Findings of Fact

I. Introduction

The City of Milpitas (City) prepared a Subsequent Environmental Impact Report (SEIR) in accordance with the provisions of the California Environmental Quality Act (CEQA) to evaluate the proposed changes to the Milpitas Transit Area Specific Plan (TASP) Final Environmental Impact Report, certified in 2008. The SEIR analyzes the Milpitas Metro Specific Plan (Metro Plan or Project), an update to the original TASP. The Findings of Fact (Findings) and Statement of Overriding Considerations (SOC) describe the environmental effects associated with the Metro Plan that are evaluated and disclosed in the final SEIR. The Findings are made pursuant to Public Resources Code (PRC) Sections 21081 and 21081.6 and CEQA Guidelines (Guidelines) Sections 15091. The SOC is made pursuant to Public Resources Code Sections 21081 and Guidelines Section 15093.

PRC Section 21081 and Guidelines Section 15091 require that the City, as the Lead Agency for the Metro Plan, prepare written findings for each significant environmental effect, accompanied by a brief rationale for each finding. Specific findings provided for under PRC Section 21081(a) and Guidelines section 15091(a) are:

1. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

Additionally, in accordance with PRC Section 21081(b) and Guidelines Section 15093, when the City finds that significant effects cannot be mitigated, the City must determine whether specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment and are therefore "acceptable." If the benefits outweigh the significant environmental effects, then the lead agency must adopt a statement of overriding considerations in addition to the findings.

The final SEIR identified potentially significant environmental effects that could result from implementation of the Metro Plan, including significant and unavoidable effects. Therefore, an SOC is required.

II. Overview

A. Project Background

The Metro Plan is an update to the original TASP vision to transform the area into a transit-oriented neighborhood and complete the emerging neighborhood by expanding access to neighborhood services and retail, creating new opportunities for jobs near transit, providing additional affordable

and market-rate housing, enhancing multimodal connections and non-vehicle mobility throughout the area, providing a greater variety of shared public spaces, and strengthening the identity sense of place within the Metro Plan Area.

In 2008, the City certified the TASP EIR (Certified EIR). The TASP consists of policies and proposals to guide growth, including transit-oriented residential and commercial redevelopment on industrial land in a 437-acre area around the Milpitas Bay Area Rapid Transit (BART) and Valley Transportation Authority (VTA) light rail station. The Certified EIR analyzed the potential impacts from implementation of the TASP, including the potential impacts associated with redevelopment within the 437-acre TASP Planning Area and the potential impacts associated with population growth (17,915) due to additional residential units (7,109), and new jobs (4,228) resulting from added office uses (993,843 square feet), retail uses (287,075 square feet), and hotels (175,500 square feet). These improvements were analyzed at a program level in the Certified EIR. While development associated with the TASP has occurred, full buildout of the TASP has not yet been achieved.

Based on current needs and policy directives, the City proposed changes to the TASP that was analyzed in the Certified EIR. The Metro Plan updates the TASP by adding substantially more opportunity for development in this transit-oriented and integrated mixed use area of the City, including the potential for more housing, jobs, services and amenities in the slightly enlarged Metro Plan Area. Implementation of the Metro Plan would result in four main changes (Project Change), when compared to the TASP. In summary, those changes are:

1. Expansion of the original 437-acre TASP Plan Area by approximately 73 additional acres, for a total of 510 acres, in order to facilitate the development of an Innovation District east of the Milpitas Transit Center and to promote opportunities for housing development along South Main Street. In addition, the Metro Plan redefines the five Districts, such that they are bounded by major streets and are located on a mix of land uses, development densities, park placements, street grids, pedestrian connections, and proximities to the Milpitas Transit Center.
2. Changes to the land use classifications (increased allowable densities, new land use classifications, and change in location of land use classifications) and policies, compared to the TASP.
3. Additional residential and non-residential density and related population and employment growth, compared to the TASP.
4. Extension of the Metro Plan horizon year by 10 years (from 2030 to 2040), compared to the TASP.

The environmental analysis of the Project Change involves study of new development that would result in the following: (1) the addition of up to 14,000 new residents and 9,500 new jobs, (2) the expansion of the geographic area of the Metro Plan, and (3) changes in the policies identified in the Metro Plan. The SEIR prepared for the Metro Plan evaluates the potential environmental impacts associated only with the Project Change to determine whether the Project Change would alter the impact significance determinations for the TASP in the Certified EIR. The SEIR was not required to reevaluate development already addressed by the Certified EIR, even if it has not yet been constructed but may still go forward.

B. Procedural Background

A Notice of Preparation (NOP) for the SEIR was published, distributed to the State Clearinghouse, and circulated by the City on September 16, 2021. The NOP notified agencies, interested parties, and the public about the Project Change and provided an opportunity to transmit comments and concerns on the scope and content of the SEIR. The 30-day NOP review period began on September 16, 2021, and ended on October 18, 2021. A scoping meeting was held on September 30, 2021. The NOP and comments on the NOP received by the City are provided in Appendix A of the SEIR.

The draft SEIR was published and posted on the City's website on April 15, 2022. A Notice of Availability (NOA) was distributed to state and local agencies and other interested parties to solicit public comment. It was also published in the Milpitas Post on April 15, 2022. The draft SEIR was available for public comment from April 15, 2022, to May 31, 2022. The NOA solicited comments on the adequacy and accuracy of information presented in the draft SEIR. Comments were made in written form during the public comment period and as oral testimony at the public hearing on the draft specific plan and draft SEIR at a special meeting of the City Council on April 19, 2022. Written comments received during the public review period are included in the final SEIR, while verbal comments are summarized. The final SEIR also addresses all substantive written and oral comments on the draft SEIR.

C. Record of Proceedings and Custodian of Record

For the purposes of CEQA and the findings set forth below, the record of proceedings for the City's findings and determinations consists of the following documents and testimony, at a minimum:

- The NOP, comments received on the NOP, NOA, and all other public notices issued by the City in relation to the Metro Plan.
- The Metro Plan final SEIR, including comment letters and technical materials cited in the document.
- All non-draft and/or non-confidential reports and memoranda prepared by the City and consultants in relation to the SEIR.
- Minutes of the discussions regarding the Metro Plan and/or Metro Plan components at public hearings held by the City.
- Staff reports associated with Planning Commission and City Council meetings on the Metro Plan.
- Those categories of materials identified in PRC Section 21167.6(e).

The City Clerk is the custodian of the record of proceedings. The documents and materials that constitute the record of proceedings are available for review at the City of Milpitas Office of the City Cleark at 455 East Calaveras Boulevard, Milpitas, California 95035.

D. Consideration of the Subsequent EIR

Buildout for the Metro Plan was evaluated at a program level in the SEIR, which is important context for consideration of the SEIR. Guidelines Section 15168 establishes the use of program Environmental Impact Reports (EIR) for review of later activities. As defined therein, a program EIR is one prepared on a series of related actions that can be characterized as one large project. Feasible mitigation measures and alternatives developed in a program EIR must be incorporated into later

activities in the program to the extent applicable to the individual later activity. Later activities must be evaluated to determine whether additional environmental review is needed. If a later activity is determined to be "within the scope" of the project covered by the program EIR, the lead agency can make a finding of consistency and approve the activity without having to prepare a new environmental document. The lead agency may use a written checklist or similar device to determine whether the environmental effects of the later action are within the scope of the program EIR. The City anticipates utilizing such a written checklist or similar device when evaluating future development projects processed under the Metro Plan and/or for implementation of related infrastructure improvements.

In adopting these findings, this Council finds that the SEIR was presented to this Council, the decisionmaking body of the lead agency, which reviewed and considered the information in the final SEIR prior to approving the Metro Plan. By these findings this City Council ratifies, adopts, and incorporates the analysis, explanation, findings, responses to comments, and conclusions in the SEIR. The City Council finds that the final SEIR was completed in compliance with CEQA. The SEIR represents the independent judgment and analysis of the City.

E. Severability

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void, or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Metro Plan, shall continue in full force and effect unless amended or modified by the City.

III. Findings for Significant and Unavoidable Impacts

A. Air Quality

1. Impact AQ-2a: Construction of the Metro Plan would result in a new significant air quality impact that was not identified in the Certified EIR related to a cumulatively considerable net increase in any criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or state ambient air quality standard.

(a) **Potential Impact:** The potential for construction of the Metro Plan to result in a cumulatively considerable net increase in any criteria pollutant for which the area is in nonattainment is described on pages 3.1-15 through 3.1-20 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the Mitigation Monitoring and Reporting Program (MMRP) that is to be adopted concurrently with these findings.

Mitigation Measure AQ-1: Require at Least Tier 4 Final Engines on Construction Equipment

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to further reduce construction-related exhaust emissions by ensuring that all off-road equipment greater than 50

horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities, shall operate on at least an Environmental Protection Act (EPA)-approved Tier 4 Final or newer engine. Exemptions can be made for specialized equipment where Tier 4 engines are not commercially available within 200 miles of the Metro Plan Area. The construction contract must identify these pieces of equipment, document their unavailability, and ensure that they operate on no less than an EPA-approved Tier 3 engine.

Mitigation Measure AQ-2: Require Use of Diesel Trucks with 2010-Compliant Model Year Engines

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to use diesel trucks that have 2010 model year or newer engines, but no less than the average fleet mix for the current calendar year as set forth in the CARB's EMFAC database. In the event that 2010 model year or newer diesel trucks cannot be obtained, the contractor must provide documentation to the City showing that a good faith effort to locate such engines was conducted.

Mitigation Measure AQ-3: Require Construction Fleet to Use Renewable Diesel

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related exhaust emissions by ensuring that all off-road equipment greater than 50 hp and operating for more than 20 total hours over the entire duration of construction activities shall operate on renewable diesel (such as high performance renewable diesel).

Mitigation Measure AQ-4: Require Low-VOC Coatings During Construction

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive ROG emissions by ensuring that low-VOC coatings that have a VOC content of 10 grams/liter (g/L) or less are used during construction. The project applicant will submit evidence of the use of low-VOC coatings to City prior to the start of construction.

Mitigation Measure AQ-5: Require Fugitive Dust Best Management Practices

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive dust by implementing BAAQMD's basic control measures at all construction and staging areas. The following measures would be implemented.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite will be covered.
- All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads, driveways, or driving surfaces shall be limited to 15 miles per hour (mph).

- All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
- A publicly visible sign will be posted with the telephone number and the name of the person to contact at the lead agency regarding dust complaints. This person will respond and take corrective action within 48 hours. The phone number of the BAAQMD will also be visible to ensure compliance.

Mitigation Measure AQ-6: Purchase Mitigation Credits for Construction Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for construction criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 277,000 square feet. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls). If the project is less than the screening limit for its project type, then applicants shall confirm to the City whether construction-related activities would include any of the following:

- Demolition.
- Simultaneous occurrence of more than two construction phases (e.g., paving and building construction would occur simultaneously) or construction would occur simultaneous with other Metro Plan development.
- Simultaneous construction of more than one land use type (e.g., project would develop residential and commercial uses on the same site) (not applicable to high density infill development).
- Extensive site preparation (i.e., greater than default assumptions used by the CalEEMod model for grading, cut/fill, or earth movement).
- Extensive material transport (e.g., greater than 10,000 cubic yards of soil import/export) requiring a considerable amount of haul truck activity.

If the project is less than the screening limit for the project type and construction would involve none of the five conditions above, no further action is required.

Project applicants not excluded by the conditions above shall estimate annual average emissions for each year of construction and compare the annual average emissions for each year of construction to the applicable BAAQMD thresholds at the time of analysis. The emissions estimate shall be provided as part of the project's initial application to the City. The City will review the estimate and confirm whether offsets are required for construction. Should the City-confirmed estimate indicate that the proposed development estimate would not result in construction emissions exceeding BAAQMD's daily pollutant thresholds, no further action will be required.

For proposed developments that are estimated to result in exceedances of thresholds, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation)

or governmental entity to pay for criteria pollutant offsets for every year in which construction emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which construction activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront, prior to construction.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 3.1-16 through 3.1-17 of the draft SEIR, during construction of a development project, the activity that typically generates the highest nitrogen oxides (NO_X) and particulate matter (PM) exhaust emissions is the operation of off-road equipment, whereas the activity that typically generates the highest ROG emissions is the application of architectural coatings. Per Mitigation Measures AQ-1 through AQ-4, the use of at least Tier 4 engines and renewable diesel for off-road equipment, which is commercially available in Santa Clara County, newer trucks to reduce NO_X and PM exhaust emission levels, and use of low-volatile-organic-compound (VOC) paints to reduce reactive organic gas (ROG) emission levels would be required during construction activities within the Metro Plan Area. Additionally, while the Bay Area Air Quality Management District (BAAQMD) considers impacts from fugitive emissions of particulate matter with a diameter of 10 microns or less (PM_{10}) and particulate matter with a diameter of 2.5 microns or less ($PM_{2.5}$) significant without the application of standard best management practices (BMP), Mitigation Measure AQ-5 would require construction projects within the Metro Plan Area to implement BMPs (as recommended by BAAQMD) to reduce these fugitive dust emissions. Thus, the implementation of BMPs by future development projects associated with the Metro Plan would reduce fugitive PM_{10} and $PM_{2.5}$ emissions to less-than-significant levels.

However, with respect to ROG, NO_X, and PM_{10} and $PM_{2.5}$ exhaust emissions, there could be foreseeable conditions under the Metro Plan where the amount of construction activity for an individual development project, or a combination of projects, could result in the generation of pollutant emissions that exceed their respective BAAQMD significance thresholds (i.e., 54 pounds/ day for ROG and NO_X, 82 pounds per day for exhaust PM_{10}, and 54 pounds/day for exhaust $PM_{2.5}$). Moreover, even with implementation of Mitigation Measures AQ-1 through AQ-5, as well as the policies described under Impact AQ-1, emissions of

ROG, NO_X, PM_{10}, and $PM_{2.5}$ exhaust may not be reduced to levels below BAAQMD's thresholds when multiple construction projects are concurrently ongoing within the Metro Plan Area.

Accordingly, additional mitigation would be required to reduce these emissions impacts. Pursuant to Mitigation Measure AQ-6, applicants would be required to assess and determine the estimated total emissions from proposed construction activities (subject to City review and approval), and coordinate with BAAQMD or a third-party or governmental entity to determine the mitigation fees for each development project's applicant to pay on a pro rata basis to BAAQMD or a third-party or governmental entity to offset their pollutant emissions as necessary, such that BAAQMD's daily pollutant thresholds would not be exceeded.

Based on recent experience of offsets being feasibly available for other large projects in the Bay Area, it is reasonable to assume that offset programs will be available in the future and that emissions can, therefore, be reduced below threshold levels. Should offsets programs be available for future development, Mitigation Measure AQ-6 would ensure that the construction-related emissions would not contribute to a significant level of air pollution, such that regional air quality within the San Francisco Bay Area Air Basin (SFBAAB) would be degraded and project impacts on air quality could be less than significant with mitigation. However, because it cannot be concluded that offset programs would always be available in the future at the time and in the amount needed for any given future development, for the purposes of this SEIR analysis, construction air quality impacts are conservatively assumed to be significant and unavoidable.

As described on draft SEIR pages 3.1-19 through 3.1-20, the Certified EIR concluded that after implementation of policies included in the TASP, criteria air pollutant impacts due to construction would be less than significant. Based on the analysis above, with incorporation of the Project Change, construction of the Metro Plan would result in a significant and unavoidable impact related to a cumulatively considerable net increase in criteria pollutants, even with implementation of Mitigation Measures AQ-1 through AQ-6. While it may be possible for Impact AQ-2a to be reduced to less than significant with mitigation (Mitigation Measure AQ-6), offsets cannot be guaranteed in the types and amounts that may be needed in the future and, thus, this analysis conservatively concludes a significant and unavoidable impact. Therefore, the Project Change would result in a change to the Certified EIR's impact determination related to criteria air pollutants from construction. The Project Change would result in a new significant and unavoidable impact that was not identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with criteria pollutant emissions (CEQA Guidelines Section 15091(a)(3)).

2. Impact AQ-2b: Operation of the Metro Plan would result in a substantially more severe significant air quality impact than that identified in the Certified EIR related to a cumulatively considerable net increase in any criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or state ambient air quality standard.

(a) **Potential Impact:** The potential for operation of the Metro Plan to result in a cumulatively considerable net increase in any criteria pollutant for which the area is in nonattainment is described on pages 3.1-20 through 3.1-24 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure AQ-7: Restrict Use of Natural Gas in New Development

Future development within the Metro Plan Area shall utilize electric space and water heating to the maximum extent feasible or to the extent required by existing or future local building regulations. Natural gas infrastructure and appliances shall not be installed to the extent feasible as determined by the availability and capacity of electrical power distribution infrastructure.

Mitigation Measure AQ-8: Purchase Mitigation Credits for Operational Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for operational criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 346,000 square feet, 323,000 square feet, and 61,000 square feet, respectively. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls)

If the project is less than the screening limit for the project type, then no further action is required.

Project applicants not excluded by the condition above shall estimate annual average operational emissions for each operational year over the life of the project (20 years) and compare the annual average emissions for each year of operations to the BAAQMD thresholds used in the EIR for criteria pollutants. The emissions estimate shall be provided as part of the project's initial application to the City for the project. The City will review the estimate and confirm whether offsets are required for operation. Should the City-confirmed estimate indicate that the proposed development estimate would not result in operational emissions exceeding BAAQMD's daily pollutant thresholds, no further action is required.

For proposed developments that are estimated to result in exceedances of thresholds during any year of the project's life, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation) or governmental entity to pay for criteria pollutant

offsets for every year in which operational emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which operational activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront prior to operation.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 3.1-22 through 3.1-24 of the draft SEIR, despite implementation of Metro Plan policies, it is reasonably foreseeable that projects developed under the Metro Plan would generate emissions in excess of BAAQMD's project-level thresholds. Mitigation Measure AQ-7 is required to reduce operational area source emissions to the extent feasible. Mitigation Measure AQ-8 is further required to offset operational criteria pollutant emissions through the purchase of mitigation credits. Through implementation of Mitigation Measures AQ-8, applicants would determine the estimated total emissions for operational activities, and BAAQMD would determine the mitigation fees for each development project's applicant to pay on a pro rata basis to BAAQMD to offset their pollutant emissions as necessary, such that BAAQMD's daily pollutant thresholds would not be exceeded. Offsetting emissions below BAAQMD's threshold levels would ensure future development under the Metro Plan would not contribute a significant level of air pollution such that regional air quality within the SFBAAB would be degraded. Based on recent experience of offsets being feasibly available for other large recent projects in Santa Clara County, it is reasonable to assume that offset programs will be available in the future and thus that emissions can be reduced below threshold levels. Should offset programs be available for future development, operational criteria pollutant emissions under the Metro Plan would be less than significant with mitigation. However, because it cannot be concluded that offset programs would always be available in the future at the time and in the amount needed for any given future development, for the purposes of this EIR analysis, operational air quality impacts are conservatively assumed to be significant and unavoidable.

Additionally, the Project's operational emissions would potentially exceed BAAQMD's regional significance thresholds for ROG, NO_X, and CO. Implementation of Mitigation Measure AQ-7 and Mitigation Measure AQ-8 would help ensure that the individual developments within the City would not

contribute a significant level of air pollution such that regional air quality within the Basin would be degraded. However, because cumulative development within the City would potentially exceed the BAAQMD regional significance thresholds, the Project Change could contribute to an increase in health effects in the SFBAAB until the attainment standards are met. Accordingly, health impacts related to regional criteria pollutants would be significant and unavoidable.

The Certified EIR concluded that even after implementation of policies included in the 1994 General Plan, criteria air pollutant (ozone, PM_{10}, and $PM_{2.5}$) impacts due to operation, for which the SFBAAB is in nonattainment, would be significant and unavoidable. Based on the analysis above, with incorporation of the Project Change, operation of the Metro Plan would result in a significant and unavoidable impact related to a cumulatively considerable net increase in criteria pollutants for which the SFBAAB is in nonattainment, even with implementation of Mitigation Measure AQ-7 and Mitigation Measure AQ-8. The Project Change would not result in a change to the Certified EIR's impact related to criteria air pollutants from operation. Nonetheless, the magnitude of the impact would be greater with operation of the Metro Plan, and the Project Change would result in a substantially more severe impact than what was identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, override the remaining significant adverse impact of the Metro Plan associated with operation emissions of criteria air pollutants (CEQA Guidelines Section 15091(a)(3)).

3. Impact AQ-3: Implementation of the Metro Plan would result in a new significant air quality impact that was not identified in the Certified EIR related to exposing sensitive receptors to substantial pollutant concentrations (health impacts related to regional criteria pollutants, TAC emissions).

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in exposure of sensitive receptors to substantial criteria air pollutant concentrations is described on pages 3.1-24 through 3.1-27 and on page 3.1-29 of the draft SEIR. The potential for implementation of the Metro Plan to result in exposure of sensitive receptors to substantial concentrations of toxic air contaminants (TAC), such as diesel particulate matter (DPM), is described on pages 3.1-27 through 3.1-29 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure AQ-1: Require at Least Tier 4 Final Engines on Construction Equipment

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to further reduce construction-related exhaust emissions by ensuring that all off-road equipment greater than 50

horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities, shall operate on at least an Environmental Protection Act (EPA)-approved Tier 4 Final or newer engine. Exemptions can be made for specialized equipment where Tier 4 engines are not commercially available within 200 miles of the Metro Plan Area. The construction contract must identify these pieces of equipment, document their unavailability, and ensure that they operate on no less than an EPA-approved Tier 3 engine.

Mitigation Measure AQ-2: Require Use of Diesel Trucks with 2010-Compliant Model Year Engines

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to use diesel trucks that have 2010 model year or newer engines, but no less than the average fleet mix for the current calendar year as set forth in the CARB's EMFAC database. In the event that 2010 model year or newer diesel trucks cannot be obtained, the contractor must provide documentation to the City showing that a good faith effort to locate such engines was conducted.

Mitigation Measure AQ-3: Require Construction Fleet to Use Renewable Diesel

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related exhaust emissions by ensuring that all off-road equipment greater than 50 hp and operating for more than 20 total hours over the entire duration of construction activities shall operate on renewable diesel (such as high performance renewable diesel).

Mitigation Measure AQ-4: Require Low-VOC Coatings During Construction

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive ROG emissions by ensuring that low-VOC coatings that have a VOC content of 10 grams/liter (g/L) or less are used during construction. The project applicant will submit evidence of the use of low-VOC coatings to City prior to the start of construction.

Mitigation Measure AQ-5: Require Fugitive Dust Best Management Practices

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive dust by implementing BAAQMD's basic control measures at all construction and staging areas. The following measures would be implemented.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite will be covered.
- All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads, driveways, or driving surfaces shall be limited to 15 miles per hour (mph).

- All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
- A publicly visible sign will be posted with the telephone number and the name of the person to contact at the lead agency regarding dust complaints. This person will respond and take corrective action within 48 hours. The phone number of the BAAQMD will also be visible to ensure compliance.

Mitigation Measure AQ-6: Purchase Mitigation Credits for Construction Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for construction criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 277,000 square feet. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls). If the project is less than the screening limit for its project type, then applicants shall confirm to the City whether construction-related activities would include any of the following:

- Demolition.
- Simultaneous occurrence of more than two construction phases (e.g., paving and building construction would occur simultaneously) or construction would occur simultaneous with other Metro Plan development.
- Simultaneous construction of more than one land use type (e.g., project would develop residential and commercial uses on the same site) (not applicable to high density infill development).
- Extensive site preparation (i.e., greater than default assumptions used by the CalEEMod model for grading, cut/fill, or earth movement).
- Extensive material transport (e.g., greater than 10,000 cubic yards of soil import/export) requiring a considerable amount of haul truck activity.

If the project is less than the screening limit for the project type and construction would involve none of the five conditions above, no further action is required.

Project applicants not excluded by the conditions above shall estimate annual average emissions for each year of construction and compare the annual average emissions for each year of construction to the applicable BAAQMD thresholds at the time of analysis. The emissions estimate shall be provided as part of the project's initial application to the City. The City will review the estimate and confirm whether offsets are required for construction. Should the City-confirmed estimate indicate that the proposed development estimate would not result in construction emissions exceeding BAAQMD's daily pollutant thresholds, no further action will be required.

For proposed developments that are estimated to result in exceedances of thresholds, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation)

or governmental entity to pay for criteria pollutant offsets for every year in which construction emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which construction activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront, prior to construction.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

Mitigation Measure AQ-7: Restrict Use of Natural Gas in New Development

Future development within the Metro Plan Area shall utilize electric space and water heating to the maximum extent feasible or to the extent required by existing or future local building regulations. Natural gas infrastructure and appliances shall not be installed to the extent feasible as determined by the availability and capacity of electrical power distribution infrastructure.

Mitigation Measure AQ-8: Purchase Mitigation Credits for Operational Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for operational criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 346,000 square feet, 323,000 square feet, and 61,000 square feet, respectively. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls)

If the project is less than the screening limit for the project type, then no further action is required.

Project applicants not excluded by the condition above shall estimate annual average operational emissions for each operational year over the life of the project (20 years) and compare the annual average emissions for each year of operations to the BAAQMD thresholds used in the EIR for criteria pollutants. The emissions estimate shall be provided as part of the project's initial application to the City for the project. The City will review the estimate and confirm whether offsets are required for operation. Should the City-confirmed estimate indicate that the proposed development estimate would not result in operational emissions exceeding BAAQMD's daily pollutant thresholds, no further action is required.

For proposed developments that are estimated to result in exceedances of thresholds during any year of the project's life, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation) or governmental entity to pay for criteria pollutant offsets for every year in which operational emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which operational activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront prior to operation.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

Mitigation Measure AQ-9: Prepare a Health Risk Assessment

All applicants proposing development of projects in the Metro Plan Area within 1,000 feet of existing sensitive receptors, as defined by BAAQMD (e.g., residential), shall prepare a site-specific construction and operational Health Risk Assessment (HRA). The HRA shall include all reasonably foreseeable sources of TAC, consistent with BAAQMD guidelines. If the HRA demonstrates, to the satisfaction of the City, that the health risk exposures or PM2.5 concentrations for adjacent receptors would be less than BAAQMD project-level thresholds, then additional mitigation would be unnecessary. However, if the HRA demonstrates that health risks or PM2.5 concentrations would exceed BAAQMD project-level thresholds, additional feasible on- and offsite mitigation would be analyzed by the applicant to help reduce risks to the greatest extent practicable. Mitigation may include installation of indoor air filters (MERV 13 or higher) at sensitive receptor locations and planting of vegetation and trees as pollution buffers.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As discussed on pages 3.1-26 through 3.1-27 of the draft SEIR, regional criteria pollutants were discussed in Impact AQ-2a are significant and unavoidable even with mitigation. Construction emissions resulting from individual projects developed under the Metro Plan could exceed BAAQMD's regional ROG, NOX, and PM thresholds. Mitigation Measures AQ-1 through AQ-6 would reduce regional emissions of ROG, NO_X, and PM below BAAQMD's regional thresholds (assuming offset programs are available in the future). Similarly, long-term operation of development under the Metro Plan would result in an increase of in emissions of ROG, NO_X, PM_{10}, and $PM_{2.5}$. Mitigation Measure AQ-7 and Mitigation Measure AQ-8 would reduce regional emissions of ROG, NO_X, and PM of individual projects developed under the Metro Plan below BAAQMD's regional thresholds

(assuming offset programs are available in the future). Based on recent experience of offsets being feasibly available for other large recent projects in the Bay Area, it is reasonable to assume that offset programs will be available in the future and thus that emissions can be reduced below threshold levels. Should offset programs be available for future development, health impacts related to criteria pollutant emissions under the Metro Plan would be less than significant with mitigation, as discussed above. Because it cannot be concluded that offset programs per Mitigation Measure AQ-6 and Mitigation Measure AQ-8 would be available in the future at the time and in the amount needed for any given future development, for the purposes of the SEIR analysis, health impacts related to regional criterial pollutants are conservatively assumed to be significant and unavoidable.

As discussed on pages 3.1-27 through 3.1-29 of the draft SEIR, the potentially significant impacts resulting from exposure of receptors to $PM_{2.5}$ exhaust from new stationary sources, emissions from increased traffic volumes, and TACs generated during project construction activities would be reduced by Metro Plan policies and mitigation measures. Mitigation Measure AQ-1 would require BMPs to minimize construction emissions. In addition, Policy SC 8.1 in the Metro Plan requires the installation of high-efficiency filters should new sensitive receptors be sited within 500 feet of major roadways and highways in the Metro Plan Area. Reductions achieved by this measure cannot currently be quantified as the locations of these receptors are unknown.

Even with these Metro Plan policies and BMPs, additional emissions generated by new stationary sources, vehicle trips, and construction activity could expose receptors to cancer and non-cancer risks in excess of BAAQMD significance thresholds during construction and operational activities. Mitigation Measure AQ-9 requires applicants to provide a project-level evaluation of construction- and operational-related health risks from future projects. However, because it cannot be concluded what the result of the project level evaluation will be without speculation, it is possible that mitigation for future project health risks may be inadequate to reduce impacts below BAAQMD's threshold level. This impact would be significant and unavoidable.

The Certified EIR concluded that, after implementation of policies included in the TASP, impacts related to exposing sensitive receptors to TACs would be less than significant. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would have a significant and unavoidable impact with regard to exposing sensitive receptors to PM pollution during construction and operation. Thus, the Project Change would result in a change to the Certified EIR's impact determination with regard to exposing sensitive receptors to substantial TACs. The Project Change would result in a new significant and unavoidable impact that was not identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the

Metro Plan associated with exposure of sensitive receptors to substantial pollutant concentrations (CEQA Guidelines Section 15091(a)(3)).

4. Impact GHG-1: Implementation of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to the generation of greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment or conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.

(a) **Potential Impact:** The potential for implementation of the Metro Plan to generate GHG emissions and have a significant impact on the environment or conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs is discussed on pages 3.2-14 through 3.2-23 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure GHG-1: Require Implementation of BAAQMD-Recommended Construction Best Management Practices

All applicants within the Metro Plan Area shall require their contractors, as a condition of contracts, to reduce construction-related GHG emissions by implementing BAAQMD's recommended BMPs, including the following measures (based on BAAQMD's 2017 CEQA Guidelines):

- Ensure alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment make up at least 15 percent of the fleet.
- Use at least 10 percent local building materials (sourced from within 100 miles of the Metro Plan Area).
- Recycle and reuse at least 50 percent of construction waste or demolition materials.

Mitigation Measure GHG-2: Implement Operational GHG Reduction Measures or Their Equivalent

Applicants of future projects within the Metro Plan Area shall implement the following operational GHG emissions reduction strategies where feasible or demonstrate why a measure is not feasible, and implement equivalent GHG reductions to the foregone measure, or pay a mitigation fee per Mitigation Measure GHG-3 (see below) to compensate for any foregone GHG reductions not implemented. Applicants of future projects that do not propose to implement all of the strategies described below shall prepare a feasibility study outlining why the declined strategies were not implemented (e.g., feasibility, not applicable, etc.), estimating the foregone GHG reductions, and identifying any equivalent GHG reduction measures proposed (or proposal to pay a mitigation fee instead) for the City's review and concurrence prior to the issuance of building permits.

- **LEED Certification.** The United States Green Building Council (USGBC) is a private 501(c)3, non-profit organization that promotes sustainability in building design, construction, and operation. The USGBC developed the LEED program, which provides a rating system that awards points for new construction based on energy use, materials, water efficiency, and other sustainability criteria. LEED has certification systems for both commercial and residential use.

  While LEED allows some flexibility in choice of measures to meet LEED criteria, new construction shall be required to include specific committed measures in use of recycled and sustainable materials in construction, water efficiency, and efficiency of energy use. New development in the Metro Plan Area shall be required to achieve LEED Silver certification or equivalent, or a higher certification, or provide equivalent GHG reductions through proposed new measures or payment of a fee per Mitigation Measure GHG-3.

- **Natural Gas Infrastructure.** Future development within the Metro Plan Area shall utilize electric space and water heating to the maximum extent feasible or to the extent required by existing or future regulations. Natural gas infrastructure and appliances shall not be installed to the extent feasible as determined by the availability and capacity of electrical power distribution infrastructure.

- **Solar Roofs.** Mounted rooftop electricity-generating solar panels convert solar energy to electricity for use in commercial and residential buildings.

New construction in the Metro Plan Area shall be required to either employ solar roofs on at least 30 percent of roof square footage or provide equivalent GHG reductions through proposed new measures or pay a mitigation fee per Mitigation Measure GHG-3. The inclusion of solar roofs may be part of meeting LEED Silver or equivalent requirements.

- **Waste Minimization Programs.** For waste that is generated by non-residential uses, recycling, composting of food waste and other organics, and the use of reusable products instead of disposal products diverts solid waste from the landfill stream.

New non-residential uses in the Metro Plan Area shall be required to implement recycling (including organics recycling) and reusable product use programs or provide equivalent GHG reductions through proposed new measures or pay a mitigation fee per Mitigation Measure GHG-3. The inclusion of these measures may be part of meeting LEED Silver or equivalent requirements.

Mitigation Measure GHG-3: Purchase GHG Mitigation Credits

Where a future project in the Metro Plan Area does not propose to implement all of the GHG reduction measures in Mitigation Measure GHG-2 and does not propose equivalent reduction measures to compensate for the measures not implemented, the project applicant shall be required to pay on a pro rata basis for net operational GHG emissions to compensate for emissions foregone from not implementing all measure in Mitigation Measure GHG-2 or providing equivalent reductions.

Applicants may purchase GHG credits from a voluntary GHG credit provider[1] that has an established protocol that requires projects generating GHG credits to demonstrate that the reduction of GHG emissions are real, permanent, quantifiable, verifiable, enforceable, and additional (per the definition in California Health and Safety Code Sections 38562(d)(1) and (2)). Definitions for these terms are as follows.

- **Real**: Estimated GHG reductions should not be an artifact of incomplete or inaccurate emissions accounting. Methods for quantifying emission reductions should be conservative to avoid overstating a project's effects. The effects of a project on GHG emissions must be comprehensively accounted for, including unintended effects (often referred to as "leakage"). To ensure that GHG reductions are real, the reduction must be a direct reduction within a confined project boundary.
- **Additional**: GHG reductions must be additional to any that would have occurred in the absence of the Climate Action Reserve, or of a market for GHG reductions generally. "Business as usual" reductions (i.e., those that would occur in the absence of a GHG reduction market) should not be eligible for registration.
- **Permanent**: To function as offsets to GHG emissions, GHG reductions must effectively be "permanent." This means, in general, that any net reversal in GHG reductions used to offset emissions must be fully accounted for and compensated through the achievement of additional reductions.
- **Quantifiable**: GHG reductions or GHG removal enhancements must be able to be accurately measured and calculated relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.
- **Verified**: GHG reductions must result from activities that have been verified. Verification requires third-party review of monitoring data for a project to ensure the data are complete and accurate.
- **Enforceable**: The emission reductions from offset must be backed by a legal instrument or contract that defines exclusive ownership and the legal instrument can be enforced within the legal system in the country in which the offset project occurs or through other compulsory means. Please note that per this mitigation measure, only credits originating within the United States are allowed.

GHG credits must also meet the following requirements:

- GHG credits may be in the form of GHG offsets for prior reductions of GHG emissions verified through protocols or forecasted mitigation units for future committed GHG emissions meeting protocols.
- All credits shall be documented per protocols functionally equivalent in terms of stringency to CARB's protocol for offsets in the cap and trade program. The

[1] Examples of potential GHG credit sources include the Climate Action Reserve Voluntary Offset Registry and Climate Forward program, the American Carbon Registry, or other providers using the Verified Carbon Standard.

applicant must provide the protocols from the credit provider and must document why the protocols are functionally equivalent.

- Applicants shall identify GHG credits in geographies closest to Santa Clara County first and only turn to larger geographies (i.e., California, United States, global) if adequate credits cannot be found in closer geographies, or the procurement of such credits would create an undue financial burden. Applicants shall provide the following justification for not using credits in closer geographies in terms of either availability or cost prohibition:
    - Lack of enough credits available in closer geographies.
    - Prohibitively costly credits in closer geographies are defined as credits costing more than 300 percent the amount of the current costs of credits in the regulated CARB offset market.
    - Documentation submitted supporting GHG credit proposals shall be prepared by individuals qualified in GHG credit development and verification and such individuals shall certify the following: (1) proposed credits meet the definitions for the criteria provided in this measure; and (2) the protocols used for the credits meet or exceed the standards for stringency used in CARB protocols for offsets under the California cap-and-trade system.

This mitigation includes the following specific requirements for applicants of future projects within the Metro Plan Area:

- Applicants shall provide the City with a 30-year operational GHG emissions estimate for the final design that includes two scenarios: (1) project operations including all Mitigation Measure GHG-2 reduction measures; and (2) project operations only including those Mitigation Measure GHG-2 reduction measures the applicant proposes to implement and any alternative GHG reduction measures proposed by the applicant. The emissions estimate can be focused exclusively on the sectors where Mitigation Measure GHG-2 measures will not be fully implemented. The difference between the Scenario 1 and Scenario 2 operational emissions will define the amount of needed annual GHG reductions to be addressed through purchase of GHG mitigation credits. The City shall review the emission estimates to ensure they are representative and determine the total amount of annual GHG emissions required to be addressed through purchase of mitigation credits.

Applicants shall purchase GHG mitigation credits meeting the above requirements and provide documentation to the City of how the credits meet the above requirements. Applicants shall provide the City with documentation of the retirement of sufficient GHG credits to meet the annual GHG reduction amount prior to January 1 of each calendar year for the following year. This requirement shall apply to operations for up to 30 years. Applicants may purchase credits up front or in advance as they choose.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 3.2-19 and 3.2-23 of the draft SEIR, while the City would encourage implementation of voluntary sustainability features through the Metro Plan, there is no guarantee that all of these measures will be incorporated into the designs of all future

developments. Furthermore, as discussed above, the Metro Plan Area will have waste and wastewater GHG emissions in 2045. Thus, this is a potentially significant impact.

Implementation of Mitigation Measure GHG-2 would reduce operational GHG emissions in the sectors with the largest amount of emissions. Mitigation Measure GHG-2, which includes requirements for Leadership in Energy and Environmental Design (LEED) certification or equivalent, electric space and water heating, solar roofs, and waste diversion programs, would also ensure consistency with the Scoping Plan and the long-term statewide reduction trajectory. Should all measures included in Mitigation Measure GHG-2 be implemented by a future project sponsor within the Metro Plan Area, that development would be consistent with the Metro Plan and the state's reduction targets for 2030.

Additionally, because the extent of implementation of Mitigation Measure GHG-2 is currently unknown (e.g., applicability and feasibility), impacts from future development could remain significant for some sectors if all strategies are not implemented for a particular project or equivalent measures are not identified by a project sponsor. For projects where all of the requirements of Mitigation Measure GHG-2 (or their equivalent) are not implemented, Mitigation Measure GHG-3 would reduce net operational GHG emissions through purchase of GHG mitigation credits. Even with implementation of Mitigation Measures GHG-2 and Mitigation Measure GHG-3, the Metro Plan Area may still have GHG emissions by 2045 (as discussed above) and thus would not achieve carbon neutrality. Thus, operations of the Metro Plan would result in a significant and unavoidable impact.

The Certified EIR concluded that after implementation of policies included in the TASP, GHG impacts would be less than significant. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would result in a significant and unavoidable impact related to operational GHG emissions and would be inconsistent with the state's carbon neutrality goal by 2045, even with implementation of Mitigation Measures GHG-2 and GHG-3. Thus, the Project Change would result in a change to the Certified EIR's impact determination related to GHG emissions. The Project Change would result in a new significant and unavoidable impact that was not identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with GHG emissions (CEQA Guidelines Section 15091(a)(3)).

5. Impact NOI-1: Construction of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to generating a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.

(a) **Potential Impact:** The potential for construction of the Metro Plan to generate a substantial temporary or permanent increase in ambient noise levels in excess of standards established in the general plan or noise ordinance is described on page 3.4-15 through 3.4-18 of the draft SEIR.

(b) **Mitigation Measures:** No feasible mitigation is available.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 3.4-17 through 3.4-18 of the draft SEIR, construction noise would be reduced by General Plan Policies N 1-5 and N 1-8, as well as Action N-1b, Action N-1c, and Action N-1d. Policy N 1-8 of the General Plan requires construction activities to comply with standard best practices to reduce noise exposure to adjacent sensitive receptors. In addition, General Plan Action N-1d requires that projects be evaluated individually during the environmental review process to determine if project construction would constitute a significant impact on nearby sensitive receptors. If impacts are identified, mitigation measures pertaining to construction noise would be required in addition to the standard best practices required in Action N-1d of the General Plan.

The requirements in Action N-1d of the General Plan, which would apply to all development under the Metro Plan, would reduce impacts related to construction noise in the Metro Plan Area. However, it is not possible to ensure that in all instances and for all future projects, that compliance with General Plan Policies and Actions would reduce construction noise to less-than-significant levels. For example, certain projects may require construction noise during nighttime hours for various reasons (e.g., projects that require road closures, concrete pour activities that require early morning starts to prevent concrete curing prematurely). Therefore, even with the requirement that mitigation measures be applied to reduce construction noise for future projects pursuant to the General Plan, some future projects may result in significant construction noise impacts that cannot be reduced to less-than-significant levels with mitigation.

The Certified EIR concluded that after implementation of policies included in the 1994 General Plan and TASP, construction noise impacts would be less than significant. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would result in a significant and unavoidable impact related to construction noise even with implementation of applicable General Plan policies. Thus, the Project Change would result in a change to the Certified EIR's impact determination related to construction noise. The Project Change

would result in a new significant and unavoidable impact that was not identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with construction noise (CEQA Guidelines Section 15091(a)(3)).

6. Impact NOI-3: Construction of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to exposing persons to or generating excessive ground-borne vibration or ground-borne noise levels. Operation of the Metro Plan would not result in a new or substantially more severe impact than what was identified in the Certified EIR related to exposing persons to or generating excessive ground-borne vibration or ground-borne noise levels.

(a) **Potential Impact:** The potential for construction of the Metro Plan to generate excessive groundborne vibration is described on pages 3.4-27 through 3.4-34 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure NOI-2: Protect Potentially Susceptible Structures from Construction-Generated Vibration

If a future development project in the Metro Plan requires any of the following construction activities, then this measure would apply:

- Pile driving within approximately 100 feet of an existing structure.
- Construction with other ground-disturbing equipment (e.g., jackhammers, bulldozers, excavators, etc.) within 25 feet of an existing structure.

The construction contractor shall consult with the City to determine whether adjacent or nearby structures could be adversely affected by construction-generated vibration. If buildings adjacent to construction activity are identified that could be adversely affected, the project applicant will incorporate into construction specifications for their project a requirement that the construction contractor(s) use all feasible means to avoid damage to adjacent and nearby buildings. Such methods to help reduce vibration-related damage effects may include maintaining a safe distance between the construction site and the potentially affected building (e.g., at least 100 feet for "historic and some old buildings") or using "quiet" pile-driving technologies (such as predrilling piles or using sonic pile drivers).

Should pile driving be required within 100 feet of a building in the "historic or some old building" category, within 75 feet of buildings in the "older residential structures" category, and within 55 feet of buildings in the "modern industrial/commercial" category, the City will work with the construction

contractor to implement a monitoring program to minimize damage to adjacent buildings and ensure that any such damage is documented and repaired. If required, the monitoring program will include the following components:

- Prior to the start of any ground-disturbing activity, the project applicant will engage a historic architect or qualified historic preservation professional to undertake a preconstruction survey of nearby affected buildings that may be considered historic. For buildings that are not potentially historic, a structural engineer or other professional with similar qualifications will document and photograph the existing conditions of potentially affected buildings within 100 feet of pile-driving activity.
- Based on the construction and condition of the resource(s), the consultant will also establish a standard maximum vibration level that will not be exceeded at any building, based on existing conditions, character-defining features, soil conditions, and anticipated construction practices. Common standards are a peak particle velocity of 0.25 inch per second for "historic and some old buildings," a peak particle velocity of 0.3 inch per second for "older residential structures," and a peak particle velocity of 0.5 inch per second for "new residential structures" and "modern industrial/commercial buildings," as shown in Table 3.4-2.
- To ensure that vibration levels do not exceed the established standard, the project applicant will monitor vibration levels at each structure and prohibit vibratory construction activities that generate vibration levels in excess of the standard.
- Should vibration levels be observed in excess of the selected standard, construction will be halted, and alternative construction techniques put in practice, to the extent feasible (e.g., predrilled piles could be substituted for driven piles, if feasible, based on soil conditions, or smaller, lighter equipment could be used in some cases).
- The historic preservation professional (for effects on historic buildings) and/or structural engineer (for effects on non-historic structures) will conduct regular periodic inspections (every 3 months) of each building during ground-disturbing activity on the project site. Should damage to any building occur, the building(s) will be remediated to their preconstruction condition at the conclusion of ground-disturbing activity on the site.

Mitigation Measure NOI-3: Implement Nighttime Construction Vibration Control Plan to Reduce Vibration-Related Annoyance Impacts on Adjacent Land Uses

Should vibration-generating construction activities for future development under the Metro Plan be proposed outside of the daytime hours of 7:00 a.m. to 7:00 p.m. and should non-pile driving equipment be proposed within 25 feet of occupied residences or buildings where people sleep, the construction contractor for a project in the Metro Plan Area shall develop a nighttime construction vibration control plan. In addition, should nighttime pile driving activities be proposed within 100 feet of such buildings, the construction contractor for a project in the Metro Plan Area shall similarly develop a nighttime construction vibration control plan. The construction vibration control plan shall demonstrate that vibration levels at the residential land uses during nighttime hours will not exceed 0.1 PPV in/sec.

In addition, the construction contractor will appoint a project vibration coordinator who will serve as the point of contact for vibration-related complaints during

project construction. The contact information for the project vibration coordinator shall be posted at the project site and on a publicly available project website for future development projects under the Metro Plan. Should residents in the project area submit complaints to the project vibration coordinator for nighttime construction vibration concerns, the project vibration coordinator shall work with the construction team to adjust activities to reduce vibration or to reschedule activities for a less sensitive time.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 3.4-29 through 3.4-34 of the draft SEIR, the Metro Plan does not include policies related to ground-borne vibration from construction activities. However, Policy N 1-8, Action N-1c, and Action N-1d in the 2040 General Plan would help reduce the effects of construction-related vibration on sensitive uses. For example, the implementation of standard best practices for construction noise (see General Plan Policy N 1-8) would also help reduce construction vibration. Actions under this policy include a requirement for developers to prepare a construction management/noise mitigation plan that defines BMPs to reduce construction noise and suggests that mitigation measures be implemented. For example, measures under this Action that would reduce construction-related vibration impacts are the requirements to locate stationary equipment as far as practical from sensitive receptors, to locate construction staging areas farther from occupied sensitive uses, notifying neighbors adjacent to the construction sites of upcoming construction, and designating a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise (or vibration).. Another suggested mitigation measure is limiting the allowable hours for construction activity to between 7:00 a.m. and 7:00 p.m., when people are generally less sensitive to vibration and noise. Should construction for a future project be limited to these daytime hours, sleep disturbance and vibration-related annoyance impacts would be less than significant based on the thresholds defined in this analysis. However, even with implementation of these policies, vibration-related damage and annoyance impacts from future construction would be potentially significant.

Mitigation Measure NOI-2 would be required to reduce construction-related damage impacts. However, it is not possible to ensure that in all instances and for all future projects, mitigation measures would reduce construction vibration to less-than-significant levels. For example, certain projects may require construction to take place at very close distances to existing structures. Therefore, even with the requirement that mitigation measures be applied to reduce construction vibration for future projects, some future projects may result in significant vibration-related damage impacts from construction that cannot be reduced to less-than-significant levels with mitigation.

Mitigation Measure NOI-3 would be required to reduce construction-related annoyance impacts. However, it is not possible to ensure that mitigation measures would reduce construction vibration to less-than-significant levels in all instances and for all future projects. For example, certain projects may

require construction take place at very close distances to existing occupied residences. Therefore, even with the requirement that mitigation measures be applied to reduce construction vibration for future projects, some future projects may result in significant vibration-related annoyance impacts from construction that cannot be reduced to less-than-significant levels with mitigation.

The Certified EIR concluded that after implementation of a VTA BART Expansion SEIR mitigation measure and policies included in the TASP, vibration impacts from operation of the TASP would be less than significant. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would have a less-than-significant impact related to operational sources of vibration. The Project Change would not alter the result of the Certified EIR's impact determination related to operational vibration impacts. For operational vibration impacts the Project Change would not result in new or substantially more severe effects that were not analyzed in the Certified EIR, and no substantial changes in circumstances have occurred that could result in new or substantially more severe effects than were in the Certified EIR.

The Certified EIR did not make a determination regarding vibration impacts from construction activities in the TASP area. Based on the analysis above, with incorporation of the Project Change, construction of the Metro Plan would result in a significant and unavoidable vibration impact, even with implementation of Mitigation Measure NOI-2 and Mitigation Measure NOI-3. Thus, the Project Change would result in a new significant and unavoidable impact that was not identified in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with construction vibration (CEQA Guidelines Section 15091(a)(3)).

7. Impact C-AQ-1: Implementation of the Metro Plan would result in new and substantially more severe cumulative air quality impacts that were not identified in the Certified EIR.

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in a cumulatively considerable contribution to a significant cumulative air quality impact is discussed on pages 4-4 through 4-6 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure AQ-1: Require at Least Tier 4 Final Engines on Construction Equipment

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to further reduce construction-

related exhaust emissions by ensuring that all off-road equipment greater than 50 horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities, shall operate on at least an Environmental Protection Act (EPA)-approved Tier 4 Final or newer engine. Exemptions can be made for specialized equipment where Tier 4 engines are not commercially available within 200 miles of the Metro Plan Area. The construction contract must identify these pieces of equipment, document their unavailability, and ensure that they operate on no less than an EPA-approved Tier 3 engine.

Mitigation Measure AQ-2: Require Use of Diesel Trucks with 2010-Compliant Model Year Engines

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to use diesel trucks that have 2010 model year or newer engines, but no less than the average fleet mix for the current calendar year as set forth in the CARB's EMFAC database. In the event that 2010 model year or newer diesel trucks cannot be obtained, the contractor must provide documentation to the City showing that a good faith effort to locate such engines was conducted.

Mitigation Measure AQ-3: Require Construction Fleet to Use Renewable Diesel

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related exhaust emissions by ensuring that all off-road equipment greater than 50 hp and operating for more than 20 total hours over the entire duration of construction activities shall operate on renewable diesel (such as high performance renewable diesel).

Mitigation Measure AQ-4: Require Low-VOC Coatings During Construction

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive ROG emissions by ensuring that low-VOC coatings that have a VOC content of 10 grams/liter (g/L) or less are used during construction. The project applicant will submit evidence of the use of low-VOC coatings to City prior to the start of construction.

Mitigation Measure AQ-5: Require Fugitive Dust Best Management Practices

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive dust by implementing BAAQMD's basic control measures at all construction and staging areas. The following measures would be implemented.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite will be covered.
- All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- All vehicle speeds on unpaved roads, driveways, or driving surfaces shall be limited to 15 miles per hour (mph).
- All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
- A publicly visible sign will be posted with the telephone number and the name of the person to contact at the lead agency regarding dust complaints. This person will respond and take corrective action within 48 hours. The phone number of the BAAQMD will also be visible to ensure compliance.

Mitigation Measure AQ-6: Purchase Mitigation Credits for Construction Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for construction criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 277,000 square feet. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls). If the project is less than the screening limit for its project type, then applicants shall confirm to the City whether construction-related activities would include any of the following:

- Demolition.
- Simultaneous occurrence of more than two construction phases (e.g., paving and building construction would occur simultaneously) or construction would occur simultaneous with other Metro Plan development.
- Simultaneous construction of more than one land use type (e.g., project would develop residential and commercial uses on the same site) (not applicable to high density infill development).
- Extensive site preparation (i.e., greater than default assumptions used by the CalEEMod model for grading, cut/fill, or earth movement).
- Extensive material transport (e.g., greater than 10,000 cubic yards of soil import/export) requiring a considerable amount of haul truck activity.

If the project is less than the screening limit for the project type and construction would involve none of the five conditions above, no further action is required.

Project applicants not excluded by the conditions above shall estimate annual average emissions for each year of construction and compare the annual average emissions for each year of construction to the applicable BAAQMD thresholds at the time of analysis. The emissions estimate shall be provided as part of the project's initial application to the City. The City will review the estimate and confirm whether offsets are required for construction. Should the City-confirmed estimate indicate that the proposed development estimate would not result in construction emissions exceeding BAAQMD's daily pollutant thresholds, no further action will be required.

For proposed developments that are estimated to result in exceedances of thresholds, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation) or governmental entity to pay for criteria pollutant offsets for every year in which construction emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which construction activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront, prior to construction.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

Mitigation Measure AQ-7: Restrict Use of Natural Gas in New Development

Future development within the Metro Plan Area shall utilize electric space and water heating to the maximum extent feasible or to the extent required by existing or future local building regulations. Natural gas infrastructure and appliances shall be installed to the extent feasible as determined by the availability and capacity of electrical power distribution infrastructure.

Mitigation Measure AQ-8: Purchase Mitigation Credits for Operational Emissions Exceeding BAAQMD's Daily Pollutant Thresholds

Applicants proposing development of projects within the Metro Plan Area shall compare their project size with the BAAQMD screening sizes appropriate to their project for operational criteria pollutants found in Table 3-1 in BAAQMD's current CEQA guidelines (2017). The screening limit for general office buildings, office park, or government office building is 346,000 square feet, 323,000 square feet, and 61,000 square feet, respectively. There are different screening limits for residential, retail, hotels, and other developments based off specific land use type (e.g., single-family housing, apartments, low-rise, hotels, strip malls)

If the project is less than the screening limit for the project type, then no further action is required.

Project applicants not excluded by the condition above shall estimate annual average operational emissions for each operational year over the life of the project (20 years) and compare the annual average emissions for each year of operations to the BAAQMD thresholds used in the EIR for criteria pollutants. The emissions estimate shall be provided as part of the project's initial application to the City for the project. The City will review the estimate and confirm whether offsets are required for operation. Should the City-confirmed estimate indicate that the proposed development estimate would not

result in operational emissions exceeding BAAQMD's daily pollutant thresholds, no further action is required.

For proposed developments that are estimated to result in exceedances of thresholds during any year of the project's life, the applicants shall coordinate with a third-party (e.g., Bay Area Clean Air Foundation) or governmental entity to pay for criteria pollutant offsets for every year in which operational emissions are estimated to exceed the BAAQMD thresholds. If the estimate shows exceedances of multiple criteria pollutants above the BAAQMD thresholds, then offsets must be obtained to address each pollutant above the thresholds. Emission reduction projects and fee will be determined in consultation between the applicant and the third-party or governmental entity and will include offset provider administrative costs. The agreement that specifies fees and timing of payment shall be provided to the City for review and signed by the applicant and the third-party or governmental entity. The emission reductions shall be secured prior to any year in which operational activity is estimated to result in an exceedance. The payment for the emissions can either be on an annual basis or done once upfront prior to operation.

To qualify under this mitigation measure, the specific emissions reduction project(s) must result in emission reductions in the SFBAAB that are real, surplus, quantifiable, and enforceable, and that would not otherwise be achieved through compliance with existing regulatory requirements of any other legal requirement.

Mitigation Measure AQ-9: Prepare a Health Risk Assessment

All applicants proposing development of projects in the Metro Plan Area within 1,000 feet of existing sensitive receptors, as defined by BAAQMD (e.g., residential), shall prepare a site-specific construction and operational Health Risk Assessment (HRA). The HRA shall include all reasonably foreseeable sources of TAC, consistent with BAAQMD guidelines. If the HRA demonstrates, to the satisfaction of the City, that the health risk exposures or PM2.5 concentrations for adjacent receptors would be less than BAAQMD project-level thresholds, then additional mitigation would be unnecessary. However, if the HRA demonstrates that health risks or PM2.5 concentrations would exceed BAAQMD project-level thresholds, additional feasible on- and offsite mitigation would be analyzed by the applicant to help reduce risks to the greatest extent practicable. Mitigation may include installation of indoor air filters (MERV 13 or higher) at sensitive receptor locations and planting of vegetation and trees as pollution buffers.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As discussed on pages 4-5 through 4-6 of the draft SIER, per BAAQMD guidelines, exceedances of project-level thresholds would be cumulatively considerable, and the cumulative impact would be significant. As discussed in Impacts AQ-2a and AQ-2b, construction and operational emissions resulting from individual projects developed under the Specific Plan could exceed BAAQMD's regional ROG, NO_X, PM_{10}, and $PM_{2.5}$ thresholds. Mitigation Measures AQ-1 through AQ-8 could reduce regional emissions of ROG, NO_X, PM_{10}, and $PM_{2.5}$ to a level below BAAQMD's regional thresholds. Because it cannot be concluded that offset programs per Mitigation Measures AQ-6 and AQ-8 would be available in the future at the time and in the

amount needed for any given future development under the Metro Plan, for the purposes of the SEIR analysis, impacts during construction and operation related to regional criterial pollutants quality impacts from the project are conservatively assumed to result in a significant and unavoidable cumulative impact.

Existing nearby DPM sources and the Metro Plan could contribute to a cumulative health risk for sensitive receptors near the Metro Plan Area. As discussed under Impact AQ-3, a quantitative evaluation of potential health risk impacts for the Metro Plan is not possible. Mitigation Measures AQ-1 through AQ-9 would develop and maintain best practices for reducing emissions associated with construction and operational activities and require that new development with sensitive receptors adjacent to TAC sources be designed to minimize health risks, which would reduce construction and operational health risks for existing and future receptors. However, there may be instances where project-specific conditions would preclude a reduction in the health risk to a level below adopted thresholds and expose receptors to cumulative health risks. For instance, this may include the installation or operation of new stationary sources of TACs (e.g., generators) on the project site that result in significant PM2.5 concentrations. However, BAAQMD permitting would ensure that cancer risks and the hazard index would be below the applicable thresholds but would not ensure that $PM_{2.5}$ concentrations would be below the applicable threshold. In addition, future development projects under the Metro Plan could generate DPM, $PM_{2.5}$, or other TACs that could expose adjacent receptors to significant health risks (e.g., from construction and operational sources that are adjacent to sensitive receptors). Therefore, it is conservatively assumed that the Metro Plan in combination with other past, present, and reasonably foreseeable future projects would result in a cumulative impact that would be significant and unavoidable.

The Certified EIR concluded that cumulative impacts on to air quality would be significant and unavoidable due to conflicts with air quality plans and criteria air pollutants due to operation. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would have a significant and unavoidable cumulative impact on air quality due to impacts during construction and operation related to regional criterial pollutants quality impacts and exposing adjacent receptors to significant health risks. The Project Change would result in new cumulative air quality impacts (criteria air pollutants during construction and exposing adjacent receptors to significant health risks) and substantially more severe cumulative air quality impacts (criteria air pollutants during operation) than what was analyzed in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with cumulative air quality impacts (CEQA Guidelines Section 15091(a)(3)).

8. Impact C-GHG-1: Implementation of the Metro Plan would result in new cumulative greenhouse gas emissions impacts that were not identified in the Certified EIR.

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in cumulative GHG emissions is discussed on pages 4-11 through 4-12 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measures have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure GHG-1: Require Implementation of BAAQMD-Recommended Construction Best Management Practices

All applicants within the Metro Plan Area shall require their contractors, as a condition of contracts, to reduce construction-related GHG emissions by implementing BAAQMD's recommended BMPs, including the following measures (based on BAAQMD's 2017 CEQA Guidelines):

- Ensure alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment make up at least 15 percent of the fleet.
- Use at least 10 percent local building materials (sourced from within 100 miles of the Metro Plan Area).
- Recycle and reuse at least 50 percent of construction waste or demolition materials.

Mitigation Measure GHG-2: Implement Operational GHG Reduction Measures or Their Equivalent

Applicants of future projects within the Metro Plan Area shall implement the following operational GHG emissions reduction strategies where feasible or demonstrate why a measure is not feasible, and implement equivalent GHG reductions to the foregone measure, or pay a mitigation fee per Mitigation Measure GHG-3 (see below) to compensate for any foregone GHG reductions not implemented. Applicants of future projects that do not propose to implement all of the strategies described below shall prepare a feasibility study outlining why the declined strategies were not implemented (e.g., feasibility, not applicable, etc.), estimating the foregone GHG reductions, and identifying any equivalent GHG reduction measures proposed (or proposal to pay a mitigation fee instead) for the City's review and concurrence prior to the issuance of building permits.

- **LEED Certification.** The United States Green Building Council (USGBC) is a private 501(c)3, non-profit organization that promotes sustainability in building design, construction, and operation. The USGBC developed the LEED program, which provides a rating system that awards points for new construction based on energy use, materials, water efficiency, and other sustainability criteria. LEED has certification systems for both commercial and residential use.

  While LEED allows some flexibility in choice of measures to meet LEED criteria, new construction shall be required to include specific committed measures in use of recycled and sustainable materials in construction, water efficiency, and efficiency

of energy use. New development in the Metro Plan Area shall be required to achieve LEED Silver certification or equivalent, or a higher certification, or provide equivalent GHG reductions through proposed new measures or payment of a fee per Mitigation Measure GHG-3.

- **Natural Gas Infrastructure.** Future development within the Metro Plan Area shall utilize electric space and water heating to the maximum extent feasible or to the extent required by existing or future regulations. Natural gas infrastructure and appliances shall not be installed to the extent feasible as determined by the availability and capacity of electrical power distribution infrastructure.
- **Solar Roofs.** Mounted rooftop electricity-generating solar panels convert solar energy to electricity for use in commercial and residential buildings.

  New construction in the Metro Plan Area shall be required to either employ solar roofs on at least 30 percent of roof square footage or provide equivalent GHG reductions through proposed new measures or pay a mitigation fee per Mitigation Measure GHG-3. The inclusion of solar roofs may be part of meeting LEED Silver or equivalent requirements.
- **Waste Minimization Programs.** For waste that is generated by non-residential uses, recycling, composting of food waste and other organics, and the use of reusable products instead of disposal products diverts solid waste from the landfill stream.

  New non-residential uses in the Metro Plan Area shall be required to implement recycling (including organics recycling) and reusable product use programs or provide equivalent GHG reductions through proposed new measures or pay a mitigation fee per Mitigation Measure GHG-3. The inclusion of these measures may be part of meeting LEED Silver or equivalent requirements.

Mitigation Measure GHG-3: Purchase GHG Mitigation Credits

Where a future project in the Metro Plan Area does not propose to implement all of the GHG reduction measures in Mitigation Measure GHG-2 and does not propose equivalent reduction measures to compensate for the measures not implemented, the project applicant shall be required to pay on a pro rata basis for net operational GHG emissions to compensate for emissions foregone from not implementing all measure in Mitigation Measure GHG-2 or providing equivalent reductions.

Applicants may purchase GHG credits from a voluntary GHG credit provider[2] that has an established protocol that requires projects generating GHG credits to demonstrate that the reduction of GHG emissions are real, permanent, quantifiable, verifiable, enforceable, and additional (per the definition in California Health and Safety Code Sections 38562(d)(1) and (2)). Definitions for these terms are as follows.

- **Real**: Estimated GHG reductions should not be an artifact of incomplete or inaccurate emissions accounting. Methods for quantifying emission reductions

[2] Examples of potential GHG credit sources include the Climate Action Reserve Voluntary Offset Registry and Climate Forward program, the American Carbon Registry, or other providers using the Verified Carbon Standard.

should be conservative to avoid overstating a project's effects. The effects of a project on GHG emissions must be comprehensively accounted for, including unintended effects (often referred to as "leakage"). To ensure that GHG reductions are real, the reduction must be a direct reduction within a confined project boundary.

- **Additional**: GHG reductions must be additional to any that would have occurred in the absence of the Climate Action Reserve, or of a market for GHG reductions generally. "Business as usual" reductions (i.e., those that would occur in the absence of a GHG reduction market) should not be eligible for registration.
- **Permanent**: To function as offsets to GHG emissions, GHG reductions must effectively be "permanent." This means, in general, that any net reversal in GHG reductions used to offset emissions must be fully accounted for and compensated through the achievement of additional reductions.
- **Quantifiable**: GHG reductions or GHG removal enhancements must be able to be accurately measured and calculated relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.
- **Verified**: GHG reductions must result from activities that have been verified. Verification requires third-party review of monitoring data for a project to ensure the data are complete and accurate.
- **Enforceable**: The emission reductions from offset must be backed by a legal instrument or contract that defines exclusive ownership and the legal instrument can be enforced within the legal system in the country in which the offset project occurs or through other compulsory means. Please note that per this mitigation measure, only credits originating within the United States are allowed.

GHG credits must also meet the following requirements:

- GHG credits may be in the form of GHG offsets for prior reductions of GHG emissions verified through protocols or forecasted mitigation units for future committed GHG emissions meeting protocols.
- All credits shall be documented per protocols functionally equivalent in terms of stringency to CARB's protocol for offsets in the cap and trade program. The applicant must provide the protocols from the credit provider and must document why the protocols are functionally equivalent.
- Applicants shall identify GHG credits in geographies closest to Santa Clara County first and only turn to larger geographies (i.e., California, United States, global) if adequate credits cannot be found in closer geographies, or the procurement of such credits would create an undue financial burden. Applicants shall provide the following justification for not using credits in closer geographies in terms of either availability or cost prohibition:
    - Lack of enough credits available in closer geographies.

- Prohibitively costly credits in closer geographies are defined as credits costing more than 300 percent the amount of the current costs of credits in the regulated CARB offset market.
- Documentation submitted supporting GHG credit proposals shall be prepared by individuals qualified in GHG credit development and verification and such individuals shall certify the following: (1) proposed credits meet the definitions for the criteria provided in this measure; and (2) the protocols used for the credits meet or exceed the standards for stringency used in CARB protocols for offsets under the California cap-and-trade system.

This mitigation includes the following specific requirements for applicants of future projects within the Metro Plan Area:

- Applicants shall provide the City with a 30-year operational GHG emissions estimate for the final design that includes two scenarios: (1) project operations including all Mitigation Measure GHG-2 reduction measures; and (2) project operations only including those Mitigation Measure GHG-2 reduction measures the applicant proposes to implement and any alternative GHG reduction measures proposed by the applicant. The emissions estimate can be focused exclusively on the sectors where Mitigation Measure GHG-2 measures will not be fully implemented. The difference between the Scenario 1 and Scenario 2 operational emissions will define the amount of needed annual GHG reductions to be addressed through purchase of GHG mitigation credits. The City shall review the emission estimates to ensure they are representative and determine the total amount of annual GHG emissions required to be addressed through purchase of mitigation credits.

Applicants shall purchase GHG mitigation credits meeting the above requirements and provide documentation to the City of how the credits meet the above requirements. Applicants shall provide the City with documentation of the retirement of sufficient GHG credits to meet the annual GHG reduction amount prior to January 1 of each calendar year for the following year. This requirement shall apply to operations for up to 30 years. Applicants may purchase credits up front or in advance as they choose.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As described on pages 4-11 through 4-12 of the draft SEIR, climate change is a global problem, and GHGs are global pollutants, unlike criteria air pollutants (e.g., ozone precursors), which are primarily pollutants of regional and local concern. Given the long atmospheric lifetimes, GHGs emitted by sources worldwide accumulate in the atmosphere. No single emitter of GHGs is large enough to trigger global climate change on its own. Rather, climate change is the result of the individual contributions of countless past, present, and future sources. Therefore, GHG emissions impacts are inherently cumulative. As described for Impact GHG-1, GHG impacts would be considered significant and unavoidable. Accordingly, cumulative GHG impacts would also be considered significant and unavoidable.

The Certified EIR concluded that cumulative GHG impacts would be less than significant. Based on the analysis above, with incorporation of the Project

Change, the Metro Plan would have a significant and unavoidable cumulative GHG impact. The Project Change would result in new cumulative GHG impacts than what was analyzed in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with cumulative GHG emissions (CEQA Guidelines Section 15091(a)(3)).

9. Impact C-NOI-1: Implementation of the Metro Plan would result in new cumulative noise impacts that were not identified in the Certified EIR (construction noise).

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in a cumulatively considerable contribution to a significant cumulative noise is discussed on pages 4-16 through 4-19 of the draft SEIR.

(b) **Mitigation Measures:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measure have been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure NOI-2: Protect Potentially Susceptible Structures from Construction-Generated Vibration

If a future development project in the Metro Plan requires any of the following construction activities, then this measure would apply:

- Pile driving within approximately 100 feet of an existing structure.
- Construction with other ground-disturbing equipment (e.g., jackhammers, bulldozers, excavators, etc.) within 25 feet of an existing structure.

The construction contractor shall consult with the City to determine whether adjacent or nearby structures could be adversely affected by construction-generated vibration. If buildings adjacent to construction activity are identified that could be adversely affected, the project applicant will incorporate into construction specifications for their project a requirement that the construction contractor(s) use all feasible means to avoid damage to adjacent and nearby buildings. Such methods to help reduce vibration-related damage effects may include maintaining a safe distance between the construction site and the potentially affected building (e.g., at least 100 feet for "historic and some old buildings") or using "quiet" pile-driving technologies (such as predrilling piles or using sonic pile drivers).

Should pile driving be required within 100 feet of a building in the "historic or some old building" category, within 75 feet of buildings in the "older residential structures" category, and within 55 feet of buildings in the "modern industrial/commercial" category, the City will work with the construction contractor to implement a monitoring program to minimize damage to adjacent buildings and ensure that any such damage is documented and repaired. If required, the monitoring program will include the following components:

- Prior to the start of any ground-disturbing activity, the project applicant will engage a historic architect or qualified historic preservation professional to undertake a preconstruction survey of nearby affected buildings that may be considered historic. For buildings that are not potentially historic, a structural engineer or other professional with similar qualifications will document and photograph the existing conditions of potentially affected buildings within 100 feet of pile-driving activity.
- Based on the construction and condition of the resource(s), the consultant will also establish a standard maximum vibration level that will not be exceeded at any building, based on existing conditions, character-defining features, soil conditions, and anticipated construction practices. Common standards are a peak particle velocity of 0.25 inch per second for "historic and some old buildings," a peak particle velocity of 0.3 inch per second for "older residential structures," and a peak particle velocity of 0.5 inch per second for "new residential structures" and "modern industrial/commercial buildings," as shown in Table 3.4-2.
- To ensure that vibration levels do not exceed the established standard, the project applicant will monitor vibration levels at each structure and prohibit vibratory construction activities that generate vibration levels in excess of the standard.
- Should vibration levels be observed in excess of the selected standard, construction will be halted, and alternative construction techniques put in practice, to the extent feasible (e.g., predrilled piles could be substituted for driven piles, if feasible, based on soil conditions, or smaller, lighter equipment could be used in some cases).
- The historic preservation professional (for effects on historic buildings) and/or structural engineer (for effects on non-historic structures) will conduct regular periodic inspections (every 3 months) of each building during ground-disturbing activity on the project site. Should damage to any building occur, the building(s) will be remediated to their preconstruction condition at the conclusion of ground-disturbing activity on the site.

Mitigation Measure NOI-3: Implement Nighttime Construction Vibration Control Plan to Reduce Vibration-Related Annoyance Impacts on Adjacent Land Uses

Should vibration-generating construction activities for future development under the Metro Plan be proposed outside of the daytime hours of 7:00 a.m. to 7:00 p.m., and should non-pile driving equipment be proposed within 25 feet of occupied residences or buildings where people sleep, the construction contractor for a project in the Metro Plan Area shall develop a nighttime construction vibration control plan. In addition, should nighttime pile driving activities be proposed within 100 feet of such buildings, the construction contractor for a project in the Metro Plan Area shall similarly develop a nighttime construction vibration control plan. The construction vibration control plan shall demonstrate that vibration levels at the residential land uses during nighttime hours will not exceed 0.1 PPV in/sec.

In addition, the construction contractor will appoint a project vibration coordinator who will serve as the point of contact for vibration-related complaints during project construction. The contact information for the project vibration coordinator shall be posted at the project site and on a publicly available project website for future development projects under the Metro Plan. Should residents in the project area submit complaints to the project vibration coordinator for nighttime construction vibration

concerns, the project vibration coordinator shall work with the construction team to adjust activities to reduce vibration or to reschedule activities for a less sensitive time.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that:

(1) **Effects of Mitigation and Remaining Impacts:** As discussed on pages 4-17 and 4-19 of the draft SEIR, direct impacts related to construction noise were determined to be significant and unavoidable. Similarly, construction noise from individual Metro Plan projects could combine with construction noise from other Metro Plan projects or Milpitas Gateway-Main Street Specific Plan project to result in a cumulative construction noise impact. Because concurrent construction of multiple projects could expose individual receivers located between two Metro Plan projects to greater construction noise levels than would be experienced from either project alone, because concurrent construction of multiple projects could expose individual receivers located between a Metro Plan project and a Milpitas Gateway-Main Street Specific Plan project to greater construction noise levels than would be experienced from either project alone, and because direct construction noise impacts would be considered significant and unavoidable, cumulative construction noise impacts would also be significant and unavoidable.

The Certified EIR concluded that cumulative impacts related to noise would be less than significant. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would have a significant and unavoidable cumulative noise impact, related to cumulative construction noise impacts. The Project Change would result in a new significant and unavoidable construction noise impact compared to what was analyzed in the Certified EIR.

(2) **Overriding Considerations:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, overriding the remaining significant adverse impact of the Metro Plan associated with cumulative construction noise (CEQA Guidelines Section 15091(a)(3)).

IV. Findings for Significant Effects that Can be Mitigated to Less than Significant

The following findings are made for significant effects in the SEIR that can be mitigated to less than significant.

A. Air Quality

1. Impact AQ-3: Implementation of the Metro Plan would result in a new significant air quality impact that was not identified in the Certified EIR related to exposing sensitive receptors to substantial pollutant concentrations (construction-related fugitive dust emissions).

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in exposure of sensitive receptors to substantial concentration of fugitive dust is described on page 3.1-26 of the draft SEIR.

(b) **Mitigation Measure:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measure has been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure AQ-5: Require Fugitive Dust Best Management Practices

All applicants proposing development of projects within the Metro Plan Area shall require their contractors, as a condition of contract, to reduce construction-related fugitive dust by implementing BAAQMD's basic control measures at all construction and staging areas. The following measures would be implemented.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite will be covered.
- All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads, driveways, or driving surfaces shall be limited to 15 miles per hour (mph).
- All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
- A publicly visible sign will be posted with the telephone number and the name of the person to contact at the lead agency regarding dust complaints. This person will respond and take corrective action within 48 hours. The phone number of the BAAQMD will also be visible to ensure compliance.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that changes or alterations have been required in, or incorporated into, the Metro Plan that

would avoid or substantially lessen the significant environmental effect identified in the SEIR (CEQA Guidelines Section 15091(a)(1)). As described on pages 3.1-26 and 3.128 of the draft SEIR, during grading and excavation activities associated with construction, localized fugitive dust would be generated. The amount of dust generated by a project is highly variable and dependent on the size of the disturbed area at any given time, the amount of activity, soil conditions, and meteorological conditions. BAAQMD's CEQA air quality guidelines consider dust impacts to be less than significant if BAAQMD's construction BMPs are employed to reduce such emissions. Because BAAQMD's Basic Construction Mitigation Measures would be implemented, per Mitigation Measure AQ-5, construction-related fugitive dust emissions would be less than significant and would not expose receptors to substantial pollutant concentrations or risks.

The Certified EIR concluded that, after implementation of policies included in the TASP, impacts related to exposing sensitive receptors to substantial toxic air contaminants would be less than significant. Based on the analysis above, with incorporation of the Project Change and Mitigation Measure AQ-5, the Metro Plan would have a less-than-significant effect with regard to exposing sensitive receptors to fugitive dust during construction. Thus, the Project Change would result in a change to the Certified EIR's impact determination with regard to exposing sensitive receptors to substantial fugitive dust concentrations. The Project Change would result in a new significant impact that was not identified in the Certified EIR, but the impact would be less than significant with Mitigation Measure AQ-5.

B. Noise

1. Impact NOI-2: Operation of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to generating a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.

(a) **Potential Impact:** The potential for operation of the Metro Plan to result in a substantial temporary or permanent increase in ambient noise levels in excess of standards in the general plan or noise ordinance is discussed at pages 3.4-19 through 3.4-27 of the draft SEIR.

(b) **Mitigation Measure:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measure has been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure NOI-1: Mechanical Equipment Noise Reduction Plan

To reduce potential noise impacts resulting from mechanical equipment (including but not limited to HVAC equipment and emergency generators), the applicants of future projects under the Metro Plan shall conduct a noise analysis to estimate noise levels of project-specific mechanical equipment. The noise analysis shall be based on the selected equipment models and design features. The applicant for the project shall create a Noise Reduction Plan to ensure noise levels of equipment, once installed, are below the applicable criteria described below.

The Noise Reduction Plan shall include any necessary noise reduction measures required to reduce project-specific mechanical equipment noise to a less-than-significant level. The plan shall also demonstrate that with the inclusion of selected measures, noise from equipment would be below the significance thresholds. Feasible noise reduction measures to reduce noise below the significance thresholds include, but are not limited to, selecting quieter equipment, utilizing silencers and acoustical equipment at vent openings, siting equipment farther from the roofline, and/or enclosing all equipment in a mechanical equipment room designed to reduce noise. Regarding emergency generators, additional noise reduction options include, but are not limited to, installing quieter model generators, incorporating noise-reducing emergency generator weather enclosures, and installing exhaust mufflers or silences. The results of the noise analysis and the final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits.

The noise analysis and Noise Reduction Plan shall be prepared by persons qualified in acoustical analysis and/or engineering. The Noise Reduction Plan shall demonstrate with reasonable certainty that noise from mechanical equipment selected for the project, including the attenuation features incorporated into the project design, will not exceed the City of Milpitas property plane thresholds of 55 dBA during daytime hours or 45 dBA during nighttime hours for nearby residential land uses.

The applicants of future projects under the Metro Plan shall incorporate all feasible methods to reduce noise and any other feasible recommendations from the acoustical analysis and Noise Reduction Plan into the building design and operations, as necessary, to ensure that noise sources meet applicable requirements of the respective noise ordinances at receiving properties.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that changes or alterations have been required in, or incorporated into, the Metro Plan that would avoid or substantially lessen the significant environmental effect identified in the SEIR (CEQA Guidelines Section 15091(a)(1)). As described on pages 3.4-24 through 3.4-27 of the draft SEIR, the Metro Plan does not include policies related to mechanical equipment noise. However, General Plan Policies N 1-1, N 1-2, N 1-4, N 1-5, and N 1-6 would help reduce the effects of mechanical equipment noise on nearby sensitive uses. For example, Policy N 1-1 requires that the noise compatibility of existing and future development be considered when making land use planning decisions and requires that development projects ensure consistency with land use compatibility standards outlined in the General Plan Tables N-1 and N-2. Implementation of Mitigation Measure NOI-1 requires the applicants of future projects under the Metro Plan to conduct a noise analysis to estimate noise levels of project-specific mechanical equipment and implement measures to ensure noise levels are below allowable limits. With the implementation of Mitigation Measure NOI-1, operational impacts due to operational mechanical equipment would be reduced to less than significant with mitigation. The Certified EIR did not make a determination regarding noise from operational equipment associated with the TASP. Based on the analysis above, with incorporation of the Project Change, the Metro Plan would result in a significant noise impact from operational equipment that would be reduced to a less-than-significant level with Mitigation Measure NOI-1.

2. Impact C-NOI-1: Implementation of the Metro Plan would result in new cumulative noise impacts that were not identified in the Certified EIR (mechanical equipment noise).

(a) **Potential Impact:** The potential for implementation of the Metro Plan to result in a cumulatively considerable contribution to a significant cumulative noise is discussed on pages 4-16 through 4-19 of the draft SEIR.

(b) **Mitigation Measure:** Pursuant to CEQA Guidelines Section 15091, the following mitigation measure has been included in the MMRP that is to be adopted concurrently with these findings.

Mitigation Measure NOI-1: Mechanical Equipment Noise Reduction Plan

To reduce potential noise impacts resulting from mechanical equipment (including but not limited to HVAC equipment and emergency generators), the applicants of future projects under the Metro Plan shall conduct a noise analysis to estimate noise levels of project-specific mechanical equipment. The noise analysis shall be based on the selected equipment models and design features. The applicant for the project shall create a Noise Reduction Plan to ensure noise levels of equipment, once installed, are below the applicable criteria described below.

The Noise Reduction Plan shall include any necessary noise reduction measures required to reduce project-specific mechanical equipment noise to a less-than-significant level. The plan shall also demonstrate that with the inclusion of selected measures, noise from equipment would be below the significance thresholds. Feasible noise reduction measures to reduce noise below the significance thresholds include, but are not limited to, selecting quieter equipment, utilizing silencers and acoustical equipment at vent openings, siting equipment farther from the roofline, and/or enclosing all equipment in a mechanical equipment room designed to reduce noise. Regarding emergency generators, additional noise reduction options include, but are not limited to, installing quieter model generators, incorporating noise-reducing emergency generator weather enclosures, and installing exhaust mufflers or silences. The results of the noise analysis and the final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits.

The noise analysis and Noise Reduction Plan shall be prepared by persons qualified in acoustical analysis and/or engineering. The Noise Reduction Plan shall demonstrate with reasonable certainty that noise from mechanical equipment selected for the project, including the attenuation features incorporated into the project design, will not exceed the City of Milpitas property plane thresholds of 55 dBA during daytime hours or 45 dBA during nighttime hours for nearby residential land uses.

The applicants of future projects under the Metro Plan shall incorporate all feasible methods to reduce noise and any other feasible recommendations from the acoustical analysis and Noise Reduction Plan into the building design and operations, as necessary, to ensure that noise sources meet applicable requirements of the respective noise ordinances at receiving properties.

(c) **Finding:** Based on the SEIR and the record before the Council, the Council finds that changes or alterations have been required in, or incorporated into, the Metro Plan that would avoid or substantially lessen the significant environmental effect identified in the SEIR (CEQA Guidelines Section 15091(a)(1)). As described on draft SEIR page 4-18 regarding the potential for mechanical equipment noise from future individual Metro Plan projects to combine with mechanical equipment noise from other future Metro Plan projects, the specific locations and equipment details for future projects are not known at this time. However, it is possible that equipment noise from multiple future Metro Plan projects could be located close enough to one another to combine, and to expose individual receptors to greater noise levels than they would experience from one project alone. Cumulative impacts from Metro Plan mechanical equipment noise would be considered significant.

With implementation of Metro Plan Mitigation Measure NOI-1, which requires the applicants of future Metro Plan projects to implement measures to ensure mechanical equipment noise levels are below allowable limits, impacts from mechanical equipment noise would be reduced to below the allowable levels. Cumulative mechanical equipment noise impacts would be less than significant with mitigation. The Certified EIR concluded that cumulative impacts related to noise would be less than significant. Based on the analysis above, the Project change would have a less than significant with mitigation cumulative impact related to operational mechanical equipment noise.

V. Findings Regarding Impacts that are Less than Significant, Less than Cumulatively Considerable, or Have No Impact

The City makes the following findings pursuant to and in accordance with PRC Sections 21081, 21081.5, and 21081.6. The City prepared an Initial Study to identify the environmental resources for which the Project Change would not result in new significant impacts nor substantially more severe impacts than disclosed in the Certified EIR. The Initial Study, which is included as Appendix B of the draft SEIR, found that the Project Change would not result in new significant impacts nor substantially more severe impacts than disclosed in the Certified EIR, for the following environmental resources:

- Aesthetics
- Agricultural and Forestry Resources
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality

- Mineral Resources
- Tribal Cultural Resources
- Wildfire

In the SEIR, it was determined the Metro Plan would not result in a potentially significant impact for the following criteria:

- **Impact AQ-1 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to conflicting with or obstructing implementation of an applicable air quality plan.
- **Impact AQ-4 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than those identified in the Certified EIR related to creating objectionable odors affecting a substantial number of people.
- **Impact LU-1 (no impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to physically dividing an established community.
- **Impact LU-2 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to causing a significant environmental impact due to a conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.
- **Impact NOI-4 (no impact):** The Metro Plan would not result in a new or substantially more severe impact than what was identified in the Certified EIR related to being located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, and exposing people residing or working in the project area to excessive noise levels.
- **Impact POP-1 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to inducing substantial unplanned population growth in an area, either directly or indirectly.
- **Impact POP-2 (no impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to displacing substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere.
- **Impact PS-1 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to substantial adverse physical impacts associated with the provision of new or physically altered schools or the need for new schools.
- **Impact PS-4 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to substantial adverse physical impacts associated with the provision of new or physically altered parks or the need for new parks; related to the increased use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated; or including recreational facilities or

requiring the construction or expansion of recreational facilities that might have an adverse physical effect on the environment.

- **Impact TR-1 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to conflicting with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities.
- **Impact TR-2 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to conflicting or being inconsistent with Guidelines Section 15064.3, subdivision (b).
- **Impact TR-3 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to substantially increasing hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).
- **Impact TR-4 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to resulting in inadequate emergency access.
- **Impact UTIL-1 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to requiring or resulting in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which would cause significant environmental effects.
- **Impact UTIL-2 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to having sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years.
- **Impact UTIL-3 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to resulting in a determination by the wastewater treatment provider which serves or may serve the project it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.
- **Impact UTIL-4 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to generating solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals.
- **Impact UTIL-5 (less-than-significant impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to complying with federal, state, and local management and reduction statutes and regulations related to solid waste.

For cumulative resources, the SEIR concluded the Metro Plan would have no impact on agriculture and forestry resources, mineral resources, tribal cultural resources, or wildfire. Because the Metro Plan would have no impact on these environmental resources, the Metro Plan would not contribute

to any cumulative impact. The conclusions for the remainder of cumulative impacts that were found to have a less-than-cumulatively-considerable contribution or for where there was no significant cumulative impact are:

- **Impact C-AES-1 (less-than-cumulatively-considerable contribution):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative aesthetics impacts.
- **Impact C-BIO-1 (less-than-cumulatively-considerable contribution):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative biological resources impacts.
- **Impact C-CUL-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative cultural resources impacts.
- **Impact C-EN-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to energy impacts.
- **Impact C-GEO-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative geology and soils impacts.
- **Impact C-HAZ-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative hazards and hazardous materials impacts.
- **Impact C-LU-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative land use impacts.
- **Impact C-POP-1 (less-than-cumulatively-considerable contribution):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative population and housing impacts.
- **Impact C-TR-1 (less-than-cumulatively-considerable contribution):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to cumulative transportation impacts.
- **Impact C-UTIL-1 (less-than-significant cumulative impact):** Implementation of the Metro Plan would not result in new or substantially more severe impacts than what was identified in the Certified EIR related to utilities and service systems impacts for all facilities except the future reservoir and pump stations.

No additional findings are required for these environmental resource areas.

VI. Mitigation Monitoring and Reporting Program

As referenced above in the findings, an MMRP has been prepared for the Metro Plan and has been adopted concurrently with these findings (PRC Section 21081.6(a)(1); Guidelines Section 15097). The City will use the MMRP to track compliance with mitigation measures.

VII. Alternatives

A. Identification of Project Objectives

CEQA requires that an EIR identify a "range of potential alternatives to the project [which] shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one of more of the significant effects." Chapter 2.0 of the draft SEIR identifies the Project's goals and objectives. The City is proposing the Project Change in order to achieve the following objectives:

1. To enhance the sense of place and identity of the Metro Plan Area with visually memorable structures and buildings.
2. To provide safer and more attractive multimodal connections for walking and biking.
3. To provide a greater variety of shared public spaces.
4. To expand neighborhood services and the variety of retail.
5. To create and expand available space for jobs near transit.
6. To provide both affordable and market-rate housing.

B. Alternatives Analysis in the SEIR

The following two alternatives to the Proposed Project Change are analyzed in the SEIR.

- **Reduced Height Alternative.** The Reduced Height Alternative places a height restriction across the Metro Plan Area that limits building heights to 75 feet, which would reduce the additional projected dwelling units by 1,000 units and the additional office space by approximately 500,000 square feet compared to the proposed Metro Plan.
- **Removal of Western Expansion Area Alternative.** The Removal of Western Expansion Area would remove the western expansion area from the Metro Plan Area and reduce the additional projected dwelling units by 500 units, compared to the proposed Metro Plan.

As required by CEQA, the SEIR also identified a No Project Alternative. It assumes full buildout of the TASP, as disclosed in the Certified EIR.

1. No Project Alternative

The No Project Alternative is discussed on pages 5-6 through 5-7 and 5-10 through 5-14 of the draft SEIR. The No Project Alternative assumes that the Metro Plan would not be implemented and that the TASP would be the governing Specific Plan. The No Project Alternative assumes full buildout of the TASP, as disclosed in the Certified EIR. This includes the remaining development of only a few hundred of the 7,109 residential units, approximately 980,000 of the 993,843 square feet of office

space, just over 100,00 of the 287,075 square feet of retail space, and over 200 of the 350 hotel rooms to complete the Plan.

Under the No Project Alternative, the City would continue to experience the need for additional housing, including the need to fulfill its Regional Housing Needs Allocation (RHNA) obligations. Under the No Project Alternative, the City would not plan for additional housing beyond that already allowed in the TASP. The No Project Alternative, therefore, assumes that the City would plan for housing elsewhere in the City in order to fulfill its RHNA obligations. The City's 6th cycle RHNA is 6,713 housing units between 2023 and 2031; the RHNA is also stratified by housing for specific income levels. To address the RHNA, the City must update its Housing Element to demonstrate where this level of housing can be built and to identify the strategies to meet the RHNA obligation. The sites selected for housing must be realistic accounting for elements such as dimensions of parcels, existing use of sites, economic considerations, environmental factors, and other considerations. The housing units in the Project Change would count toward both the prior cycle RHNA and 6th Cycle RHNA. Therefore, if the Project Change is not approved, the City would have to plan for housing units elsewhere in the City to meet its RHNA obligations. Additionally, aside from the City's RHNA obligations, there is a crisis related to housing affordability in the Bay Area that in part is related to a need for more housing. Therefore, it is reasonable to assume that a reduction in units built in the City, regardless of RHNA requirements, would result in housing planned for and constructed elsewhere. However, it cannot currently be known where those housing units may be located or what the characteristics of those units (e.g., density, height, etc.) would be.

The No Project Alternative also assumes full buildout of the 2040 General Plan, which otherwise relies upon the Metro Plan Area to provide more housing opportunities and specifically calls for development of an Innovation District in the area east of the Milpitas Transit Center. Because the No Project Alternative would not build any of the development or infrastructure associated with the Metro Plan, the No Project Alternative does not meet any of the Project Change objectives.

(a) **Finding:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, make the No Project Alternative infeasible (CEQA Guidelines Section 15091(a)(3)).

(b) **Explanation:** The No Project Alternative is rejected as an alternative because it would not achieve the Project Change objectives and is therefore infeasible. This alternative would not realize the benefits of the Metro Plan and fails to achieve the Project Change objectives. The No Project Alternative would not achieve some of the environmental benefits associated with the Metro Plan. The housing units in the Project Change would count toward both the prior cycle RHNA and 6th Cycle RHNA. Therefore, if the Project Change is not approved, the City would have to plan for housing units elsewhere in the City to meet its RHNA obligations. Additionally, aside from the City's RHNA obligations, there is a crisis related to housing affordability in the Bay Area that in part is related to a need for more housing, and denying the project would not help address housing affordability. Because the No Project Alternative would not build any of the housing uses near transit, the No Project Alternative is also expected to have less of a reduction in vehicle miles traveled (VMT) than the proposed Metro Plan.

The reduction in housing units under the No Project Alternative would likely result in planning and construction of housing elsewhere. However, it cannot currently be known where those housing units may be located or what the characteristics of those units (e.g.,

density, height, etc.) would be, such that specific impacts could not be evaluated. However, generally speaking, it is possible that the No Project Alternative might also have greater impacts on land use than the proposed Metro Plan because these alternatives could require planning for housing units elsewhere in the City to meet RHNA obligations and could exacerbate existing housing shortages more generally, resulting in development of housing elsewhere. Other locations within the City would not be located near the BART station and are thus unlikely to have the same transit-oriented development benefits as the proposed Metro Plan. Residents and workers that could have lived in the Metro Plan Area may instead live somewhere where average VMT is higher. Therefore, the alternatives may have a less beneficial impact on VMT than the proposed Metro Plan. The No Project Alternative could also result in population growth either elsewhere in the City or outside the City that might be unaccounted for in other jurisdictions' planning.

2. Reduced Height Alternative

The Reduced Height Alternative is discussed on pages 5-7 through 5-8 and 5-14 through 5-20 of the draft SEIR. The Reduced Height Alternative would place a height restriction across the Metro Plan Area that limits building heights to 75 feet. This restriction would reduce the additional projected dwelling units by 1,000 units compared to the proposed Metro Plan. About 500 fewer units would be projected at both Great Mall and the Tango District. This alternative would also reduce office space by about 500,000 square feet compared to the proposed Metro Plan by reducing the square footage projected for the Innovation District. Projected retail space and hotel rooms would remain the same as projected under the proposed Metro Plan. Under this Alternative, it is expected that the infrastructure improvements identified in the Metro Plan (i.e., circulation, open space, utilities) would remain the same and that the policies in the Metro Plan related to sustainability (i.e., electric buildings, transportation demand management (TDM), low-flow fixtures etc.) would also be the same.

(a) **Finding:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, make the Reduced Height Alternative infeasible (CEQA Guidelines Section 15091(a)(3)).

(b) **Explanation:** This alternative would meet all six Project Change objectives. However, it would meet Objective 5 (to create and expand available space for jobs near transit) to a lesser extent than the proposed Metro Plan because it would reduce by 25 percent the amount of office square footage in the Innovation District. Similarly, this alternative would meet Objective 6 (to provide both affordable and market-rate housing) to a lesser extent than the proposed Metro Plan because it would reduce the dwelling unit capacity in the Metro Plan Area.

It would also reduce the amount of housing set aside in the RHNA for this cycle of the Housing Element. The reduction in housing units under the Reduced Height Alternative would likely result in planning and construction of housing elsewhere. However, it cannot currently be known where those housing units may be located or what the characteristics of those units (e.g., density, height, etc.) would be, such that specific impacts cannot be evaluated. However, generally speaking, it is possible that the Reduced Height Alternative might also have greater impacts on land use than the proposed Metro Plan because these alternatives could require planning for housing

units elsewhere in the City to meet RHNA obligations and could exacerbate existing housing shortages more generally, resulting in development of housing elsewhere. Other locations within the City would not be located near the BART station and are thus unlikely to have the same transit-oriented development benefits as the proposed Metro Plan. Residents and workers that could have lived in the Metro Plan Area may instead live somewhere where average VMT is higher. Therefore, the alternative may have a less beneficial impact on VMT than the proposed Metro Plan. The Reduced Height Alternative could also result in population growth either elsewhere in the City or outside the City that might be unaccounted for in other jurisdictions' planning.

3. Removal of Western Expansion Area Alternative

The Removal of Western Expansion Area Alternative is discussed on pages 5-8 through 5-9 and 5-20 through 5-27of the draft SEIR. This alternative would remove the western expansion area from the Metro Plan Area. This restriction could reduce the additional projected dwelling units by 500 units compared to the proposed Metro Plan. Projected office space, retail space, and hotel rooms would remain the same as projected under the proposed Metro Plan. Under this Alternative, it is expected that the infrastructure improvements identified in the Metro Plan (i.e., circulation, open space, utilities) would remain the same and that the policies in the Metro Plan related to sustainability (i.e., electric buildings, TDM, low-flow fixtures etc.) would also be the same.

(a) **Finding:** The environmental, economic, social, and other benefits of the Metro Plan, as described in detail in the Statement of Overriding Considerations, make the Removal of Western Expansion Area Alternative infeasible (CEQA Guidelines Section 15091(a)(3)).

(b) **Explanation:** This alternative would meet all six Project Change objectives. However, it would meet Objective 6 (to provide both affordable and market-rate housing) to a lesser extent than the proposed Metro Plan because it would reduce the dwelling unit capacity in the Metro Plan Area.

It would also reduce the amount of housing set aside in the RHNA for this cycle of the Housing Element. The reduction in housing units under the Removal of Western Expansion Area Alternative would likely result in planning and construction of housing elsewhere. However, it cannot currently be known where those housing units may be located or what the characteristics of those units (e.g., density, height, etc.) would be, such that specific impacts cannot be evaluated. However, generally speaking, it is possible that the Removal of Western Expansion Area Alternative might also have greater impacts on land use than the proposed Metro Plan because these alternatives could require planning for housing units elsewhere in the City to meet RHNA obligations and could exacerbate existing housing shortages more generally, resulting in development of housing elsewhere. Other locations within the City would not be located near the BART station and are thus unlikely to have the same transit-oriented development benefits as the proposed Metro Plan. Residents and workers that could have lived in the Metro Plan Area may instead live somewhere where average VMT is higher. Therefore, the alternative may have a less beneficial impact on VMT than the proposed Metro Plan. The Removal of Western Expansion Area Alternative could also result in population growth either elsewhere in the City or outside the City that might be unaccounted for in other jurisdictions' planning.

4. Environmentally Superior Alternative

CEQA requires that an environmentally superior alternative be identified among the alternatives that are analyzed in the EIR. If the No Project Alternative is the environmentally superior alternative, an EIR must also identify an environmentally superior alternative among the other alternatives (CEQA Guidelines Section 15126.6(e)(2)). The environmentally superior alternative is that alternative with the least adverse environmental impacts when compared to the proposed project.

As discussed in Section 5.5 of the draft SEIR, the No Project Alternative was identified as superior. Among the other alternatives, the Reduced Height Alternative was concluded to be the environmentally superior alternative as it is expected to have a greater reduction on the impacts of eight environmental topics (air quality, energy, greenhouse gases, noise, population and housing, public services and recreation, and utilities and service systems), when compared to the Removal of Western Expansion Area Alternative. In addition, impacts on three of these environmental topics (air quality, greenhouse gases, noise) would be reductions in the magnitude of significant and unavoidable impacts, although the impact conclusion of significant and unavoidable is expected to be the same for the Metro Plan, Reduced Height Alternative, and the Removal of Western Expansion Area Alternative. In total, the Removal of Western Expansion Area Alternative is expected to have a greater reduction on the impacts of three environmental topics (cultural resources, geology and soils, and hydrology and water quality), when compared to the Reduced Height Alternative. In addition, impacts on these environmental topics (cultural resources, geology and soils, and hydrology and water quality) would be reductions in the magnitude of less-than-significant impacts (after implementation of policies and regulations).

As previously discussed, the Reduced Height Alternative was dismissed as infeasible per CEQA Guidelines Section 15091(a)(c). Additionally, the Removal of Western Expansion Area Alternative, which would be the next environmentally superior alternative after the Reduced Height Alternative, was also dismissed as infeasible per CEQA Guidelines Section 15091(a)(c).

VIII. Statements of Overriding Consideration

Public Resources Code section 21081(b) explains that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. Further, CEQA Guidelines Section 15021(d) explains that "CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project hat will cause one or more significant effects on the environment."

Before the adoption of a Statement of Overriding considerations, the City must meet the following requirements in CEQA Guidelines section 15093(b) and (c):

- When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record
- If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

A. Significant Unavoidable Impacts

Based on the information and analysis set forth in the SEIR and reiterated in Section III of these Findings, implementation of the proposed Milpitas Metro Specific Plan would result in the following significant and unavoidable impacts related to air quality, greenhouse gases, and noise:

- **Impact AQ-2a:** Construction of the Metro Plan would result in a new significant air quality impact that was not identified in the Certified EIR related to a cumulatively considerable net increase in any criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or state ambient air quality standard.
- **Impact AQ-2b:** Operation of the Metro Plan would result in a substantially more severe significant air quality impact than that identified in the Certified EIR related to a cumulatively considerable net increase in any criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or state ambient air quality standard.
- **Impact AQ-3:** Implementation of the Metro Plan would result in a new significant air quality impact that was not identified in the Certified EIR related to exposing sensitive receptors to substantial pollutant concentrations.
- **Impact GHG-1:** Implementation of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to the generation of GHG emissions, either directly or indirectly, that may have a significant impact on the environment or conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.
- **Impact NOI-1:** Construction of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to generating a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.
- **Impact NOI-2:** Operation of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to generating a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.
- **Impact NOI-3:** Construction of the Metro Plan would result in a new significant impact that was not identified in the Certified EIR related to exposing persons to or generating excessive ground-borne vibration or ground-borne noise levels.

- **Impact C-AQ-1:** Implementation of the Metro Plan would result in new and substantially more severe cumulative air quality impacts that were not identified in the Certified EIR.
- **Impact C-GHG-1:** Implementation of the Metro Plan would result in new cumulative greenhouse gas emissions impacts that were not identified in the Certified EIR.
- **Impact C-NOI-1:** Implementation of the Metro Plan would result in new cumulative construction noise impacts that were not identified in the Certified EIR.

Air Quality

Impact AQ-2a

During construction of a development project, the activity that typically generates the highest NO_X and PM exhaust emissions is the operation of off-road equipment, whereas the activity that typically generates the highest ROG emissions is the application of architectural coatings. Mitigation Measures AQ-1 through AQ-5 would reduce criteria pollutants, while Mitigation Measure AQ-6 would require pollutant offsets. However, because it cannot be concluded that offset programs would always be available in the future at the time and in the amount needed for any given future development, construction air quality impacts were conservatively assumed to be significant and unavoidable.

Impact AQ-2b

Buildout of the Metro Plan has the potential to result in air quality impacts from area, energy, and mobile sources. Area sources would include landscaping equipment, off-gassing (release of VOCs) during the reapplication of architectural coatings, and consumer products (e.g., solvents, cleaning supplies, cosmetics, toiletries). The Metro Plan includes numerous proposed improvements and policies to reduce VMT (Policy M 8), increase energy efficiency (Policy CB 7.2), and reduce energy consumption (Policy CB 7.2). Several policies further support the maintenance and expansion of the transportation network to enhance connectivity, accessibility, and safety (see Policy M 5, Policy M 6, and Policy M 7). Implementation of Mitigation Measure AQ-7 and Mitigation Measure AQ-8 would help ensure that the individual developments within the City would not contribute a significant level of air pollution such that regional air quality within the Basin would be degraded. However, because it cannot be concluded that offset programs would always be available in the future at the time and in the amount needed for any given future development, operational air quality impacts are conservatively assumed to be significant and unavoidable.

Impact AQ-3

Construction emissions resulting from individual projects developed under the Metro Plan could exceed BAAQMD's regional ROG, NO_X, and PM thresholds. Mitigation Measures AQ-1 through AQ-6 would reduce regional emissions of ROG, NO_X, and PM below BAAQMD's regional thresholds (assuming offset programs are available in the future). Similarly, long-term operation of development under the Metro Plan would result in an increase of criteria pollutant emissions. Mitigation Measure AQ-7 and Mitigation Measure AQ-8 would reduce regional emissions of ROG, NO_X, and PM of individual projects developed under the Metro Plan below BAAQMD's regional thresholds (assuming offset programs are available in the future). Because it cannot be concluded that offset programs per Mitigation Measure AQ-6 and Mitigation Measure AQ-8 would be available in the future at the time and in the amount needed for any given future development, for the

purposes of this SEIR analysis, health impacts related to regional criterial pollutants are conservatively assumed to be significant and unavoidable.

Potentially significant impacts resulting from exposure of receptors to $PM_{2.5}$ exhaust from new stationary sources, TAC emissions from increased traffic volumes, and TACs generated during project construction activities would be reduced by Metro Plan policies and mitigation measures. Mitigation Measure AQ-1 would require BMPs to minimize construction emissions. In addition, Policy SC 8.1 in the Metro Plan requires the installation of high-efficiency filters should new sensitive receptors be sited within 500 feet of major roadways and highways in the Metro Plan Area. Mitigation Measure AQ-9 requires applicants to provide a project-level evaluation of construction- and operational-related health risks from future projects. However, because it cannot be concluded what the result of the project level evaluation will be without speculation, it is possible that mitigation for future project health risks may be inadequate to reduce impacts below BAAQMD's threshold level. This impact would be significant and unavoidable.

Impact C-AQ-1

Per BAAQMD guidelines, exceedances of project-level thresholds would be cumulatively considerable, and the cumulative impact would be significant. As discussed in Impacts AQ-2a and AQ-2b, construction and operational emissions resulting from individual projects developed under the Specific Plan could exceed BAAQMD's regional ROG, NO_X, PM_{10}, and $PM_{2.5}$ thresholds. Mitigation Measures AQ-1 through AQ-8 could reduce regional emissions of ROG, NO_X, PM_{10}, and $PM_{2.5}$ to a level below BAAQMD's regional thresholds. Because it cannot be concluded that offset programs per Mitigation Measures AQ-6 and AQ-8 would be available in the future at the time and in the amount needed for any given future development under the Metro Plan, impacts during construction and operation related to regional criterial pollutants quality impacts from the project are conservatively assumed to result in a significant and unavoidable cumulative impact.

Existing nearby DPM sources and the Metro Plan could contribute to a cumulative health risk for sensitive receptors near the Metro Plan Area. Mitigation Measures AQ-1 through AQ-9 would develop and maintain best practices for reducing emissions associated with construction and operational activities and require that new development with sensitive receptors adjacent to TAC sources be designed to minimize health risks, which would reduce construction and operational health risks for existing and future receptors. However, there may be instances where project-specific conditions would preclude a reduction in the health risk to a level below adopted thresholds and expose receptors to cumulative health risks. In addition, future development projects under the Metro Plan could generate DPM, $PM_{2.5}$, or other TACs that could expose adjacent receptors to significant health risks (e.g., from construction and operational sources that are adjacent to sensitive receptors). Therefore, it is conservatively assumed that the Metro Plan in combination with other past, present, and reasonably foreseeable future projects would result in a cumulative impact that would be significant and unavoidable.

Greenhouse Gases

Impact GHG-1

Mobile emissions from the Metro Plan would not achieve the state's carbon neutrality goal by 2045. Mitigation Measure GHG-2, which includes requirements for LEED certification or equivalent, electric space and water heating, solar roofs, and waste diversion programs, would ensure

consistency with the Scoping Plan and the long-term statewide reduction trajectory. Should all measures included in Mitigation Measure GHG-2 be implemented by a future project sponsor within the Metro Plan Area, that development would be consistent with the Metro Plan and the state's reduction targets for 2030. For projects where all of the requirements of Mitigation Measure GHG-2 (or their equivalent) are not implemented, implementation of Mitigation Measure GHG-3 is further required to reduce net operational GHG emissions through purchase of GHG mitigation credits. Even with implementation of Mitigation Measures GHG-2 and Mitigation Measure GHG-3, the Metro Plan Area may still have GHG emissions by 2045 and thus would not achieve carbon neutrality. Thus, GHG emissions from operations of the Metro Plan would result in a significant and unavoidable impact.

Impact C-GHG-1

No single emitter of GHGs is large enough to trigger global climate change on its own. Rather, climate change is the result of the individual contributions of countless past, present, and future sources. Therefore, GHG emissions impacts are inherently cumulative. GHG impacts of the Metro Plan would be considered significant and unavoidable. Accordingly, cumulative GHG impacts would also be considered significant and unavoidable.

Noise

Impact NOI-1

Construction noise from future development under the Metro Plan could occur during nighttime hours and/or could result in a substantial temporary increase in ambient noise levels in the City during daytime or nighttime hours, construction noise impacts from implementation of the Metro Plan would be considered potentially significant. Construction noise would be reduced by General Plan Policies N 1-5 and N 1-8, as well as Action N-1b, Action N-1c, and Action N-1d. However, it is not possible to ensure that in all instances and for all future projects, mitigation measures would reduce construction noise to less-than-significant levels. For example, certain projects may require construction noise during nighttime hours for various reasons (e.g., projects that require road closures, concrete pour activities that require early morning starts to prevent concrete curing prematurely). Therefore, some future projects may result in significant construction noise impacts that cannot be reduced to less-than-significant levels with mitigation.

Impact NOI-3

Pile driving and non-pile driving activities could result in vibration levels in excess of applicable thresholds (depending on the proximity of future construction activities to nearby structures), vibration-related damage impacts would be considered potentially significant. It is also possible that construction activities from future projects under the Metro Plan could result in vibration levels in excess of the thresholds at residential land uses during nighttime hours. Vibration-related annoyance impacts during nighttime hours would be considered potentially significant. Mitigation Measure NOI-2 would be required to reduce construction-related damage impacts. However, it is not possible to ensure that in all instances and for all future projects, mitigation measures would reduce construction vibration to less-than-significant levels.

Impact C-NOI-1

Direct impacts related to construction noise were determined to be significant and unavoidable. Similarly, construction noise from individual Metro Plan projects could combine with construction noise from other Metro Plan projects or Milpitas Gateway-Main Street Specific Plan project to result in a cumulative construction noise impact. Because concurrent construction of multiple projects could expose individual receivers located between two Metro Plan projects to greater construction noise levels than would be experienced from either project alone, because concurrent construction of multiple projects could expose individual receivers located between a Metro Plan project and a Milpitas Gateway-Main Street Specific Plan project to greater construction noise levels than would be experienced from either project alone, and because direct construction noise impacts would be considered significant and unavoidable, cumulative construction noise impacts would also be significant and unavoidable.

B. Benefits of the Proposed Milpitas Metro Plan/Overriding Considerations

The City of Milpitas has (i) independently reviewed the information in the SEIR and record of proceedings; (ii) made a reasonable and good faith effort to eliminate or substantially lessen the impacts resulting from the proposed Metro Plan to the extent feasible through identification of mitigation measures to the greatest extent feasible and (iii) balanced the project's benefits against the project's significant unavoidable impacts. Each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the proposed project outweigh its significant adverse environmental effects and is an overriding consideration warranting project approval. Adoption and implementation of the Metro Plan would provide the following considerable economic, social, legal, and other benefits.

1. Support Meeting the City's Regional Housing Needs

Milpitas' RHNA is based on growth projections and the current housing deficit. As described on page 3.5-6 of the draft SEIR, the City's RHNA allocation for Milpitas for 2023 to 2013 is a total of 6,713 housing units at a variety of income levels. Per the General Plan, almost all growth is planned in existing residential and mixed-use areas, with most of the growth planned in two Specific Plan areas, one of which is the Milpitas Metro Specific Plan Area. As explained on pages 3.5-8 through 3.5-9 of the draft SIER, when it first developed the TASP, the City identified the potential of redeveloping the TASP Area from an industrial area into one where people could work, live, and take advantage of the proximity to, what was then, a future BART station. The planning process included the development of a Specific Plan with policies that would address the demands from the population growth associated with the TASP. Since the development of the TASP, the City has identified ways to plan for additional growth in the area, as a way of helping meet its RHNA requirements, and in doing so identified the need for the Metro Plan. The Milpitas Metro Specific Plan is a document that includes the City's plan for the population growth that would be generated from its implementation, including policies to guide the growth of the Metro Plan Area.

The Project Change supports the growth anticipated by the General Plan and is consistent with the population and housing goals from the 2040 General Plan, including Goal LU-7 to promote job-generating land uses; and Housing Element Goals A, B, C, D, and E to provide adequate sites to accommodate the City's share of the regional housing need; maintain and preserve housing resources; maintain high-quality residential neighborhoods and preserve existing housing

resources; facilitate new housing production; support housing diversity and affordability; and eliminate housing discrimination.

The Metro Plan will accommodate up to 7,000 additional housing units to help the City meet its regional housing needs requirements and support transit ridership As explained on page 34 of the Milpitas Metro Plan, the Plan also envisions a series of neighborhoods that will be "affordable by design" due to their excellent access to high-quality transit and multimodal access, higher density design, small to moderate unit sizes, and low parking ratios. These units will still need to meet income-level affordability standards to meet RHNA requirements. Through future Housing Elements, the City will define affordable housing sites and establish Housing Opportunity Zones that support the development of affordable housing, which is likely to include sites within the Metro Plan Area. Therefore, the Metro Plan can play a substantial role in helping the City meet its RHNA.

2. Guide Development in the District

The Metro Plan guides development in the Metro Plan area, providing policies to guide development in the district in terms of land use, circulation, community design, and utilities and services. It fulfills the Policy 7.5 of the original TASP, which requires the creation of a coordinated development plan for the parcels at and around the Milpitas Transit Center. It also has all necessary actions needed to implement the Metro Plan and make it consistent with the City's adopted 2040 General Plan and other relevant master plans and land development regulations. Therefore, adoption of the Metro Plan provides overall guidance for development in the Metro Plan area for a 20-year planning horizon.

3. Increase Transit-Oriented Development

The long-term focus of the Metro Plan is to continue and accelerate the transformation of the area from industrial and auto-oriented to a vibrant, connected, and fully developed transit-oriented neighborhood. The extension of VTA and BART lines into the Milpitas and East San Jose areas generally, and specifically into the Metro Area, meant that the Plan Area would be more regionally connected than any other part of the City of Milpitas. VTA completed construction of the Tasman East Extension in 2004, extending the regional light rail transit system and adding Great Mall/Main Street and Montague Expressway stations in Milpitas. A new Milpitas BART station, which opened in June 2020, was proposed at the intersection of Montague Expressway and Capitol Avenue. The TASP was originally developed to anticipate new development around the Milpitas Transit Center and respond to the continued growth of Silicon Valley by transforming a low-density industrial area into a mixed-use, transit-friendly area.

Mixed-use buildings create destinations that organically facilitate community interaction and reduce traffic during the workday by providing jobs and essential services within walking and biking distance of homes. The Metro Plan would update the TASP by adding substantially more opportunity for development in a transit-oriented and integrated mixed-use area of the City, including the potential for more housing, jobs, services and amenities in the Metro Plan Area. Mixed use housing would provide homes near jobs, services, and transit. The Metro Plan would provide high to very high-density housing and/or high intensity office and employment uses along arterials, the light rail, and close to the BART station to support transit ridership and complementary activities by responding to strong market interest in high-density development in an appropriate setting. It would accommodate a vibrant mix of pedestrian-accessible retail and amenities, high density housing and high intensity offices and other employment uses within the Metro Plan Area and

particularly within the Great Mall District, along Great Mall Parkway and Montague Expressway; and promote public art and wayfinding strategies. The Metro Plan would also attract business investments and generate employment opportunities through commercial development near transit, with up to 3,000,000 square feet of new office/Research and Development (R&D)/light manufacturing space. The Metro Plan therefore provides the framework for increasing transit-oriented development in the City.

4. Improve Pedestrian and Bicycle Circulation

The Metro Plan would create a multi-modal network that includes pedestrian pathways and bikeways to reinforce a pedestrian scale and grid, where appropriate. It would also improve connectivity with the Tango District to and from the VTA Transit Station and McCandless District with a pedestrian/bicycle bridge connection and improvements that complete the multi-use trail system. Key enhancements for the transportation network also include creating safer and more accessible connections for pedestrians and bicyclists and establishing a plan-wide TDM program. Therefore, the Metro Plan would improve both pedestrian and bicycle circulation in the Metro Plan area.

5. Improve the City Transportation Network

The Metro Plan would improve the City transportation network and contribute to the Countywide transportation network and transportation demand management over the next 20 years by improving the multimodal network and implementing the Active Transportation Plan. Key enhancements include creating safer and more accessible connections for pedestrians and bicyclists and establishing a plan-wide TDM program. Additionally, the Metro Plan supports creation of a streetscape that encourages multimodal connections with an attractive and richly detailed urban environment with good connectivity between desired destinations.

6. Reduce VMT

The Metro Plan would importantly reduce VMT. It would require TDM measures for all new development projects within the Metro Plan Area and encourage TDM strategies for existing uses. The Metro Plan would ensure that TDM measures are followed through the establishment of a Transportation Management Association (TMA) for the Metro Plan Area, as required by Action IM 28. The TMA will be responsible for monitoring trip reduction, VMT targets, and services within the Metro Plan Area.

7. Develop Public Open Spaces

The Metro Plan would develop parks, trails, and public open spaces that provide active and passive recreation opportunities, pedestrian connectivity, and places for community interaction in each District, as per the Parks and Recreation Master Plan. The Metro Plan identifies several opportunities for additional open space to be developed. This includes the following publicly accessible open space opportunities: a park north of the existing August Rathbone Park; improvements to the Penitencia Creek Trail, which is planned for in the Bicycle/Pedestrian and Trails Master Plan (City of Milpitas 2021); multiple parks and plazas in the Great Mall District; a park north of Mabel Mattos Elementary School; a park along Main Street in the McCandless District; improvements to trails along Berryessa Creek; and a park in the Innovation District. The Metro Plan

would establish urban design policies to ensure adequate public open space to serve residential development.

It would also generate publicly accessible private open space to supplement public open space in meeting the outdoor and recreational needs of residents. The Metro Plan would also encourage the development of creative, usable private and public outdoor space, such as on building rooftops and balconies and on other accessible public areas. Therefore, through several avenues, the Metro Plan prioritizes development of open space uses.

8. Increase Commercial, Light-Manufacturing, and Other Non-Residential Uses

Much of the TASP has been implemented. By 2019, 92 percent of the planned residential units were under development. However, economic conditions did not support the planned commercial development due to a lack of strong transit access that could support the higher intensity employment development prior to the opening of the BART station.

The Metro Plan outlines increases in non-residential uses. It aims to attract business investments and generate employment opportunities through commercial development near transit. It would create additional neighborhood-serving retail to serve demand from Metro Plan Area residents, community members, and the local workforce, including up to 300,000 additional square feet of retail and restaurant space. It requires local-serving retail on particular sites where it is feasible and appropriate and permit it in otherwise residential and commercial-only structures. Additionally, the Metro Plan promotes the development of hotels where appropriate to meet demand and support commercial activity to provide an important revenue source for the City.

It allows for up to 3,000,000 square feet of new office/Research and Development (R&D)/light manufacturing space. The Metro Plan supports the development of an Innovation District in the industrial area east of the Milpitas Transit Center and west of I-680, and particularly east of Berryessa Creek and on the four corners at the intersection of South Milpitas Boulevard and Montague Expressway, as a hub of employment and R&D, integrating Milpitas into Silicon Valley with high-density office, research, light manufacturing uses, and services primarily to the east of Berryessa Creek.

9. Re-envision the Great Mall and Enhance Great Mall Parkway

The attractions in the Metro Plan Area currently include the Great Mall's regional-serving shopping and entertainment. The Metro Plan envisions the Great Mall as a regional destination but with a greater variety of uses. The Metro Plan support the evolution of the Great Mall site from a purely retail-based mall site into a mixed-use, retail and amenity-rich area that is well integrated into the Metro Plan Area. Additionally, the Metro Plan would enhance Great Mall Parkway as a landmark street with a new linear park, streetscape improvements, and public art. In this way, the Metro Plan re-envisions the Great Mall site.

10. Integrate Sustainability Features in New Development

Milpitas has a citywide goal of reducing greenhouse gas emissions by nearly 50 percent from 2005 levels by 2030 and reaching carbon neutrality by 2045. To reach these targets, the City has taken a holistic approach to reduce emissions, particularly in the transportation sector and emissions related to energy usage in buildings.

Over the next few decades, the City's General Plan envisions that the majority of new development will continue to occur within the Milpitas Metro Area. Sustainability strategies implemented in the Metro Plan will have a substantial impact on the City of Milpitas and greater environment for years to come. The Milpitas Metro Plan is an early adopter of policies in the Climate Action Plan and contains policies that will increase the sustainability of the area through building standards that reduce emissions and increase reliance on renewable energy sources; transportation strategies that manage automobile usage and promote low- and zero-carbon transportation options; targeted strategies to reduce waste; and landscaping requirements to ensure reductions in water use. For example, the Metro Plan would require implementation of sustainability features for new development, including features in new buildings to reduce GHG emissions, requirements to design buildings using Low Impact Design principles, achieving a 75 percent diversion waste rate, and provide organic waste collection services for multifamily residential buildings.

C. Findings Regarding the Proposed Project and Statement of Overriding Considerations

The City of Milpitas finds and determines that the benefits of the proposed project are sufficient to find that the significant and unavoidable environmental effects are acceptable and justify adopting a Statement of Overriding Considerations. The discussion of project benefits described above are based on substantial evidence in the record in support of each of these findings.

VIII. Conclusion

After balancing the specific economic, legal, social, technological, and other benefits of the proposed project, the Council finds that the unavoidable adverse environmental impacts identified may be considered "acceptable" due to the specific considerations listed above, which each outweigh the unavoidable, adverse environmental impacts of the proposed project.

The Milpitas City Council has considered information contained in the SEIR prepared for the proposed Milpitas Metro Specific Plan as well as the public testimony and record of proceedings in which the project was considered. Recognizing that significant unavoidable and cumulatively considerable noise, air quality, and GHG impacts may result from implementation of the proposed Milpitas Metro Specific Plan, the Council finds that the benefits of the Milpitas Metro Specific Plan and overriding considerations outweigh the adverse effects of the project. Having included all feasible mitigation measures, and recognized all unavoidable significant impacts, the Council hereby finds that each of the separate benefits of the proposed Milpitas Metro Specific Plan, as stated herein, is determined to be unto itself an overriding consideration, independent of other benefits, that warrants adoption of the proposed Milpitas Metro Specific Plan and outweighs and overrides its unavoidable significant effects, and thereby justifies the adoption of the proposed Milpitas Metro Specific Plan.

Based on the foregoing findings and the information contained in the record, the Council hereby determines that:

1. All significant effects on the environment due to implementation of the proposed Milpitas Metro Specific Plan have been eliminated or substantially lessened where feasible;

2. There are no feasible alternatives to the proposed General Plan which would mitigate or substantially lessen the impacts; and
3. Any remaining significant effects on the environment found to be unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations above.