

MEMORANDUM

DATE: February 10, 2023

To: Avery Stark, Acting Senior Planner, City of Milpitas

FROM: Theresa Wallace, AICP, Principal
Matthew Wiswell, AICP, Senior Environmental Planner

SUBJECT: 475 Sycamore Drive Project Draft Initial Study/Mitigated Negative Declaration – Response to Comments

In accordance with Section 15074 of the CEQA Guidelines, prior to approving a project, the decision-making body of the lead agency shall consider the proposed environmental document together with any comments received during the public review process. Although there is no legal requirement to formally respond to comments on a proposed Mitigated Negative Declaration (MND) as there is for an Environmental Impact Report (EIR), this memorandum provides a response to the written comments received on the 475 Sycamore Drive Project Initial Study/Mitigated Negative Declaration (IS/MND) to aid the City of Milpitas decision-makers in their review of the project.

The Draft IS/MND was available for public review and comment from January 6, 2023 to February 6, 2023. In the following pages, the comments and responses are enumerated to allow for cross-referencing of CEQA-related comments. The enumerated comment letter is included in this memorandum, followed by the respective responses. As noted above, CEQA does not require or provide guidance on responding to comments on MNDs; therefore, this memorandum follows CEQA Guidelines Section 15088, applicable to responses to comments on EIRs, which requires that agencies respond only to significant environmental issues raised in connection with the project. Therefore, this document focuses primarily on responding to comments that relate to the adequacy of the information and environmental analysis provided in the IS/MND.

Revisions to mitigation measures identified in the IS/MND that are made either in response to comments received or initiated by City of Milpitas Planning staff are identified at the end of this memorandum and are incorporated into the Mitigation Monitoring and Reporting Program (MMRP). The MMRP will be adopted by the City of Milpitas if the IS/MND is adopted.

COMMENTS AND RESPONSES

This section includes a reproduction of the comment letter received on the IS/MND and responses to each substantive CEQA-related comment. The comment letter is assigned a letter (A) and individual comments with the letter are numbered consecutively. For instance, comment A-1 is the first numbered comment in Letter A.

Please note that text within the letter that has not been numbered does not raise environmental issues or related to the adequacy of the information or analysis within the IS/MND, and therefore, no comment is enumerated or response required, per CEQA Guidelines Section 15132.

The following comment letter on the IS/MND was submitted to the City:

LETTER A

State of California, Department of Toxic Substance Control, Site Mitigation and Restoration Program, Gavin McCreary, M.S., Project Manager

February 2, 2023

Written responses to the comments on the IS/MND are provided after the comment letter.



Yana Garcia
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

February 2, 2023

Mr. Avery Stark
Associate Planner
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
AStark@milpitas.gov

MITIGATED NEGATIVE DECLARATION FOR 475 SYCAMORE DRIVE PROJECT – DATED JANUARY 2023 (STATE CLEARINGHOUSE NUMBER: 2023010109)

Dear Mr. Stark:

The Department of Toxic Substances Control (DTSC) received a Mitigated Negative Declaration (MND) for the 475 Sycamore Drive Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the MND:

1. The MND references the listing compiled in accordance with California Government Code Section 65962.5, commonly known as the Cortese List. Not all sites impacted by hazardous waste or hazardous substances will be found on the Cortese List. DTSC recommends that the Hazards and Hazardous Materials section of the MND address actions to be taken for any sites impacted by hazardous waste or hazardous substances within the Project area, not just those found on the Cortese List. DTSC recommends consulting with other agencies that may provide oversight to hazardous waste facilities or sites impacted with hazardous substances in order to determine a comprehensive listing of all sites impacted by hazardous waste or substances within the Project area. DTSC

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hazardous waste facilities and sites with known or suspected contamination issues can be found on DTSC's [EnviroStor](#) data management system. The [EnviroStor Map](#) feature can be used to locate hazardous waste facilities and sites with known or suspected contamination issues for a county, city, or a specific address. A search within EnviroStor indicates that numerous hazardous waste facilities and sites with known or suspected contamination issues are present within the Project's region.

2. Although a Phase I Environmental Site Assessment was performed for the Project site, a State of California environmental regulatory agency such as DTSC, a Regional Water Quality Control Board (RWQCB), or a local agency that meets the requirements of [Health and Safety Code section 101480](#) should provide regulatory concurrence that the Project site is safe for construction and the proposed use.

3. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the Project described in the MND.

4. If any projects initiated as part of the proposed Project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 [Information Advisory Clean Imported Fill Material](#).

5. If any sites included as part of the proposed Project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the MND. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

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cont.

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DTSC appreciates the opportunity to comment on the MND. Should you choose DTSC to provide oversight for any environmental investigations, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,



Gavin McCreary, M.S.
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
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LETTER A

State of California, Department of Toxic Substance Control, Site Mitigation and Restoration Program, Gavin McCreary, M.S., Project Manager

February 2, 2023

Response A-1: This comment states that not all sites impacted by hazardous waste or hazardous substances are included on the listing compiled pursuant to Government Code Section 65962.5, commonly referred to as the Cortese List and recommends consulting with agencies that may provide oversight in order to determine a comprehensive listing of all sites impacted by hazardous waste or substances.

As described on page 4-41 of the Draft IS/MND, a Phase I Environmental Site Assessment (ESA) was prepared for the project site (and included as Appendix D to the Draft IS/MND), which determined that the project site was not included on the Cortese List. The Phase I ESA also included a search of federal, State, and tribal environmental record sources to identify adjoining or surrounding properties that may have a Recognized Environmental Condition (REC), Historical REC (HREC), Controlled REC (CREC), or de minimis condition that may affect the project site. As described on pages 4-5 through 4-11 of the Phase I ESA, none of the listings either on the project site or within a 0.25-mile search radius are considered to be RECs with respect to the project site.

Impacts related to hazardous soil conditions are discussed in Section 4.9, Hazards and Hazardous Materials of the Draft IS/MND and these impacts were determined to be less than significant.

Response A-2: This comment states that a local agency that meets the requirements of Health and Safety Code Section 101480 should provide regulatory concurrence that the project site is safe for construction and the proposed use.

As described on page 4-43 of the Draft IS/MND, all future uses of the project site would be subject to the existing regulatory requirements for hazardous materials, which is administered by the Santa Clara County Department of Environmental Health (SCCDEH) Hazardous Materials Program. The SCCDEH Hazardous Materials Program is designated as the Certified Unified Program Agency (CUPA) for the City of Milpitas and meets the requirements of Health and Safety Code Section 101480.

Response A-3: This comment notes that soil contaminated by aerially deposited lead (ADL) still exists along roadsides and medians and recommends soil samples be collected for lead analysis prior to construction activities.

As described on page 4-45 of the Draft IS/MND, the Phase I ESA determined that the project site has been adequately characterized through multiple rounds of soil and groundwater sampling, including in 1983, 1989, 1998, and 2013. The Phase I ESA determined that the current pathways to groundwater, surface water, and human receptors are not of concern due to the minimal levels of contamination.

Response A-4: This comment states that any soil imported to the project site should be properly sampled to ensure that it is free of contamination. As described on page 2-10 of the Draft IS/MND, it is anticipated that a total of 3,800 cubic yards of soil would be exported from the site as a result of grading. No soil import is included in the proposed project.

Response A-5: This comment recommends that the project site be evaluated in accordance with DTSC's Interim Guidance for Sampling Agricultural Properties if the project site was previously used for agricultural uses, particularly related to organochlorinated pesticides.

As described on page 4-41 of the Draft IS/MND, the project site was used for agricultural purposes from at least 1939 to the early 1980s, at which point it was developed into its current configuration. As described in Response A-3, soil sampling was conducted on the project site in 1983, 1989, 1998, and 2013. Pesticides were not identified in soil or groundwater samples.

REVISIONS TO THE DRAFT IS/MND

This section presents specific text changes to the IS/MND initiated by City staff. In no case do these revisions result in a greater number of impacts or impacts of a greater severity than those set forth in the IS/MND. These measures would further ensure that potential impacts are reduced to a less-than-significant level. These revised measures represent refinements to the MMRP (attached) to be considered with adoption of the IS/MND. Added text is indicated with double underlined text and deleted text is shown in ~~strikeout~~.

Staff-Initiated Revisions

The following revisions are made to the second paragraph of page 4-21 of the Draft IS/MND:

Although no archaeological deposits have been recorded at the project site, there is the potential for previously unknown pre-contact archaeological deposits to be unearthed during construction activities. Should project excavation unearth intact archaeological deposits, a substantial adverse change to a historical resource could ~~would~~ occur due to the partial or complete destruction of the resource. This destruction could ~~would~~ undermine the integrity of the resource, such that it would no longer be eligible for listing in the California Register of Historical Resources.

The following revision is made to Mitigation Measure CUL-1 starting on page 4-21 of the Draft IS/MND:

Mitigation Measure CUL-1: Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants.

The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive on the project grading plans:

"The subsurface of the construction site may be is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; flakes of, and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells."

The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.

If the deposits are uncovered on the site and found to be significant (i.e., eligible for listing in the California Register of Historical Resources), the applicant shall be responsible for funding and implementing appropriate mitigation measures. Mitigation measures may include recordation of the archaeological deposit, data recovery and analysis, and public outreach regarding the scientific and cultural importance of the discovery. Upon completion of the selected mitigations, a report documenting methods and findings shall be prepared, and the final report shall be submitted to the Northwest Information Center at Sonoma State University. Significant archaeological materials shall be submitted to an appropriate curation facility and used for public interpretive displays, as appropriate and in coordination with a local Native American tribal representative.

The following revision is made to the second paragraph of page 4-25:

Construction-Period Energy Use. The proposed project would require demolition, grading, site preparation, building, paving, and architectural coating activities during construction. Construction of the proposed project would require energy for the manufacture and transportation of construction materials, preparation of the site for grading activities, and construction of the proposed park improvements.

The following revision is made to the impact table on page 4-29:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a. Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

The following revision is made to the third paragraph on page 4-32 of the Draft IS/MND:

The Geotechnical Investigation concluded that the presence of relatively thin and isolated layers of medium stiff silt and clay within the upper 21 to 36 feet of the site that are weak and potentially susceptible to recompression settlement under the weight of new fill and building loads could be a geotechnical challenge associated with the proposed project.

However, the Geotechnical Investigation includes recommendations to address mitigate this problem including scarification and aeration of the upper 12 to 24 inches of soil; mixing and compaction of the upper 12 to 18 inches of the weak soil with a Quicklime Plus admixture of equivalent lime/cement-based material; over-excavation of the upper 12 to 18 inches of weak soil and backfill with a lean concrete backfill; or over-excavation of the upper 12 to 24 inches of the weak soil and placement of a geotextile stabilization fabric over the sides and bottoms of the over-excavated areas and placement and compaction of granular fill over the geotextile tensile fabric.

The following revision is made to the impact table on page 4-60:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project result in:				
a. 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?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The following revisions are made to the second paragraph on page 4-67 of the Draft IS/MND:

As identified above, the project site is generally surrounded by a mix of commercial and industrial uses. The closest receptors include the industrial uses located north and south of the project site approximately 440 and 500 feet, respectively, from the center of project site. The closest sensitive receptors would be the Element San Jose Hotel located approximately 1,000 feet to the north and the single-family residences located opposite I-880, approximately 800 feet east from the center of project site.⁴⁸ The 440-foot distance would decrease the noise level by approximately 19 dBA compared to the noise level measured at 50 feet from the construction activity.

Footnote 48: The Element San Jose Hotel and residential uses are also referred to as 600 and 330 feet from the project site. These distances are from the boundaries of the project site. Based on the size of the site, the center of the project site was used to analyze potential construction impacts.