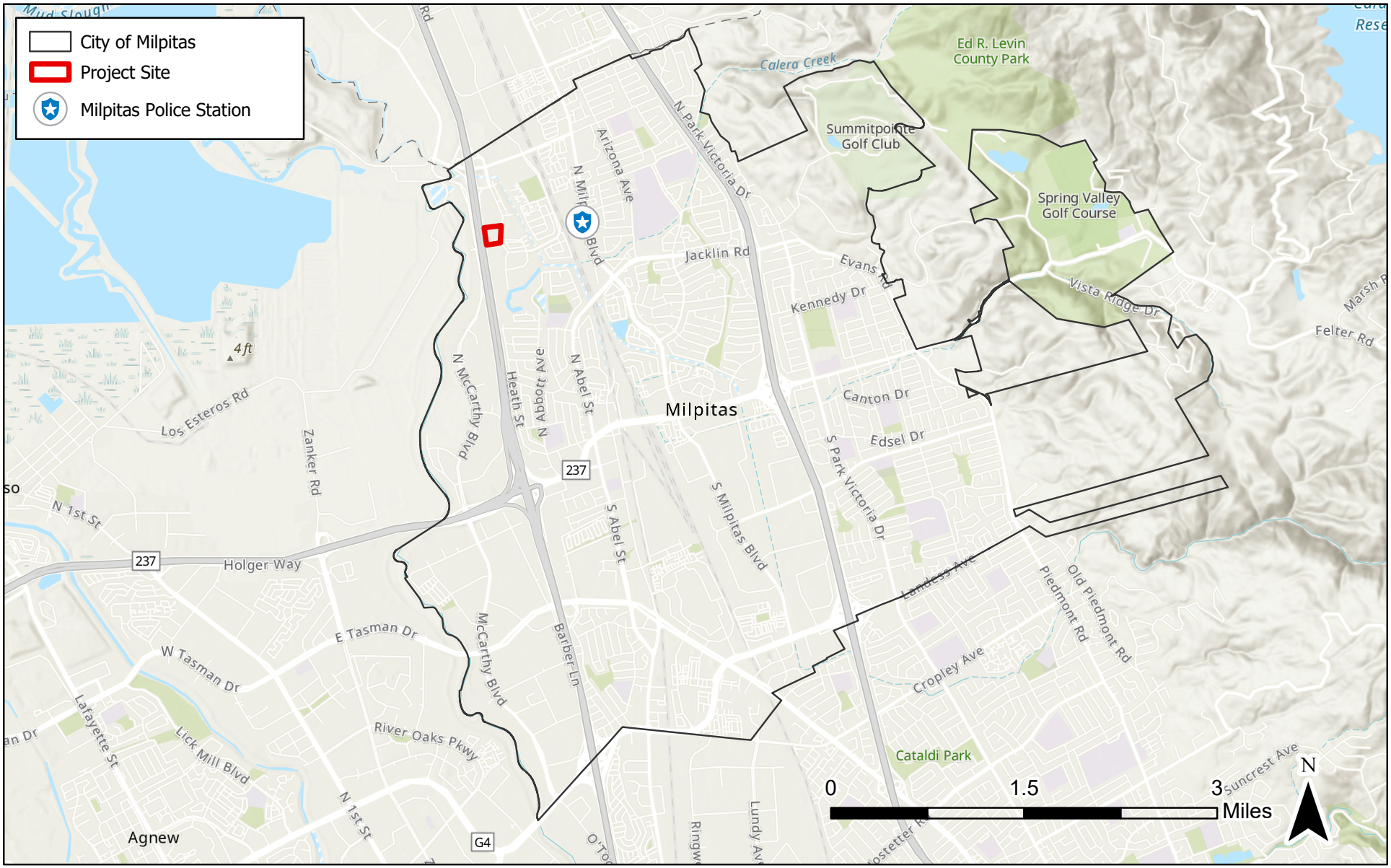
3.13.2 POLICE PROTECTION

3.13.2.1 Environmental Setting

Law enforcement protection services for the City of Milpitas are provided by the Milpitas Police Department (MPD). Located at 1275 North Milpitas Boulevard, the MPD provides general law enforcement services and emergency services to the City (see **Figure 3.13-2**, **City of Milpitas Police Station**). The MPD is currently staffed with 93 sworn officers, four Community Service Officers, 15

Communications Dispatchers, and 15 staff/personnel members.[12] As of 2022, the MPD has a target emergency response time below three minutes.

12 Captain Matthew Miller, Milpitas Police Department, Email Correspondence, November 30, 2022.



SOURCE: Esri, 2022

FIGURE **3.13-2**

IMPACT SCIENCES

City of Milpitas Police Station

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Table 3.13-1, Milpitas Police Department Crime Statistics, shows the trends of various levels of crime within the Project Site and the surrounding area (Project area) between 2017 and 2022. As shown, the Project area has experienced an upwards trend in theft between 2017 and 2022, while the rate in burglary has decreased within the same timeframe. The Project area experienced an overall increase in crime between 2017 and 2021, followed by a decrease between 2021 and 2022.

Table 3.13-1
Milpitas Police Department Crime Statistics

Crime	2017	2018	2019	2020	2021	2022
Rape	0	0	0	1	0	0
Robbery	0	0	0	1	0	0
Assault	3	6	2	2	5	5
Burglary	7	8	1	4	4	3
Theft	19	17	21	33	31	35
Recovered Vehicle	3	2	0	5	6	4
Stolen Vehicle	0	1	1	0	1	5
Fraud/Forgery	1	0	3	1	2	1
Weapons Violation	1	0	0	1	0	0
Sex Registry	2	1	3	1	2	1
Drugs	1	3	3	2	7	2
Disorder	4	0	0	4	3	1
Driving Under the Influence (DUI)	1	1	2	1	0	1
Vehicle Violation	3	2	2	4	2	1
Other	14	6	2	0	7	5
Mental Cases	0	0	0	1	2	2
Suspicious Circumstances	1	5	3	0	2	3
Lost/Found Property	3	2	3	5	6	2
Accidents	3	2	2	0	1	1
Warrants	1	2	2	3	1	0
Miscellaneous	1	0	1	1	2	1
Total	**68**	**58**	**51**	**70**	**84**	**73**

Source: [1] Captain Matthew Miller, Milpitas Police Department, Email Correspondence, November 30, 2022.

3.13.2.2 Regulatory Framework

State

All law enforcement agencies within the State of California are organized and operate in accordance with the applicable provisions of the California Penal Code. This code sets forth the authority, rules of conduct, and training for peace officers. Under state law, all sworn municipal and County officers are state peace officers.

California Building Code

The 2022 CBC, which is codified in Title 24 of the California Code of Regulations, Part 2, was promulgated to safeguard the public health, safety, and general welfare by establishing minimum standards related to structural strength, means of egress facilities, and general stability of buildings. The purpose of the CBC is to regulate and control the design, construction, quality of materials, use/occupancy, location, and maintenance of all buildings and structures within its jurisdiction. Title 24 is administered by the California Building Standards Commission, which, by law, is responsible for coordinating all building standards. Under State law, all building standards must be centralized in Title 24, or those standards are not enforceable. The provisions of the CBC apply to the construction, alteration, movement, replacement, location, and demolition of every building or structure, or any appurtenances connected or attached to such buildings or structures throughout California.

Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* states the following goals and policies within Safety Element:

Goal SA-3: Enhance safety throughout the community by ensuring emergency preparedness.

Policy SA 3-6 Maintain effective mutual aid agreements for fire, medical response, and other functions as appropriate.

Goal SA-4: Maintain a safe community by providing, efficient and high-quality police, fire, and emergency services.

Policy SA 4-4: Maintain a safe community by providing, efficient and high-quality police, fire, and emergency services

Policy SA 4-9: Ensure that fire and emergency medical services meet existing and future demand by maintaining a response time of four minutes or less for all urban service areas.

3.13.2.3 Thresholds of Significance

The following thresholds for determining the significance of impacts related to police services are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts related to police services, if any of the following would occur:

- Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for police protection.

3.13.2.4 Methodology

The need for or deficiency in adequate police services in and of itself is not a CEQA impact, but a social or economic impact (*City of Hayward v. Boardd of Trustees* (2015) 242 Cal.App. 4th 833, 843). To the extent that the Project causes a need for additional police services, that results in the construction of new facilities or additions to existing facilities, the potential impact from that construction to the environment would be a CEQA impact that needs to be assessed in this EIR. Any discussion in this EIR that relates solely to the level of police protection services provided to the residents or users of the Project Site and its surrounding community, including any existing or future needs and deficiencies, is for informational purposes only. The ultimate determination of whether there is a significant impact related to police protection services is based on whether a significant impact will result from the construction of new or expanded police facilities.

Police protection service needs are dependent on the size of the service population and the geographic area served, the number and types of calls for service, and the characteristics of a project and its surrounding community. Impacts on police protection services are considered significant if the demand for services exceeds the capacity of existing facilities, or if a station area is located outside of specified distances from a project area.

Police protection impacts are also evaluated for the Project within the context of applicable local policies and codes described in the Regulatory Framework above.

3.13.2.5 Environmental Impacts

Impact PS-2 Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered police protection facilities, need for new or physically altered police protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?

Construction

Construction activities associated with the Project may create a temporary increase in demand for MPD services at the construction site. However, construction activities would be required to comply with the CBC. Specifically, the CBC includes emergency site access requirements that would minimize site safety hazards and potential construction-related impacts to police services. Therefore, construction activities, in compliance with CBC requirements, would not result in the need for additional police protection facilities, and would not adversely impact service ratios, response times, or other MPD performance standards. A less than significant impact would occur and no mitigation measures are required.

Operation

The Project is anticipated to introduce approximately 655 new residents to the Project area, as well as 206 new residential units. The Project would rezone the Project Site from Industrial Park (MP) to Mixed Use (MXD) . In addition, the City is currently preparing a comprehensive update to the Zoning Ordinance to bring the Municipal Code into conformance with the updated General Plan, and proposed amendments to the Zoning Map at California Circle would rezone adjacent parcels to the north, and south from MP to MXD. The proposed MXD zoning is consistent with the Neighborhood Commercial Mixed Use (NCMU) General Plan land use designation. The change in use from a less intensive use to a more intensive use with more people living in the Project area would increase calls for service, traffic and traffic-related calls, community policing, and crime prevention outreach for residential uses. This in turn could result in delays with MPD's emergency response times. However, the projected number of residents generated by the Project would account for a nominal percentage (three percent or less) of the City's and County's projected population increases by the year 2040. Accordingly, the Project's projected increases in population are accounted for in the increases projected by the Association of Bay Area Governments (ABAG) and the City for the 2040-year

horizon. In addition, the MPD does not anticipate that the Project would result in a significant impact nor would the Project require the provision of new or physically altered facilities.[13]

The City does not have an established development impact fee for new development or an adopted generation factor to determine the appropriate number of additional personnel or patrol cars based on population, response times, or other similar metrics. However, the Project area, including the existing residential and industrial uses nearby, is currently within the MPD's service area and thus, the Project would not extend MPD's resources and staffing beyond their existing service area. Additionally, the Project would not result in substantial adverse physical impacts or require the need for new or physically altered MPD facilities, the construction of which could cause significant environmental impacts. Further, the proposed driveways under the Project would comply with the City's Municipal Code, Chapter 300, Fire Code, which , which requires all new developments to be designed with driveways that are accessible for emergency vehicles.

As concluded under **Impact PS-1**, the Project Applicant would submit a Fire Department access plan to the City and the MFD for review and approval to ensure that emergency access and on-site vehicle circulation are feasible for MFD-operated fire trucks. Accordingly, the proposed access points on-site would also serve as emergency access points for police vehicles operated by the MPD.

In conclusion, the Project is not expected to result in any provisions of new or physically altered MPD facilities. Compliance with local regulations, as well as coordination with the City and MPD would ensure that impacts in this regard would be less than significant. No mitigation measures are required.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

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13 Captain Matthew Miller, Milpitas Police Department Milpitas Police Department, Email Correspondence, November 30, 2022.

3.13.2.6 Cumulative Impacts

Cumulative projects are not anticipated to result in cumulatively considerable impacts towards police protection services and facilities. The future needs for police protection are reviewed on a regular basis. Thus, cumulative development projects would be reviewed on a case-by-case basis to determine any impacts to the MPD's services provided and the MPD's facilities available at the time of a proposed project's planning and development review phase. Additionally, cumulative development projects would be required to provide feasible access points for emergency vehicles and demonstrate compliance prior to any proposed project's approval.

The Project would increase the number of residents within the Project area, thus resulting in potential impacts to the MPD's current emergency response times. However, the Project is not expected to result in an increase in need for police protection services nor would Project implementation result in substantial adverse physical impacts or require the need for new or physically altered MPD facilities. The Project would comply with all applicable regulations outlined in the CBC to negate any impacts towards emergency services due to associated construction activities. Further, the City and MFD would confirm that the proposed Project would have the appropriate access points for emergency services.

3.13.3 PUBLIC SCHOOLS

3.13.3.1 Environmental Setting

The Project Site is served by the Milpitas Unified School District (MUSD). The MUSD serves approximately 10,170 students within the City of Milpitas. MUSD offers 18 different programs, with 10 elementary schools, two middle schools, two child development centers, one comprehensive high school, one continuation high school, one San José City College Extension Program, and one Adult Education school.[14] There are approximately 13 schools within a five-mile radius of the Project Site (see **Figure 3.13-3, MUSD Schools Serving the Project Site**).

According to MUSD, the Project Site would be served by Joseph Weller Elementary School, Thomas Russel Middle School, and Milpitas High School. The closest school to the Project Site is Milpitas High School, located approximately 0.8 miles east of the Project Site. **Table 3.13-2**, **Student Enrollment for MUSD Schools Serving the Project Site,** identifies the existing enrollment of each school serving the Project Site within the past five years. As shown in **Table 3.13-2**, both Joseph Weller Elementary School

[14] Milpitas Unified School District. "Milpitas Unified School District-About." Available online at: https://www.musd.org/about.html, accessed November 16, 2022.

and Milpitas High School have experienced a gradual decline in student enrollment within the past five school years. Additionally, Thomas Russel Middle School has faced a decline in student enrollment by 48 students within the recent school years. However, the MUSD is proposing to develop a new campus (the "MUSD Innovation Campus") to accommodate the recent increases in student enrollment growth for students in Kindergarten through 12th grade. The MUSD Innovation Campus would include a second high school campus and alternative high school classes for grades 9-12th grade,[15] and Adult Education classes.

Table 3.13-2
Student Enrollment for MUSD Schools Serving the Project Site

School (Grade Levels)	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Joseph Weller Elementary School (TK-6)	477	454	474	426	426
Thomas Russel Middle School (7-8)	823	825	839	761	761
Milpitas High School (9-12)	3,249	3,177	3,132	3,198	3,077

Source:
[1] *California Department of Education. DataQuest. Available online at: https://dq.cde.ca.gov/dataquest/*

The Project Site is currently occupied by a vacant industrial office building and therefore does not generate students for local schools.[16] The MUSD has established a method of calculating the anticipated number of students generated from a new residential development. The student generation rate for market rate housing units is 0.30 students per unit, and for below market rate housing units is 0.58 students per unit. As such, Project implementation would generate approximately 83 new students in the MUSD service area, with a concentration of students being in the lower grades.[17]

As discussed in the **Section 3.13.3**, **Regulatory Framework**, the School Facilities Act (Government Code Section 65995) was enacted to allow school districts to assess developer fees to help cover the cost of constructing or reconstructing school facilities necessary to accommodate increases in student population. It also set out to limit the amount that local agencies could require of developers to mitigate the impact of development on school facilities. Current developer fees are calculated at the rate of $4.79

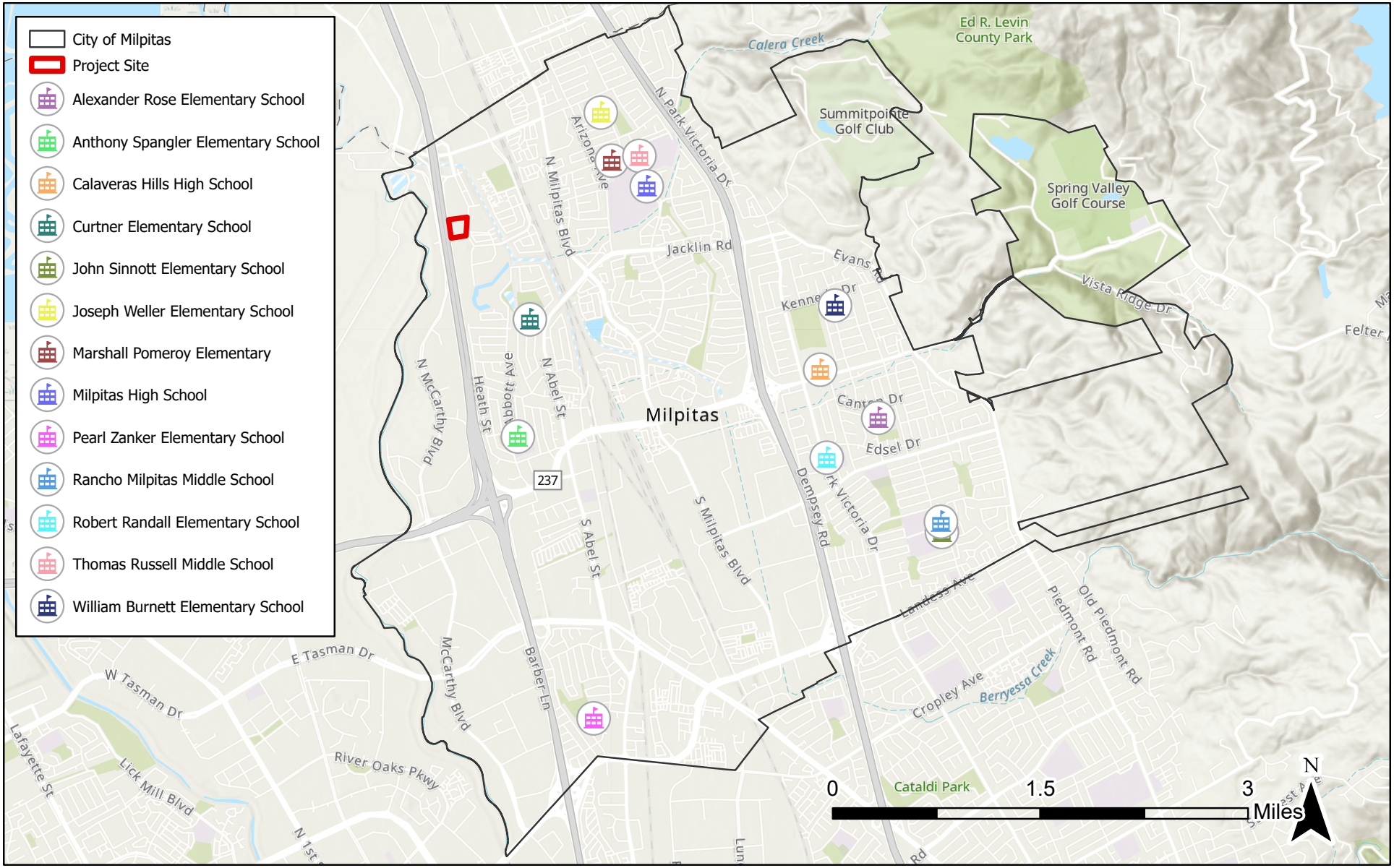
15 Milpitas Unified School District. MUSD Innovation Campus Campaign. Available online at: https://www.musd.org/musd-innovation-campus-campaign.html, accessed June 15, 2023.
16 Milpitas Unified School District. "District Boundary Map." Available online at: https://www.musd.org/district-boundary-map.html, accessed March 28,2023.
17 Cheryl Jordan, Email Correspondence. February 2023.

per square feet assessable space.[18,19] "Assessable space" is defined as all of the square footage within the perimeter of a residential structure, not including any carport, covered or uncovered walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area.

Additional mechanisms available to school districts to fund school construction include community assessment districts and general obligation bonds. MUSD has an active bond for funding necessary improvements.

18 "Accessible Space" is defined as all of the square footage within the perimeter of a residential structure, not including any carport, covered or uncovered walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area.

19 Milpitas Unified School District." School Impact (Developer) Fees." Available online at: https://drive.google.com/file/d/1Z1giENC4AEDqf7ZKmGBlNRIjZDGb1P-R/view, accessed on October 14, 2022.



SOURCE: Esri, 2022

FIGURE **3.13-3**

IMPACT SCIENCES

MUSD Schools Near the Project Site

1451.001•11/22

3.13.3.2 Regulatory Framework

State

California Government Code Section 65995

California Government Code Section 65995 is found in Title 7, Chapter 4.9 of the California Government Code. California Government Code Section 65995 authorizes school districts to collect impact fees from developers of new residential and commercial/industrial building space. Senate Bill 50 (SB 50) amended Government Code Section 65995 in 1998. Under the provisions of SB 50 schools can collect fees to offset costs associated with increasing school capacity as a result of development. The local school districts determine fees in accordance with California Government Code Section 65995 which can be adjusted every two years. The maximum fees authorized under SB 50 apply to zone changes, general plan amendments, zoning permits and subdivisions. The provisions of SB 50 are deemed to provide full and complete mitigation of school facilities impacts, notwithstanding any contrary provisions in CEQA or other State or local laws.

Additional mechanisms available to school districts to fund school construction include community assessment districts and general obligation bonds. MUSD has an active bond for funding necessary improvements.

California Education Code

School facilities and services are subject to the rules and regulations of the California Education Code and governance of the State Board of Education (SBE). The SBE is the 11-member governing and policymaking body of the California Department of Education (CDE) that sets K–12 education policy in the areas of standards, instructional materials, assessment, and accountability. The CDE and the State Superintendent of Public Instruction are responsible for enforcing education law and regulations; and for continuing to reform and improve public elementary school, secondary school, and childcare programs, as well as adult education and some preschool programs. The CDE's mission is to provide leadership, assistance, oversight, and resources so that every Californian has access to an education that meets world-class standards. The core purpose of the CDE is to lead and support the continuous improvement of student achievement, with a specific focus on closing achievement gaps.

California Department of Education

The CDE is the government agency responsible for public education throughout the state. The department oversees funding and student testing and achievement levels for all state schools.

A sector of the CDE, the California State Board of Education is the governing and policy making sector responsible for education policies regarding standards, instructional materials, assessment, and accountability.

Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* states the following goals and policies within its Utilities and Community Services Element:

Goal UCS 8: Enhance the quality of life for all city residents through the provision of cultural and social resources including quality schools, libraries, medical, and other community services and facilities.

Policy UCS 8-2: Encourage the planned financing of new school facilities concurrent with new development.

3.13.3.3 Thresholds of Significance

The following thresholds for determining the significance of impacts related to public schools are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts due to the use of school services, if any of the following would occur:

- Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for schools.

3.13.3.4 Methodology

In *Goleta Union Sch. Dist. v Regents of Univ. of Cal.* (1995) 37 CA 4th 1025, the court held that school overcrowding is a social impact and does not require analysis in an EIR and mitigation, unless the overcrowding is linked to physical environmental effects (such as new school construction).

However, the law is somewhat unclear on how to analyze impacts from school facilities. The treatise, practice under CEQA, provides the following discussion on impacts to schools:

> *State and local agencies may not deny either legislative or adjudicative approvals on the basis of a refusal to pay fees in excess of those limits. Govt C §65995.*
>
> *The statutes also significantly limit the application of CEQA to school facilities impact issues. The fees set forth in Govt C §65996 constitute the exclusive means of both "considering" and "mitigating" school facilities impacts of projects. Govt C §5996(a).*

Because the statute states that the statutory fees are the exclusive means of considering, as well as mitigating, school impacts, it limits not only the mitigation that may be required but also the scope of impact review in the EIR and the findings for school impacts. In *Chawanakee Unified Sch. Dist. v County of Madera* (2011) 196 CA 4th 1016, the court held that because the methods in the statute are the exclusive means of "considering" impacts on schools, an EIR does not need to describe and analyze a development's impacts on schools.[20] Consistent with this view:

- Once the statutory fee is imposed, the impact should be determined to be mitigated because of the provision that the statutory fees constitute full and complete mitigation (Government Code Section 65995(b)); and

- It should not be necessary to adopt a statement of overriding considerations for school facilities impacts when the statutory fee is assessed, because the impact is deemed as a matter of law to be adequately mitigated (Government Code Section 65995(b)).

The Chawanakee court also ruled that the reach of the statute is limited to impacts "on" schools and does not extend to impacts on the non-school physical environment, even though they may be "related" to schools in some way. The implications of this ruling are uncertain because the court did not consider the effect of Government Code Section 65995(b), which provides full school facilities mitigation notwithstanding CEQA, or Government Code Section *65995*(c), which defines a school facility as "any school-related consideration relating to a school district's ability to accommodate enrollment."

Based on the uncertainty created by the *Chawanakee* decision related to impacts to the non-school physical environment and construction of school facilities, a project's impact on schools would occur if the project promotes growth that results in the need for the provision of new and/or physically altered public school facilities (including charter schools). It is further analyzed that the construction of new facilities may cause significant environmental impacts in order to maintain service ratios or other performance objectives. The potential environmental impacts associated with the construction of those new or

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20 Casetext. *Chawanakee Unified School District v. County of Madera*. 2011. Available online at: https://casetext.com/case/chawanakee-unified-sch-dist-v-cty-of-madera/?PHONE_NUMBER_GROUP=P, accessed May 5, 2023.

expanded facilities would be considered a CEQA impact that needs to be assessed in this EIR. Any discussion in this EIR that relates solely to the level of school services provided to the residents of the Project area, including any existing or future needs and deficiencies, is for informational purposes only. The ultimate determination of whether there is a significant impact related to schools is based on whether a significant impact will result from the construction of new or expanded school facilities.

The discussion of impacts to public schools addresses potential impacts for the entire Project. Public school service needs are dependent on the size of the service population and the geographic area served. This analysis estimates the number of students that would be generated by the Project using the Milpitas Unified School District (MUSD) student generation rates and assesses whether existing and planned MUSD school facilities expected to serve the Project would have sufficient available capacity to accommodate the students. If there would not be sufficient available capacity, the EIR will consider whether new school facilities will be needed and if foreseeable, whether the construction of the school facilities will result in a significant impact.

3.13.3.5 Environmental Impacts

Impact PS-3 Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered school facilities, need for new or physically altered school facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives of the school district?

The Project Site is located within the boundaries of the MUSD. The Project would result in an increase of 206 residential units and is estimated to generate approximately 83 students.[21] As discussed, MUSD has been experiencing gradual declines in enrollment in the attendance boundaries for Joseph Weller Elementary School, Thomas Russel Middle School, and Milpitas High School. This reduction in enrollment numbers is due to a number of factors, including the ongoing Covid pandemic during which many families moved out of the area. As a result, an increase in student enrollment from the proposed Project is not projected to substantially increase beyond existing enrollment. The Project Applicant would be subject to California Government Code Section 65995 and AB 2926, which would require the Project Applicant to contribute its fair share of the cost of increasing demand for school facilities through payment of development impact fees to MUSD. Once constructed, the proposed MUSD Innovation would help accommodate the projected increase in student enrollment resulting from the Project.

21 Cheryl Jordan. Milpitas Unified School District. Email Correspondence. February 10, 2023.

Furthermore, the Project Applicant and the MUSD have reached a mutual agreement to provide MUSD staff members with the first right of refusal on the proposed below market rate housing units in the proposed apartment complex. The Project's conformance to California Government Code Section 65995 and the proposed mutual agreement with MUSD would ensure potential impacts to MUSD school facilities would be less than significant. Therefore, Project implementation would result in a less than significant impact on public schools and no mitigation measures are required.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

3.13.3.6 Cumulative Impacts

The 1355 California Circle Project, along with cumulative projects within the MUSD service area would increase student enrollment, possibly causing the need for new or expanded facilities, the construction of which could result in significant adverse impacts. However, these impacts could be offset by declining enrollment trends. Such impacts would be dependent on site-specific conditions that are too speculative to determine without site-specific information. The payment of school fees in compliance with the California Government Code Section 65995 is considered full mitigation for school impacts; therefore, the cumulative impact of past, present, and future development would be less than significant. Appropriate school fees would be paid for by each future development. Depending on the location of new schools, if they are determined by MUSD to be needed, construction and operational impacts (such as traffic, noise, and lighting) could occur and would be generally consistent with other allowed development analyzed in this EIR. However, impacts related to specific locations would be speculative at this time. Therefore, the proposed Project would not make a cumulatively considerable contribution to impacts related to school capacity and new school construction. Impacts would be less than significant.

3.13.4 LIBRARIES

3.13.4.1 Environmental Setting

The City of Milpitas is served by the Santa Clara County Public Library District (County Library District). The County Library services eight branch libraries that provide services to the general Santa Clara County.[22] As shown in **Figure 3.13-5 Milpitas Public Library**, the only branch library within a five-mile radius to the Project Site is the Milpitas Library (MPL), located approximately 1.25 miles southwest of the Project Site at 160 North Main Street. The MPL provides access to the County Library's collection of hard-copy books and articles. The MPL also offers a color printer and photocopier, wireless printing for Android & IOS and for Laptops, Multimedia scanning, and the County Library's online book collection. [23]

The MPL is funded in part by the County Library District, which is primarily funded by property taxes. Individuals living in the unincorporated area and in the nine cities served by the County Library District have a portion of their property tax designated for the County Library District. People living outside the district do not pay County Library District taxes.

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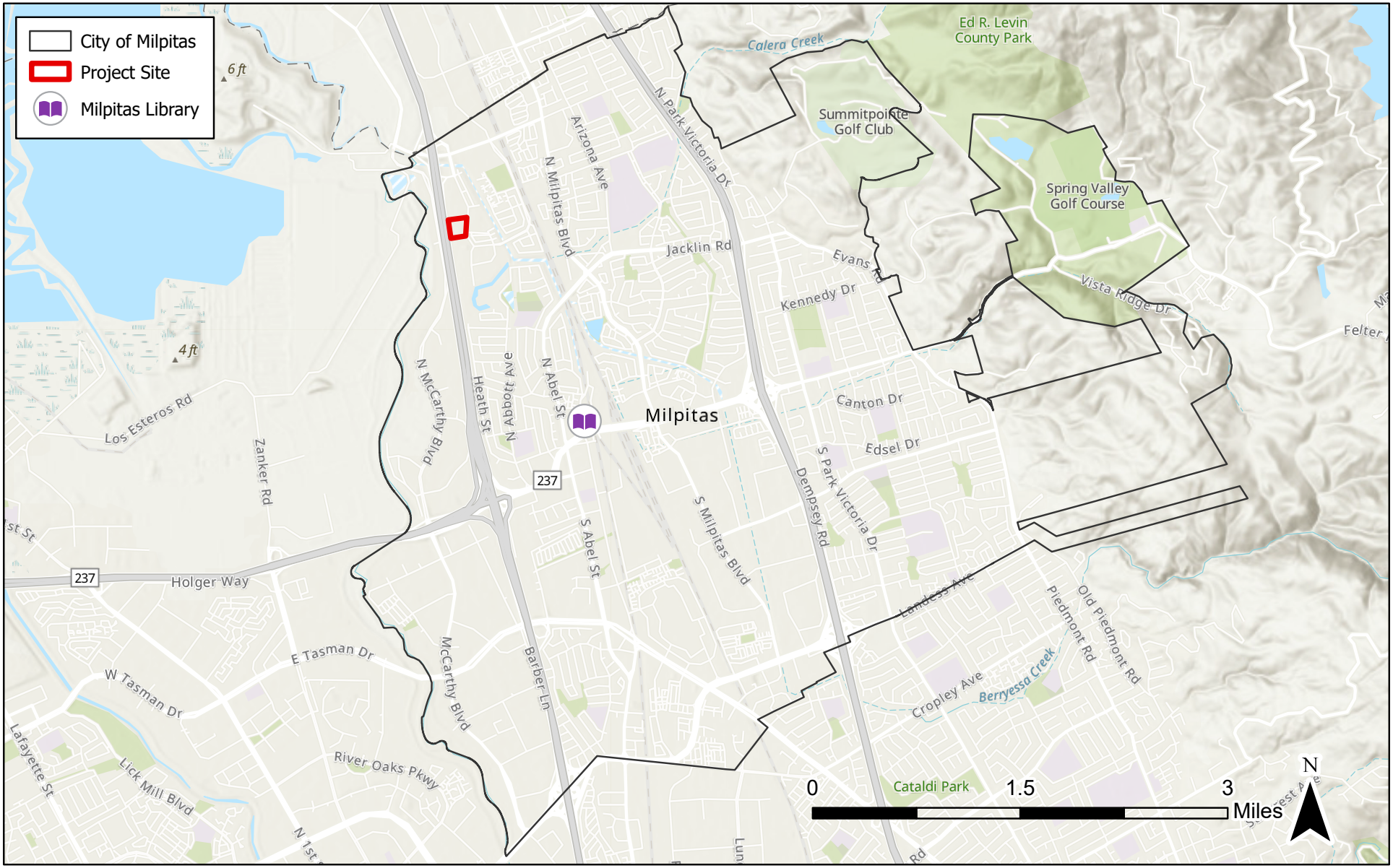
22 Santa Clara County Library District. "Library Locations." Available online at: https://sccl.bibliocommons.com/locations/?_ga=2.6142516.641854484.1668657211-740783852.1665682817&_gl=1*1jk0cnn*_ga*NzQwNzgzODUyLjE2NjU2ODI4MTc.*_ga_G99DMMNG39*MTY2ODDY1NzIxMS43LjEuMTY2ODY1NzI2Ny4wLjAuMA, accessed November 16, 2022.

23 Santa Clara County Library District. "About Milpitas Library." Available online at: https://sccld.org/milpitas-library/., accessed November 16, 2022.



SOURCE: Esri, 2022

FIGURE **3.13-4**

IMPACT SCIENCES

Milpitas Public Library

1451.001•11/22

3.13.4.2 Regulatory Framework

Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* states the following goals and policies within its Utilities and Communities Services Element related to library services:

Goal UCS-8: Enhance the quality of life for all city residents through the provision of cultural and social resources including quality schools, libraries, medical, and other community services and facilities.

Policy UCS 8-11: Explore opportunities to expand library services and funding to areas within Milpitas.

3.13.4.3 Thresholds of Significance

The following thresholds for determining the significance of impacts related to public library facilities are contained in the environmental checklist form contained in Appendix G of the most recent update of the *CEQA Guidelines*. Implementation of the Project could result in significant impacts due to the use of library services, if any of the following would occur:

- Result in substantial adverse physical impacts associated with the provision of new or physically altered library facilities, need for new or physically altered library facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives.

3.13.4.4 Methodology

The following analysis focuses on determining whether the Project would result in adverse physical impacts to the environment due to the expansion or construction of new library facilities. Whether additional facilities would be required is determined primarily by considering the adequacy of existing library services, impacts of the Project on demand for library services, and input provided by Milpitas Library staff.

The need for or deficiency in adequate library facilities to serve the future residents of the Project is not in and of itself a CEQA impact, but a social or economic impact. (*City of Hayward v. Board of Trustees* (2015) 242 Cal.App. 4th 833, 843). To the extent that the Project causes a need for additional recreational or

library services and facilities, resulting in the construction of new or expanded facilities; the potential environmental impacts from that construction would be considered a CEQA impact that needs to be assessed in this EIR. Any discussion in this EIR that relates solely to the level of library services provided to the future residents of the Project Site and its surrounding community, including any existing or future needs and deficiencies, is for informational purposes only. The ultimate determination of whether there is a significant impact related to library services is based on whether a significant impact will result from the construction of new or altered library facilities resulting in Project implementation.

This analysis estimates the number of residents that would be generated by the Project and assesses whether existing and planned public libraries expected to serve future residents of the Project would have sufficient available capacity to accommodate additional users and whether new facilities would need to be constructed, the construction of which would cause significant environmental impacts.

3.13.4.5 Environmental Impacts

Impact PS-4 Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered library facilities, need for new or physically altered library facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives?

The Project does not propose the construction of any new or physically altered library facilities. The Project would introduce up to 655 new residents to the City, thereby increasing demand for MPL facilities and resources. However, the Project is not expected to result in any negative the library's current services or it's ability to provide these services.[24] The MPL has access to more than 100,000 online collections of books and magazines, that would be adequately available to the City with additional residents. Additionally, the Project would not result in substantial adverse physical impacts to the MPL that would result in the need for new or physically altered library facilities.[25] Lastly, because the proposed townhomes would be sold as homeownership units, future property owners would be required to pay local property's that would be partially used to fund the County Library District, thereby increasing funds for the County Library District and MPL. As such, the Project would result in significant less than significant impacts to other public facilities.

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24 Kelly McKean, Milpitas Library, Email Correspondence, November 23, 2022.

25 Kelly McKean, Milpitas Library, Email Correspondence, November 23, 2022.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

3.13.4.6 Cumulative Impacts

For purposes of library service analysis, cumulative impacts are considered for projects which would also be within the City of Milpitas. Development projects would be subject to CEQA review on a case-by-case basis to determine their respective impacts on the services and the facilities of the MPL. Additionally, the cumulative projects that would develop home-ownership units would be subject to pay of the City's standard property taxes, which in turn would further support the County Library District and MPL.

Project would increase the residential population by a maximum of 655 residents, thus potentially increasing the demand for library services and facilities. However, it is not anticipated that that this increase in population would result in a significant impact on the existing facilities and resources provided by the MPL. Additionally, payment of local property taxes from future townhome owners within the Project Site would provide additional funding to the MPL. Thus, the Project would not contribute to cumulatively considerable impacts to other public facilities.

3.13.5 PARKS AND RECREATION

3.13.5.1 Environmental Setting

In the State of California, the primary avenue by which local jurisdictions set parkland and recreation standards and requirements for new development or obtain funds for the development of parks and recreation, is via the Quimby Act. The Quimby Act was established by the California Legislature in 1965 in response to California's increased rate of urbanization and the need to preserve open space and parkland for growing communities. Prior to subdividing a parcel of land, the developer must dedicate a portion of land and/or pay a fee for the purpose of providing park and recreational facilities to serve future residents of the property being subdivided.

The City's Recreation Services Departments maintains all public parks in Milpitas and provides recreational services to City residents. Overall, the City maintains approximately 30 public parks, and three recreational trails (see **Figure 3.13-5**, **Parks and Recreational Facilities Near the Project Site**). **Table 3.-13**, **Public Parks and Recreational Facilities Located in the City of Milpitas**, details the public parks and recreational facilities that are operated by the City. The closest neighborhood park to the Project Site is Dixon Landing Park, located approximately 0.25 miles northeast of the Project Site. The closes recreational trail to the Project Site is the Coyote Creek Trail, located approximately 0.23 miles west of the Project Site.

The National Recreation and Parks Association recommends five acres of parkland for every 1,000 residents. However, the Quimby Ordinance allows for cities and counties in California to implement standards of a maximum of three acres per 1,000 residents to assess new developments and an impact fee for park development. Given that the City's population is approximately 100,534 residents in 2021, the City would need to provide 302 acres of park space per the Quimby Act.

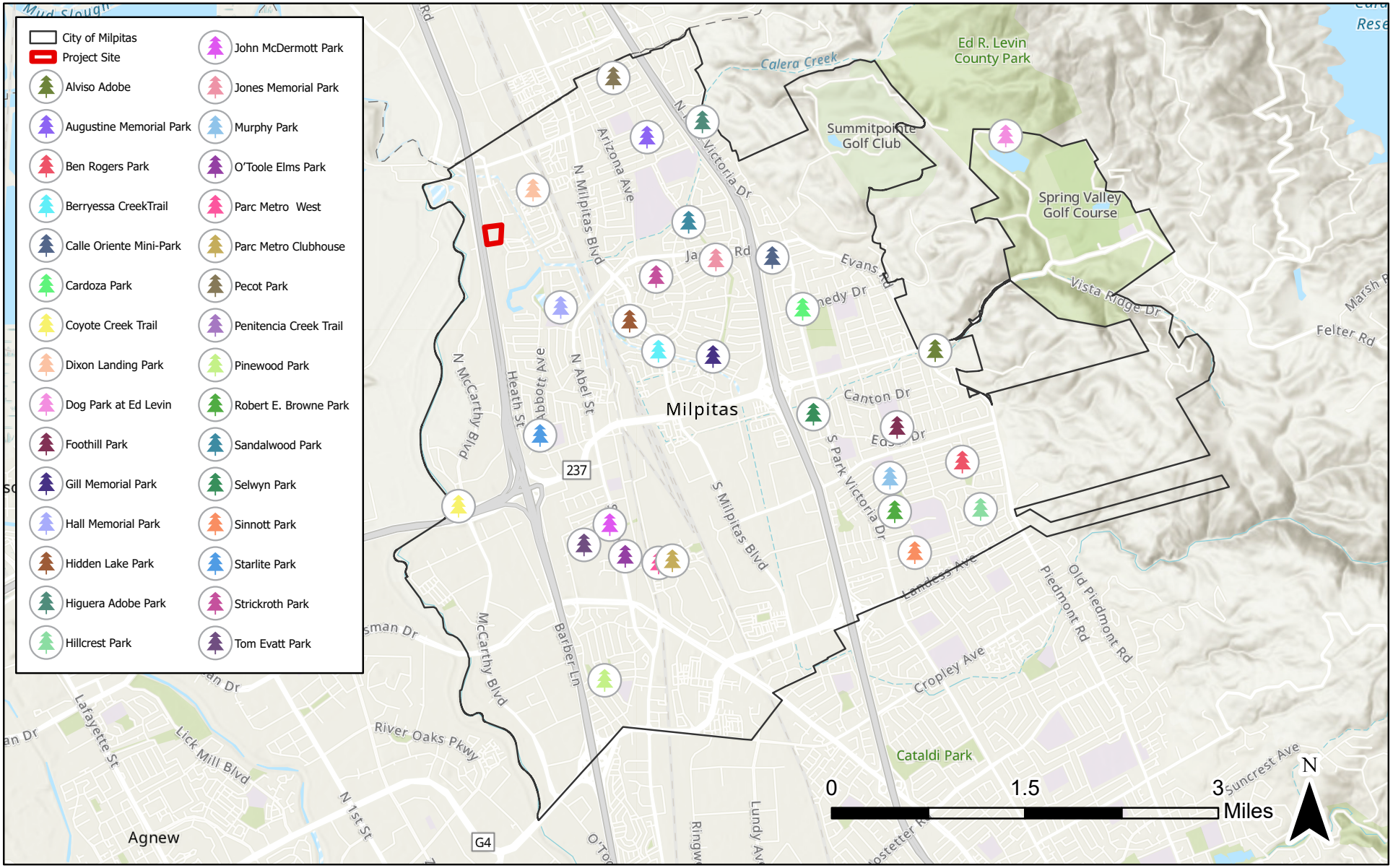
Table 3.13-3
Public Parks and Recreational Facilities Located in the City of Milpitas

Name	Location	Facilities	Park Acreage
Augustine Memorial Park	Cortez Street and Coelho Street, 400 Roger Street, Milpitas, CA 95035	Open space, play equipment, 4 barbeque units, and 4 tables	6
Ben Rogers Park	Grand Teton Dr & Sequoia Dr, 2056 Seacliff Drive, Milpitas, CA 95035	Six barbeque units and picnic tables, a backstop, play equipment, and Parking for 30	8.66
Calle Oriente Mini-Park	1199 Calle Oriente, Milpitas, CA 95035	A nice neighborhood park with two handball courts, two tables, and play equipment.	0.35
Cardoza Park	Kennedy Drive and North Park Victoria Drive, Milpitas, CA 95035	A lighted ball diamond, two horse-shoe units, volleyball poles, and an outdoor amphitheater. A great location for functions, it also includes 8 barbeque units, 19 tables, restrooms, play equipment, and parking for 133.	10.15
Dixon Landing Park	Milmont Drive and Jurgens Drive, 1313 North Milpitas Boulevard #159, Milpitas, CA 95035	Tennis courts, six barbeque units, 10 picnic tables, a basketball hoop, play equipment, restrooms, and parking for 84	11.4
Foothill Park	453 Lomer Way, Milpitas, CA 95035	Three barbeque units, 4 tables, parking for 20, and play equipment	3.98
Gill Memorial Park	Santa Rita Drive and Paseo Refugio, Milpitas, CA 95035	Three tennis courts, two handball courts, and a basketball court, plus four barbeques, eight tables, play equipment, restrooms, and parking for 20	8.16
Hall Memorial Park	304 La Honda Drive, Milpitas, CA 95035	Two barbeque units, six tables (two in park and four in the Lagoon picnic area), four tennis courts, play equipment, restrooms, and parking for 18	9.91

Name	Location	Facilities	Park Acreage
Hidden Lake Park	North Milpitas Boulevard. off Escuela Parkway	Two barbeque units, three tables, parking for five, and a lake with ducks	6.57
Higuera Adobe Park	Wessex Place, Milpitas, CA 95035	Historic adobe house sits with 4 barbeque units, 10 tables, play equipment, and parking for 20	4.8
Hillcrest Park	Fieldcrest Drive	Seven barbeque units, eight tables, and a tot lot	5.08
Murphy Park	Yellowstone Avenue and South Park Victoria Drive	Restrooms, play equipment, a picnic area with 5 barbeque units, parking for 18, and 6 tables	8.3
Pinewood Park	Starlite Drive and Lonetree Court, Milpitas, CA 95035	Four tennis courts, two barbeque units, four tables, a basketball hoop and a tot lot	9.88
Sandalwood Park	Escuela Parkway and Russell Lane	Three barbeque units, three tables, and play equipment	3.88
Selwyn Park	233 Selwyn Park	A playground, barbeque units, two picnic tables, and parking for 10	0.23
Sinnott Park	Tahoe Drive Milpitas, CA 95035	Play equipment, two barbeque units, three tables, and parking	4.67
Starlite Park	Abbot Avenue, Milpitas, CA 95035	Play equipment, three tables, and parking	3.44
Strickroth Park	391 Jacklin Road, Milpitas, CA 95035	Play equipment, two barbeque units, and six tables	4.87
Jones Memorial Park	721 Corinthia Drive, Milpitas, CA 95035	Par course, play equipment, two barbeque units, and five tables.	4.93
Robert E. Browne Park	Yellowstone east of South Park Victoria, Milpitas, CA 95035	Four lighted courts, with a large grassy area and par course	4.93
Dog Park at Ed Levin	901 Downing Road, Milpitas, CA 95035	N/A	0.03
Pecot Park	300 Manferd Street, Milpitas, CA 95035	N/A	3
Parc Metro East	330 Curtis Avenue, Milpitas, CA 95035	Playground and barbeque pits	2.06
Parc Metro Clubhouse	Comet Drive, Milpitas, CA 95035	Playground and barbeque pits	0.58
Parc Metro West	32 Curtis Avenue, Milpitas, CA 95035	Playground and barbeque pits	0.98
Alviso Adobe	2087 Alviso Adobe Court, Milpitas, CA 95035	N/A	2.26
Tom Evatt Park	Machado Avenue, Milpitas, CA 95035	Six picnic tables, fourth barbeque units, many benches. There are two half basketball courts, two tennis courts and two Bocce ball courts. A playground	4.42
John McDermott Park	Alvarez Court, Milpitas, CA 95035	Three shaded picnic tables and two playgrounds	0.94
O'Toole Elms Park	Cortez Street Coelho Street, 400 Roger Street, Milpitas, CA 95035	Eight picnic tables, one barbeque unit and two playgrounds	1.63
Total Parkland			**106.09**

Source:

1. *City of Milpitas, Our Parks. Available online at: https://www.milpitas.gov/milpitas/departments/recreation-services/parks/ 2022, accessed May 5, 2023.*
2. *City of Milpitas, Parks and Recreation Master Plan Update. Available online at: https://www.milpitas.gov/_pdfs/Cmcommunications/Website/MasterPlans/ParksandRecUpdate/ParksRecVOL1Chapters1-6_2021.pdf, accessed November 17, 2022.*



SOURCE: Esri, 2022

FIGURE **3.13-5**

IMPACT SCIENCES

Parks and Recreational Facilities Near the Project Site

1451.001•11/22

3.13.5.2 Regulatory Framework

State

Quimby Act of 1965

The Quimby Act was established by the California State Legislature in 1965 and codified as California Government Code Section 66477. The Quimby Act allows the legislative body of a city or county, by ordinance, to require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative tract map or parcel map. Under the Quimby Act, requirements for parkland dedications are not to exceed three acres of parkland per 1,000 persons residing within a subdivision, and in-lieu fee payments shall not exceed the proportionate amount necessary to provide three acres of parkland, unless the amount of existing neighborhood and community parkland exceeds that limit.

California Public Park Preservation Act of 1971

The primary instrument for protecting and preserving parkland is the State Public Park Preservation Act of 1971 (Pub. Resources Code, §§ 5400–5409). Under the Act, cities and counties may not acquire any real property that is in use as a public park for any non-park use unless compensation or land, or both, are provided to replace the parkland acquired. This provides no net loss of parkland and facilities.

State Open Space Standards

State planning law (Government Code Section 65560) provides a structure for the preservation of open space by requiring every city and county in the State to prepare, adopt, and submit to the Secretary of the Resources Agency a "local open-space plan for the comprehensive and long-range preservation and conservation of open space land within its jurisdiction." The following open space categories are identified for preservation:

- **Open space for public health and safety**, including, but not limited to, areas that require special management or regulation due to hazardous or special conditions.
- **Open space for the preservation of natural resources**, including, but not limited to, natural vegetation, fish and wildlife, and water resources.
- **Open space for resource management and production**, including, but not limited to, agricultural and mineral resources, forests, rangeland, and areas required for the recharge of groundwater basins.

- **Open space for outdoor recreation,** including, but not limited to, parks and recreational facilities, areas that serve as links between major recreation and open space reservations (such as trails, easements, and scenic roadways), and areas of outstanding scenic and cultural value.

- **Open space for the protection of Native American sites**, including, but not limited to, places, features, and objects of historical, cultural, or sacred significance such as Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property (further defined in California Public Resources Code Sections 5097.9 and 5097.993).

Mitigation Fee Act

The California Mitigation Fee Act, Government Code sections 66000, *et seq.,* allows cities to establish fees to be imposed on development projects for the purpose of mitigating the impact of development on a city's ability to provide specified public facilities. In order to comply with the Mitigation Fee Act a City must follow the following primary requirements: (1) Make certain determinations regarding the purpose and use of a fee and establish a nexus or connection between a development project or class of project and the public improvement being financed with the fee; (2) Segregate fee revenue from the General Fund in order to avoid commingling of capital facilities fees and general funds; (3) For fees that have been in the possession of a City for five years or more and for which the dollars have not been spent or committed to a project, the City must make findings each fiscal year.

Local

City of Milpitas 2040 General Plan

The *City of Milpitas 2040 General Plan* states the following goals and policies within its Conservation / Open Space / Parks and Recreation Element and Land Use Element related to Parks and Open Space:

Goal PROS-1: Provide a diversified and high-quality public park and trail system that provides recreational opportunities for all residents.

Policy PROS 1-3: Achieve and maintain a minimum overall citywide ratio of 5 acres of park land for every 1,000 residents outside of the City's adopted Specific Plan areas. Within adopted Specific Plan areas, achieve and maintain the parks standards and ratios specified in the Specific Plan, with an emphasis on publicly accessible spaces and facilities.

Policy PROS 1-6: Encourage private owners to permit public access to all private parks, trails, and recreation facilities to the greatest extent feasible.

Policy PROS 1-13: Require new development to provide direct pedestrian connections, such as sidewalks, trails, wayfinding measures and other rights-of-way and infrastructure improvements to the existing and planned network of parks and trails wherever feasible.

City of Milpitas Parks and Recreation Master Plan Update

The *Milpitas Parks and Recreation Master Plan Update Volume 1* (December 2021) (*Parks and Rec Master Plan*) identifies potential policy changes and upgrades and/or enhancement projects that could gradually be implemented over time to improve the public park and recreation system. The Parks and Rec Master Plan identifies enhancement projects at the City's 37 public parks which are recommended to be implemented over the next 20 years; focusing on recommendations that could enhance park and recreation opportunities for Milpitas residents and visitors based on public input and comments received during the community outreach process. The *Parks and Rec Master Plan* also includes a preliminary long-term conceptual improvement plan for each park site, to be used in the future as a guide when funding is available. Once subsequent improvement projects are underway, staff will use these conceptual plans as a guide to further evaluate the feasibility and community's desire with a more focused community discussion, professional assessment and site logistics. In 2019 the City offered 3.4 acres per 1,000 residents. In concurrence with the City's *General Plan*, the City shall endeavor to achieve 5 acres per 1,000 residents in areas outside Specific Plan areas.

City of Milpitas Municipal Code

Section 9 (Improvements: Dedication of Land or Payment of Fee or Both, for Recreational Purposes) of the City's Municipal Code outlines the City's regulatory requirements for parkland dedication and in lieu fees for new development that directly increases the City's population density. Under Section 9 of the Municipal Code, the amount of and required to be provided as park land in the rest of the City must be that figure which is the result of multiplying the project's estimated population. The amount for fees in lieu of parkland dedication shall be based upon the fair market value of the amount of land which would otherwise dedicate actual parkland. "Fair market value" shall be determined as of the time of filing the final site plans.

3.13.5.3 Thresholds of Significance

The following thresholds for determining the significance of impacts related to recreational facilities are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. Implementation of the Project could result in significant impacts due to the use of recreational facilities, if any of the following would occur:

- Result in substantial adverse physical impacts associated with the provision of new or physically altered recreational facilities, need for new or physically altered recreational facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for parks. (This threshold is addressed within the two thresholds below)

- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

3.13.5.4 Methodology

The need for or deficiency in adequate park and recreation facilities to serve the residents or users of the Project or the City is not in and of itself a CEQA impact, but a social or economic impact. (*City of Hayward v. B'd of Trustees* (2015) 242 Cal.App. 4th 833, 843). To the extent that the Project causes a need for additional recreational services and facilities and that results in the construction of new facilities or additions to existing facilities and the impact from that construction results in a potential impact to the environment, that is a CEQA impact that needs to be assessed in this EIR. Additionally, the deterioration of existing recreational facilities and parks caused by the Project is a CEQA impact that needs to be assessed in the EIR. Any discussion in this EIR that relates solely to the level of park services provided to the residents or users of the Project and its surrounding community, including any existing or future needs and deficiencies, is for informational purposes only. The ultimate determination of whether there is a significant impact related to park and recreational services is based on whether a significant impact will result from the construction of new or altered park and recreational facilities or where existing park and recreational facilities will be substantially physically deteriorated as a result of the implementation of the Project.

This analysis estimates the number of residents that would be generated by implementation of the Project and assesses whether existing and planned public parks and recreational facilities expected to serve the

Project area would have sufficient available capacity to accommodate additional users and whether new facilities would need to be constructed, the construction of which would cause significant environmental impacts; and whether the Project will result in substantial physical deterioration to park and recreational facilities.

3.13.5.5 Environmental Impacts

REC-1 Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

As discussed in **Section 3.12**, **Population and Housing**, the Project would result in an increase of 206 residential units and a population increase of approximately 655 residents. This increase in housing and population would result in an increased demand for and use of parks and recreation facilities. According to the City's Parks and Recreation Department, 1.95 acres are needed per 1,000 residents.[26] Therefore, the Project would result in an increased need for park spaces in the City by approximately 1.2 acres.

Although outdoor recreational spaces are provided under the Project (i.e., paseos and outdoor recreation areas), these spaces are not open to the public and are intended for Project residents. To offset this increased need for parkland in the City, the Project Applicant would be required to pay a park developer fee in lieu of the Project parkland dedication per the Quimby Act and Section 9 (Improvements: Dedication of Land or Payment of Fee or Both, for Recreational Purposes) of the City's Municipal Code. The City would determine the "fair market value" for an acre of land in the City to determine said park fee. Payment of this fee would ensure that the Project's potential impacts on parkland capacities and existing parkland facilities would be reduced to less than significant levels. As such, impacts would be less than significant.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

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26 Tegan McClane. City of Milpitas. Email Correspondence. November 23, 2022.

Significance After Mitigation

Less than Significant Impact.

REC-2 Would the Project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

As discussed in **Impact Statement REC-1**, the Project Applicant would adhere to state and local law and regulations and pay the appropriate fees-in-lieu of parkland dedication. The Project includes open space and outdoor recreational areas. The outdoor recreational area would include a playground area, benches, turf areas, and picnic tables. The outdoor recreational area would serve as a recreational facility for residents on-site. However, these recreational areas would not be open to the public. Further, the Coyote Creek Trail located 0.12 miles west of the Project Site would serve as an existing recreational facility to Project residents and residents within a 0.25-mile distance to the Project. Therefore, less than significant impacts to recreational facilities would occur.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

3.13.5.6 Cumulative Impacts

Cumulative residential projects within the City, or cumulative projects that would directly or indirectly increase the City's population, would be required to either dedicate parkland acreage to the City or pay the City's park developer fee. Revenue generated from the park developer fee could be used towards the development and construction of new park and recreation facilities and maintenance or expansion of current facilities. As stated above, the Project would be subject to payment of a park dedication fee to the City, in which the City determines the "fair value" pricing for the fee including. Payment of this park fee

would reduce any potential impacts to a less than significant level when possible. Thus, the Project would not result in cumulatively considerable impacts to the City's park and recreation facilities. No mitigation is required.

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Santa Clara County Library District. "Library Locations." Available online at: https://sccl.bibliocommons.com/locations/?_ga=2.6142516.641854484.1668657211-740783852.1665682817&_gl=1*1jk0cnn*_ga*NzQwNzgzODUyLjE2NjU2ODI4MTc.*_ga_G99DMMNG39*MTY2ODY1NzIxMS43LjEuMTY2ODY1NzI2Ny4wLjAuMA.., accessed November 16, 2022.

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3.14 TRANSPORTATION

INTRODUCTION

The purpose of this section is to address the potential transportation impacts associated with the proposed 1355 California Circle Project.

On September 27, 2013, Governor Edmund G. "Jerry" Brown signed Senate Bill (SB) 743, which went into effect in January 2014 and directed the Governor's Office of Planning and Research (OPR) to develop revisions to the California Environmental Quality Act (CEQA) Guidelines by July 1, 2014, to establish new criteria for determining the significance of transportation impacts and define alternative metrics for traffic level of service (LOS). This started a process that has changed the requirements for transportation impact analyses under CEQA. These changes include elimination of auto delay, LOS, and similar measures of vehicular capacity or traffic congestion as a basis for determining significant transportation impacts resulting from land use projects and plans in California.

On January 20, 2016, the Governor's Office of Planning and Research (OPR) released the Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA, which was an update to Updating Transportation Impacts Analysis in the CEQA Guidelines, Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743, which had been released on August 6, 2014. Of particular relevance was the updated text of State CEQA Guidelines Section 15064.3, which as discussed further below establishes vehicle miles traveled (VMT) as the most appropriate measure of transportation impacts. VMT is an area-wide performance measure which helps compare the overall performance of a project or project alternatives. VMT analysis shifts the focus towards impacts caused by the distance traveled by vehicles rather than the localized congestion created by vehicles. Comparative scenarios of VMT are used to demonstrate the effect of land use or transportation projects by calculating total auto VMT divided by population and/or employment to determine the "efficiency" of the transportation system in moving persons with the fewest VMT. Even when new projects result in additional VMT, due to growth and population and employment, they could result in lower VMT efficiency as the numerator (VMT) would be relatively lower than the denominator (persons). This would occur if persons drove shorter distances, carpooled more, or switched trips to non-auto modes such as walking, biking and transit.

The Guidelines became effective on July 1, 2020. As such, automobile delay as measured by LOS or similar metrics is no longer to be considered a significant environmental impact. Further, Section 21099(a)(2) of the Public Resources Code states "Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." Therefore, as LOS is no longer an

environmental impact under CEQA, all analysis provided in this section related to LOS is presented for informational purposes only, and not for the purpose of determining a significant environmental impact under CEQA.

The analysis in this section is based in part on ***Appendix 3.14, Transportation Analysis****.*

3.14.1 ENVIRONMENTAL SETTING

3.14.1.1 Existing Transportation Network

This section describes the existing conditions within the immediate Project Area, in terms of roadway facilities, transit service and traffic operating conditions, and alternative transportation facilities.

Existing Roadway Network

Existing Study Area

The *Transportation Analysis for the 1355 California Circle Residential Development* (Transportation Analysis) (December 2022) prepared by Hexagon Consultants, Inc. analyzed the existing and future (with and without the Project) weekday peak hour traffic conditions at three signalized intersections on California Circle (see **Figure 3.14-1**, **Project Study Area Intersections**).

The intersections that were analyzed include the following:

1. California Circle and Interstate 880 (I-880) northbound ramps;

2. California Circle and Dixon Landing Road; and

3. Dixon Landing Road and Milmont Drive.

The Transportation Analysis also determined the traffic volumes for existing conditions at each intersection (see **Figure 3.14-2, Existing Traffic Volumes**) and the existing with Project traffic volumes (see **Figure 3.14-3, Existing Plus Project Traffic Volumes**).

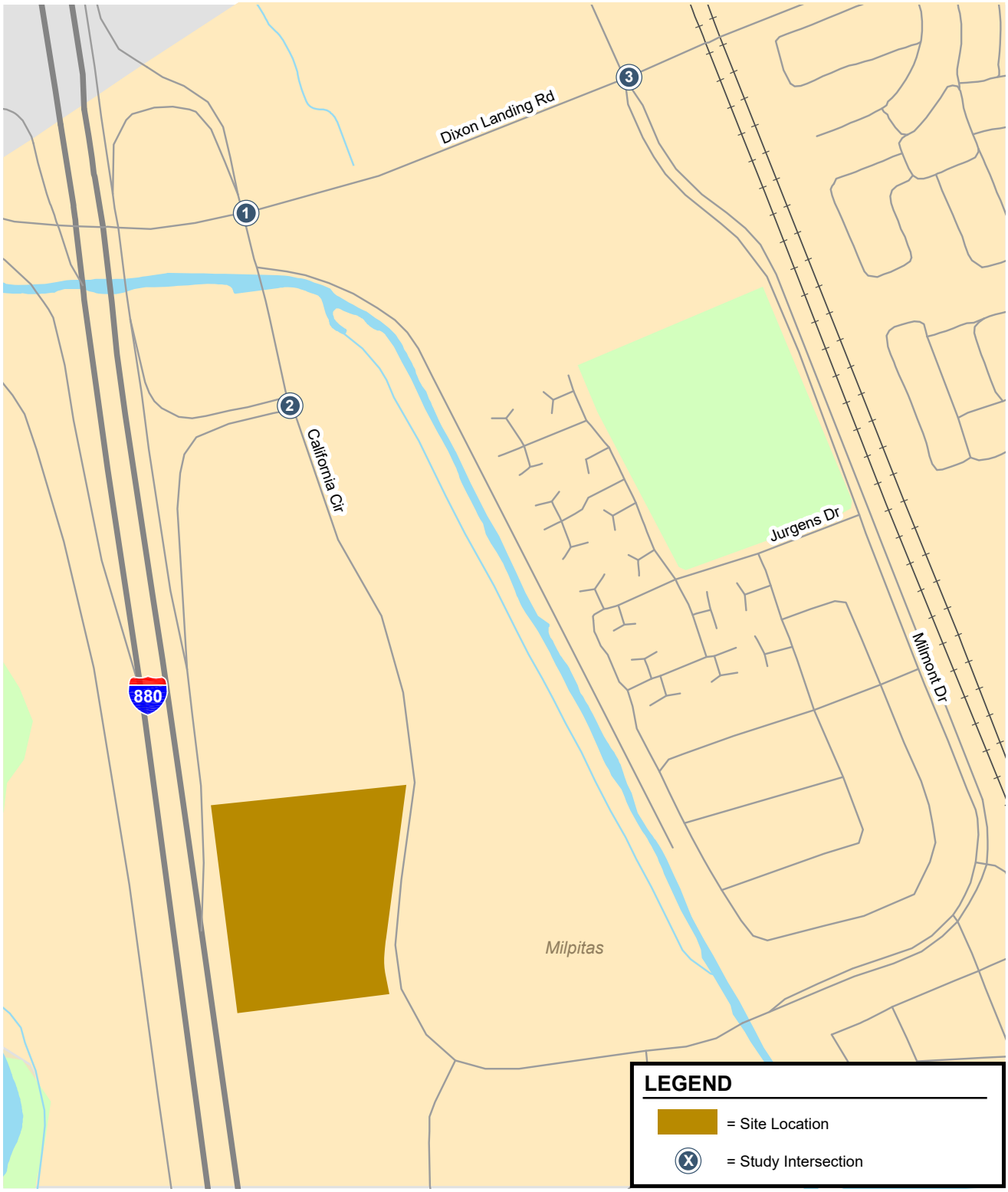
Existing Local and Regional Roadway Network

Interstate 880 (I-880) is an interstate freeway that runs in a north-south direction, beginning in the City of Oakland and ending in the City of San José, where it becomes SR 17 and extends into Santa Cruz. The interstate freeway provides regional access from East Bay cities to San José varies in width from six lanes through San José south of U.S. 101 to as many as twelve lanes plus high occupancy vehicle (HOV) lanes

in each direction through north San José, Milpitas and Fremont. Access to the site is provided by an interchange at I-880 and Dixon Landing Road.

California Circle is primarily a four-lane roadway that runs in a north-south direction beginning at its intersection with Fairview Way, and then transition into a north-south direction until reaching its intersection with Dixon Landing Road. California Circle is five lanes wide between Dixon Landing Road and the northbound 880 ramps, and four lanes with center-left-turn lane between the northbound 880 ramps and Fairview Way. An on-and-off ramp to I-880 is provided along California Circle and is located approximately 0.25 miles north of the Project Site.

Dixon Landing Road is an east-west arterial extending from west of North. McCarthy Boulevard to North Milpitas Boulevard where it changes to Dixon Road extending eastward to end just west of I-680. Dixon Landing Road varies in width from two lanes west of McCarthy Boulevard, to six lanes (plus auxiliary lanes) at the I-880 interchange, to four lanes with center-left-turn lane east of Milmont Drive. The road is five- to six-lanes wide in the vicinity of the Project Site.



SOURCE: Hexagon, 2023

FIGURE **3.14-1**

Project Study Area Intersections

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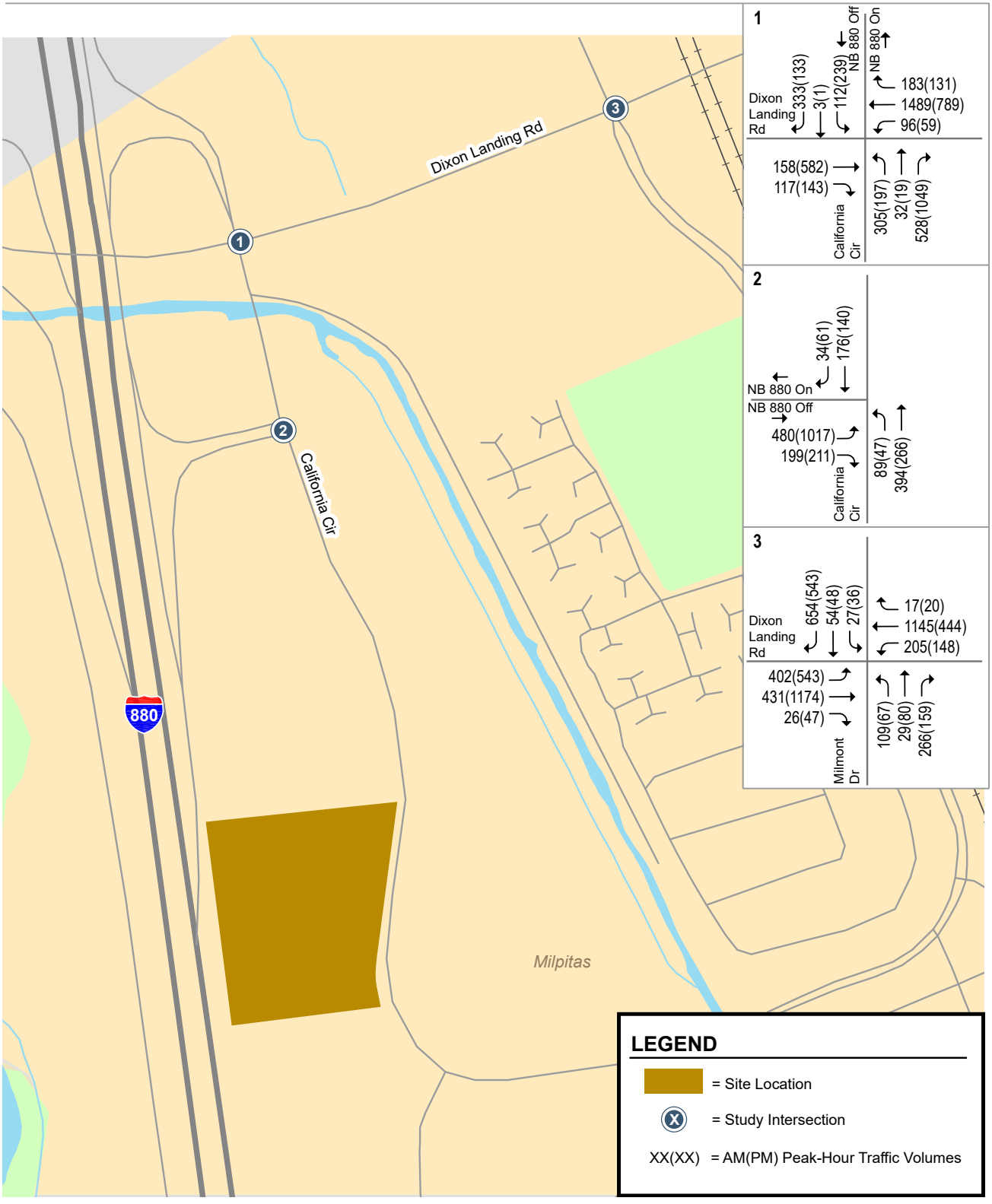

SOURCE: Hexagon, 2023

FIGURE **3.14-2**

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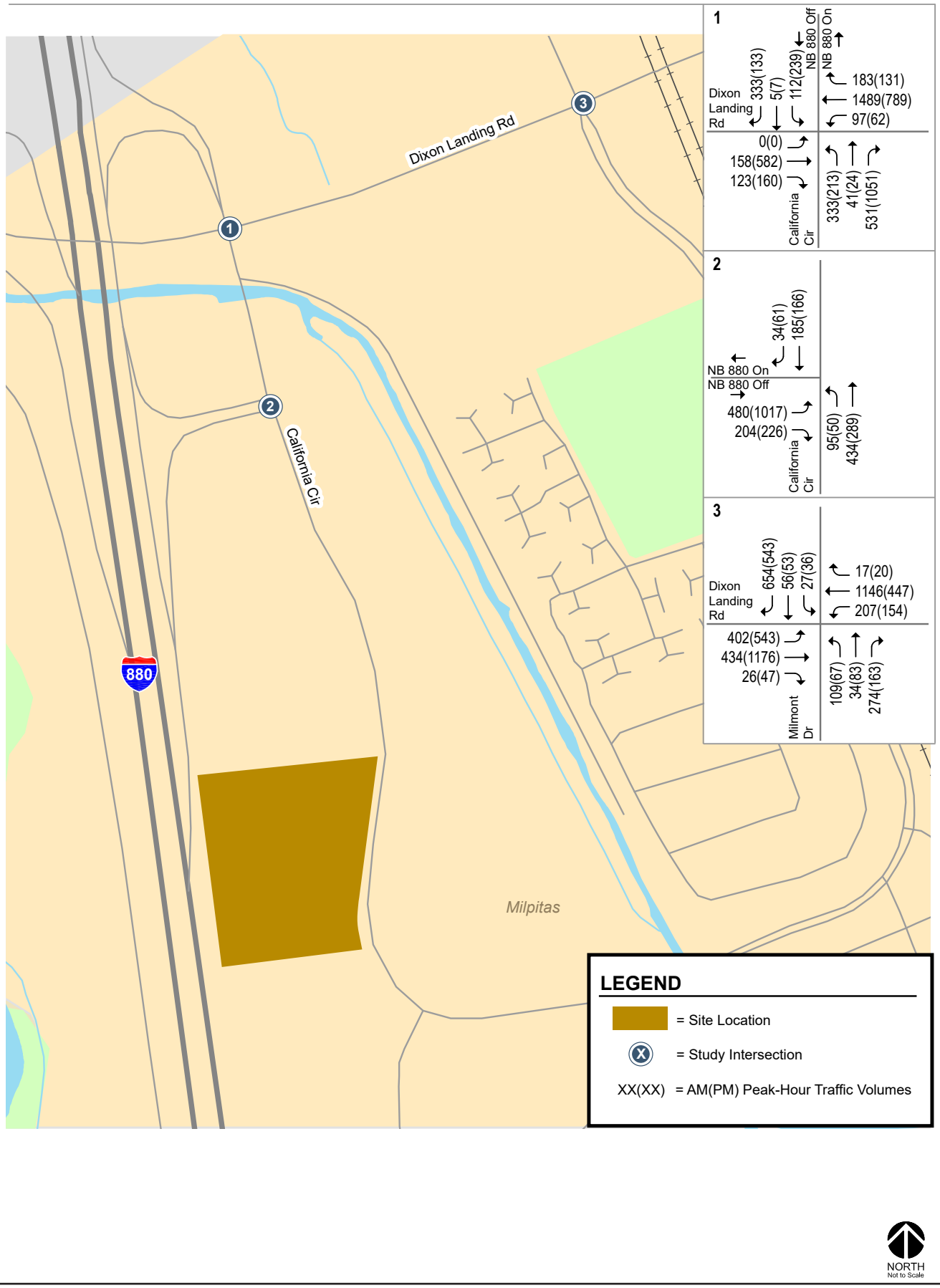
Existing Traffic Volumes



SOURCE: Hexagon, 2023

FIGURE **3.14-3**

Existing Plus Project Traffic Volumes

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3.14.1.2 Existing Bicycle, Pedestrian, and Transit Facilities

Bicycle Facilities

The City of Milpitas categorizes existing and planned bicycle facilities into the following four categories:[1]

- **Class I Multi-Use Path** – a completely separated right-of-way for the exclusive use of bicycles and pedestrians with cross flows of motorized traffic minimized;
- **Class II Bike Lane** – a striped and signed lane for one-way bike travel on a street or highway. Additionally, Class II Bike Lanes are occasionally designed to include a spatial buffer between motorists and cyclists. As such, buffered Class II Bike Lanes include striping to provide additional separation between the two travel modes;
- **Class III Bike Route** – signing only for shared use with motor vehicles within the same travel lane on a street or highway; and
- **Class IV Bikeway (Cycle Track)** – also known as a separated bikeway, a Class IV Bikeway is for the exclusive use of bicycles and includes a separation between the bikeway and the motor vehicle traffic lane. The separation may include, but is not limited to, grade separation, flexible posts, inflexible physical barriers, or on-street parking.

Classified bicycle facilities that are located within the immediate vicinity of the Project Site consist of a Class III bike route on Dixon Landing Road from McCarthy Boulevard to California Circle, Class II bicycle lanes on California Circle from Dixon Landing Road to Milmont Drive, Class II bike lanes on Milmont Drive from California Circle to Dixon Landing Road and a Class I paved shared use path along the Penitencia Creek Trail from California Circle to Calero Creek.

Pedestrian Facilities

Sidewalks are provided along almost all streets near the site including along California Circle at the frontage of the Project Site. All the signalized intersections within close proximity to the Project Site provide crosswalks, curb ramps, and pedestrian-actuated pedestrian-crossing phases on most approaches. There are no crosswalks across Dixon Landing Road at the intersection with California Circle.

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1 City of Milpitas. City of Milpitas Bicycle/Pedestrian & Trails Plan. Available online at: https://www.milpitas.gov/wp-content/uploads/2022/10/Milpitas_FinalPlan_20221017-Errata.pdf, accessed June 9, 2023.

Directly in front of the site, across California Circle, there is a pedestrian-actuated flashing beacon with a high-visibility textured crosswalk, raised median refuge, and ADA-standard ramps. A pedestrian-actuated, pedestrian-only traffic signal with the same features (except the crosswalk isn't textured) is located about 250 feet north of the northern border of the Project Site. These pedestrian crossings provide direct and easy access across California Circle.

Transit Services

The City is served by rail and bus public transit provided by the Valley Transportation Authority (VTA) and the Alameda-Contra Costa Transit District (AC). A brief discussion of the routes located within a one-mile distance are discussed below:

VTA Bus Transit System

The VTA provides approximately eight local bus routes, one transit bus route, and one express route within the City.[2] The only line that serves within a one-mile distance to the Project Site is Route 66, located approximately 0.58 miles west of the Project Site at the intersection between North Milpitas Boulevard and Washington Drive. Route 66 is a local route that connects Milpitas to Santa Teresa in San Jose. Route 66 operates daily with 10-20 minute headways Monday to Saturday during the day, 30-60 minute headways Monday to Saturday late evenings, 20-minute headways on Sunday during the day, and 45-60 minute headways Sunday evenings.[3] The closest bus stop occurs at the Milpitas Boulevard/Dixon Road interchange, located approximately 0.65 northeast of the Project Site.

AC Transit System

The AC Transit System provides regional public transit for the City of Milpitas and serves as a connection between Milpitas to Alameda County and Contra Costa County. The AC provides three bus routes within the City, and all three routes include bust stops that are located within a one-mile distance to the Project Site.

- **Route 217**. A local bus route that connects the Great Mall and the City of Milpitas to Fremont and the Fremont BART station, primarily along Mission Boulevard, Warm Springs Boulevard, and North Milpitas Boulevard. Route 217 operates daily, with 20–30-minute headways on weekdays and 30-

2 Valley Transportation Authority, "Routes." Available online at: https://www.vta.org/go/routes, accessed November 15, 2022.

3 City of Milpitas, *Draft General Plan Update Environmental Impact Report*. November 2, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed November 15, 2022.

minute headways on weekends.[4] The closest bus stop also occurs at the Milpitas Boulevard/Dixon Road interchange, located approximately 0.50 miles northeast of the Project Site.

- **Route 239**. A local bus route that connects the City of Milpitas to the Fremont BART station. The bus route occurs within the northern perimeter of the City's boundaries, along Dixon Landing Road and North Milpitas Boulevard. Route 239 operates Monday through Friday (except for holidays), with five-to-10-minute headways.[5] The closest bus stop occurs at the Milmont Drive/Dixon Landing interchange, approximately 0.0.50 miles northeast of the Project Site.

- **Route 623.** A service school bus route that provides transit services for students in Milpitas to Irvington High and School and Horner Junior High School in the City of Fremont.[6] Route 623 operates Monday through Friday (except for holidays) with a five-minute headway.[7] Similar to Bus Route 217, the closest bus stop occurs at the Milpitas Boulevard/Dixon Road interchange.

3.14.1.3 Citywide Existing Transportation Operations

Level of Service (LOS)

One way to understand existing traffic conditions in the City of Milpitas is to study existing traffic volumes with an analysis of the delay-based operating conditions, indicated through volume-to-capacity (V/C) ratios and Level of Service (LOS). LOS is a qualitative measure used to describe roadway operations for different user types, including vehicles, transit riders, bicyclists, and pedestrians. LOS is assigned letter grades ranging from "A" (free flow conditions) to "F" (severe congestion). The Transportation Analysis analyzed the potential traffic conditions at the signalized study intersections by utilizing LOS.

The City of Milpitas utilizes TRAFFIX software and the Highway Capacity Manual (HCM) methodology to evaluate intersection operations. The HCM methodology evaluates intersection operations on the basis of average delay time for all vehicles at the intersection. According to the Transportation

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4 City of Milpitas, *Draft General Plan Update Environmental Impact Report*, November 2, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf, accessed November 15, 2022.

5 Valley Transportation Authority, "Route 66 - 66 - North Milpitas - Kaiser San Jose." Available online at: https://www.vta.org/sites/default/files/route_schedule_pdfs/current/route_66/route_66_schedule.pdf, accessed November 15, 2022.

6 AC Transit, "Line 239: Grimmer - Warm Springs." Available online at: https://www.actransit.org/bus-lines-schedules/239, accessed November 15, 2022.

7 AC Transit, "Line 623." Available online at: https://www.actransit.org/sites/default/files/timetable_files/623-2022_08_07.pdf, accessed November 15, 2022.

Analysis, the minimum acceptable level of service in the City is LOS D. According to the City of Milpitas, significant project effects at signalized intersections occur when:

1. The level of service at an intersection drops below its LOS standard when project traffic is added; or

2. An intersection that is operating worse than its level of service standard under no project conditions has an increase in critical delay of four or more seconds AND the demand-to-capacity ratio (V/C) is increased by more than 0.01 when project traffic is added.

3.14.1.4 Existing Emergency Access

Existing emergency access to the Project Site is currently provided via two vehicle driveways that are located in the northeast and southeast corners of the Project Site.

3.14.2 REGULATORY FRAMEWORK

3.14.2.1 Federal Regulations

Federal Clean Air Act (CAA) Transportation Conformity

Congress passed the first major CAA (42 U.S. Code [USC] 7506(c)) in the 1970s which gave the U.S. EPA primary responsibility to regulate mobile and stationary sources of emissions and direct states to develop State Implementation Plans (SIPs) and required conformity determinations for areas designated nonattainment against the National Ambient Air Quality Standards (NAAQS), which included Santa Clara County. Conformity analysis and determination can be done at a regional level. The Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) work together as partner regional agencies to provide a regional transportation conformity analysis in the Plan to address all nonattainment areas within the six-county region. The regional conformity determination is updated every 4 years with the Regional Transportation Plan (RTP) and associated Federal Transportation Improvement Plan (FTIP) and is done as a part of the project-level conformity process for regionally significant projects as they occur. A hot spot analysis is provided to confirm that the project will not cause or worsen a localized violation of the standard for carbon monoxide (CO) or particulate matter (PM10 and/or PM2.5) in the existing nonattainment area. For more information, refer to **Section 3.2, Air Quality**.

Metropolitan Transportation Planning

The provisions of Title 23 USC Section 134 et seq. provides direct authority for metropolitan planning organizations (MPOs) such as the Metropolitan Transportation Commission (MTC) to act as a regional transportation planning organization with direct responsibility for carrying out the RTP. The Plan Bay

Area 2050 outlines a planned development scenario for the region, which, when integrated with the transportation network and other transportation measures and policies, would reduce GHG emissions from transportation (excluding goods movement) beyond the per capita reduction targets identified by the California Air Resources Board (CARB). The Plan serves as a limited and focused update to Plan Bay Area 2040. MPOs are required to use transportation and air emissions modeling techniques consistent with guidelines prepared by the California Transportation Commission (CTC). The Project's relationship to greenhouse gas emissions reductions is discussed in detail in **Section 3.7**, **Greenhouse Gases**, of this Environmental Impact Report.

Fixing America's Surface Transportation Act (FAST)

The Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94), enacted in 2015, builds on the changes to federal transportation planning law made by MAP-21.[8] It was the first long-term surface transportation authorization enacted in a decade that provides long-term funding certainty for surface transportation.[9] The FAST Act authorizes $305 billion over fiscal years 2016 through 2020 for highway improvements, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology, and statistics programs. The FAST Act maintains the focus on safety, keeps intact the established structure of the various highway-related programs, continues efforts to streamline project delivery, and provides a dedicated source of federal dollars for freight projects.

Under the FAST Act and its predecessors, MPOs such as MTC must prepare long-range transportation plans and update them every four years if they are in areas designated as "nonattainment" or "maintenance" for federal air quality standards. Per federal requirements, long-range transportation plans must:

- be developed through an open and inclusive process, that ensures public input; seeks out and considers the needs of those traditionally underserved by existing transportation systems;
- consults with resource agencies to ensure potential problems are discovered early in the planning process;

8 The Moving Ahead for Progress in the 21st Century Act (MAP-21) was enacted in 2012 (PL 112-141).

9 Federal Highway Administration. *Fixing America's Surface Transportation Act*. Available online at: https://www.fhwa.dot.gov/fastact/, accessed December 18, 2022.

- be developed for a period of not less than 20 years into the future; long-range transportation plans must reflect the most recent assumptions for population, travel, land use, congestion, employment and economic activity;
- have a financially-constrained element, transportation revenue assumptions must be reasonable, and the long range financial estimate must take into account construction-related inflation costs;
- include a description of the performance measures and performance targets used in assessing the performance of the transportation system;
- include a system performance report evaluating the condition and performance of the system with respect to performance targets adopted by the state that detail progress over time;
- include multiple scenarios for consideration and evaluation relative to the state performance targets as well as locally-developed measures;
- conform to the applicable federal air quality plan, called the State Implementation Plan, for ozone and other pollutants for which an area is not in attainment; and
- consider planning factors and strategies in the local context.

3.14.2.2 State and Regional

Senate Bill 743

Senate Bill 743 (SB 743) was enacted in 2013 and became effective in July 2014. It requires OPR and the Natural Resources Agency to amend the *State CEQA Guidelines* through developing criteria for determining the way transportation impacts are measured in California for new development projects, making sure they are built in a way that allows Californians more options to drive less (Pub. Res. Code § 21099(b).). Starting on July 1, 2020, agencies analyzing the transportation impacts of new projects must now look at a metric known as VMT instead of LOS. VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto our roads, the project may cause a significant transportation impact. This change is intended to help the State achieve climate commitments, preserve the environment, improve health and safety and boost the economy by prioritizing co-located jobs, services, and housing. It will also reduce the time spent in cars to get places and provide more choices for how people travel, which will help to promote business, provide access to opportunity, and improve the quality of life across California.

Senate Bill 375

Senate Bill 375 (SB 375) requires MPOs to prepare a SCS that demonstrates how the region will meet its greenhouse gas (GHG) reduction targets through integrated land use, housing and transportation planning. Specifically, the SCS must identify a transportation network that is integrated with the forecasted development pattern for the plan area and will reduce GHG emissions from automobiles and light trucks in accordance with targets set by CARB. The targets for MTC are a 7 percent reduction in per capita transportation by 2020 and 15 percent by 2035.[10]

California Vehicle Code

The California Vehicle Code (CVC) provides requirements for ensuring emergency vehicle access regardless of traffic conditions. Sections 21806(a)(1), 21806(a)(2), and 21806(c) define how motorists and pedestrians are required to yield the right-of-way to emergency vehicles.

3.14.2.3 Local and Regional

Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS)

The Metropolitan Transportation Commission (MTC) is an association of local governments and agencies that serves as an MPO, a Regional Transportation Planning Agency, and a Council of Governments. The MTC region encompasses nine counties (Santa Clara, San Francisco Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma) and 101 cities. MTC is responsible for developing long-range regional transportation plans, including the regional Sustainable Communities Strategy and associated growth forecasts, regional transportation improvement programs, regional housing needs allocations.

The ABAG and the Metropolitan Transportation Commission (MTC) prepared the Plan Bay Area 2050, a long-range regional transportation and land use network plan that looks ahead 20+ years and provides a vision of the region's future mobility and housing needs with economic, environmental and public health goals. Jointly adopted in October 2021, Plan Bay Area 2050 builds upon and expands land use and transportation strategies established over several planning cycles to increase mobility options and achieve a more sustainable growth pattern.

10 Plan Bay Area 2050. What are the greenhouse-gas reduction targets? Available online at: https://www.planbayarea.org/node/4901, accessed December 19,2022.

Santa Clara Valley Transportation Authority Congestion Management Plan

The Santa Clara Valley Transportation Authority (VTA) serves as the Congestion Management Agency (CMA) for the region. As the County's CMA, VTA is responsible for managing the County's blueprint to reduce congestion and improve air quality. VTA is authorized to set State and federal funding priorities for transportation improvements that affect the Santa Clara Congestion Management Plan (CMP) transportation system. Priority projects are also eligible for the RTP. The CMP roadway network in Santa Clara includes all State highways, County expressways, and some principal arterials and intersections, while the CMP transit network includes rail service and selected bus service.

City of Milpitas 2040 General Plan

The following goals and policies of the *City of Milpitas General Plan* are applicable to the 1355 California Circle project.

Goal CIR-1: Provide a transportation system that efficiently, Equitably and effectively supports the City's land use vision, minimizes vehicle miles traveled (VMT), enhances connectivity of the existing network, and supports the use of all modes of transportation.

Policy CIR 1-5: Encourage reduced block size in new developments to develop a grid or modified grid network to enhance walkability.

Goal CIR-2: Support and expand the City's efforts to promote economic, environmental and social sustainability through initiatives to reduce greenhouse gas emissions and other air pollutants, reduce runoff, promote public health, equity and engage the community in an inclusive planning process.

Policy CIR 6-7: Develop impact fees to provide revenues to be used to construct pedestrian and bicycle infrastructure that will support new development.

Policy CIR 6-9: Maximize efficient maintenance of transportation infrastructure of all modes, such as coordinating roadway paving or striping projects to include maintenance of pedestrian and bicycle infrastructure.

City of Milpitas Trail, Pedestrian, and Bicycle Master Plan

The *City of Milpitas Trail, Pedestrian, and Bicycle Master Plan* (dated June 2021) states that provides a vision and action plan for the city to improve safe and convenient travel by active modes in Milpitas.

Specifically, the plan seeks to: support connectivity and access to destinations, improve safety for all modes; and create an all ages and abilities active transportation network that supports all users, including vulnerable and historically disadvantaged populations; integrate active transportation networks with BART and other transit options; and increase access to recreational opportunities. The Plan also identifies the existing and proposed bicycle and pedestrian facilities within the City of Milpitas.

The *Milpitas Trail, Pedestrian and Bicycle Master Plan* identifies a number of planned pedestrian improvements within the Project Area. The plan identifies the following locations for Priority Pedestrian Spot Improvements: intersection crossing improvements at the intersection of Dixon Landing Road and California Circle; and unspecified spot improvements at the signalized intersections of Dixon Landing Road/Milmont Drive and California Circle/northbound 880 ramps. Spot improvements can, for example, include implementation of pedestrian countdown signals, leading pedestrian intervals, right turn restrictions, high visibility crosswalks, curb extensions, and median refuge islands, among others.

The plan also identifies a Pedestrian Gap Improvement (new sidewalks) on Dixon Landing Road between McCarthy Boulevard and Milmont Drive, and Priority Trail Improvements (Class I paved shared use paths) on Dixon Landing Road between N. McCarthy Boulevard and California Circle, and on the Penitencia Creek trail between California Circle and Milmont Drive. Priority Trail Spot Improvements include trailhead improvement at Penitencia Creek at Dixon Landing Park and Trail Access Improvements for the Penitencia Creek trail at Milmont Drive/California Circle.

Proposed trail network improvements also include adding a Class I paved shared use path on the south side of Dixon Landing Road between McCarthy Blvd and Penitencia Creek, and along the west side of the Penitencia Creek between Dixon Landing Road and south of California Circle/Milmont Drive.

3.14.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to transportation are contained in the environmental checklist form contained in Appendix G of the most recent update of the *CEQA Guidelines*. Implementation of the 1355 California Circle Project could result in significant impacts, if any of the following would occur:

- Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.
- Conflict or be inconsistent with *State CEQA Guidelines* section 15064.3, subdivision (b).

- Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).

- Result in inadequate emergency access.

3.14.4 METHODOLOGY

As discussed above, the Transportation Analysis analyzed the existing and future (with and without the Project) weekday peak hour traffic conditions at three signalized intersections on California Circle. This analysis assumed that the AM peak hour of traffic is typically between 7:00 AM and 9:00 AM and the PM peak hour is typically between 4:00 PM and 6:00 PM. It is during these periods that the most congested traffic conditions occur on an average weekday. Traffic conditions (i.e., LOS, V/C, VMT) were evaluated for the following scenarios:

- **Scenario 1**: Existing Conditions. Existing conditions are represented by existing peak hour traffic volumes on the existing roadway network. Existing traffic volumes were obtained from recent traffic counts conducted in October 2022.

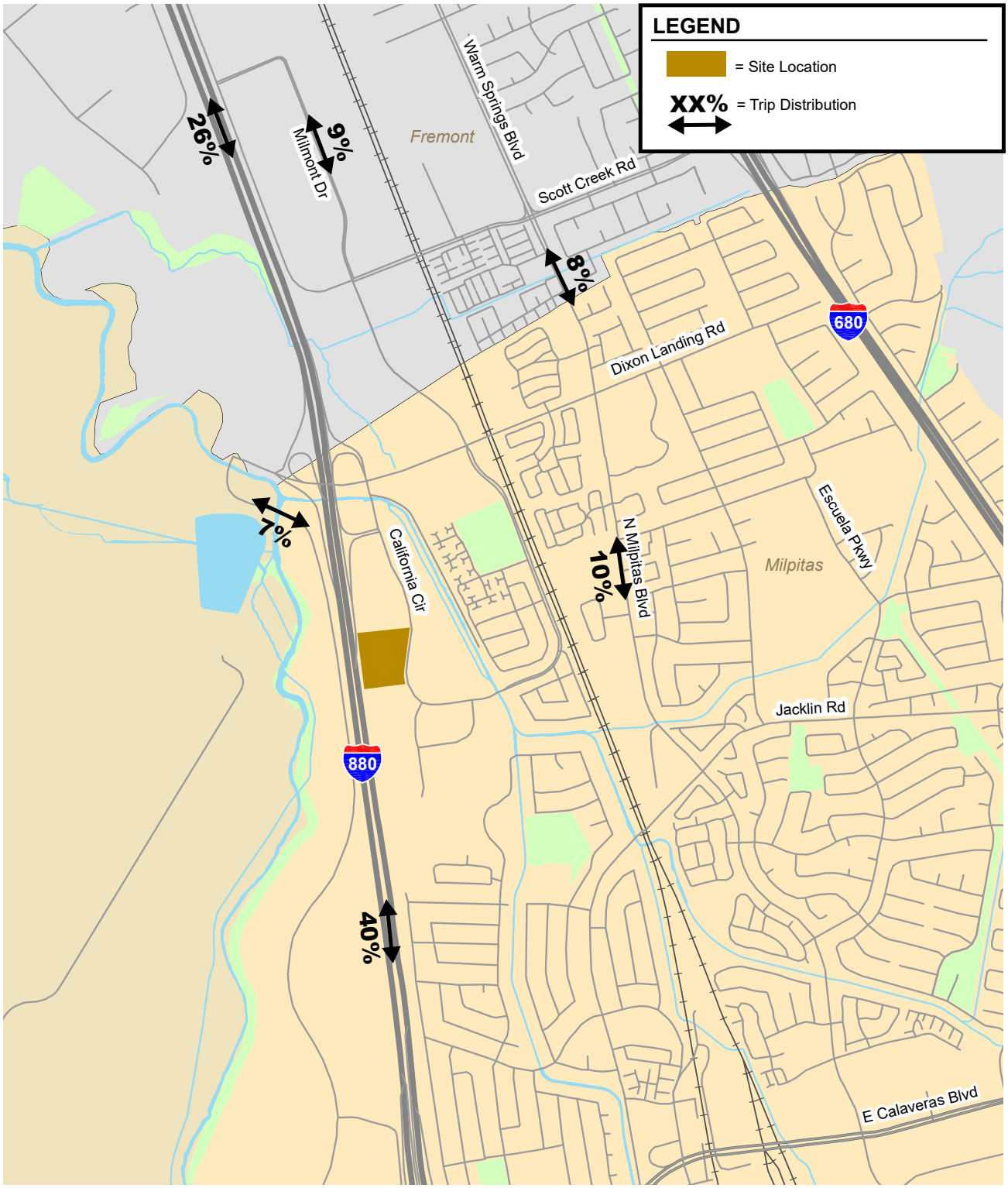
- **Scenario 2**: Existing Plus Project Conditions. Project traffic volumes were added to existing traffic volumes to estimate existing plus project traffic volumes. Existing plus project conditions were represented by existing plus project traffic on the existing network and evaluated relative to existing conditions in order to determine potential project effects.

Project Trip Estimates

According to the Transportation Analysis, the magnitude of traffic produced by a new development, and the locations where that traffic would appear, are typically estimated using a three-step process: (1) trip generation, (2) trip distribution (see **Figure 3.14-4, Project Trip Distribution**), and (3) trip assignment (see **Figure 3.14-5, Project Trip Assignment**). In determining project trip generation, the magnitude of traffic entering and exiting the site was estimated for the weekday AM and PM peak hours. As part of the Project trip distribution step, an estimate was made of the directions to and from which the project trips would travel. In the project trip assignment step, the project trips were assigned to specific streets and intersections in the study area.

Through empirical research, data have been collected that correlate common land uses to their propensity for producing traffic. Thus, for the most common land uses there are standard trip generation rates that can be applied to help predict the future traffic increases that would result from a new development. Project trip generation was estimated by applying to the size and uses of the development the

appropriate trip generation rates published by the Institute of Transportation Engineers (ITE) in *Trip Generation*, *11th Edition*. Based on ITE's trip generation rates, the project would generate 1,012 daily vehicle trips, with 77 trips occurring during the AM peak hour and 85 trips occurring during the PM peak hour. The project trip generation is shown in **Table 3.14-1**, **Project Trip Generation Estimates**.



SOURCE: Hexagon, 2023

FIGURE **3.14-4**

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Project Trip Distribution

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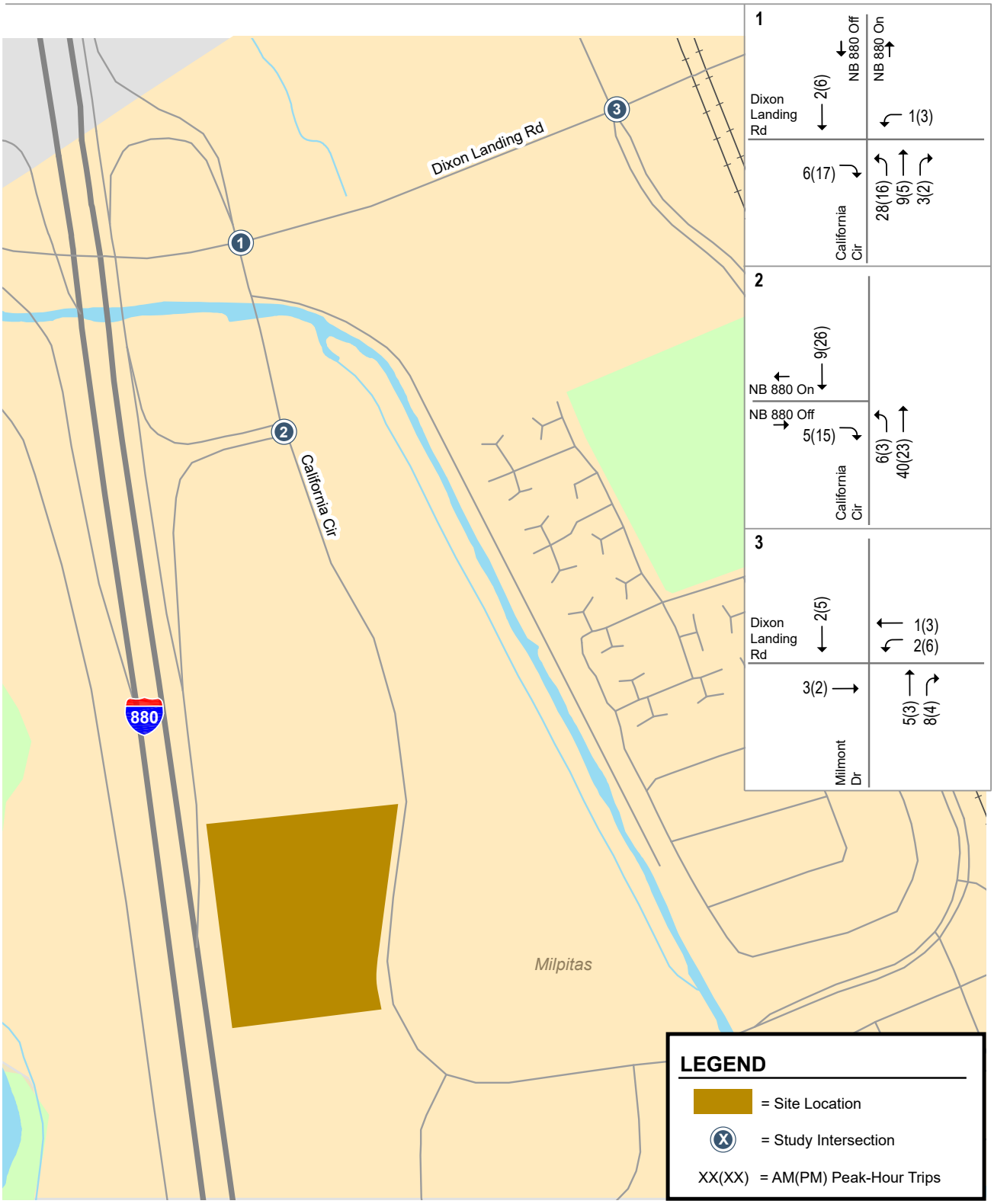

SOURCE: Hexagon, 2023

FIGURE **3.14-5**

Project Trip Assignment

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Table 3.14-1
Project Trip Generation Estimates

Land Use	Size	Daily Rate	Daily Trips	Rate (AM Peak Hour)	In (AM Peak Hour)	Out (AM Peak Hour)	Total (AM Peak Hour)	Rate (PM Peak Hour)	In (PM Peak Hour)	Out (PM Peak Hour)	Total (PM Peak Hour)
Proposed Use[1] (Multi Family Housing [Mid-Rise])	171 du[3]	4.54	776	0.37	15	48	63	0.39	41	26	67
Proposed Use[2] (Multi Family Housing [Low-Rise])	35 du	6.74	236	0.37	3	11	14	0.51	11	7	18
Total	**206 du**	**N/A**	**1,012**		**18**	**59**	**77**		**52**	**33**	**85**

Notes:

1. Trip generation based on average rates in the ITE Trip Generation Manual, 11th Edition, for Multifamily Housing (Mid-Rise, not near rail transit) (LU Code 221).
2. Trip generation based on average rates in the ITE Trip Generation Manual, 11th Edition, for Multifamily Housing (Low-Rise, not near rail transit) (LU Code 220).
3. du= dwelling unit.

Source: Hexagon Consultants, Transportation Analysis for the 1355 California Circle Residential Development, December 2022.

According to the project trip distribution pattern, shown in **Figure 3.14-4**, was estimated in consultation with City staff, based on the surrounding land uses and locations of major employment centers in the area. The project trips were assigned to the roadway network in accordance with the trip distribution. The project trip assignment is shown in **Figure 3.14-5.**

VMT Methodology

CEQA Guidelines Section 15064.3(b) provides considerations for evaluating a project's transportation impacts. Land Use Projects (b)(1) are evaluated through VMT. Generally, projects within one-half miles of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact.[11] Projects that decrease VMT in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.

11 California Office of Planning and Research. *Technical Advisory on Evaluating Transportation Impacts in CEQA*. 2018. Available online at: https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

On May 18, 2021, the City of Milpitas adopted a local transportation policy VMT to comply with State law and provide established and consistent criteria for analyzing transportation impacts of development projects and long-range plans. The transportation policy is intended for evaluating potential transportation impacts of new developments to comply with the California Environmental Quality Act (CEQA). The City has established thresholds of significance for residential Projects that are in accordance with the Office of Planning and Research (OPR). According to the *City of Milpitas Transportation Analysis* (dated March 2022), shall be presumed to have a less-than-significant transportation impact of they meet any of the following screening criteria:

- Small Project Screening: Projects generating 110 daily trips or less. Examples: Single-family residential development of 12 units or fewer, multi-family residential development of 20 units or fewer, and office developments of 10,000 square feet or less.

- Retail projects that are local serving defined as 100ksf or less;

- Local serving public projects such as fire stations, neighborhood parks, libraries, and community centers;

- Transit Supportive Project transit screening: All land-use projects located within one half mile of a major transit stop, or a stop along a high-quality transit corridor, pursuant to State definitions for such facilities and meet the following criteria;

  - For Office/R&D projects, a minimum floor area ratio of 0.75

  - For Residential projects, a minimum density of 35 units/acre (40 units/acre in the Serra Center and 50 units/acre in the Milpitas Metro Specific Plan area);

  - No excess parking: the project does not include more parking for use by residents, customers, or employees of the project than required by the City Code;

  - No loss of affordable dwelling units: the project does not replace affordable residential units with a smaller number of affordable units, and any replacement units are at the same level of affordability; and

- Affordable Housing Screening: Projects with restricted affordable housing, as described as the following:

  - For 100% Affordable developments: Rental developments with all units at or below 80% Area Median Income or Ownership with all units at or below 100% Area Median Income; and

- For mixed-income rental developments: A 10% minimum of the total residential units must be affordable to households with income at or below 80% Area Median Income. An additional 10% minimum of the total residential units must be affordable to households with income at or below 50% Area Median Income.

Additionally, the *Transportation Analysis Policy* establishes: the following guidelines:

- The Santa Clara County Areawide reference average VMT baseline and a 15% threshold of significance for both residential and office projects.
- Retail projects which result in a net increase in total VMT is a significant VMT impact; however, retail projects determined by the City to be local serving are exempt from VMT analysis. In all cases, retail projects larger than 100,000 square feet may be considered regional-serving and would be subject to the retail threshold of significance.
- Mixed-Use and all other Project Types: Each land use within a mixed-use project, and all other project types, shall be evaluated independently by applying the most appropriate threshold of significance to each land use type being proposed.

3.14.5 ENVIRONMENTAL IMPACTS

Impact TRA-1 Would the Project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?

Transit

The VTA and the AC provide transit services for the City of Milpitas and in the immediate vicinity of the Project Site. As discussed above, the closest VTA bus stop to the Project Site is Route 66, located approximately 0.58 miles west of the Project Site. The closest bus stop for three AC bus routes (Routes 217, 239, 623) to the Project Site are located northeast at the Milmont Drive/Dixon Landing interchange. According to the Transportation Analysis, there are no planned expansions of any transit services within the study area. The Transportation Analysis concludes that Project implementation would not preclude, modify, or otherwise affect existing or proposed transit projects or policies identified by the VTA, nor is it expected to materially increase delay in transit service. Thus, the Project would not result in any significant impacts to existing transit facilities.

Bicycle Facilities

As stated, California Circle (from Dixon Landing Road to Milmont Drive) along the Project frontage is classified by the City as a Class II bicycle lane.

Project operations are not anticipated to significantly impact the existing bicycle facilities within the Project area. Rather, the Project would introduce new bicycle facilities within the Project Site, including bike racks. Construction activities associated with the Project would require the demolition and reconstruction of the existing driveways within the eastern perimeter of the Project Site. These activities, such as demolition, minor excavation, and grading, may require temporary partial lane closure within the California Circle right-of-way, resulting in partial lane closures for bicyclists. Accordingly, **Mitigation Measure MM TRA-1** would require the Project Applicant to implement a Traffic Management Plan (TMP) to maintain vehicular and bicycle traffic circulation along California Circle and to the Project Site emergency access during construction activities. The TMP would include information detailing proposed signage, lane closures, flag persons, etc., and require that bicycle lanes, pedestrian sidewalks, and bus stops remain open and accessible, to the great extent feasible, during construction or be re-routed to ensure continued connectivity. With the implementation of **Mitigation Measure MM TRA-1**, the Project would not conflict with existing bicycle facilities, and impacts would be less than significant.

Pedestrian Facilities

As stated, sidewalks are provided along almost all streets near the Project Site, including the frontage of the Project Site on California Circle. Project operations are not anticipated to significantly impact the existing pedestrian facilities within the study area. Rather, the Project would introduce new pedestrian facilities within the Project Site, such as new walkways, crossings, and sidewalks on-site (see **Section 2.0**, **Project Description**). As discussed above, construction activities associated with the Project would involve the demolition and reconstruction of the existing driveways along the Project frontage. These activities would result in the temporary closure of the existing sidewalks located along the frontage. However, this sidewalk closure would cease either upon or prior to the completion of the Project associated construction activities. Additionally, under **Mitigation Measure MM TRA-1**, the implementation of a Traffic Management Plan (TMP) would provide detailed instructions related to alternative routes and its associated signage for pedestrians during this temporary period of sidewalk closure. With the implementation of **Mitigation Measure MM TRA-1**, the Project would not conflict with existing pedestrian facilities, and impacts would be less than significant.

Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

MM TRA-1 Prior to project construction initiation, the respective Applicants shall prepare a Traffic Management Plan (TMP) for approval by the City Traffic Engineer. The TMP shall specify that one direction of travel in each direction on adjacent roadways must always be maintained during project construction activities. If full lane closures are required and one direction of travel in each direction cannot be maintained, the TMP shall identify planned detours. The TMP shall include measures such as construction signage, limitations on timing for lane closures to avoid peak hours, temporary striping plans, and use of construction flag person(s) to direct traffic during heavy equipment use. The TMP shall include signage, lane closures, flag persons, etc., and shall specify that one lane of travel in each direction shall be maintained along City rights-of-way. Bicycle lanes and pedestrian sidewalks shall remain open and accessible, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity. Lastly the TMP shall detail plans that the Applicant would take to ensure that the Project Site would provide adequate emergency access. The TMP shall be incorporated into project specifications for verification prior to final plan approval.

Significance After Mitigation

Less than significant impact.

Impact TRA-2 Would the Project conflict or be inconsistent with *CEQA Guidelines* section 15064.3(b)?

As discussed in the City of Milpitas *Transportation Analysis Policy* the Santa Clara Countywide Average VMT is the environmental baseline for land development projects. However, the Project would replace a vacant existing use on site, and although the City's VMT policy does not directly address how redevelopment projects are to be treated, OPR does. OPR's guidance is as follows: *"Where a project replaces existing VMT-generating land uses, if the replacement leads to a net overall decrease in VMT, the project would lead to a less-than-significant transportation impact."*

The Transportation Analysis includes a detailed VMT analysis for the Project. The VMT analysis employed the State method for redevelopment projects, which determines VMT impacts based on a comparison of the Project total VMT to the total VMT for the existing use. This analysis determined the total VMT for the existing and proposed uses of the Project Site under 2022 and 2040 scenarios, using the Santa Clara County VMT Tool (see **Table 3.14-2**, **Existing and Proposed Uses-VMT Comparison**). As

shown in **Table 3.14-2**, for both years 2022 and 2040, the Project would yield a VMT lower than the VMT of the existing use. Therefore, the Project would result in a less-than-significant impact.

Table 3.14-2
Baseline VMT Per Service Population

Land Use	Size	Daily Rate	Daily Trips	Average Trip Length (2022)	Total VMT (2022)	Average Trip Length (2040)	Total VMT (2040)
Proposed Use (Multi Family Housing [Mid-Rise])	171 du	4.54	776	18.40	14,285	17.98	13,959
Proposed Use (Multi Family Housing [Low-Rise])	35 du	6.74	236	18.40	4,341	17.98	4,241
Total	**206 du**	**N/A**	**1,012**	**N/A**	**18,625**	**N/A**	**18,200**
Existing Use (R&D)	90,000 sf	11.08	-997	20.01	-19,954	20.81	-20,752
	Net New:		15		-1,329		-2,552

Source: Hexagon Consultants, Transportation Analysis for the 1355 California Circle Residential Development, December 2022.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

Impact TRA-3 Would the Project substantially increase hazards due to geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Circulation

Townhomes

Vehicle circulation for the proposed townhome community on-site would be provided by a series of private streets that travel in north-south and east-west directions (see **Figure2.0-3**, **Conceptual Site Plan**). These private streets connect with each other and form a l rectangular loop surrounding the outdoor recreational area between townhome buildings 4, 5, and 6. The on-site private streets also form three east-west private cul-de-sacs that extend westward to the border of the Project Site.

Several of the on-site private streets have dead ends of length 50 feet or less, with some having ninety-degree visitor parking. According to the Transportation Analysis, these dead ends would not provide turnaround space for vehicles that could enter but not park. However, the lack of turnaround space would not be considered a substantially adverse hazard since the dead ends are short enough that, if there is no available parking, drivers would know to not enter. In addition to the light-duty vehicles that residents and visitors would likely use, the proposed private streets on-site would accommodate emergency vehicles and local trash haulers. As shown in **Figure 2.0-6, Fire Department Access Plan**, fire trucks owned by the Milpitas Fire Department would be able to adequately circulate the entire townhome community in the event of an emergency. Additionally, two trash bins per lot would be provided throughout the townhome site. The driveway width of the proposed private streets would be 25 feet and would be capable of providing adequate on-site circulation for standard Milpitas refuse trucks. Project site plans and fire truck access plans would be subject to review and approval from the City and the Milpitas Fire Department. Upon approval of these plans, the proposed townhome community would provide adequate vehicle circulation that would not increase safety hazards. Impacts would be less than significant.

Apartment Complex

Vehicular circulation within the apartment complex consists of a half loop in the proposed parking garage with a dead end on the first floor. The Transportation Analysis determined that this on-site-circulation would be adequate for resident and visitor vehicles to circulate safely. Further, the parking spaces at the dead end are shown to be set back from the wall by at least seven feet, thereby providing sufficient room for vehicles to maneuver out of the end spaces. As shown in **Figure 2.0-5**, **Apartment Site Plan**, the internal vehicle pathway for the apartment complex would be approximately 25 to 27 feet wide. In addition, the apartment building trash pickup shall be provided on the for-sale townhome site.

Therefore, the pathway would be capable of providing adequate on-site circulation for standard Milpitas refuse trucks. As stated above, site plan and fire truck access plan would be subject to review by the City and Milpitas Fire Department. Upon approval of these plans, the proposed apartment complex would provide adequate vehicle circulation that would not increase safety hazards. Impacts would be less than significant.

Vehicle Queue Analysis and Site Distance

A vehicle queueing analysis for the Project Site was conducted as part of the Transportation Analysis. The queueing analysis specifically analyzes the vehicular queuing for the northbound and westbound left-turn movements at the intersection of California Circle/Dixon Landing Road, and for the northbound left-turn movement at the intersection of California Circle/northbound I-880 ramps under existing conditions and existing plus Project conditions. **Table 3.14-3**, **Project Vehicle Queueing**, shows the results of the vehicle queueing analysis under the AM and PM peak hours.

Table 3.14-3
Project Vehicle Queueing

Measurement	California Circle and Dixon Landing Road NB Left-Turn	California Circle and Dixon Landing Road WB Left-Turn	California Circle and NB I-880 Ramps NB Left-Turn
Existing			
AM Peak Hour			
Cycle/Delay (sec)[1]	90	90	55
Volume (vph)	305	96	89
Average Queue (veh)	7.6	2.4	1.4
Average Queue (ft.)[2]	191	60	34
95th Percent Queue (veh)	12	5	3
95th Percent Queue (ft.)	300	125	75
Storage	700	380	200
PM Peak Hour			
Cycle/Delay (sec) [1]	90	90	55
Volume (vph)	197	59	47
Average Queue (veh)	4.9	1.5	0.7
Average Queue (ft.) [2]	123	37	18
95th Percent Queue (veh)	12	5	3
95th Percent Queue (ft.)	300	125	75
Storage	700	380	200
Existing + Project			
AM Peak Hour			

Measurement	California Circle and Dixon Landing Road NB Left-Turn	California Circle and Dixon Landing Road WB Left-Turn	California Circle and NB I-880 Ramps NB Left-Turn
Cycle/Delay (sec)[1]	90	90	55
Volume (vph)	333	97	95
Average Queue (veh)	8.3	2.4	1.5
Average Queue (ft.)[2]	208	61	36
95th Percent Queue (veh)	13	5	4
95th Percent Queue (ft.)	325	125	100
Storage	700	380	200
PM Peak Hour			
Cycle/Delay (sec)[1]	90	90	55
Volume (vph)	213	62	50
Average Queue (veh)	5.3	1.6	0.8
Average Queue (ft.)[2]	133	39	19
95th Percent. Queue (veh)	9	4	2
95th Percent Queue (ft.)[2]	225	100	50
Storage	700	380	200

Notes:

NB=northbound WB=westbound sec=second, vph= vehicles per hour, veh=vehicle, ft=feet

1. *Vehicle queue calculations are based on approach delay for unsignalized intersections and cycle length for signalized intersections.*
2. *Assumes 25 feet per vehicle queued.*
3. *Storage distance based on distance from stop bar back to the driveway to the office and retail.*

Source: Hexagon Consultants, Transportation Analysis for the 1355 California Circle Residential Development, December 2022.

As shown in **Table 3.14-3**, there currently is and would be adequate vehicle storage to accommodate the expected maximum vehicle queues at both intersections at California Circle.

Site Access

Townhomes

As discussed in **Section 2.0**, **Project Description**, vehicular access to the proposed townhomes would be provided via two driveways; the existing driveway on the southeastern end of the Project Site, along California Circle, would be maintained and the existing northeastern driveway will be moved south towards the middle of the Project Site. The northeastern driveway would serve as the primary vehicle access for residents, guests, and emergency access. Bicycle and pedestrian access would be provided along the southeastern perimeter and into the proposed development. Both driveways would function as full-access, side-street-stop-controlled T-intersections and can accommodate one inbound and one outbound lane.

Relocation of the 26 feet wide northeastern driveway would be consistent with the Transportation Analysis' recommendations, and left turns from the driveway onto northbound California Circle would be safe and feasible. Additionally, the Project would maintain the landscaping near the Project driveways such that it does not obstruct the line of sight to California Circle. The sight distance for vehicles entering and exiting the Project Site from both driveways were determined by the Transportation Analysis to be adequate. According to the Transportation Analysis, the onsite vehicle storage for outbound vehicles at the northeastern driveway was measured to be 70 feet. At this length, the Transportation Analysis determined that the vehicle storage would safely accommodate the estimated 95th-percentile maximum vehicle queue of 25 feet. Nonetheless, the City would review both proposed access points as part of the site plan review process to confirm compliance with all applicable safety standards and considerations concerning the proposed access configurations. Additionally, the Project would comply with all site access requirements imposed by the City and the Milpitas Fire Department (MFD) to ensure that inadequate design features or incompatible uses, for the purpose of emergency access, do not occur.

Apartment Complex

Vehicular access to the proposed apartment complex would be provided via one new driveway located on the northeastern corner of the Project Site, along California Circle. Similar to the proposed townhomes, the driveway would serve as access points for residents, guests and emergency service vehicles. Like the townhome's driveways, this driveway would function as a full-access, side-street-stop-controlled T-intersection. The driveway width can accommodate one inbound and one outbound lane.

The new 26-foot-wide driveway would have a throat depth of approximately 25 feet from the California Circle curb facing the first parking space on the north side of the parking lot. Similar to the two driveways discussed above, the driveway for the apartment complex would be reviewed by the City to ensure compliance with all applicable safety standards and considerations concerning the proposed access configuration. The driveway would also be required to comply with all site access requirements imposed by the City and the Milpitas Fire Department (MFD) for multi-family residences. Adherence to City requirements and the approval of Project site plans would ensure that the proposed apartment complex would not have inadequate design features or incompatible uses, for the purpose of emergency access.

As such, the Project would not introduce incompatible uses to the area roadways and intersections, and impacts would be less than significant.

Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Significance After Mitigation

Less than Significant Impact.

Impact TRA-4 Would the Project result in inadequate emergency access?

Construction Activities

Project construction activities would not result in inadequate emergency access during construction. However, short term construction activities may result in temporary lane closures along California Circle. As discussed above, implementation of **Mitigation Measure MM-TRA-1** would require the Project Applicant to implement a Traffic Management Plan (TMP) to maintain emergency access during the construction process and minimize congestion. Additionally, The Project would not implement any off-site roadway network changes and therefore would not adversely affect emergency vehicle circulation on surrounding roadways. Thus, impacts concerning emergency access would be reduced to less than significant levels with mitigation incorporated.

Operational Activities

As discussed above, the proposed on-site vehicle circulation would be sufficient for emergency vehicles to access and utilize safely. Additionally, the proposed driveways for the townhome community and the apartment complex would provide adequate access for emergency vehicles to enter. Therefore, Project operations would not result in inadequate emergency access.

Significance Before Mitigation

Potentially Significant Impact.

Mitigation Measures

Refer to **Mitigation Measure MM TRA-1.**

Significance After Mitigation

Less than significant impact

3.14.6 CUMULATIVE IMPACTS

Cumulative development of the Project and other proximal projects must identify its cumulative transportation and traffic impacts consider regional population, housing, and employment growth projections prepared by MTC as well as growth anticipated in the City and Santa Clara County. Cumulative development Projects would be required to be reviewed by their respective cities, as well as the VTA, MTC, and Caltrans, as applicable. As such, each jurisdiction would ensure that future development, on a project-by-project basis, would comply with State and local municipal code requirements pertaining to the circulation system, including transit, roadway, bicycle, and pedestrian facilities. Each cumulative development of the Project would be subject to site plan and fire truck access review by their respective cities and fire department for project approval. Each cumulative development of the Project would also be required to determine the project's generated VMT in order to compare to the City's average and total VMT. When using an absolute VMT metric, i.e., total VMT, analyzing the combined impacts for a cumulative impact analysis may be appropriate. A project that falls below the threshold that is aligned with long-term goals and relevant plans has no cumulative impact distinct from the project impact. Accordingly, a less than significant project impact would imply a less than significant cumulative impact, and vice versa. As stated above, the Project would result in less than significant impacts upon implementation of **Mitigation Measure TRA-1**, which would require the Project Applicant to implement a TMP to ensure continued bicycle and pedestrian circulation during the construction activities. Planned development projects that are adjacent to Class II Bicycle Lanes would also be required to implement this mitigation measure to reduce potential impacts to existing bicycle circulation. With the implementation of **Mitigation Measure TRA-1**, cumulative impacts would be less than significant.

Mitigation Measures

Refer to **Mitigation Measure MM TRA-1.**

3.14.7 REFERENCES

California Office of Planning and Research. *Technical Advisory on Evaluating Transportation Impacts in CEQA*. 2018. Available online at: https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf, accessed July 7, 2022.

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Hexagon Transportation Consultants Inc. Transportation Analysis for the 1355 California Circle Residential Development. December 1, 2022.

Plan Bay Area 2050. What are the greenhouse-gas reduction targets? Available online at: https://www.planbayarea.org/node/4901, accessed December 19,2022.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) was enacted in 2012 (PL 112-141).

3.15 UTILITIES AND SERVICE SYSTEMS

INTRODUCTION

This section analyzes the environmental effects related to utilities and service systems associated with construction and operation of the Project. It discusses water and wastewater infrastructure as well as solid waste facilities. Issues related to water quality, drainage and infiltration patterns, and flood hazards are discussed in ***Section 3.9, Hydrology and Water Quality****.*

3.15.1 ENVIRONMENTAL SETTING

3.15.1.1 Water Supply

The City of Milpitas water supply comes from two suppliers, the San Francisco Public Utilities Commission (SFPUC) and Valley Water (formerly Santa Clara Valley Water District). Water from the SFPUC is primarily from the Hetch Hetchy watershed located in the Sierra Nevada mountains. Water from Valley Water is primarily from the Sacramento-San Joaquin Delta watershed via the South Bay Aqueduct, Dyer Reservoir, Lake Del Valle and San Luis reservoir.[1]

The City purchases potable water from the SFPUC Regional Water System (RWS). The SFPUC RWS supply is predominantly comprised of snowmelt from the Sierra Nevada, delivered through the Hetch Hetchy aqueducts, but also includes treated water produced by the SFPUC from its local watersheds and facilities in Alameda and San Mateo counties. On June 2, 2009, the City entered into a 25-year Water Supply Agreement with SFPUC. The agreement affirms the City's perpetual right to purchase up to 9.23 million gallons per day (mgd) of treated potable water unless SFPUC has a water shortage.[2]

Valley Water provides treated water from its Penitencia and Santa Teresa treatment plant via its Milpitas Pipeline which terminates in the City. Although the City's purchases are currently limited to surface water largely purchased by Valley Water from the State Water Project and Central Valley Project, Valley Water's overall water supply comes from a variety of sources. Nearly half is from local groundwater aquifers, and more than half is imported from the Sierra Nevada through pumping stations in the Sacramento-San Joaquin River Delta. Both groundwater and imported water are sold to retailers. Valley Water also manages the groundwater basin to the benefit of agricultural users and other independent users who pump groundwater. Local runoff is captured in Valley Water reservoirs for recharge into the

1 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

2 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

groundwater basin or treatment at one of Valley Water's water treatment plants. The total storage capacity of these reservoirs is about 170,000 acre-feet (AF).[3]

Table 3.15-1, City of Milpitas Normal Year Water Demand and Supply, shows the projected water demand and supplies for the City through 2045. **Table 3.15-2, City of Milpitas Water Demand and Supply During Single Dry and Multiple Dry Years,** shows the projected available supplies during various drought conditions.

Table 3.15-1
City of Milpitas Normal Year Water Demand and Supply (Acre-Feet)

	2025	2030	2035	2040	2045
San Francisco Public Utilities Commission	2,410	2,470	2,570	2,660	2,750
Valley Water	1,445	1,505	1,536	1,586	1,637
Recycled Water	400	400	400	400	400
Active Conservation	70	100	120	130	130
Reasonably Available Supply (AFY)	**4,325**	**4,475**	**4,626**	**4,776**	**4,917**
Demand (AFY)	**4,325**	**4,475**	**4,626**	**4,776**	**4,917**

AFY= Acre-feet per year
Source: City of Milpitas. 2021. 2020 Urban Water Management Plan. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 14, 2022.

3 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

Table 3.15-2
City of Milpitas Demand and Supply During Single Dry and Multiple Dry Years (Acre-Feet)

	2025	2030	2035	2040	2045
Single Dry Year					
Water Supply (AFY)	3,460	4,475	4,626	4,776	4,917
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-865	0	0	0	0
Multiple-dry year first year supply					
Water Supply (AFY)	3,450	4,475	4,626	4,776	4,917
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-875	0	0	0	0
Multiple-dry year second year supply					
Water Supply (AFY)	3,230	4,475	4,626	4,776	4,917
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-1,095	0	0	0	0
Multiple-dry year third year supply					
Water Supply (AFY)	2,940	4,370	4,626	4,776	4,917
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-1,385	-105	0	0	0
Multiple-dry year fourth year supply					
Water Supply (AFY)	2,940	4,370	4,626	4,776	4,870
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-1,385	-105	0	0	-47
Multiple-dry year fifth year supply					
Water Supply (AFY)	2,940	4,370	4,626	4,776	4,870
Water Demand (AFY)	4,325	4,475	4,626	4,776	4,917
Difference (AFY)	-1,385	-105	0	0	-47

AFY= Acre-feet per year
Source: City of Milpitas. 2021. 2020 Urban Water Management Plan. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 14, 2022.

Table 3.15-1 and **Table 3.15-2** show that there is insufficient supply to cover future demands in the City of Milpitas under various drought conditions. The City of Milpitas's 2020 Urban Water Management Plan (UWMP) includes a Water Shortage Contingency Plan (WSCP) to plan for a greater than 50% shortage. The WSCP serves as the operating manual that the City will use to prevent catastrophic service disruptions through proactive, rather than reactive, mitigation of water shortages. The WSCP contains documented processes and procedures, which are given legal authority through the Water Shortage Contingency Response Ordinance. This way, when shortage conditions arise, the City's governing body,

its staff, and the public can easily identify and efficiently implement pre-determined steps to mitigate a water shortage to the level appropriate for the degree of water shortfall anticipated.[4]

3.15.1.2 Wastewater

The City of Milpitas comprises 13 square miles of residential, commercial, industrial, agricultural, and recreational land uses. The City's sewer utility is a self-supporting enterprise. Revenues derived from sewer rates and other sources, including reserves, are sufficient to cover all operating and capital expenditures each year. The City's rate structure requires each customer to pay sewer rates in proportion to the cost of service received. Milpitas customer rates are allocated based on estimated wastewater flows and strengths. The sewer enterprise maintains four separate funds including the Sewer, Sewer Capital Improvement, Treatment Plant Construction, and Sewer Infrastructure Funds. Each of these funds is treated as a separate accounting entity. The City aims to balance its budgets each year. Fund reserves generated in surplus years are typically used to make up any revenue shortfalls in deficit years.

Currently, all wastewater collected from the City is treated at the San Jose-Santa Clara Regional Wastewater Facility (RWF), which has a wastewater treatment capacity of 167 million gallons per day (mgd). Current flows to the plant are approximately 110 mgd. The RWF receives and treats wastewater from a total of eight municipalities in the South Bay, including San Jose, Saratoga, Campbell, Los Gatos, Monte Sereno, Santa Clara, Milpitas, and Cupertino. The RWF's treatment capacity is allocated to each tributary agency on the basis of the peak five-day dry weather flow, also referred to as the peak week flow. The City currently has a contract for 12.5 mgd with RWF. The City recently purchased an additional 1.0 mgd of capacity at the plant from West Valley Sanitation District and 0.75 mgd of capacity from Cupertino Sanitary District to bring the City's total contracted peak flow capacity at the plant to 14.25 mgd.[5]

3.15.1.3 Solid Waste

The City of Milpitas has a franchise agreement for solid waste services with Republic Services (formerly Allied Waste). Waste from the City is hauled to the Newby Island solid waste disposal facility, which is located within Milpitas.

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4 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf, Accessed November 11, 2022.

5 City of Milpitas. 2021. 2020 Urban Water Management Plan. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

The Newby Island Landfill is a Class III Landfill which opened in 1938. The facility accepts municipal solid waste, construction/demolition waste, industrial waste, sludge, tires, green materials, and contaminated soils. Newby Island Landfill is open to the public.[6]

Newby Island Landfill covers 342 acres of land; 298 acres are permitted for disposal. The landfill's permit allows up to 4,000 tons of waste per day to be managed at the facility. As of January 2020, the remaining capacity at the Newby Island Landfill is 16.4 million cubic yards with an estimated closing date for the landfill of 2041.[7]

3.15.1.4 Electrical Service

Electrical service for the Santa Clara County, including the City of Milpitas, is provided by the Pacific Gas and Electric Company (PG&E). In 2021 (the most recent available data), a total of approximately 16,905 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[8] Electricity in Santa Clara County in 2021 was consumed primarily by the non-residential sector with 12,632 GWh (75 percent). The residential sector consumed approximately 4,273 GWh (25 percent).

3.15.1.5 Natural Gas

PG&E provides natural gas service to the County of Santa Clara, including the City of Milpitas. The availability of natural gas is based upon recent conditions of gas supply and regulatory policies. As a public utility, PG&E is under the jurisdiction of the California Public Utilities Commission and can be affected by actions of gas supply or the condition under which service is available. Gas service will be provided in accordance with any revised conditions. The core gas supply is purchased from producers and marketers in Canada, the Rockies, and the Southwest.

In 2021, Santa Clara County consumed approximately 417.3 Millions of Therms (MMThm). Residential uses accounted for 245.13 MMThm (57 percent) of total consumption. Non-residential uses consumed approximately 181.0 MMThm (43 percent).[9]

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6 City of Milpitas, *Draft Environmental Impact Report – Milpitas General Plan Update*, 2020. Available online at: https://static1.squarespace.com/static/57277b461d07c02f9c2f5c2c/t/5fa094bab97246713f3e4e9a/1604359401370/Milipitas_Public_Draft_EIR_reduced.pdf. Accessed November 18, 2022.

7 California Department of Resources Recycling and Recovery. "Solid Waste Information System, SWIS Facility/Site Activity Details – Newby Island Sanitary Landfill (43-AN-0003)." Available online at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1362?siteID=3388. Accessed November 18, 2022.

8 California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Available online at: http://ecdms.energy.ca.gov/elecbycounty.aspx. Accessed November 18, 2022.

9 California Energy Commission. "Natural Gas Consumption by County." Available online at: http://ecdms.energy.ca.gov/gasbycounty.aspx. Accessed November 18, 2022.

3.15.2 REGULATORY FRAMEWORK

Federal, State, and local regulations applicable to utilities and service systems are presented below. This setting addresses issue areas relevant to utilities and service systems, including water supply, wastewater, and solid waste.

3.15.2.1 Federal

Clean Water Act of 1972, as amended (CWA)

The law was originally enacted as the Federal Water Pollution Control Act (FWPCA; Public Law 92–500) in 1948 but took on its modern form when completely rewritten in 1972 in an act entitled the Federal Water Pollution Control Act Amendments of 1972, now commonly known as the Clean Water Act. Major changes have subsequently been introduced via amendatory legislation including the Clean Water Act of 1977 and the Water Quality Act of 1987.

The Clean Water Act (CWA) is the primary federal law in the United States governing water pollution. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands. It is one of the United States' first and most influential modern environmental laws. As with many other major U.S. federal environmental statutes, it is administered by the U.S. Environmental Protection Agency (U.S. EPA), in coordination with state governments. Its implementing regulations are codified at 40 C.F.R. Subchapters D, N, and O (Parts 100-140, 401-471, and 501-503).

Section 303(d)

Section 303(d) of the Federal CWA requires the SWRCB to list impaired water bodies and determine TMDLs of pollutants or other stressors that are contributing excessively to these impaired waters.

Section 401 – Water Quality Certification

Section 401 establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters. Under the CWA, the U.S. EPA has implemented pollution control programs such as setting wastewater standards for industries and surface waters.

Section 402

Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) permit process. In California, NPDES permitting authority is delegated to, and administered by the nine RWQCBs. Pursuant to Section 402, a discharge of any pollutant from a point source into navigable waters is prohibited unless an NPDES permit is obtained. Point sources are discrete conveyances such as pipes or manmade ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

Section 402(p) establishes that storm water permits are required for discharges from a municipal separate storm sewer system (MS4) serving a population of 100,000 or more. U.S. EPA defines an MS4 as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a State (40 CFR 122.26(b)(8)).

Section 404 – Discharge of Dredge or Fill Material

Section 404 of the federal CWA is administered and enforced by the U.S. Army Corps of Engineers (USACE). Section 404 of the CWA establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. USACE administers the day-to-day program, including the determination of eligibility of project for use of Categorical Exclusions and Nationwide Permits, and review and consideration of individual permit decisions and jurisdictional determinations. USACE also develops policy and guidance; and enforces Section 404 provisions.

3.15.2.2 State

Water Supply

Urban Water Management Planning Act

California State Assembly Bill 797 (California Water Code Section 10610, et seq.), adopted in 1983, requires every urban water supplier providing water for municipal purposes to more than 3,000 customers or more than 3,000 acre-feet of water on an annual basis to prepare an UWMP. The intent of the UWMP is to assist water supply agencies in water resource planning given their existing and anticipated future demands. UWMPs must be updated every five years, in years ending in zero and five.

Senate Bills 610 and 221

SB 221 (Kuehl) amended the Subdivision Map Act, and SB 610 (Costa) amended Part 2.10 of the California Water Code regarding water supply availability. These amendments took effect on January 1, 2002, and require generally that water retail providers demonstrate that sufficient and reliable sources are available in order for local agencies to evaluate large-scale developments and complete the environmental review process.

SB 610 requires cities and counties that determine a project is subject to the California Environmental Quality Act (CEQA) to identify any public water system that may supply water for the project, and to require those public water systems to prepare a specified water supply assessment to be included in any environmental document prepared for the project. The assessment includes an identification of existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project and water received in prior years, pursuant to those entitlements, rights, and contracts. If the assessment concludes that water supplies are or will be insufficient, the public water system shall also submit plans for acquiring additional water supplies.

SB 221 requires written verification from the applicable public water system that sufficient water supply is available for a subdivision of property of more than 500 dwelling units prior to approval of a tentative or parcel map.

Assembly Bill (AB) 1668 and Senate Bill (SB) 606

Passed on May 31, 2018, AB 1668 and SB 606 establish guidelines for efficient water use and a framework for the implementation and oversight of the new standards, which must be in place by 2022. The two bills strengthen the state's water resiliency in the face of future droughts with provisions that include: Establishing water use objectives and long-term standards for efficient water use that apply to urban retail water suppliers, comprised of indoor residential water use, outdoor residential water use, commercial, industrial and institutional (CII) irrigation with dedicated meters, water loss, and other unique local uses; Providing incentives for water suppliers to recycle water; Identifying small water suppliers and rural communities that may be at risk of drought and water shortage vulnerability and provide recommendations for drought planning; Requiring both urban and agricultural water suppliers to set annual water budgets and prepare for drought.

Wastewater

California Code of Regulations Title 22

The California Code of Regulations Title 22, Division 4, Chapter 3, Sections 60301 through 60355 are used to regulate recycled wastewater and are administered jointly by the CDPH and the RWQCBs. Title 22 contains effluent requirements for four levels of wastewater treatment, from undisinfected secondary recycled water to disinfected tertiary recycled water. Higher levels of treatment have higher effluent standards, allowing for a greater number of uses under Title 22, including irrigation of freeway landscaping, pasture for milk animals, parks and playgrounds, and vineyards and orchards for disinfected tertiary recycled water.

Solid Waste

Assembly Bill 939 and Senate Bill 1016

The California Integrated Waste Management Act of 1989, or Assembly Bill 939, established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of all solid waste generated (from 1990 levels), beginning January 1, 2000, and divert at least 75 percent by 2010. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures to assist in reducing these impacts to less-than-significant levels. With the passage of Senate Bill 1016 (the Per Capita Disposal Measurement System) in 2006, only per capita disposal rates are measured to determine if a jurisdiction's efforts are meeting the intent of Assembly Bill 939. Therefore, the 50 percent diversion requirement should be measured in terms of per-capita disposal expressed as pounds per person per day.

Assembly Bill 341 and Senate Bill 1383

The purpose of AB 341 of 2011 (Chapter 476, Statutes of 2011) is to reduce greenhouse gas (GHG) emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California. In addition to Mandatory Commercial Recycling, AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

SB 1383 of 2016 (Chapter 395, Statutes of 2016) established the following goals: a 50 percent reduction in the level of the statewide disposal of organic waste from 2014 levels by 2020, and a 75-percent reduction

in the level of the statewide disposal of organic waste from 2014 levels by 2025. This bill also authorized CalRecycle to adopt regulations, to take effect on or after January 1, 2022, to achieve these targets.

Assembly Bill 1826

AB 1826 of 2014 (Chapter 727, Statutes of 2014) requires businesses that generate a specified amount of organic waste per week to arrange for recycling services for that waste, and for jurisdictions to implement a recycling program to divert organic waste from businesses subject to the law, as well as report to CalRecycle on their progress in implementing an organic waste recycling program. As of January 1, 2017, businesses that generate four cubic yards or more of organic waste per week shall arrange for organic waste recycling services.

3.15.2.3 Regional and Local

City of Milpitas Urban Water Management Plan (2020)

The City's 2020 Urban Water Management Plan (UWMP) is a report used for local water conservation planning and implementation purposes. The UWMP provides the City with a reliable water management action plan that can be confidently referred to continuously, as conditions change, and management decisions arise. It also can demonstrate the reliability of the City's water supplies and how that might affect local growth and the economy. An additional intention of this UWMP is to provide DWR, the State Water Resources Control Board (State Water Board) and the California Legislature with a representation of the City's water reliability so that a full picture of statewide water reliability may be constructed. The UWMP also allows the City to characterize conditions to improve its water reliability assessments, drought risk assessments and use of the UWMP for addressing local, regional and statewide water planning and management issues.[10]

City of Milpitas Sewer System Management Plan

The City of Milpitas Sewer System Management Plan (SSMP), last updated in 2021, was prepared to comply with the State Water Resource Control Board (SWRCB) General Order 2006-0003-DWQ and WQ 2013-0058-EXEC. The SSMP provides a plan and schedule to properly manage, operate, and maintain all components of the municipal sanitary sewer system.

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10 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

Santa Clara Valley Urban Runoff Prevention Program (SCVURPPP)

The SCVURPPP is an association of 15 municipal agencies in the Santa Clara Valley that discharge stormwater to the lower South San Francisco Bay. Member agencies (Co-permittees) include the cities of Campbell, Cupertino, Los Altos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale, the towns of Los Altos Hills and Los Gatos, the County of Santa Clara, and the SCVWD. The SCVURPPP and member agencies implement pollution prevention, source control, monitoring, and outreach programs aimed at reducing pollutants in stormwater runoff and protecting water quality and beneficial uses of the San Francisco Bay and Santa Clara Valley creeks and rivers. The SCVURPPP also promotes valuing stormwater as an important resource.

The member agencies of the SCVURPPP share a common NPDES permit to discharge stormwater to the South San Francisco Bay. The SCVURPPP incorporates regulatory, monitoring and outreach measures aimed at reducing pollution in urban runoff to the "maximum extent practicable" to improve the water quality of South San Francisco Bay and the streams of Santa Clara Valley.

C.3 Stormwater Handbook

The C.3 Stormwater Handbook was written to help developers, builders, and project applicants include appropriate post-construction stormwater controls in their projects, to meet local municipal requirements and requirements of the Bay Area Municipal Regional Stormwater Permit (MRP). Municipalities covered by the MRP include: Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Saratoga, Sunnyvale, Santa Clara County, and the Santa Clara Valley Water District. These municipalities must require post- construction stormwater controls on development projects as part of their obligations under Provision C.3 of the MRP. This permit is a NPDES permit issued by the San Francisco Bay RWQCB, allowing municipal stormwater systems to discharge stormwater to local creeks, San Francisco Bay, and other water bodies if municipalities conduct prescribed actions to control pollutants.

The term “post-construction stormwater control” refers to permanent features included in a development project to reduce pollutants in stormwater and/or erosive flows during the life of the project – after construction is completed. The term “post-construction stormwater control” encompasses Low Impact Development (LID) site design, source control, and treatment measures as well as hydromodification management measures. LID techniques reduce water quality impacts by preserving and re-creating natural landscape features, minimizing imperviousness, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource.

Milpitas Municipal Code, Chapter 200: Solid Waste Management

Chapter 200 of the Milpitas Municipal Code contains specific requirements related to:

- Keeping or accumulating solid waste
- Collection and disposal
- Authorized contractors
- Manner of collection, removal, and transportation
- Solid waste disposal
- Enforcement and penalties
- Disaster operations

3.15.3 THRESHOLDS OF SIGNIFICANCE

The following thresholds for determining the significance of impacts related to utilities and service systems are contained in the environmental checklist form contained in Appendix G of the most recent update of the *State CEQA Guidelines*. The Project could result in significant impacts regarding utilities and services systems if any of the following would occur:

- Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.
- Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years.
- Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.
- Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals.
- Comply with federal, state, and local management and reduction statutes and regulations related to solid waste.

3.15.4 METHODOLOGY

The analysis in this section focuses on the potential environmental effects of any relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities. If the Project would not require the relocation or construction of such facilities, it follows that there would not be a significant environmental impact. The analysis would also evaluate the Project's potential to exceed available water supplies, wastewater capacity, and the generation of solid waste in excess of capacity or applicable solid waste reduction goals.

3.15.5 ENVIRONMENTAL IMPACTS

Impact USS-1 Would the Project require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

Water Supply

The Project Site receives water supplies from the San Francisco Public Utilities Commission (SFPUC) and Valley Water (formerly Santa Clara Valley Water District). The Project may be more intense than development anticipated for this area in the City's current *General Plan*.

The City's 2020 UWMP water demands and supplies through 2045 indicate that there is sufficient supply during normal years, however there may be deficiencies during dry years, as shown in **Table 3.15-1, City of Milpitas Normal Year Water Demand and Supply,** and **Table 3.15-2, City of Milpitas Water Demand and Supply During Single Dry and Multiple Dry Years.**

Water demands are based on water use factors (WUFs) from the City's Water Master Plan Update (WMPU). These WUFs represent typical water use for each General Plan Land Use (GPLU) designation. **Table 3.15-3, Estimated Project Water Demand,** shows the anticipated water demand based on the WUFs found in the City's WMPU.[11]

[11] City of Milpitas, *Water Master Plan Update,* 2009. Available online at: https://www.milpitas.gov/_pdfs/eng_mp_water.pdf. Accessed November 18, 2022.

Table 3.15-3
Estimated Project Water Demand

Land Use	Size (acres)	Water Use Factor (GPD per acre)	Daily Water Demand (GPD)	Annual Water Demand (AFY)
Townhomes/Condominiums[1]	5.75	9,720	55,890	62.60
Apartment Building[2]	0.94	14,580	13,705	15.35
Project Total	**6.69**		**69,595**	**77.95**

1 The WUF for Multifamily Very High land use was used for the Project's Townhomes/Condominiums land use, as this would give a more conservative estimate on the Project's total water use.
2 The WUF for Multifamily Very High with TOD Overlay Zone was used for the Project's Apartment Building land use, as this is the highest WUF in the City's Water Master Plan Update.
Note: Water use factors available at: https://www.milpitas.gov/_pdfs/eng_mp_water.pdf

As shown above, the Project would have a demand of 69,595 gpd or 77.95 AFY. This would account for 1.80 percent of the reasonably anticipated water supply availability during normal (i.e., not drought) conditions in 2025 (See **Table 3.15-1, City of Milpitas Normal Year Water Demand and Supply**). The City would have sufficient supply to cover future demand to accommodate the Project during normal years. However, as shown in **Table 3.15-2, City of Milpitas Water Demand and Supply During Single Dry and Multiple Dry Years**, the City of Milpitas would have insufficient supply to cover future demands under various drought conditions. The Project would be required to comply with State and local regulations to reduce water consumption, particularly during drought conditions. As such, the Project's incremental increase in water demand would not exacerbate drought conditions and would not require or result in the construction of new water treatment facilities or expansion of existing facilities. Impacts would be less than significant.

Wastewater

The Project Site is served by the San José-Santa Clara Regional Wastewater Facility (RWF), which has a wastewater treatment capacity of 167 million gallons per day (mgd). The City's total contracted peak flow capacity at the plant is 14.25 mgd.[12] **Table 3.15-4, Estimated Project Wastewater Generation,** shows the anticipated wastewater generation for the Project based on use factors for multifamily land uses from the Sewer Master Plan Update.[13]

12 City of Milpitas, *2020 Urban Water Management Plan*, 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

13 City of Milpitas, *Sewer Master Plan Update,* 2009.Available online: https://www.milpitas.gov/_pdfs/eng_mp_sewer.pdf. Accessed November 18, 2022.

Table 3.15-4
Estimated Project Wastewater Generation

Land Use	Size (persons)[1]	Generation Rates (GPD per person)	Wastewater Generation (GPD)
Townhomes/Condominiums[2]	416	90	37,440
Apartment Building[2]	239	90	21,510
Total	**655**		**58,950**

1 Anticipated Project population of 655 (416 from Townhomes/Condominiums and 239 from Apartments). See Section 3.12, Population and Housing.
2 The wastewater flow factor for Multifamily High land uses was used for the Project's Townhomes/Condominiums and the Apartment Building.
Source: City of Milpitas. 2009. Sewer Master Plan Update. Available online: https://www.milpitas.gov/_pdfs/eng_mp_sewer.pdf.

As shown above, the Project would generate 58,950 gpd of wastewater. This would account for 0.41 percent of the City's contracted peak flow of 14.25 mgd for the San Jose-Santa Clara RWF. As such, the existing wastewater treatment capacity is anticipated to be sufficient to accommodate the Project. The Project would install 10-inch underground sewer lateral connections along the proposed internal private streets near the center of the project site. The sewer laterals would connect to each townhome. The proposed wastewater lateral connecter would connect to existing offsite 24-inch sewer lateral located along California Circle. With adherence to applicable regulations, the Project would have adequate wastewater conveyance systems and impacts related to wastewater conveyance would be less than significant.

Electric Power

Electricity services for the Project Site is provided by Pacific Gas and Electric Company (PG&E). The Project may require site-specific modification to some existing electrical distribution systems. This service would be provided in accordance with the rules and regulations of PG&E on file with and approved by California Public Utilities Commission (CPUC). According to the California Emissions Estimator Model (CalEEMod) used to estimate the Project's air quality and greenhouse gas emissions, the Project would use 0.80 GWh of electricity per year (see **Appendix 3.2, Air Quality Data**). This would account for approximately 0.02 percent of the residential annual electricity use for Santa Clara County of 4,273 GWh. It is not anticipated that existing transmission lines would need to be modified as a result of the Project. Potential impacts would be less than significant.

Natural Gas

Natural gas service for the Project Site is provided by PG&E which is regulated by the CPUC. Based on the CalEEMod air quality and greenhouse gas modeling, the Project is anticipated to consume 25,290 therms of natural gas per year (See **Appendix 3.2, Air Quality Data**). This would account for approximately 0.01 percent of the residential natural gas demand for Santa Clara County of 245.13 million therms in 2021. As such, the Project is not anticipated to require the relocation or construction of new or expanded natural gas facilities and impacts would be less than significant.

Telecommunications Facilities

The Project would only install necessary telecommunications infrastructure to be used by residents, employees, and visitors of the Project. It is not anticipated that new infrastructure off-site will be required. If upgraded telephone or cable lines are needed, utility plans would be submitted concurrent with the final plans for the Project. Given the urbanized nature of the Project Site, construction of any telecommunications infrastructure needed for the Project would result in less than significant environmental impacts.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact USS-2 Would the Project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

As discussed under **Impact USS-**1, the Project would have a demand of 69,595 gpd or 77.95 AFY. This would account for 1.80 percent of the reasonably anticipated water supply availability during normal (i.e., not drought) conditions in 2025 (see **Table 3.15-1, City of Milpitas Normal Year Water Demand and**

Supply). As shown in **Table 3.15-2, City of Milpitas Water Demand and Supply During Single Dry and Multiple Dry Years**, the City of Milpitas would have insufficient supply to cover future demands under various drought conditions. During a shortage, the City would invoke the City's Water Shortage Contingency Plan (WSCP) which would include measures such as:

- Mandatory reductions on indoor water uses
- Prioritize water use for essential domestic sanitation and other critical needs
- No irrigation with domestic water permitted
- No outdoor domestic water use, except for fire-fighting and critical needs
- Increase water shortage emergency rates

The City's 2020 UWMP demonstrates how the WSCP would reduce water usage to ensure sufficient water supplies for the City during drought conditions. The Project would be required to comply with the WSCP during drought conditions. Therefore, the Project would adhere to State and local regulations to reduce water consumption during drought conditions and the Project's incremental increase in water demand would have sufficient water supplies during normal years. Impacts would be less than significant.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact USS-3 Would the Project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?

As noted under **Impact USS-1**, the Project is served by the San Jose-Santa Clara Regional Wastewater Facility (RWF), which has a wastewater treatment capacity of 167 million gallons per day (mgd). the

Project would generate 58,950 gpd of wastewater. This would account for 0.41 percent of the City's contracted peak flow of 14.25 mgd for the San Jose-Santa Clara RWF. Therefore, the existing wastewater treatment capacity is anticipated to be sufficient to accommodate the Project. The Project would install 10-inch underground sewer lateral connections along the proposed internal private streets near the center of the Project Site. The sewer laterals would connect to each townhome and the apartment complex. The proposed wastewater lateral connecter would connect to existing offsite 24-inch sewer lateral located along California Circle. As such, the Project would have adequate wastewater conveyance systems and impacts would be *less than significant*.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact USS-4 Would the Project generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Solid waste generated at the Project Site would be transported to Newby Island solid waste disposal facility. Newby Island Landfill covers 342 acres of land and 298 acres are permitted for disposal. The landfill's permit allows up to 4,000 tons of waste per day to be managed at the facility. As of January 2020, the remaining capacity at the Newby Island Landfill is 16.4 million cubic yards with an estimated closing date for the landfill of 2041.[14]

According to the CalEEMod air quality and greenhouse gas emissions modeling for the Project, the Project would generate approximately 50.96 tons per year, or 0.14 tons per day. This would account for less than 0.01 percent of the Newby Island Landfill's permitted daily capacity of 4,000 tons per day. As a

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14 California Department of Resources Recycling and Recovery, "Solid Waste Information System, SWIS Facility/Site Activity Details – Newby Island Sanitary Landfill (43-AN-0003)," Available online at: 'https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1362?siteID=3388. Accessed November 18, 2022.

result, the generation of solid waste would not exceed available capacity. The Project would adhere to all State and local standards and impacts would be ***less than significant***.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

Impact USS-5 Would the Project comply with federal, state, and local management and reduction statutes and regulations related to solid waste?

The City is required by Assembly Bill 939 to divert 75 percent of solid waste from landfills. The Project would be required to demonstrate compliance with all applicable regulations including Assembly Bill 939. The Project would not interfere with any federal, state, or local management and reduction statutes and regulations related to solid waste. Impacts would be ***less than significant***.

Level of Significance Before Mitigation

Less than Significant Impact.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

Less than Significant Impact.

3.15.6 CUMULATIVE ANALYSIS

As described in **Impact USS-2**, the City will need to reduce demand for water significantly during drought conditions in accordance with the WSCP, as well as implement long-term projects aimed at

increasing supply in order to provide enough water for projected future conditions. Cumulative projects throughout the City have the potential to increase population, and subsequently increase water demand. The Water Master Plan includes several capital improvement projects that are anticipated to increase water supply reliability. As such, efforts to reduce demand during drought conditions and projects to increase supply will mean that development projects in the City would not have a cumulatively considerable impact on water infrastructure and impacts would be less than significant.

As noted above, wastewater is collected through a sewer system that is serviced by the San Jose-Santa Clara Regional Wastewater Facility (RWF), which has a wastewater treatment capacity of 167 million gallons per day (mgd). The City's total contracted peak flow capacity at the plant is 14.25 mgd. With respect to future growth in the RWF service area and associated increases in wastewater treatment demands, continued implementation of system improvements that follow the guidance of the City's Sewer Master Plan Update would ensure sufficient conveyance and treatment capacity to meet cumulative needs. Funding for such increases is available through a combination of connection fees paid by developers, service districts, and general fund monies. Compliance with these requirements would reduce cumulative impacts to wastewater treatment and collection systems to a less than significant level and the Project's contribution to wastewater service impacts would not be cumulatively considerable.

As discussed under **Impact USS-4**, area landfills have capacity to accommodate additional solid waste for the next couple of decades. Cumulatively, other areas which utilize the same landfills as the Project would likely also continue to experience growth and associated increases in solid waste generation. State mandated solid waste diversion rates (for recycling) would continue to minimize the quantity of waste directed to area landfills. The Newby Island Landfill is anticipated to remain open until 2041 with sufficient disposal capacity to accommodate the existing service territory.

The Santa Clara County Integrated Waste Management Plan includes strategies for meeting disposal capacity at the Newby Island Landfill, including increased waste diversion and potential expansion of landfill capacity. Solid waste disposal facilities and management approach would continue to adjust as needed to provide adequate disposal capacity throughout the county. Thus, cumulative impacts to solid waste facilities would be less than significant and the Project's contribution to solid waste impacts would not be cumulatively considerable.

3.15.7 REFERENCES

California Department of Resources Recycling and Recovery. "Solid Waste Information System, SWIS Facility/Site Activity Details – Newby Island Sanitary Landfill (43-AN-0003)." Available online at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1362?siteID=3388. Accessed November 18, 2022.

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California Energy Commission. "Natural Gas Consumption by County." Available online at: http://ecdms.energy.ca.gov/gasbycounty.aspx. Accessed November 18, 2022.

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City of Milpitas. *2020 Urban Water Management Plan.* 2021. Available online at: https://www.milpitas.gov/_pdfs/Milpitas_2020_%20UWMP_FINAL.pdf. Accessed November 11, 2022.

4.0 EFFECTS FOUND NOT TO BE SIGNIFICANT

As required by Section 15128 of the *State CEQA Guidelines*, an EIR shall contain a brief discussion stating the reasons why various possible significant effects of a project were determined not significant and are, therefore, not discussed in detail in the EIR. In accordance with the *State CEQA Guidelines*, this section discusses the environmental issue areas where impacts were found not to be significant. These discussions address the *State CEQA Guidelines* Appendix G questions for each of the environmental topic areas where the Project would result in either a less than significant impact or no impact.

4.1 AGRICULTURAL RESOURCES

The Project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.

No Impact. Based on the Department of Conservation's Farmland Mapping and Monitoring Program, neither the Project Site nor adjacent properties are State-designated Farmland. The Project Site is listed as Urban and Built-up Land.[1] The Project Site is currently zoned as Industrial Park by the City and has no current uses that are related to agriculture. Additionally, the Project would be rezoned to the Mixed Use (MXD) Zoning District. Therefore, implementation of the Project would have no impact on existing agricultural resources and would not result in the conversion of agricultural farmland.

The Project would not conflict with existing zoning for agricultural use, or a Williamson Act contract.

No Impact. Based on the Department of Conservation's Williamson Act maps, the City of Milpitas is not enrolled in a Williamson Act contract.[2] Therefore, Project implementation would have no impact on existing agricultural resources or Williamson Act contract land.

The Project would not conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g)).

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1 California Department of Conservation, "California Important Farmland Finder," Available online at: https://maps.conservation.ca.gov/DLRP/CIFF/, accessed October 4, 2022.

2 California Department of Conservation, *The Williamson Act Status Report*, 2022. Available online at: https://www.conservation.ca.gov/dlrp/wa/Documents/stats_reports/2022%20WA%20Status%20Report.pdf, accessed October 4, 2022.

No Impact. There are currently no forests within or adjacent to the Project Site. As stated above, the Project Site is currently zoned Industrial Park by the City and would be rezoned to MXD. Therefore, the Project would have no impact on the rezoning of forest land or timberland.

The Project would not result in the loss of forest land or conversion of forest land to non-forest use?

No Impact. The Project Site is urbanized and fully developed. Because no forests are located in or adjacent to the Project Site, the Project would have no impact to forest land or forestry resources.

The Project would not involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use.

No Impact. As discussed above, the Project would have no impact to the conversion of Farmland to non-agricultural use; conflict with existing agricultural zoning or Williamson Act contracts; result in the loss of forest land or conversion of forest land to non-forest use; or other conversion of farmland to non-agricultural use.

4.2 MINERAL RESOURCES

The Project would not result in the loss of availability of a known mineral resource that would be a value to the region and the residents of the state.

No Impact. The Project Site is located in an area classified by the California Geological Survey (CGS) as Mineral Resource Zone-1 (MRZ-1).[3] This designation indicates that there is little likelihood that significant mineral resources are present in the area. Because the Project Site is predominantly developed and is not planned for use as a mineral extraction area, the Project would not have an adverse effect on mineral resources.

The Project would not result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.

No Impact. Per the Department of Conservation maps, there are no active mine operations within the Project Site.[4] Therefore, the Project would not have an adverse effect on mineral resources.

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3 California Department of Conservation. *Revised Mineral Land Classification Map Special Report Plate 6: Milpitas Quadrangle.* 1996.

4 California Department of Conservation. "Mines Online." Available online at: https://maps.conservation.ca.gov/mol/index.html , accessed October 4, 2022.

4.3 WILDFIRE

The Project would not substantially impair an adopted emergency response plan or emergency evacuation plan.

Less than Significant Impact. The Project Site is located within a predominately urbanized and developed area of the City. Although sidewalk closures immediately adjacent to Project Site and temporary lane closures along California Circle may be necessary during construction, adequate emergency vehicle access to the Project Site would be maintained at all times as required. Additionally, the Project Site plans would be reviewed by the Milpitas Fire Department prior to approval. Accordingly, the Project would not impair any adopted emergency response plan or emergency evacuation plan and impacts would therefore be less than significant.

The Project would not exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire due to slope, prevailing winds, and other factors.

No Impact. Wildfires have the potential to occur not only in fire-prone undeveloped areas, but also in developed areas where existing transmission lines, lightning strikes, lawn equipment operated over dry grass, fireworks, and even arson may ignite a wildfire. Wildfires pose a significant public health risk due to their air quality impacts, particularly with regard to smoke and particulate matter exposure. This risk persists even after a wildfire is extinguished because particulate matter from fire ash can be picked up by winds.

The Project Site is not located within a Very High Fire Hazard Zone (VHFHZ), nor does Project Site contain vegetation that could contribute to the uncontrolled spread of wildfire.[5] The nearest VHFHZ are the open hillsides Milpitas, located more than ten miles to the east of the Project Site.[6] The Project would result in additional residential uses within the City and would not contain any uses that could add or contribute to wildfire risk. Therefore, given the components of the Project, and the urbanized location of the Project Site, the Project would not exacerbate wildfire risks and would therefore result in no impact.

The Project would not require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment.

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5 County of Santa Clara, "Wildland Urban Interface." Adopted February 24, 2009. Available online at: https://stgenpln.blob.core.windows.net/document/WUIFA_Adopted_Map.pdf. Accessed October 4, 2022.

6 CalFire, "FHSZ Viewer." Available online at: https://egis.fire.ca.gov/FHSZ/, accessed on October 4, 2022.

No Impact. The Project Site is urbanized and does not include wildlands or high fire terrain. The Project Site is surrounded by existing structures and infrastructure including roadways and interstate highways and would not require the installation or maintenance of roads, fuel breaks, emergency water or other sources that could exacerbate fire risk. Due to the urbanized nature of the area, it is unlikely any fire would spread and would therefore result in no impacts.

The Project would not expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

No Impact. In Northern California, intense rainfall may occur during the winter months, creating natural flooding events when the ground in saturated and water levels are high. This has the potential for flooding issues, and fire hazards may exacerbate such flooding and debris flows along waterways. Since debris flows may occur quickly and without warning, such flows can damage structures, block drainage or even sweep away vegetation resulting in tenuous post-fire slope stability. Fast moving debris flows can be one of the most dangerous post-fire hazards. The Project Site is generally flat and urbanized, is not in an area of wildfire risk, and would not be subject to any post fire slope instability or landslides. Therefore, there would be no impact.

4.4 REFERENCES

California Department of Conservation. "California Important Farmland Finder." Available online at: https://maps.conservation.ca.gov/DLRP/CIFF/, accessed October 4, 2022.

California Department of Conservation. *The Williamson Act Status Report*. 2022. Available online at: https://www.conservation.ca.gov/dlrp/wa/Documents/stats_reports/2022%20WA%20Status%20Report.pdf, accessed October 4, 2022.

California Department of Conservation. "Mines Online." Available online at: https://maps.conservation.ca.gov/mol/index.html, accessed May 3, 2023.

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CalFire. "FHSZ Viewer." Available online at: https://egis.fire.ca.gov/FHSZ/, accessed on February 4, 2022.

County of Santa Clara. "Santa Clara Wildland Urban Interface Fire Area." Adopted February 24, 2009. Available online at: https://stgenpln.blob.core.windows.net/document/WUIFA_Adopted_Map.pdf, accessed April 28, 2023.

5.0 ALTERNATIVES

INTRODUCTION

This section of the environmental impact report (EIR) provides a comparative analysis of the merits of alternatives to the Project pursuant to Section 15124.6 of the 2023 California Environmental Quality Act (CEQA) Statutes and Guidelines, as amended. According to the guidelines, an EIR shall describe a range of reasonable alternatives to the project or to its location, which would feasibly attain most of the basic objectives of the project but avoid or substantially lessen any of the significant effects. The EIR shall evaluate the comparative merits of the alternatives. It need not consider every conceivable alternative to a project; rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

5.1 CONSIDERATIONS

The range of alternatives in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to make a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any significant effects of the project (Section 15124.6(f)). Of those alternatives, the EIR needs to examine in detail only the alternatives that the lead agency determines could feasibly attain most of the project's basic objectives. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making. When addressing feasibility, the *State CEQA Guidelines* state that "among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)." The *State CEQA Guidelines* also state that the alternative discussion need not be presented in the same level of detail as the assessment of the Project.

Therefore, several factors need to be considered in determining the range of alternatives to be analyzed in an EIR and the level of detail that analysis should provide. These factors include (1) the nature of the significant impacts of the Project, (2) the ability of alternatives to avoid or substantially lessen impacts associated with the Project, (3) the ability of the alternatives to meet most of the basic objectives of the Project, and (4) the feasibility of the alternatives.

The selection and discussion of alternatives is intended to foster meaningful public participation and informed decision making. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. The *State CEQA Guidelines* also require

the analysis of a no project alternative, and the identification of the environmentally superior alternative. Where the environmentally superior alternative is the no project alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."[1]

The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. 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.(d) Evaluation of alternatives.[2]

Accordingly, several alternatives that might avoid or substantially lessen project impacts were considered. Two alternatives were selected for further analysis, as detailed below.

5.2 PROJECT OBJECTIVES

The alternatives to the Project ultimately selected for analysis in this EIR were developed to avoid or substantially lessen one or more of the significant environmental impacts associated with the Project, while still attaining most of the basic objectives of the project. The following are objectives for the Project:

- Increase affordable housing opportunities, including housing designated for teachers, and help meet the City's Regional Housing Needs Allocation (RHNA);
- Redevelop underutilized and vacated land; and
- Implement sustainable building practices to showcase energy efficiency and low water use.

5.3 SELECTION OF ALTERNATIVES FOR ANALYSIS

According to the *State CEQA Guidelines*, the discussion of alternatives should focus on alternatives to a project or its location that can feasibly avoid or substantially lessen the significant effects of the project. The *State CEQA Guidelines* indicate that the range of alternatives included in this discussion should be sufficient to allow decision makers a reasoned choice. The alternative discussion should provide decision makers with an understanding of the merits and disadvantages of these alternatives.

1 *State CEQA Guidelines* Section 15126.6(e)(2)

2 *State CEQA Guidelines* Section 15126.6(c)

Section 3.0, Environmental Impact Analysis, concludes that the Project would result in a significant and unavoidable environmental impact. This impact includes:

Aesthetics: Implementation of the Project would result in partially obstructed public views of the City's scenic resource (i.e., open hillsides) (**Impact AES-1)**.

The City of Milpitas has developed and considered the following alternatives to the Project.

Alternative 1 – No Project

Section 15126(2)(4) of the *State CEQA Guidelines* requires evaluation of the No Project Alternative. As described in the *State CEQA Guidelines*, the purpose of describing and analyzing the No Project Alternative is to allow decision makers to compare the impacts of approving the Project with the impacts of not approving the Project. However, "No Project" does not necessarily mean that development will be prohibited. The No Project Alternative includes "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."[3]

For purposes of this EIR, the No Project Alternative (Alternative 1) assumes the development of the proposed seven plex and twelve plex townhomes and apartment complex would not occur. The existing 90,000 square foot industrial office building, surface parking lot, and landscaping would remain, and no physical changes would be implemented.

Alternative 2 – Specific Plan Alternative

The Specific Plan Alternative (Alternative 2) would include the adoption and implementation of a California Circle Specific Plan bound by the I-880/California Circle on-and-off ramp, Dixon Landing Road, Lower Penitencia Creek, Fairview Avenue, and Cadillac Court (Plan Area),[4] which includes the Project Site. The Specific Plan would serve both planning and regulatory functions, including land use regulations, circulation patterns, building and streetscape design standards, and development standards. Alternative 2 assumes that the Project could be implemented as a development project under the Specific Plan.

All future development within the Plan Area (including the Project) would be subject to compliance with the Specific Plan regulations, as well as all other applicable City regulations. The Specific Plan would be

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3 *State CEQA Guidelines* § 15126.6[e][2]

4 The California Circle Plan Area is the California Specific Plan Overlay, defined in the City's 2040 General Plan as the area is located along California Circle, east of the I-880 corridor, and west of the Penitencia Creek corridor.

developed in accordance with the policy objectives outlined in Action LU-2b of the City's 2040 General Plan:[5]

- Support opportunities for future development to provide hi-tech jobs, industries, and educational opportunities;
- Foster a competitive and desirable district by establishing a sense of place and ensuring that development provides amenities and is connected to nearby community assets;
- Act as an incubator for innovation and technology by encouraging developments that offer flexible and shared workspaces, facilitate collaboration, and provide infrastructure for advanced technologies;
- Identify funding mechanisms and incentives for infrastructure improvements (including fiber optic and Wi-Fi improvements) that may be desirable for high tech uses;
- Provide opportunities for increased building intensities within the overlay district;
- Continue to support smaller startups and allow for more intensive uses that encourage new firms and high tech uses to locate in this area.

Alternative 2 would accommodate mixed use developments with opportunities for residential development. Individual development projects under the Specific Plan would also be subject to recent local and State affordable housing requirements. Existing and new commercial and industrial uses along the I-880 frontage would be supported, and ensure land use compatibility between the residential, commercial and industrial buildout within the Specific Plan Area. Additionally, the Specific Plan would identify and implement circulation and street improvements as needed within the Plan Area and the vicinity of the Project Site. The Specific Plan would be reviewed by the City of Milpitas Planning Commission and adopted by the City Council.

5.4 ANALYSIS METHODOLOGY

Each of the alternatives selected for analysis is evaluated in sufficient detail to determine whether its overall environmental impacts would be less, similar, or greater in comparison to the impacts of the Project. The impact analyses sections for the Project set forth in **Section 3.0** of this EIR include mitigation measures that reduce the environmental impacts associated with buildout of the Project. The analysis assumes that equally effective mitigation measures would apply to the alternatives, with the exception of the No Project as this alternative would be a continuation of the existing conditions. This discussion includes an analysis

5 The policy objectives are outlined in **Action LU-2b** of the City's 2040 General Plan.

of whether the Alternatives would avoid or substantially lessen any of the significant environmental impacts associated with implementation of the Project. The analysis also includes a summary of the comparative impacts across all of the environmental issues.

5.5 COMPARATIVE IMPACT ANALYSIS

5.5.1 Alternative 1 – No Project

The environmental effects of the No Project Alternative are included in **Table 5.0-3, Comparison of Alternatives to the Project,** below.

Aesthetics

Under the No Project Alternative, development could occur on-site as allowed under the *General Plan* and existing zoning. However, the No Project Alternative assumes that no physical changes would be implemented, the existing industrial office building, surface parking lot, and landscaping would remain, and the site's visual character and lighting would not change. No construction activities would occur on-site.

The existing development would remain consistent with the existing zoning as allowed under the *General Plan*. The No Project Alternative does not include redevelopment of the site and therefore would not include the same thematic visual elements that are included within the Project and would not be as visually appealing or cohesive as the Project. However, less development and density would result in fewer visual impacts than the Project. Therefore, no visual impacts would occur under Alternative 1, and impacts would be less than the Project.

Air Quality

Under the No Project Alternative, no new development would occur. Thus, no short-term construction emissions would be generated. Occupancy of the currently vacant industrial office building would result in less than significant long-term operational air quality impacts. Therefore, air quality impacts under Alternative 1 would be less than significant, and less than the Project.

Biological Resources

The Project Site is highly developed and generally lacks wildlife corridors and habitat that would support special status plant or animal species. Additionally, there are no riparian habitats or wetlands on-site or abutting the Project Site. Although endangered and sensitive species have been identified in the area, it is unlikely that they will be present on-site due to the lack of suitable habitat on-site.

Under the No Project Alternative, no trees would be removed from the Project Site. Thus, the Alternative would not be subject to **Mitigation Measure MM BIO-1.** As a result, impacts to biological resources under the No Project Alternative would be less than significant, and less than the Project.

Cultural Resources and Tribal Cultural Resources

The No Project Alternative would not result in any new development. Thus, the potential to impact previously undiscovered cultural or tribal cultural resources during construction activities would not occur. As such, the No Project Alternative would result in no impact, and would be less than the Project.

Energy

No new development would occur under the No Project Alternative. Thus, no new impacts would occur from additional energy usage (including electricity, natural gas, and petroleum-fuel). The No Project Alternative would result in less than significant impacts to energy resources and be less than the Project.

Geology and Soils

The No Project Alternative would not result in any new development. Thus, Alternative 1 would not increase the potential for geologic or soil hazards, create new hazards, or result in the destruction of paleontological resources. The No Project Alternative would result in no impacts to geology and soils and be less than the Project.

Greenhouses Gases

Given that no new development would occur on-site, no construction or operational GHG emissions would be generated. Occupancy of the currently vacant industrial office building would result in less than significant long-term operational GHG impacts. Impacts related to greenhouse gases would be less than significant under the No Project Alternative, and less than the Project.

Hazards and Hazardous Materials

No new development would occur under the No Project Alternative compared to the Project. Thus, the potential to expose workers and the public to hazards and hazardous materials, such as potential soil contamination during ground-disturbing activities associated with the Project, would not occur. As such, no mitigation would be required to reduce such impacts. In addition, given that no development would occur, the No Project Alternative would not result in an increase in the handling of hazardous materials, potential for accidental conditions, or an increase in the transport of hazardous materials. Under Alternative 1, no new residential units would be located on the Project Site, and therefore no coordination

with the City of Milpitas and the Milpitas Fire Department (MFD) to remediate any residual hazardous materials from a past leaking underground storage tank (UST) on-site would be required. Therefore, the No Project Alternative would result in less than significant impacts and impacts would be similar to the Project.

Hydrology and Water Quality

Compared to the Project, no new development would occur under the No Project Alternative. Thus, no new construction or operational activities would impact existing hydrologic and water quality conditions on the Project Site. However, the Project's best management practices (BMPs) related to hydrology and water quality to reduce stormwater runoff and improve water quality treatment on-site would not be implemented under Alternative 1. The No Project Alternative also would not implement the site design, source control and treatment control BMPs, and Low Impact Development (LID) measures that would not occur included in the Project. Therefore, the existing industrial office building and lack of BMPs for water quality under Alternative 1 would result in less than significant impacts and would be greater than the Project.

Land Use

Under the No Project Alternative, no development would occur. The Project Site would maintain its existing land use designations and zoning and, thus, would be consistent with the City's *General Plan* and Municipal Code. In comparison to the Project, Alternative 1 would not be able to achieve certain *General Plan* policies compared to the Project. Specifically, the No Project Alternative would not provide pedestrian and bicyclist linkages to adjacent uses or comfortable pedestrian amenities (Community Design Element, Policy CD-10), nor would the No Project Alternative provide creative landscape design to create visual interest (Community Design Element, Policy CD 5-7). However, the No Project Alternative would be able to achieve other *General Plan* policies that the Project is unable to achieve. Specifically, the existing industrial office building under the No Project Alternative would be consistent with specific height limits established within the City's Zoning Ordinance (Land Use Element, Policy LU 5-3). Thus, impacts related to land use under the No Project Alternative would be less than significant and be similar to the Project.

Noise

As discussed, the No Project Alternative would result in no new development within the Project Site. Thus, no construction or operational noise or vibration impacts would occur, and no mitigation would be required under Alternative 1. Furthermore, the existing industrial office building is vacant, and noise levels would be at lower levels under existing conditions compared to operations under the Project. Therefore, noise impacts under the No Project Alternative would be less than significant and less than the Project.

Population and Housing

Under the No Project Alternative, no new residents or housing would be introduced into the Project Site and no population and housing impacts would occur. In comparison, the Project would introduce up to 655 additional residents and 206 new housing units. In addition, occupancy of the currently vacant industrial office building would not cause an increase in population compared to the existing conditions. Therefore, the No Project Alternative would result in no impact to population and housing, and impacts would be less than the Project.

Public Services and Recreation

Fire

No new development for multi-family housing would occur under the No Project Alternative compared to the Project; therefore, the Alternative would not increase the population in the Project area. Additionally, no construction activities associated with Alternative 1 would occur. Thus, Alternative 1 would not increase the demand for fire protection and suppression services provided by the MFD. Alternative 1 would not require new or physically altered fire protection facilities. As such, no impacts would occur under the No Project Alternative, and impacts would be less than the Project.

Police

As stated, the No Project Alternative would not increase the population in the Project area. As such, Alternative 1 would not result in an increase in criminal activity within the City. Additionally, no construction activities associated with Alternative 1 would occur. Thus, Alternative 1 would not increase the demand for police protection services, nor would Alternative 1 result in the need for new or physically altered police protection facilities. No impacts would occur under the No Project Alternative and impacts would be less than the Project.

Education

The No Project Alternative would not result in an increase in population; and therefore, would not generate additional students that would impact the classroom capacities of the MUSD. Thus, no impacts to the MUSD school facilities would occur under the No Project Alternative, and impacts would be less than the Project.

Library Services

As stated, the No Project Alternative would not increase the population in the surrounding area. Thus, implementation of Alternative 1 would not increase the demand for library services within the Project area, nor would Alternative 1 result in the need for new or physically altered library facilities. No impacts would occur under the No Project Alternative and impacts would be less than the Project.

Parks and Recreation

Per the Quimby Act, the City of Milpitas is currently facing a deficit of approximately 302 acres of parkland space. The No Project Alternative would note introduce new housing units to the City. As such, Alternative 1 would not result in a direct increase in population or an increase in the City's existing parkland spaces. Furthermore, implementation of Alternative 1 would not increase the demand for park and recreational spaces. Therefore, no impacts would occur under the No Project Alternative and impacts would be less than the Project.

Based on the objectives and priorities of the Alternative, future development could be required to provide open space, thus impacts would be similar.

Transportation

The No Project Alternative would result in no new development. There would be no construction activities that would cause any transportation impacts, and no increase in permanent residents would be triggered that may lead to increased vehicle miles traveled (VMT) and hours in congestion. Additionally, no construction activities would cause impacts specifically to pedestrians and bicyclists. In comparison, the Project would increase the usage of transportation facilities within the surrounding area, and result in changes to the existing circulation of the area and the existing on-site VMT. Further, construction activities associated with the Project would result in an increase in congestion for bicyclists using the existing Class II Bicycle facility. Thus, impacts would be less than significant, and less than the Project.

Utilities and Services

Water Supply

The No Project Alternative would not result in any new development, therefore, demand for water would not increase. The San Francisco Public Utilities Commission (SFPUC) and Valley Water provides the Project Site with potable water. Potable water is also purchased from the SFPUC Regional Water System (RWS). The SFPUC RWS supply is predominantly comprised of snowmelt from the Sierra Nevada, delivered

through the Hetch Hetchy aqueducts, but also includes treated water produced by the SFPUC from its local watersheds and facilities in Alameda and San Mateo counties.

The City's *2020 Urban Water Management Plan* (*2020 UWMP*) provides a long-range assessment of water supply for the Department's service area. The *2020 UWMP* concluded that there would be insufficient water supplies during the "worst-case" effects of a multiple dry year drought. Compared to the Project, the No Project Alternative would result in no new development and would not result in an increase in population. Therefore, implementation of the No Project Alternative would not result in water supply and infrastructure impacts. Impacts would be less than significant and less than the Project.

Wastewater

The No Project Alternative would not result in any new development. Future occupancy of the existing vacant industrial office building would not result in an increase in population and therefore is highly unlikely to generate a substantial increase in wastewater. Therefore, the impact would be less than significant and would be less than the Project.

Solid Waste

The No Project Alternative would not result in any new development and future occupancy of the existing vacant industrial office building would not result in an increase in population; therefore, the generation of solid waste would not increase substantially. As a result, impacts would be less than significant and less than the Project.

Electricity

No new development would be introduced under the No Project Alternative. Future occupancy of the existing vacant industrial office building would not result in an increase in population. Therefore, impacts related to electricity usage would be less than significant and would be less than the Project.

Natural Gas

No new development would be introduced under the No Project Alternative. Future occupancy of the existing vacant industrial office building would not result in an increase in population. Therefore, impacts related to natural gas would be less than significant and would be less than the Project.

Cumulative Impacts

Under the No Project Alternative, cumulative projects identified in **Section 3.0**, **Environmental Analysis**, would be located within a one-mile radius of the Project Site. Per CEQA guidelines, these development projects would be required to undergo an environmental impact assessment on a project-by-project basis similar to the proposed Project. The No Project Alternative would not result in new development, and the existing conditions on-site would be maintained. Accordingly, project-related environmental impacts would not be introduced to the area. Therefore, environmental impacts under the No Project Alternative would not be cumulatively considerable.

Relationship to the Project Objectives

As demonstrated in **Table 5.0-1, Alternative 1 Relationship to the Project Objectives,** Alternative 1 would not achieve any of the Project objectives.

Table 5.0-1
Alternative 1 Relationship to the Project Objectives

Project Objective	Relationship to the Objective
Objective #1: Increase affordable housing opportunities, including housing designated for teachers, and help meet the City's RHNA	Under Alternative 1, new housing units would not be introduced to the Project area. Therefore, the objective would not be met.
Objective #2: Redevelop underutilized and vacated land.	Alternative 1 would not redevelop or demolish the existing vacant industrial office building on-site. Therefore, the objective would not be met.
Objective #3: Implement sustainable building practices to showcase energy efficiency and low water use.	Alternative 1 would not introduce new sustainable or energy efficient practices to the existing structures on-site. Therefore, the objective would not be met.

5.5.2 Alternative 2 – Specific Plan Alternative

The environmental effects of the Specific Plan Alternative are included in **Table 5.0-3, Comparison of Alternatives to the Project,** below.

Aesthetics

The Specific Plan would provide goals and policies that would serve as a roadmap for future development creating a vision for the entire Specific Plan Area. The Specific Plan Alternative could include specific design guidelines and development standards, including size and height requirements, to preserve public views of the open hillsides west of the City. Development under the Specific Plan within the Plan Area, including at the Project Site, would be required to adhere to the new development standards and therefore

would maintain existing views and reduce aesthetic impacts to scenic resources compared to the Project. Accordingly, the development standards and design guidelines would ensure that the future development of residential, commercial, or industrial uses in the Specific Plan Area would be compatible in land use and design. Under Alternative 2, future development at the Project Site would adhere to the lighting standards set forth by the Specific Plan and applicable City regulations. As such, impacts related to aesthetics at the Project Site under Alternative 2 would be less than significant, and less than the Project.

Air Quality

Implementation of the Specific Plan Alternative would implement new design guidelines and development standards for future development. Under the Specific Plan Alternative, future development projects would require construction activities and development operations that would increase emissions similar to the Project. Future development projects under Alternative 2 would undergo separate environmental review and be evaluated on a project-by-project basis. In the event that future development projects exceed the Bay Area Air Quality Management District (BAAQMD) thresholds, the project would be required to adhere to all regulatory requirements under the BAAQMD and may implement mitigation measures. Construction activities would implement the mitigation measures outlined in **Mitigation Measure MM AQ-1**. Additionally, future development projects under Alternative 2 would be required to be consistent with the air quality-related regional plans. As such, the impacts to Air Quality at the Project Site would be less than significant, and similar to the Project.

Biological Resources

Similar to the Project, implementation of the Specific Plan Alternative would result in an increase in development compared to existing conditions. The majority of the Project Site is developed and generally lacks wildlife corridors and habitat that would support special status plant or animal species. However, future development at the Project Site would be reviewed for project-specific impacts during any required environmental review. **Mitigation Measure MM BIO-1** would continue to apply in the event of ground-disturbing activities or the removal of any trees. Compliance with federal and state regulatory requirements and **MM BIO-1** would ensure that impacts to the Project Site would be less than significant. As such, impacts to biological resources at the Project Site under Alternative 2 would be less than significant, and similar than the Project.

Cultural Resources including Tribal Cultural Resources

Development at the Project Site, under the Specific Plan Alternative, would introduce a similar number of dwelling units along with the development of commercial uses in the form of mixed-use within the Project Site. No specific historical resources have been identified on-site, and the City's General Plan EIR does not

identify any historical buildings within the Plan Area. However, construction activities associated with future development, specifically excavation and grading, could potentially unearth archaeological resources. In addition, new construction would require additional ground disturbance. Thus, future development projects under Alternative 2 would be evaluated for consistency with the City's *General Plan* goals and policies and the City's Municipal Code, and state and federal regulations, when applicable. **Mitigation Measure MM CUL-1** would still apply for future development projects in the event that archaeological resources or artifacts during associated ground-disturbing activities. Similarly, in the event that human remains are discovered during associated ground-disturbing activities, future development associated with the Specific Plan would also be required to comply with the provisions of California Public Resources Health and Safety Code Section 7050.5-7055. Similar to the Project, Native American Tribal consultation would be required per Assembly Bill (AB) 52 and Senate Bill (SB) 18. Development at the Project Site under the Specific Plan would result in less than significant impacts to cultural and tribal cultural resources u and would be similar to the Project.

Energy

Future buildout associated with Specific Plan Alternative could result in an increase in energy consumption (including electricity and petroleum-fuel) but would not result in the wasteful or inefficient use of energy. Similar to the Project, land use designations under Alternative 2 would be constructed in accordance with Title 24 standards and CALGreen requirements and therefore would include energy efficiency measures. However, the Specific Plan would set forth development standards and policies that would require future development and redevelopment within the Plan Area to be up to date with current state standards pertaining to energy efficiency. Thus, energy impacts under the Specific Plan Alternative at the Project Site would be less than significant and would be less than the Project.

Geology and Soils

Implementation of the Specific Plan Alternative could result in new residential development or mixed-use development similar to the Project. Thus, like the Project, future development projects associated with Alternative 2 would be required to adhere to regulations outlined in the California Building Code (CBC) and the City's Municipal Code pertaining to development safety from geologic hazards. In addition, Alternative 2 would be required to implement **Mitigation Measure MM GEO-1** which would require all work within 100 feet of a discovery to halt and a qualified professional paleontologist to be retained to evaluate the find in consultation with the City. Therefore, impacts at the Project Site would be less than significant and similar to the Project.

Greenhouses Gases

To demonstrate compliance with the Milpitas Climate Action Plan (CAP), future development under the Specific Plan Alternative would be required to implement **Mitigation Measure MM GHG-1**, which requires the preparation and review of the City's CAP development checklist. Additionally, future development projects associated with Alternative 2 would be required to adhere to the City's CAP similar to the Project. As such, impacts related to GHG emissions at the Project Site would be less than significant, and similar to the Project.

Hazards and Hazardous Materials

The Specific Plan Alternative would allow for residential development similar to the Project. Additionally, the Project could be developed as a development project under Alternative 2. While the operation of multi-family units does not generally involve the routine use, transport, or disposal of significant amounts of hazardous materials, industrial uses could involve such activities. Land uses that use, create, or dispose of hazardous materials are regulated and monitored by federal, state, and local regulations and policies. Specifically, future development within the Specific Plan Area would be subject to compliance with the programs administered by the MFD and the State Department of Toxic Substance Control. However, new commercial and industrial developments may potentially result in foreseeable accidents related to hazardous waste. In the event that foreseeable accidents occur at Project Site, associated project applicants must comply with the applicable federal, state, and local regulations to address any accidents involving hazardous waste. Thus, the Specific Plan Alternative would result in less than significant impacts at the Project Site and would be similar to the Project.

Hydrology and Water Quality

The Specific Plan Alternative could introduce new development to the Project Site similar to the Project. Additionally, the Project could be developed as a development project under Alternative 2. As such, construction activities under Alternative 2 would result in similar impacts to water quality and could exceed the Coyote Creek Total Maximum Daily Loads (TMDLs). Construction activities associated with future development would be subject to existing regulatory requirements, including compliance with the Statewide General Construction Activity Storm Water Permit and the provisions in the MS4 Permit addressing control of construction phase water impacts. Additionally, future development projects would be required to submit Stormwater Pollution Prevention Plan (SWPPP) and Standard Urban Water Mitigation Plan (SUSMP), if applicable, and provide appropriate BMPs that would be implemented on-site. As such, construction-related impacts to hydrology and water quality would be less than significant under the Specific Plan Alternative and similar to the Project.

Implementing Alternative 2 could increase the rate and/or amount of stormwater runoff compared to existing conditions, which could result in flooding issues on or off-site. However, the Specific Plan Alternative would implement guidelines that would help reduce the amount of stormwater runoff resulting from future Buildout. As such, potential flooding impacts under the Specific Plan Alternative would be less than significant at the Project Site and would result in less impacts than the Project.

Land Use

The Specific Plan Alternative would introduce new mixed-use development to the Project Site. However, this change in land use would not result in the potential to divide an established community as the majority of the Specific Plan Area is currently developed, including the Project Site. Alternative 2 would implement land uses and zoning that would be consistent with the land use policies of the City's *General Plan.* As a planning document, the Specific Plan would implement design guidelines and development standards for the entire Specific Plan Area, including the Project Site, to ensure that the future buildout of the Plan Area would be compatible in land use and design with surrounding uses. As such, Alternative 2 would ensure that the Project Site and its surrounding uses would be consistent with Goal CD-3 and Policies 3-1, 3-2, 3-3, and 3-5 of the City's *General Plan* Land Use Element. Future development within the Plan Area, including the Project Site, would be subject to the Specific Plan development standards. In addition, the Specific Plan Alternative would be developed in accordance with policy objectives that are listed under Action LU-2b under the City's *General Plan*. Therefore, the Specific Plan Alternative would result in less than significant impacts to land use and would result in less impacts than the Project.

Noise

Implementation of the Specific Plan Alternative could include grading and construction activities that would intermittently and temporarily generate noise levels above ambient background levels, including those permissible by the General Plan, noise ordinance, and other applicable standards. Generally, construction-related noise impacts would be short-term and localized and would occur in accordance with the City's Municipal Code Noise Ordinance and any additional applicable plans or standards. In addition, some sensitive receptors could experience noise levels that would exceed the City's interior and exterior noise standards due to increased roadway noise, surrounding land uses, and temporary construction activities. Similar to the Project, future development at the Project Site under the Specific Plan Alternative would be required to adhere to and implement the *General Plan* goals and policies, would be subject to rigorous federal and local environmental review, and would be required to lessen increases in noise levels in accordance with applicable criteria. Furthermore, Alternative 2 would result in a net increase in development similar to the Project, with similar uses. Accordingly, the Specific Plan Alternative would

generate similar ambient noise levels associated with construction activities. As such, impacts related to construction noise under the Specific Plan Alternative would be less than significant and similar the Project.

Operational noise associated with the Specific Plan Alternative would be generated from future development that could include residential, commercial, or industrial uses. Alternative 2 would result in a similar increase in development compared to the Project, generate higher noise levels than the existing conditions, and have the potential to exceed ambient noise levels in the vicinity of the Project Site. As such, future development projects must comply with applicable regulatory requirements and implement appropriate mitigation measures to minimize traffic and on-site noise levels. Further, future development projects would be reviewed for project-specific impacts during any required environmental review. As such, impacts related to operational noise at the Project Site under the Specific Plan Alternative would be less than significant and similar to the Project.

Population and Housing

Similar to the Project, the Specific Plan Alternative could provide opportunities for multi-family developments within the in the Project area, including the Project Site, by accommodating residential developments or mixed-use developments. Given the existing uses of the Project Site, implementation of Alternative 2 would not result in the displacement of large numbers of existing housing units or people or substantial population growth. Thus, similar to the Project, implementation of the Specific Plan Alternative would not induce substantial population growth in the area, either directly or indirectly, nor would it result in the displacement of large numbers of existing housing units and or people. Therefore, impacts at the Project Site would be less than significant and similar to the Project.

Public Services

Fire

The Specific Plan Alternative would result in additional demands on existing fire services as future development projects would result in population increase. However, as future development within the Plan Area would occur over several years, any increase in demand for fire protection services would occur gradually as additional development and associated population growth are added. The MFD would continue regularly monitoring fire department resources to ensure adequate facilities, staffing, and equipment are available to serve existing and future development and population increases. Thus, with continued monitoring of MFD staffing levels by the City, impacts on fire services would be less than significant. Development at the Project Site under Alternative 2 would be similar to the Project and would result in an increase in the projected population growth and impacts on fire services would be similar to the Project.

Police

The Specific Plan Alternative buildout would introduce a higher number of residential uses . Similar to the Project, any direct increase in population from future residential development would require additional police facilities, personnel, and equipment to maintain adequate levels of police protection. However, as future development under the Specific Plan Alternative could be implemented in several years, any increase in demand for police protection services would occur gradually as additional development and associated population growth are added to the Project Site. Nonetheless, with continued monitoring of police department staffing levels by the Milpitas Police Department, impacts would be less than significant. Development at the Project Site under Alternative 2 would be similar to the Project and would result in less than significant impacts on police services.

Education

Implementation of the Specific Plan Alternative would result in a change in future development intensity and could result in residential uses at the Project Site similar to the Project. Thus, the Alternative could potentially increase the number of school-aged children within the City. Future development projects associated with Alternative 2 would be assessed education facilities fees based on the use and size of each project. Pursuant to California Government Code Section 65995, payment of fees to MUSD is considered full mitigation for project impacts, including impacts related to the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios or other performance objectives for schools. The total amount of education facility fees generated by development at the Project Site under Alternative 2 would be similar to the Project, and the revenue generated would be consistent with the increase in the number of students. Alternative 2 must also comply with all applicable *General Plan* policies and actions and state and federal regulations. Therefore, similar to the Project, impacts under Alternative 2 related to education facilities would be less than significant and similar to the Project.

Library Services

As discussed, the Specific Plan Alternative would result in an increase in housing units that are similar to the Project, thus increasing the projected population growth compared to the Project. As such, Alternative 2 would result in an increase in demand for library services in the City. Future development projects associated with Alternative 2 would be required to undergo a separate environmental review to assess the potential impacts on the existing services and facilities of the Milpitas Library and nearby Santa Clara County Public Library District libraries. Future development projects would also be required to adhere to all applicable regulations and implement the appropriate mitigation measures. As such, the impact on

library services associated with development of the Project Site under Alternative 2 would be less than significant and would be similar to the Project.

Recreation

Future development projects associated with the Specific Plan Alternative could introduce residential uses to the Project Site similar to the Project. An increase in housing units would increase the number of projected residents living in the City. As the Plan Area does not contain any public open space, the buildout of Alternative 2 could require the addition of parkland acres to address the existing parkland deficit. However, in lieu of parkland development, individual development projects would pay the required fees per City regulations to offset potential parkland and recreation impacts. As such, the impacts associated with development at the Project Site under Alternative 2 would be similar to the Project and would be less than significant.

Transportation

Under the Specific Plan Alternative residential uses or mixed-uses uses could be introduced to the Project Site. As such, the adoption of the Specific Plan Alternative would result in an increase in trip generation, trip distribution, and trip assignment compared to existing conditions. Under Alternative 2, the Specific Plan could implement circulation and traffic-improving amenities, such as on-site parking, and new pedestrian facilities at the Project Site (i.e., walkways, sidewalks), shortened pedestrian crossings, separated bikeways, and street trees along the Project frontage. Further, the Specific Plan could implement policies and design guidelines for future development that would reduce the potential impacts to pedestrian and bicycle facilities during construction activities. As such, the impacts on traffic and transportation at the Project Site Under Alternative 2 would be less than significant and less than the Project.

Utilities and Services

Water Supply

The Specific Plan Alternative buildout could introduce a development of residential uses similar to the Project. Therefore, Alternative 2 would result in a similar increase in the demand for water supply and services. Future development projects at the Project Site would undergo separate environmental review to determine if the Project's demands would exacerbate drought conditions and would not require or result in the construction of new water treatment facilities or expansion of existing facilities. Further, the buildout of Alternative 2 would be required to comply with State and local regulations to reduce water consumption,

particularly during drought conditions. As such, the impacts associated with development of the Project Site under Alternative 2 would be less significant and similar to the Project.

Wastewater

Implementation of the Specific Plan Alternative would increase the number of housing units within the Plan Area. Accordingly, the adoption of Alternative 2 would generate more wastewater and result in a higher demand for wastewater treatment compared to existing conditions. Future development projects under the Specific Plan Alternative would generate wastewater typical of residential or mixed use uses. Future development under Alternative 2 is not expected to disrupt sewer services in the Plan Area or exceed the San José-Santa Clara Regional Wastewater Facility (RWF) capability. Construction contractors would provide portable on-site sanitation facilities for use during demolition and construction of future development projects. Therefore, development at the Project Site under Alternative 2 would result in less than significant impacts and would be similar to the Project.

Solid Waste

Implementation of the Specific Plan Alternative could introduce residential uses similar to the Project. Construction activities associated with the buildout of the Specific Plan Alternative would generate construction-related solid waste, including wood, paper, metal, plastic, cardboard, and green wastes. Furthermore, construction-related solid waste impacts would be similar to the Project. Future development under the Specific Plan Alternative would be required to recycle/divert 75 percent of the construction waste, pursuant to the requirements of AB 939. Therefore, similar to the Project, development at the Project Site under the Specific Plan Alternative would increase the amount of solid waste generated compared to the Project, and impacts would be less than significant and similar to the Project.

Electricity

Future development under the Specific Plan Alternative would result in the long-term and continued use of electricity resources. Potential electricity impacts associated with new developments under the Specific Plan Alternative would be evaluated on an individual basis. The Pacific Gas and Electric Company (PG&E) would serve the latest development at the Project Site and future project applicants would be required to pay applicable fees assessed by PG&E necessary to provide service.[19] Therefore, impacts on electricity resources at the Project Site, under Alternative 2, would be less than significant and similar to the Project .

Natural Gas

Future development under the Specific Plan Alternative would result in long-term and continued use of natural gas resources. Alternative 2 would include an increase in the number of multi-family units compared to the Project. Similar to the Project, potential natural gas impacts associated with new developments would be evaluated on a project-by-project basis. Project applicants would be required to pay applicable fees assessed by PG&Es before service is provided to a project site. PG&E would not provide service to new developments if there were not adequate natural gas supplies and infrastructure to maintain existing service levels and meet the Project's anticipated demands. Thus, Alternative 2 would result in less than significant impacts on natural gas services at the Project Site similar to the Project.

Cumulative Impacts

Under the Specific Plan Alternative, cumulative projects identified in **Section 3.0**, **Environmental Analysis**, would be located within a one-mile radius of the Project Site. Per CEQA guidelines, these development projects would be required to undergo an environmental impact assessment on a project-by-project basis similar to the Project. The Specific Plan Alternative would result in the implementation of a programmatic Specific Plan that would allow for development within the Plan Area, including the Project Site, that is similar to the Project. Further, the Specific Plan would implement policies, design guidelines and development standards for future development that would reduce any potential significant impacts under CEQA to less than significant. This analysis has determined that the residual impacts of the Specific Plan Alternative would be similar to the Project. Therefore, environmental impacts under the Specific Plan Alternative would not be cumulatively considerable.

Relationship to the Project Objectives

The Project's objectives are included in **Table 5.0-2, Alternative 2 Relationship to the Project Objectives.** As shown in **Table 5.0-2,** Alternative 2 would achieve all three of the Project objectives. Furthermore, most of the objectives would be met to a greater degree than the Project because the Specific Plan Area would be able to accommodate a greater amount of mixed-use development, thus providing greater opportunities for housing development and increased development intensity.

Table 5.0-2
Alternative 2 Relationship to the Project Objectives

Project Objective	Relationship to the Objective
Objective #1: Increase affordable housing opportunities, including housing designated for teachers, and help meet the City's RHNA	Implementation of Alternative 2 could introduce a similar number of housing units to the City compared to the Project. As such, this objective would be met to a greater degree than the Project.
Objective #2: Redevelop underutilized and vacated land.	Similar to the Project, Alternative 2 would result in new development or the redevelopment of the Project Site. As such, this objective would be met to a similar degree than the Project.
Objective #3: Implement sustainable building practices to showcase energy efficiency and low water use.	Similar to the Project, future development under Alternative 2 would be required to comply with the sustainability requirements outlined in California Green Code and California Building Code, as well as the local regulations pertaining to energy efficiency. Further, future development projects would also be required to implement certain BMPs, such as planting drought resistant landscape, as required. As such, this objective would be met to a similar degree than the Project.

5.6 ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Section 15126.6 of the *State CEQA Guidelines* requires that an "environmentally superior" alternative be selected among the alternatives that are evaluated in an EIR. In general, the environmentally superior alternative is the alternative that would be expected to generate the fewest adverse impacts. If the No Project Alternative is identified as environmentally superior, then another environmentally superior alternative shall be identified among the other alternatives.

Table 5.0-3, Comparison of Alternatives to the Project, summarizes the impacts of each Alternative and whether impacts would be similar, less, or greater when compared to the Project.

As shown in **Table 5.0-3,** the Specific Plan Alternative (Alternative 2) would eliminate the significant impact of the Project (aesthetics-visual impacts to scenic resources). Additionally, the Specific Plan Alternative would achieve all Project objectives to a greater degree. However, Alternative 2 could increase the amount of residential development compared to the Project. Thus, the Alternative would potentially increase the City's population and the demand for public services, recreational spaces, and utility services (i.e., water, wastewater, and solid waste). Future development and redevelopment projects resulting from the Specific Plan Alternative would introduce additional commercial, industrial, and mixed-use development that would increase the development of the Project Site and uses surrounding the Project Site (Specific Plan Area). Thus, implementation of Alternative 2 could potentially result in similar

environmental impacts to the Project but to a greater degree. Therefore, the Specific Plan Alternative would result in greater impacts than the Project and would ultimately be the inferior alternative.

As shown in **Table 5.0-3**, the No Project Alternative (Alternative 1) would not achieve any of the Project's basic objectives. Alternative 1 would not redevelop the existing parcel or provide new housing in the City. No changes to the Project Site would occur under Alternative 1. Accordingly, impact areas driven by population would be determined to be less than significant, including energy, public services and utilities, including fire, police, school and library services, electricity, and natural gas consumption, as well as solid waste and wastewater generation, and water consumption, would be less than the Project. Furthermore, impact areas determined to be less than significant with mitigation or result in unavoidable and significant impacts such as aesthetics, biological resources, cultural resources, geology and soils, hazards and hazardous materials, and traffic/circulation would be reduced. As such, the No Project Alternative would be the environmentally superior alternative between the two alternatives.

Per Section 15126.6 of the *State CEQA Guidelines*, another alternative must be selected if the No Project Alternative is identified as the environmentally superior alternative. The Specific Plan Alternative (Alternative 2) would result in similar environmental impacts to the allowed uses and future development footprint at the Project Site. However, the adoption of a Specific Plan would include specific land use policies, design guidelines, and development standards for future development that would preserve the public views of the City's scenic resources and hillsides within the Plan Area. Implementation of the Project would result in significant and unavoidable impacts to these scenic resources. Thus, the Specific Plan Alternative would be selected as the environmentally superior alternative.

5.7 COMPARISON OF ALTERNATIVES

Table 5.0-3 summarizes the effects of the alternatives compared to the Project.

Table 5.0-3
Comparison of Alternatives to the Project

Environmental Issue Area	Project Impact	Alternative 1: (No Project (Comparison to Project, Impact)	Alternative 2: Specific Plan (Comparison to Project, Impact)
Aesthetics	Significant and unavoidable	Less, no impact.	Less, would reduce impacts to lessthan significant compared to the Proiject.
Air Quality	Less than significant.[1]	Less, less than significant	Similar, less than significant
Biological Resources	Less than significant with **Mitigation Measure MM BIO-1**	Less, less than significant	Similar, less than significant
Cultural and Tribal Cultural Resources	Less than significant with **Mitigation Measure MM CUL-1**	Less, no impact	Similar, less than significant
Energy	Less than significant	Less, less than significant	Less, less than significant
Geology and Soils	Less than significant with **Mitigation Measure MM GEO-1**	Less, no impact	Similar, less than significant
Greenhouse Gases	Less than significant.[2]	Less, less than significant	Similar, less than significant
Hazards and Hazardous Materials	Less than significant with **Mitigation Measure MM HAZ-1**	Similar, less than significant	Similar, less than significant
Hydrology and Water Quality	Less than significant	Greater, less than significant	Similar, less than significant
Land Use	Less than significant	Similar, less than significant	Less, less than significant
Noise	Less than significant	Less, less than significant	Similar, less than significant
Population and Housing	Less than significant	Less, no impact	Similar, less than significant
Fire Protection	Less than significant	Less, no impact	Similar, less than significant
Police Protection	Less than significant.	Less, no impact	Similar, less than significant
Education	Less than significant	Less, no impact	Similar, less than significant
Library Services	Less than significant	Less, less than significant	Similar, less than significant
Recreation	Less than significant	Less, no impact	Similar, less than significant
Transportation	Less than significant with **Mitigation Measure MM TRA-1**	Less, less than significant	Less, less than significant
Water Supply	Less than significant	Less, less than significant	Similar, less than significant
Wastewater	Less than significant	Less, less than significant	Similar, less than significant

Environmental Issue Area	Project Impact	Alternative 1: (No Project (Comparison to Project, Impact)	Alternative 2: Specific Plan (Comparison to Project, Impact)
Solid Waste	Less than significant	Less, less than significant	Similar, less than significant
Electricity	Less than significant	Similar, less than significant	Similar, less than significant
Natural Gas	Less than significant	Similar, less than significant	Similar, less than significant

Notes:

*1 While Air Quality impacts are less than significant, **Mitigation Measure MM AQ-1** was included as required by the BAAQMD to implement the BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions*

*2 While GHG impacts are less than significant, **Mitigation Measure MM GHG-1** was included to demonstrate the Project's compliance with the Milpitas 2022 CAP Update and BAAQMD threshold "B".*

6.0 OTHER CEQA CONSIDERATIONS

6.1 GROWTH INDUCEMENT

State CEQA Guidelines Section 15126.2(d) requires that an environmental impact report (EIR) evaluate the growth-inducing impacts of a proposed action. A growth-inducing impact is defined by *State CEQA Guidelines* Section 15126.2 (e) as follows:

> *the ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth…Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also…the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.*

There are two types of growth-inducing impacts a project may have: direct and indirect. To assess the potential for growth-inducing impacts, the project features that may encourage and facilitate activities that individually or cumulatively may affect the environment must be evaluated.

Direct growth-inducing impacts occur when a project development imposes new burdens on a community that directly induces population growth or the construction of additional developments in the same area of the proposed project, thereby triggering related growth associated impacts. Included in this analysis are projects that would remove physical obstacles to population growth (such as a new road into an undeveloped area or a wastewater treatment plant that could allow more construction in the service area). Construction of these types of infrastructure projects cannot be considered isolated from the development they trigger. In contrast, projects that physically remove obstacles to growth, projects that indirectly induce growth, are those that may provide a catalyst for future unrelated development in an area (such as a new residential community that requires additional commercial uses to support residents).

A project can have a direct and/or indirect growth inducement potential. Direct growth inducement would result if a project, for instance, involved the construction of new housing. A project would have indirect growth inducement potential if it established substantial new permanent employment opportunities (e.g., commercial, industrial, or governmental enterprises) or if it would involve a construction effort with substantial short-term employment opportunities that would indirectly stimulate the need for additional housing and services to support the new employment demand. Similarly, a project would indirectly induce growth if it would remove an obstacle to additional growth and development, such as removing a constraint on a required public service. For example, a project providing an increased water supply in an area where water service historically limited growth could be considered growth inducing.

The *State CEQA Guidelines* explain that the environmental effects of induced growth are considered indirect impacts of the proposed action. These indirect impacts or secondary effects of growth may result in significant, adverse environmental impacts. Potential secondary effects of growth include increased demand on other community impacts such as degradation of air and water quality, degradation or loss of plant and animal habitat, and conversion of agricultural and open space land to developed uses.

Typically, the growth-inducing potential would be considered significant if it stimulates human population growth or a population concentration above what is assumed in local and regional land use plans, or in projections made by regional planning authorities. Significant growth potential could also occur if the project provides infrastructure or service capacity to accommodate growth levels beyond those permitted by local or regional plans and policies.

As discussed below, this analysis evaluates whether the proposed project would directly or indirectly induce economic, population, or housing growth in the surrounding environment.

6.1.1 Direct and Indirect Growth-Inducing Impacts

The Project would introduce 206 residential units. Using the City's average household size of 3.18 for incremental 2040 growth, it is anticipated that the Project would generate approximately 655 residents. Conservatively assuming that all residents would move in from outside of the City, the proposed multi-family residential developments would result in direct population growth as it provides new homes within the City of Milpitas.

As discussed in **Section 3.12, Population and Housing**, the Association of Bay Government (ABAG) / Metropolitan Transportation Commission (MTC) Plan Bay Area 2050, serves as the long-range strategic plan for the Bay Area and focuses on the interrelated elements of housing, the economy, transportation and the environment. Plan Bay Area 2050 divides the nine-county Bay Area region into sub-counties, titled "super districts" and projects the future growth in population and employment within each Super District. Municipalities under these Super Districts are divided and are grouped with other jurisdictions. Therefore, for the purposes of this Project's analysis, the projected population growth trends between the years 2020 to 2040 for the City of Milpitas and the County of Santa Clara would be analyzed utilizing ABAG/MTC's previous Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS): Plan Bay Area 2040. The Plan Bay Area 2040 incremental population growth projection for the City of Milpitas is the addition of 23,131 persons between 2022 and 2040. The Project's incremental population growth would account for approximately three percent of the City's incremental population growth. In comparison to ABAG/MTC's population growth projections for Santa Clara County as a whole, the Project would account for less than one percent of the County's projected population increase by the year 2040.

As described in **Chapter 3.11, Population and Housing**, as of 2022, the City currently holds a total of approximately 25,581 residential units and is projected to increase by 4,849 residential units by 2040. The Project's incremental increase of 206 residential units would account for approximately four percent of the City's projected increase in housing units. In comparison to ABAG/MTC's growth projections in housing for Santa Clara County as a whole, the Project would account for less than one percent of the County's projected increases in the number of housing units.

Although the Project includes unplanned population growth outside of the scope of the General Plan and SCAG projections, the environmental impacts of such unplanned population growth are evaluated, planned for, and mitigated as part of the Project throughout this EIR. The Project would not induce a substantial direct growth in population or housing. Although the Project would introduce new land use changes, these changes would be contingent on a change through a General Plan Amendment (GPA). The Project Site is located within a predominantly urban area with existing infrastructure that can support the proposed infill development. All proposed infrastructure improvements (i.e., sewer, water, and storm drains) would located be on-site to support anticipated growth generated by the Project. The potential physical environmental impacts of such improvements are analyzed in **Section 3.15**, **Utilities and Service Systems**. No additional infrastructure improvements (e.g., roadways and other utilities) would be implemented that could indirectly induce population growth elsewhere in the City. Further, the Project's population and employment growth would also be offset by the more substantial increase in housing units, a portion of which would include affordable housing to help meet the City's 6th cycle RHNA allocations. Thus, Project implementation would not result in a significant inducement of direct or indirect growth.

6.2 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

Section 21100(b)(2)(B) of the *State CEQA Guidelines* and Section 15126.2(c) of the *State CEQA Guidelines* require that an EIR include a detailed statement setting forth "[a]ny significant effect on the environment that would be irreversible if the project is implemented" (Public Resources Code § 21100(b(2)(B). "Significant irreversible environmental changes" include the use of nonrenewable natural resources during the initial and continued phases of the project, should this use result in the unavailability of these resources in the future. Primary impacts and, particularly, secondary impacts generally commit future generations to similar uses. Also, irreversible damage can result from environmental accidents associated with projects. Irretrievable commitments of these resources are required to be evaluated in an EIR to ensure that such consumption is justified (*State CEQA Guidelines* §15126.2(c)).

Approval of the Project would cause irreversible environmental changes consisting of the following:

Project construction would result in an irretrievable loss of, and irreversible commitment of, nonrenewable natural resources. This would occur during the construction phase and would continue throughout the Project's operational lifetime. Construction would require the consumption of resources that are not renewable, or which may renew so slowly as to be considered non-renewable. These resources include, but are not limited to, lumber and other forest products; materials used in concrete and asphalt; metals; and water. Fossil fuels such as gasoline and oil would also be consumed in the use of construction vehicles and equipment. Construction and operations of the residential developments would also emit pollution into the air, from construction machines and vehicles, and from vehicles traveling to and from the Project Site. Future operations of the proposed residential development would occur in accordance with California Code of Regulations Title 24 Part 6, which sets forth conservation practices that would limit energy consumption. Nonetheless, the Project's energy requirements represent a long-term commitment of essentially non-renewable resources.

7.0 LIST OF EIR PREPARERS

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