

# Appendix A

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Notice of Preparation and Comments  
Received

# CITY OF MILPITAS NOTICE OF PREPARATION OF AN SUBSEQUENT ENVIRONMENTAL IMPACT REPORT AND NOTICE OF PUBLIC SCOPING MEETING FOR THE GATEWAY-MAIN STREET SPECIFIC PLAN PROJECT

**Date:** July 15, 2024

**To:** Responsible Agencies, Trustee Agencies, and Interested Persons

**RE:** Notice of Preparation of a Draft Subsequent Environmental Impact Report for the Gateway-Main Street Specific Plan Project

In accordance with the provisions of the California Environmental Quality Act (CEQA), the City of Milpitas (City) has prepared a Notice of Preparation (NOP) for a Draft Subsequent Environmental Impact Report (SEIR) for the proposed Gateway-Main Street Specific Plan (Specific Plan). The SEIR tiers from the City's adopted General Plan 2040 to implement the General Plan policies (LU 1-1 and LU 1-2) Action LU-2a for the update and implementation of the Milpitas Midtown Specific Plan. The NOP includes a project description, exhibits, summary of key issues to be addressed in the SEIR, and an overview of the purpose of this notice and the environmental review process. The purpose of this NOP is to provide an opportunity for the public, interested parties, and public agencies to comment on the scope and proposed content of the SEIR.

## PROVIDING COMMENTS ON THIS NOTICE OF PREPARATION

Agencies and interested parties may provide the City with written comments on environmental topics to be addressed in the SEIR for the project. Because of time limits mandated by State law, written and/or email comments should be provided no later than 5:00 p.m. on August 13, 2024. Please send all comments on the NOP to:

City of Milpitas, Planning Department  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Attn: Jay Lee, Planning Director  
Phone: (408) 586-3077  
E-mail: [jlee@milpitas.gov](mailto:jlee@milpitas.gov)

## PUBLIC SCOPING MEETING

The City will conduct a public scoping meeting to receive comments on environmental issues that should be addressed in the Draft SEIR as well as the range of practicable alternatives to be evaluated in the Draft SEIR. The public scoping meetings are scheduled virtually via Zoom at the following date, time and location:

**DATE:** August 1, 2024, 6:00 p.m. to 7:30 p.m.

**MEETING LINK:** <https://us06web.zoom.us/j/81649348310?pwd=XybwZmZWwtvqy2z5mH9CPim1p5ix9W.1>  
Meeting ID: 816 4934 8310  
Passcode: 816975

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## PROJECT LOCATION

The Gateway-Main Street Specific Plan Area (Specific Plan Area) covers approximately 605 acres within the City of Milpitas. The City, located in northern Santa Clara County, within the South San Francisco Bay Area, is situated north of San Jose and east of Santa Clara, Sunnyvale, and Mountain View along State Route 237 (Highway 237) (Figure 1, Regional Location). The City is served by three major freeways: Interstate (I)-880, I-680, Highway 237/Calaveras Boulevard, and the County-managed Montague Expressway.

The Specific Plan Area is located within the western portion of the city, west of the Union Pacific Railroad (UPRR) line. It encompasses Calaveras Boulevard, Main Street, and the Milpitas Midtown Specific Plan project area bordered by I-880 to the west, the UPRR tracks to the east, and Great Mall Parkway to the south. Two heavy rail lines, the UPRR freight line and Bay Area Rapid Transit (BART) commuter rail lines, traverse the Specific Plan Area on the east. The Valley Transportation Authority (VTA) operates light rail transit (LRT) and interconnecting bus lines into the Specific Plan Area along the Great Mall Parkway.

Existing land uses in the Specific Plan Area consist of single-family residential, multi-family residential, retail, office, civic/institutional, park/open space, and industrial uses. Commercial uses (retail, office, and hospitality) are located throughout the Specific Plan Area. A mix of single-family and multi-family housing is scattered throughout the Specific Plan Area. Public uses, including religious, educational, and cultural facilities, comprise a portion of the Specific Plan Area, including the County-operated Elmwood Correctional Facility. Transportation and industrial uses, in the Specific Plan Area, are primarily focused between the two railroad lines.

## PROJECT BACKGROUND

The Milpitas Midtown Specific Plan (Midtown Plan), adopted in 2002, is the predecessor plan to the Milpitas Gateway-Main Street Specific Plan. The Midtown Plan was last updated in 2010 to respond to a series of development activities in the Midtown area, including the construction of new housing, reinvestment in the Great Mall, a retail shopping center, and the extension of the Tasman East Valley Transportation Authority (VTA) light rail transit line, and proposals, at the time, to extend the Bay Area Rapid Transit (BART) through the area.

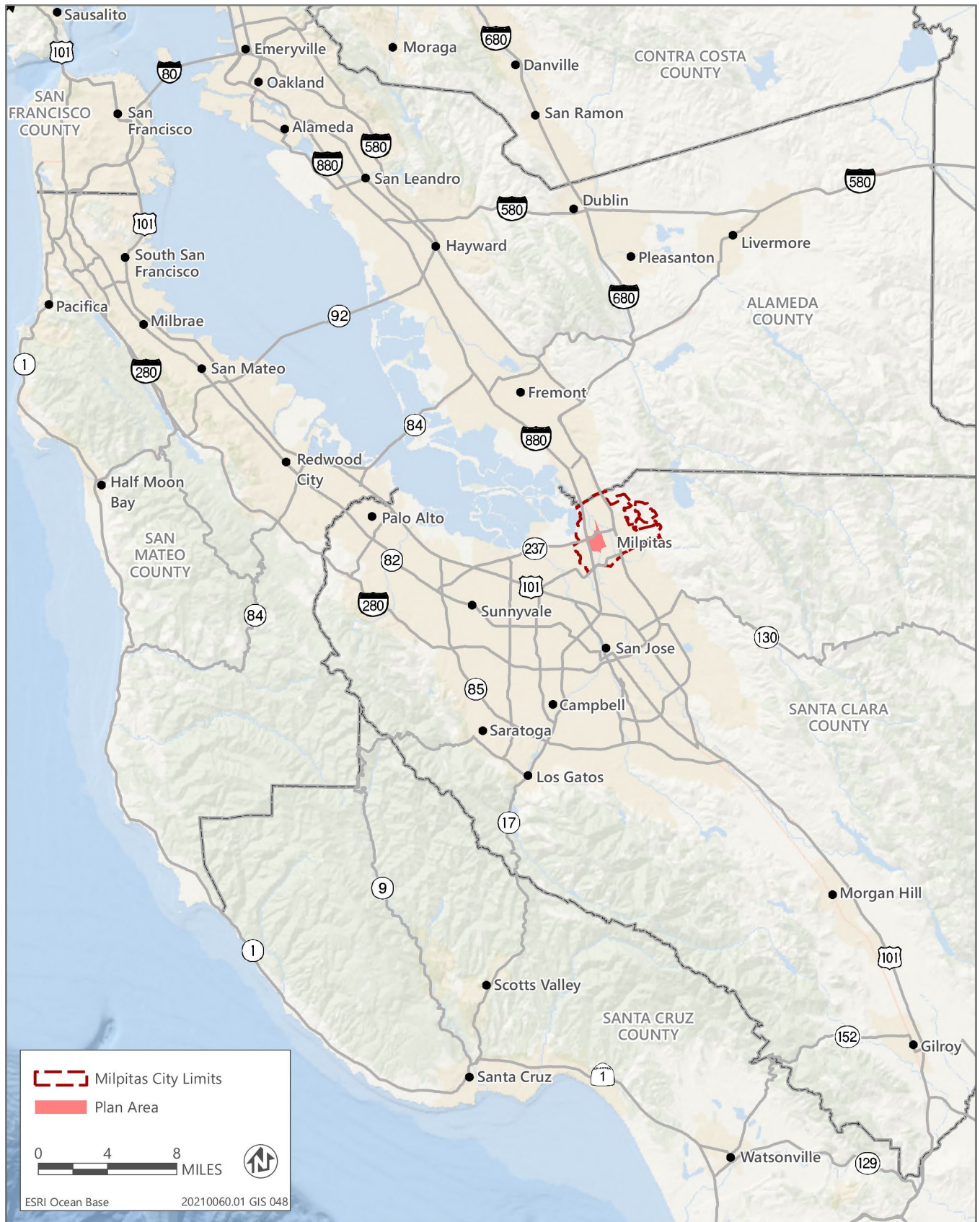
The City of Milpitas General Plan 2040, adopted in 2021, is the guiding, long-term plan and policy document for the physical development of the city through 2040. The planned update of the Midtown Plan to the Gateway-Main Street Specific Plan, as described in the General Plan, is intended to create an economically-viable main street type development that serves as the cultural hub of the city. The General Plan 2040 provides goals and policies for the Gateway-Main Street Area, to create a mixed-use neighborhood with a variety of residential, commercial, civic, and cultural uses in a compact, walkable, and centralized setting.

The Specific Plan Area includes the historic commercial core of the City, centered on Main Street and Serra Way, and Calaveras Boulevard, near Interstate 880. The Gateway-Main Street Specific Plan Update would provide the vision, standards, and policies of the Midtown Plan. The project would implement the General Plan goals and policies to update the Midtown Plan with a focus on revitalizing Main Street as the city's historic core and improving Calaveras Boulevard as a western gateway into the city.

## PROJECT DESCRIPTION

### Overview

The purpose of the Gateway-Main Street Specific Plan (Specific Plan) is to guide land use and development consistent with the General Plan; implement the City's economic development strategy and help facilitate investment in the Specific Plan's Focus Areas; preserve and enhance existing neighborhoods; and plan for the future transition of Urban Reserve lands. The Specific Plan identifies four focus areas: Gateway District, Crossroads District, Main Street District, and Abbott District.



Source: Adapted by Ascent in 2024.

**Figure 1** Regional Location

The City's General Plan Land Use Element designates the adopted Midtown Plan area as MGSP - Milpitas Gateway-Main Street Specific Plan. The General Plan includes the following actions related to the Specific Plan: Action LU-2A to maintain and implement the Gateway-Main Street Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community 'gathering place' while maintaining needed industrial, service and commercial uses; and Action ED-3H to work with property owners to facilitate development of vacant and underutilized properties on Main Street to achieve the highest and best use (Figure 2).

### Gateway-Main Street Specific Plan

The proposed Specific Plan would change the development currently allowed under the General Plan. The Specific Plan would require amendments to the General Plan as changes to the boundaries and land use and development standards of the adopted Midtown Plan Area are proposed. The Specific Plan Update proposes a new project area boundary that removes the portion of the Midtown Specific Plan Area south of the Great Mall Parkway, and adds area in the northwestern portion of the Specific Plan Area.

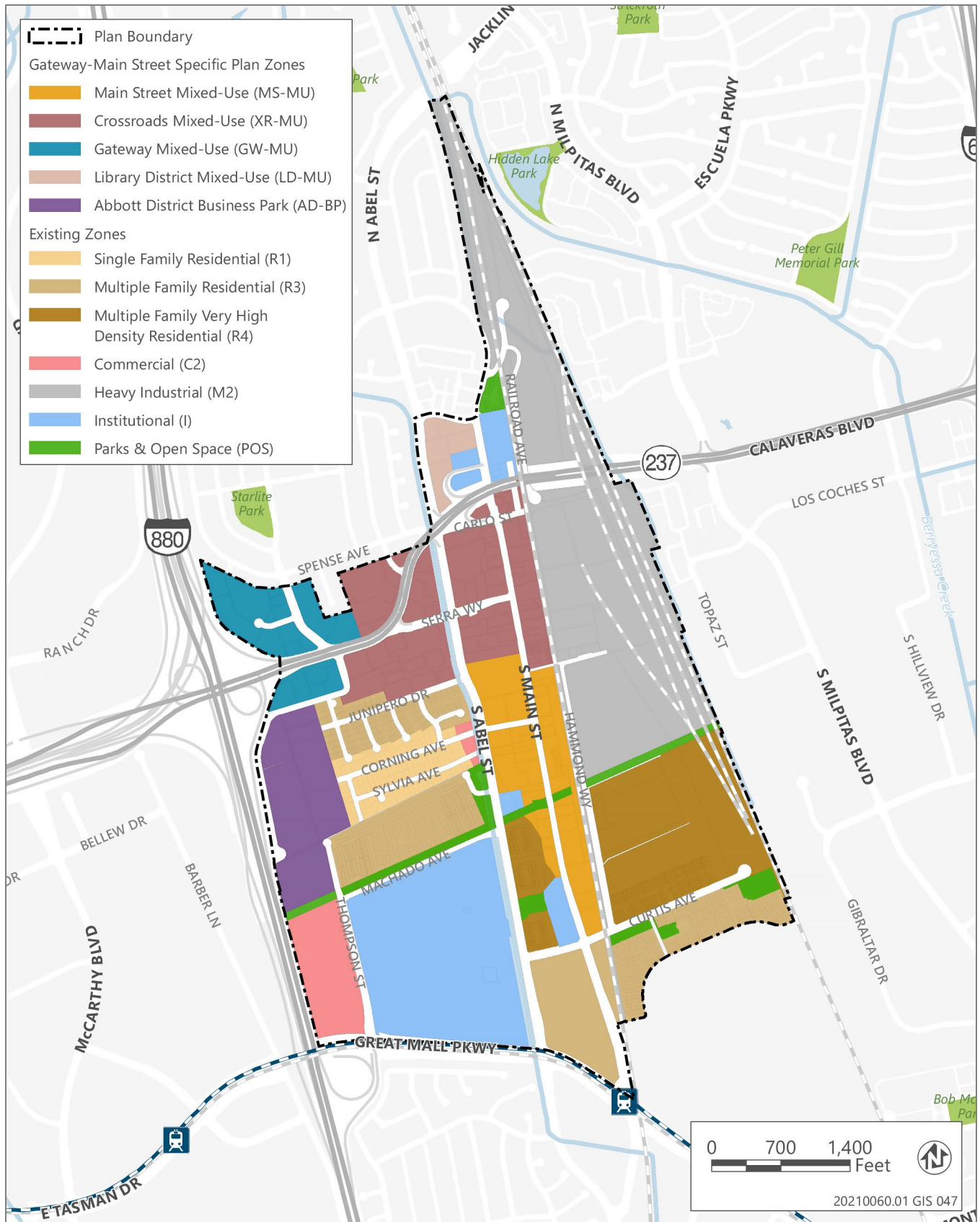
The proposed Specific Plan would allow for additional residential development beyond what is allowed under the General Plan through increases in density and implementation of an incentive program. This would also include alterations in nonresidential development potential through mixed-use development.

## POTENTIAL ENVIRONMENTAL EFFECTS

As required by CEQA, the SEIR will describe existing conditions and evaluate the potential environmental effects of the proposed project and a reasonable range of alternatives, including the no-project alternative. It will address direct, indirect, and cumulative effects. The SEIR will also discuss potential growth-inducing impacts and summarize significant and unavoidable environmental effects. The SEIR will identify feasible mitigation measures, if available, to reduce potentially significant impacts. Potential issues and impacts to the existing environment to be analyzed in the Draft SEIR include the following environmental topics:

- ▶ Aesthetics
- ▶ Air Quality
- ▶ Energy
- ▶ Biological Resources
- ▶ Archaeological, Historical, and Tribal Cultural Resources
- ▶ Noise and Vibration
- ▶ Land Use and Planning
- ▶ Population and Housing
- ▶ Public Services and Utilities
- ▶ Traffic and Circulation
- ▶ Recreation
- ▶ Greenhouse Gas Emissions

Implementation of the project would have no impact on agricultural resources, forestry resources, or mineral resources as these resources do not exist in the proposed Specific Plan area. The proposed Specific Plan Area is surrounded by urban development and is not adjacent to or intermixed with open space, natural land, or rural/agricultural lands. New construction is subject to the City Municipal Code, California Building Code, and the California Fire Code, which includes safety measures to minimize the threat of geologic hazards and fire. Thus, the project would have no impact related to geology and soils or wildfire risk. The majority of development allowed under the proposed Specific Plan would be within areas currently developed with urban uses and the amount and type of runoff that could result in hydrology and water impacts generated by new development would be similar to existing conditions.



Source: Adapted by Ascent in 2024.

**Figure 2** Proposed Land Use

Further, future development would be required to prepare a detailed project specific drainage plan, Water Quality Management Plan, and a Storm Water Pollution Prevention Plan (SWPPP). Thus, the project would have no impact related to hydrology or water quality. New construction would be subject to a comprehensive set of California regulatory requirements that are designed to assure the safe handling and disposal of hazardous materials. These issues will not be evaluated in the Draft SEIR.

**Other SEIR Sections:** In addition to the above environmental topics, the Draft SEIR will also evaluate the potential cumulative and growth inducing effects of the project, as required by CEQA. Reasonably foreseeable future projects in the project vicinity will be considered in this analysis.

In accordance with section 15126.6 of the State CEQA Guidelines, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the Project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.” As required by CEQA, the SEIR will evaluate a No Project Alternative. Aside from the No Project Alternative, the City has not yet determined what additional alternatives to the project will be evaluated in the SEIR. These will be identified during the environmental review process. Once selected, the alternatives will be analyzed at a qualitative level of detail in the Draft SEIR for comparison against the impacts identified for the proposed project, consistent with the requirements of CEQA.

## PURPOSE OF THIS NOTICE

In accordance with the State CEQA Guidelines (14 California Code of Regulations [CCR] Section 15082), the City has prepared this NOP to inform agencies and interested parties that an EIR will be prepared for the above-referenced project. The purpose of an NOP is to provide sufficient information about the project and its potential environmental impacts to allow agencies and interested parties the opportunity to provide a meaningful response related to the scope and content of the EIR, including mitigation measures that should be considered and alternatives that should be addressed (State CEQA Guidelines 14 CCR Section 15082[b]).

## ENVIRONMENTAL REVIEW PROCESS

Following completion of the 30-day NOP public review period, the City will incorporate relevant information into the Draft SEIR, including results of public scoping and technical studies. The Draft SEIR will be circulated for public review and comment for 45-day public review period. All parties that have requested to be included on the project mailing list will be provided a Notice of Availability for the Draft SEIR.

A copy of this NOP has been posted on the project website: Milpitas Gateway-Main Street Specific Plan ([milpitasmainstreet.org](http://milpitasmainstreet.org))

If you would like to be placed on the project mailing list or have any questions or comments, please contact Jay Lee, Planning Director, City of Milpitas, at (408) 586-3077 or [jlee@milpitas.gov](mailto:jlee@milpitas.gov).

## California Department of Transportation

DISTRICT 4  
OFFICE OF REGIONAL AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



August 13, 2024

SCH #: 2024070432  
GTS #: 04-SCL-2024-01305  
GTS ID: 33347  
Co/Rt/Pm: SCL/237/VAR

Jay Lee, Planning Director  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

### **Re: Gateway-Main Street Specific Plan Project— Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR)**

Dear Jay Lee:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Gateway-Main Street Specific Plan Project. The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the July 2024 NOP.

Please note this correspondence does not indicate an official position by Caltrans on this project and is for informational purposes only.

#### **Project Understanding**

The proposed project will guide the land use and development of the Specific Plan's Focus Area. The Plan will implement the City's economic development strategy and will plan for high-density, transit-oriented housing to create a mixed-use community. The project area is located along State Route (SR)- 237 and Interstate 880 (I-880).

#### **Travel Demand Analysis**

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Vehicle Miles Traveled (VMT) analysis for land use projects, please review Caltrans' Transportation Impact Study Guide ([link](#)).



If the project meets the screening criteria established in the City's adopted VMT policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in alignment with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR.

### **Fair Share Contributions**

We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT. Should the project have any significant transportation impacts, please consider fair share contributions to the following projects identified in the Plan Bay Area 2050 (PBA 2050):

- Project ID 21-T06-025: Corridor & Interchange Improvements located on I-880 in Santa Clara County. This program includes funding to implement interchange improvements at Montague Expressway (Expy).
- Project ID 21-T06-043: Corridor & Interchange Improvements located on SR-237 in Santa Clara County. This program includes funding to implement interchange improvements at SR-85, Great American Parkway, Lawrence Expy/Caribbean Dr, Java Dr, Maude Ave, and Middlefield Rd; intersection improvements at El Camino Real/Grant Rd; a new westbound auxiliary lane between McCarthy to N 1st St; new eastbound auxiliary lanes between Mathilda Ave and Fair Oaks Ave; and new auxiliary lanes between Coyote Creek/Zanker Rd to N 1st St.

### **Multimodal Transportation Planning**

Please review and include the reference to the *Caltrans District 4 Pedestrian Plan* (2021) and the *Caltrans District 4 Bike Plan* (2018) in the DEIR. These two plans studied existing conditions for walking and biking along and across the State Transportation Network (STN) in the nine-county Bay Area and developed a list of location-based and prioritized needs.

Please note that any Complete Streets reference should be updated to reflect Caltrans Director's Policy 37 ([link](#)) that highlights the importance of addressing the needs of non-motorists and prioritizing space-efficient forms of mobility, while also facilitating goods movement in a manner with the least environmental and social impacts. This supersedes Deputy Directive 64-R1, and further builds upon its goals of focusing on the movement of people and goods.

### **Integrated Transportation and Land Use Planning**

Transportation and housing are integrally connected. The Gateway-Main Street Specific Plan development process may provide a mechanism to reflect current transportation and land use policy and adopt efficient land-use strategies such as

transit-oriented, infill and mixed-use developments that can potentially reduce vehicle miles traveled and address climate change.

Please review and include the reference to the current California Transportation Plan (CTP) in the DEIR. CTP 2050 envisions that the majority of new housing located near existing housing, jobs, and transit, and in close proximity to one another will reduce vehicle travel and GHG emissions, and be accessible and affordable for all Californians, including disadvantaged and low-income communities. The location, density, and affordability of future housing will dictate much of our future travel patterns, and our ability to achieve the vision outlined in CTP 2050. Caltrans encourages the City to consider and explore the potential of excess state-owned property for affordable housing development, per Executive Order N-06-19.

Caltrans looks forward to reviewing the DEIR that should demonstrate how this specific plan aligns with the City's adopted VMT policies. Caltrans supports collaboration with local agencies to work towards a safe, functional, interconnected, multi-modal transportation network integrated through efficient and equitable land use planning and policies. The City should also continue to coordinate with Caltrans to identify and implement necessary network improvements and impact mitigation.

### **Lead Agency**

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

### **Construction-Related Impacts**

Potential impacts to the State Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, please visit Caltrans Transportation Permits ([link](#)).

Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN.

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These

access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

### **Equity and Public Engagement**

We will achieve equity when everyone has access to what they need to thrive no matter their race, socioeconomic status, identity, where they live, or how they travel. Caltrans is committed to advancing equity and livability in all communities. We look forward to collaborating with the City to prioritize projects that are equitable and provide meaningful benefits to historically underserved communities.

Caltrans encourages the City to foster meaningful, equitable and ongoing public engagement in the Specific Plan development process to ensure future transportation decisions and investments reflect community interests and values. The public engagement process should include community-sensitive and equity-focused approaches seeking out the needs of individuals from underserved, Tribal, and low-income communities, the elderly, and individuals with disabilities.

### **Encroachment Permit**

Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' ROW requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement.

The Office of Encroachment Permit requires 100% complete design plans and supporting documents to review and circulate the permit application package. To obtain more information and download the permit application, please visit Caltrans Encroachment Permits ([link](#)). Please note that the checklist TR-0416 is used to determine the appropriate Caltrans review process for encroachment projects. Your application package may be emailed to [D4Permits@dot.ca.gov](mailto:D4Permits@dot.ca.gov).

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Marley Mathews, Associate Transportation Planner, via [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

For future early coordination opportunities or project referrals, please visit Caltrans LDR website ([link](#)) or contact [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

Jay Lee, Planning Director  
August 13, 2024  
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Sincerely,

A handwritten signature in black ink, appearing to read "Luo Yunsheng". The signature is fluid and cursive, with the first name "Luo" and the last name "Yunsheng" written in a single continuous stroke.

YUNSHENG LUO  
Branch Chief, Local Development Review  
Office of Regional and Community Planning

c: State Clearinghouse



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 13, 2024

Jay Lee, Planning Director  
City of Milpitas  
455 E Calaveras Boulevard  
Milpitas, CA 95035  
[JLee@milpitas.gov](mailto:JLee@milpitas.gov)

Subject: Gateway-Main Street Specific Plan Project, Notice of Preparation of a Draft Subsequent Environmental Impact Report, SCH No. 2024070432, City of Milpitas, Santa Clara County

Dear Jay Lee:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Subsequent Environmental Impact Report (SEIR) from the City of Milpitas (Lead Agency) for the Gateway-Main Street Specific Plan Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Code. For example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by state law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any Project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

### **Lake and Streambed Alteration**

The Project has the potential to impact stream resources including mainstems, tributaries, drainages and floodplains associated with Penitencia Creek that may require notification to the LSA Program.

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting rivers, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it

may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification.

### **Migratory Birds and Raptors**

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **Fully Protected Species**

Several Fully Protected Species (Fish & G. Code § 3511 and 4700) have the potential to occur within or adjacent to the Project area.

Project activities described in the draft SEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research;

- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15).

CDFW also recommends the draft SEIR analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include

in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species. Project proponents should consult with CDFW early in the Project planning process.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Milpitas

**Objective:** The purpose of the Gateway-Main Street Specific Plan is to guide land use and development consistent with the General Plan; implement the Lead Agency's economic development strategy and help facilitate investment in the Project's Focus Areas; preserve and enhance existing neighborhoods; and plan for the future transition of Urban Reserve lands. The Project identifies four focus areas: Gateway District, Crossroads District, Main Street District, and Abbott District.

**Location:** The Gateway-Main Street Specific Plan Area (Project Area) covers approximately 605 acres within the City of Milpitas. The Project Area is located within the western portion of the city, west of the Union Pacific Railroad (UPRR) line. It encompasses Calaveras Boulevard, Main Street, and the Milpitas Midtown Specific Plan project area bordered by Interstate-880 (I-880) to the west, the UPRR tracks to the east, and Great Mall Parkway to the south.

**Timeframe:** Not noted in the NOP.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

The draft SEIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The draft SEIR relies on General Plan policies and on requirements that subsequent Projects, if necessary, obtain appropriate permits but does not sufficiently describe how these policies will reduce impacts to less-than-significant.

## **ENVIRONMENTAL SETTING**

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project (CEQA Guidelines, §§15063 & 15360). CDFW recommends that a full list or table is included in the updated Biological Resources Section of the draft SEIR that notes species common name, scientific name, state and federal listing status (as applicable), habitat type



preference and determination on presence, for all special-status species with the potential to occur within the Project area.

CDFW recommends the draft SEIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft SEIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project area (for sensitive natural communities see:

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City of Milpitas or Santa Clara County (County) may require.

CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine U.S. Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage [www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data](http://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data)). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations. Only with sufficient data and information can the Lead Agency adequately assess which special-status species are likely to occur in the Project vicinity.

According to Biogeographic Information and Observation System (BIOS) records, the Project site contains positive detections of several special-status species and has the potential to support numerous special-status species and their associated habitat. Species with potential to occur on-site include but are not limited to those listed in Attachment 1.

## I. Environmental Setting and Related Impact Shortcoming

**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 regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?**

### **COMMENT 1: Nesting Bird Surveys**

The Project area includes over a dozen mature trees. The draft SEIR does not identify the number of trees that will be removed or the potential impacts to birds. The Project has the potential to disturb special-status species and nesting habitat for birds and raptors; however, the draft SEIR does not state that baseline data will be collected if active nests are discovered.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **Nesting Bird Surveys.** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a professional biologist experienced with the applicable species and habitat shall conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day and during appropriate nesting times.
- **Nesting Bird Buffers:** CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival.

### **COMMENT 2: Bats**

The Project area includes over a dozen mature trees. The draft SEIR does not identify the number of trees that will be removed or the potential impacts to bats. The Project has the potential to disturb bat habitat. In order to determine the extent to which impacts may occur to bats and determine where habitat loss may occur from the removal of

trees, the draft SEIR should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

The habitat assessment shall include a visual inspection of features within the work area for potential roosting features including trees, crevices, and hollow areas (bats need not be present). include a visual inspection of features within 200 feet of the work area for potential roosting features including trees, crevices, and hollow areas (bats need not be present). The draft SEIR should also include a section that discusses the results of the suitable habitat assessment and if any bats or signs of bats (feces or staining at entry/exit points) are discovered. The surveys should occur at least two seasons in advance of Project initiation. The draft SEIR should include:

- Bat Habitat Monitoring by a qualified biologist of suitable habitat from March 1 to April 1 or August 31 to October 15 prior to construction activities. If the focused survey reveals the presence of roosting bats, then the appropriate exclusionary or avoidance measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15.
- Bat Project Avoidance: If active bat roosts are observed during environmental assessments or during construction, at any time, all Project activities should stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. The bat avoidance plan should utilize seasonal avoidance, phased construction as well as temporary and permanent bat housing structures developed in coordination with CDFW.

### **COMMENT 3: Crotch's bumble bee**

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The draft SEIR does not address whether the proposed Project could result in impacts to Crotch's bumble bee. Crotch's bumble bee occurrences have been documented in the County (CDFW 2023). The Project location is within the Crotch's bumble bee range (<https://wildlife.ca.gov/Conservation/CESA>) and grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bee.

The Project includes areas within ruderal grass and herbaceous vegetation and that may be potential Crotch's bumble bee nesting and foraging habitat. Potential impacts include direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

To evaluate and avoid for potential impacts to bumble bees, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **Habitat Assessment.** A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumble bee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed. Further guidance on habitat surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).
- **Survey Plan:** If Crotch's bumble bee habitat is present within the Project area, a pre-construction survey plan shall be developed and be submitted to CDFW for review and approval. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee. If CESA candidate bumble bee will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding (MOU) from CDFW. Surveys shall be conducted during the colony active period (i.e. April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year, therefore, surveys shall be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* referenced above.
- **Crotch's Bumble Bee Avoidance or Take Authorization:** If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal. If full take avoidance is not feasible, CDFW strongly recommends that the Project proponent apply to CDFW for take authorization under an ITP.

#### **COMMENT 4: Western Burrowing Owl**

Burrowing owl (*Athene cunicularia*) is designated by CDFW as a California State Species of Special Concern (SSC) due to population decline and breeding range

retraction. The species has also experienced a severe population decline in the County. Known populations of burrowing owl occur within and adjacent to the Project area.

The Project includes areas within ruderal grass and herbaceous vegetation that may be potential burrowing owl habitat. Direct mortality could occur through crushing of adults or young within burrows, loss of nesting burrows, loss of nesting habitat, loss of foraging habitat resulting in reduced nesting success (loss or reduced health or vigor of eggs or young), nest abandonment, and reduced frequency or duration of care for young resulting in reduced health or vigor of young.

To evaluate and avoid for potential impacts to burrowing owl, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **Habitat Assessment and Surveys:** The draft SEIR should include a thorough habitat assessment of potential burrowing owl habitat within and adjacent to the Project area. A professional biologist experienced with burrowing owl and their habitat should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure and presence of burrows. Specific information on habitat assessment, burrowing owl survey methods, buffer distances and mitigation is provided in the CDFW Staff Report on Burrowing Owl Mitigation, dated March 7, 2012, and available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is

Jay Lee  
City of Milpitas  
August 13, 2024  
Page 10

required in order for the underlying project approval to be operative, vested, and final. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the draft SEIR to assist the Lead Agency in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or [Marcus.Griswold@wildlife.ca.gov](mailto:Marcus.Griswold@wildlife.ca.gov), or Jason Faridi, Senior Environmental Scientist (Supervisory), at [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

B77F9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1: Special-Status Species and Commercially/Recreationally Important Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024070432)  
Craig Weightman, CDFW Bay Delta Region – [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 15, 2024.

**ATTACHMENT 1:**  
**Special-Status Species**

Species	Status
<b>Fish and Invertebrates</b>	
Crotch's bumble bee ( <i>Bombus crotchii</i> )	State Candidate (SC)
<b>Birds</b>	
burrowing owl ( <i>Athene cunicularia</i> )	State Species of Special Concern (SSC)
Swainson's hawk ( <i>Buteo swainsoni</i> )	State Threatened (ST)
tricolored blackbird ( <i>Agelaius tricolor</i> )	
white-tailed kite ( <i>Elanus leucurus</i> )	State Fully Protected (FP)
<b>Mammals</b>	
San Francisco dusky-footed woodrat ( <i>Neotoma fuscipes annectens</i> )	SSC
Townsend's big-eared bat ( <i>Corynorhinus townsendii</i> )	SSC
western mastiff bat ( <i>Eumops perotis californicus</i> )	SSC
<b>Plants</b>	
Congdon's tarplant ( <i>Centromadia parryi</i> ssp. <i>congdonii</i> )	S2, 1B.1
Halls Mallow ( <i>Malacothamnus hallii</i> )	S2, 1B.2

# NATIVE AMERICAN HERITAGE COMMISSION

July 19, 2024

Jay Lee  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas CA 95035

**Re: 2024070432, Gateway-Main Street Specific Plan Project, Santa Clara County**

Dear Mr. Lee:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a. Avoidance and preservation of the resources in place, including, but not limited to:
    - i. Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i. Protecting the cultural character and integrity of the resource.
    - ii. Protecting the traditional use of the resource.
    - iii. Protecting the confidentiality of the resource.
  - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

#### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([https://ohp.parks.ca.gov/?page\\_id=30331](https://ohp.parks.ca.gov/?page_id=30331)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:  
[Cody.Campagne@NAHC.ca.gov](mailto:Cody.Campagne@NAHC.ca.gov).

Sincerely,

*Cody Campagne*

Cody Campagne  
Cultural Resources Analyst

cc: State Clearinghouse

**Cc:** RE: Notice of Preparation of a Draft Subsequent Environmental Impact Report for the Gateway-Main Street Specific Plan Project, Milpitas  
Tuesday, August 13, 2024 12:39:18 PM  
[image002.png](#)  
**Subject:** [image004.png](#)  
**Date:** [FINAL Interim Water Pipeline Right of Way Policy.pdf](#)  
**Attachments:** [FINAL-Amended Right of Way Integrated Vegetation Management Policy.pdf](#)

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Dear Mr. Lee:

Thank you for the notice of Draft Subsequent Environmental Impact Report (SEIR) for the above-referenced project pursuant to the California Environmental Quality Act (CEQA). We appreciate the opportunity for the San Francisco Public Utilities Commission (SFPUC) to provide comments on the scope of the SEIR.

The City and County of San Francisco owns in fee several parcels, and one easement, within the project site for the Milpitas Gateway-Main Street Specific Plan (Plan). These parcels constitute the SFPUC's right-of-way (ROW) for its Bay Division Pipeline Nos. 3 and 4 and are identified by the following Assessor's Parcel Numbers:

083-20-005  
083-13-014  
083-13-009  
086-25-010  
086-25-006 (SFPUC Easement)

In the SEIR Notice of Preparation (NOP), Figure 2 depicts the SFPUC's ROW parcels within an existing zone, "Parks and Open Space (POS)". According to the NOP, the Milpitas General Plan 2040 includes policies to update and implement the Plan. While the Milpitas General Plan 2040 appears to simply designate the SFPUC ROW parcels as "MGSP-Milpitas Gateway-Main Street Specific Plan", the 1994 General Plan for Milpitas designates the SFPUC ROW between I-880 and Hammond Way as having an open space land use designation.

Since the Plan does not appear to have a physical effect on the SFPUC's ROW within the project site, the following comments are more general and concern the SFPUC's role in the Plan's environmental review process, the policies of the SFPUC that should be included in the land use analysis of the SEIR, and the process for reviewing future projects on the SFPUC's ROW.

***SEIR Scoping Comments***

The SFPUC should be listed as a responsible agency since it is foreseeable that improvements could be proposed on the SFPUC ROW property, which could result in a discretionary action by the SFPUC that would require the SFPUC to draft responsible agency findings pursuant to the California Environmental Quality Act (CEQA).

In addition, SFPUC land use policies should be included in the land use analysis of the SEIR. Land use and planning analyses under CEQA generally consider the compatibility of a project with neighboring areas, change to or displacement of existing uses, and consistency of a project with relevant local land use policies. The magnitude of land use conflicts or compatibility issues depends on the extent to which a project physically divides an established community or conflicts with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect such that an adverse impact on the environment occurs.

The SFPUC maintains policies to help inform how and in which instances its ROW can serve the needs of public agencies, private parties, nonprofit organizations, and developers while maintaining the safety and security of the pipelines that run underneath the ROW. SFPUC policies pertain to land use and structures, recreational use, utilities, vegetation, and water efficiency. Construction of structures on the ROW is generally prohibited, with prohibitions on structures or improvements that require excavation, bored footings, or concrete pads that are greater than 6 inches deep. No structures may be placed directly on top of a pipeline or within 20 feet of the edge of a pipeline. No utilities may be installed on the ROW running parallel to SFPUC's pipelines; utilities may run perpendicular to pipelines with SFPUC approval.

According to SFPUC's Interim Water Pipeline Right of Way Use Policy for San Mateo, Santa Clara, and Alameda Counties (copy

attached), the SFPUC typically issues 5-year licenses for use of its property, with a form of rent and insurance required upon signing. These licenses are revocable, meaning that the SFPUC can revoke them prior to the 5-year expiration. The licensee (user of SFPUC property) is to maintain landscaping and equipment to ensure that water is used efficiently. Water runoff leaving a landscaped area due to low head drainage, overspray, broken irrigation hardware, or other similar conditions is prohibited. Structures on the ROW are generally prohibited under SFPUC's policies.

The SFPUC's Right of Way Integrated Vegetation Management Policy (copy attached) was established to manage vegetation on the transmission, distribution, and collection systems within SFPUC's ROW so that it does not pose a threat or hazard to the system's integrity and infrastructure or impede utility maintenance and operations. These policies include regulations on the types of plantings that are permitted to occur within each zone of the ROW, regulations on annual grass and weed management, and policies pertaining to vegetation removal.

The SFPUC ROWs are primarily used for utility purposes and are vital to the reliable operation of a regional water system. The SFPUC has policies that limit third-party uses and improvements on San Francisco property due to the presence of high-pressure, subsurface water transmission lines and appurtenances and other infrastructure located above-grade. Please see the attached Interim Water Pipeline ROW Use Policy and Integrated Vegetation Management Policy for more information about restrictions on the ROW.

Certain secondary uses by third parties on SFPUC property are allowed under a fee-based lease or license agreement requiring payment of fair market value to the SFPUC. Such a secondary use may occur only if the SFPUC determines that the secondary use benefits the SFPUC and does not in any way interfere with, endanger, or damage existing or future SFPUC operations, security, or facilities.

The SFPUC prohibits any use on its ROW property that:

1. Cannot be removed promptly, to allow SFPUC construction, maintenance, or emergency repairs of its facilities.
2. Would conflict with SFPUC legal obligations to adjoining property owners or tenants. Some SFPUC parcels in the City of Milpitas could be subject to easements or other agreements held by adjoining landowners or third parties which may present conflicts with a proposed use. Further research by the SFPUC's Real Estate Services would be needed to determine whether certain SFPUC parcels are available for a proposed use.
3. Would conflict with the resolution of unauthorized third-party encroachments that currently exist on some SFPUC ROW parcels.
4. Would create an unreasonable burden for the SFPUC (or its ratepayers) in the use of its property for utility purposes. The SFPUC reasonably anticipates that its property in the City of Milpitas will be available for future utility infrastructure and capital projects. Revocable licenses and leases issued by the SFPUC contain standard language requiring any lessee or licensee of SFPUC lands to mitigate the effects for the disruption of its recreational use on SFPUC lands, even if the SFPUC is causing the disruption of the recreational use. This includes required mitigation under CEQA.
5. Is otherwise inconsistent with SFPUC plans and policies.

This list is not exhaustive. The SFPUC retains the right to disallow any use that, at the SFPUC's sole discretion, may interfere with, endanger or damage existing or future SFPUC operations, security, or facilities.

### ***SFPUC Project Review Process***

Proposed projects and other activities on any San Francisco property must undergo the Project Review Process if the project will include construction; digging or earth moving; clearing; installation; the use of hazardous materials; other disturbance to watershed and ROW resources; or the issuance of new or revised leases, licenses and permits. This review is done by the SFPUC's Project Review Committee (Committee).

The Committee is a multidisciplinary team with expertise in natural resources management, environmental regulatory compliance, engineering, water quality and real estate. Projects and activities are vetted by the Committee for consistency with SFPUC plans and policies.

In reviewing a proposed project, the Committee may conclude that modifications or avoidance and minimization measures are necessary. Large and/or complex projects may require several project review sessions to review the project at significant planning and design stages.

To initiate the Project Review process, please download and fill out a Project Review application at <https://www.sfpuc.gov/construction-contracts/lands-rights-of-way/project-review-and-land-use-bay-area>. Please submit the completed application to [projectreview@sfwater.org](mailto:projectreview@sfwater.org) and it will be scheduled for the next available Project Review meeting.

If you have any questions or need more information, please contact me.

Sincerely,

*Joanne Wilson*

Joanne Wilson  
Senior Land and Resources Planner  
Natural Resources and Lands Management Division  
Water Enterprise  
1657 Rollins Road  
Burlingame, CA 94010

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**To:** Valley Water File 26436 - Notice of Preparation of A Draft Subsequent Environmental Impact Report for the  
**Subject:** Gateway-Main Street Specific Plan Project  
Tuesday, August 13, 2024 4:41:50 PM  
**Date:** [image001.png](#)  
**Attachments:**

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Hi Jay,

The Santa Clara Valley Water District (Valley Water) has reviewed the Notice of Preparation (NOP) for the Draft Subsequent Environmental Impact Report (SEIR) for the proposed Gateway-Main Street Specific Plan, received on July 11, 2024.

Based on our review, we have the following comments:

1. The Gateway – Main Street Specific Plan will increase the allowable residential density in the project area. If the changes allow 500 additional housing units or more, the City should prepare a Water Supply Assessment to evaluate the proposal’s consistency with the City’s Urban Water Management Plan and available water supplies to serve the development. The City’s Urban Water Management Plan assumes a substantial increase in water conservation to meet future water demand (as does the Urban Water Management Plan for Valley Water). Valley Water encourages the City to help meet this goal by requiring all available water conservation measures in new development and redevelopment. Valley Water has been working with jurisdictions throughout the county on a Model Water Efficient New Development Ordinance that the City may consider to ensure there are sufficient water supplies are available into the future.
2. Valley Water owns fee title property and easements for Valley Water’s Milpitas Pipeline and Lower Penitencia Creek within the plan area. In accordance with Valley Water’s Water Resources Protection Ordinance, any work within Valley Water fee title property or easements or that impacts Valley Water’s facilities will require a Valley Water encroachment permit. Issuance of an encroachment permit is a discretionary act under CEQA. More information can be found on our website here:  
<https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-district-land-or-easement/encroachment-permits>.

We appreciate the opportunity to review and provide comments on this NOP for the Draft SEIR for the Gateway-Main Street Specific Plan. Please include us on future review opportunities regarding this project.

This project has been assigned to Valley Water File 26436. Please reference this number on future correspondence regarding this project.

Thank you,



## **MATT SASAKI**

Pronouns: he/him

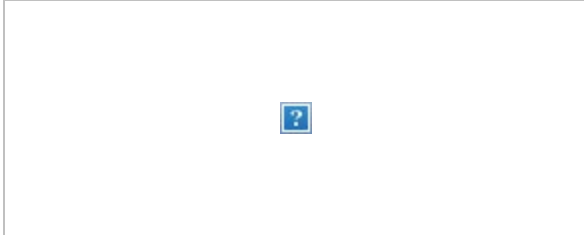
Acting Associate Engineer - Civil

Community Projects Review Unit

[msasaki@valleywater.org](mailto:msasaki@valleywater.org)

Tel. (408) 630-3776

Santa Clara Valley Water District is now known as:



Clean Water • Healthy Environment • Flood Protection

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[www.valleywater.org](http://www.valleywater.org)