1000 Gibraltar Drive

Final Environmental Impact Report

State Clearinghouse No. 2020069024

Lead Agency:

City of Milpitas
Planning Department
455 E Calaveras Blvd
Milpitas, CA 95035-5479

Contact:

Rozalynne Thompson
(408) 586-3278
rthompson@ci.milpitas.ca.gov

March 2021

wra
ENVIRONMENTAL CONSULTANTS

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March 2021

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ATTACHMENTS

I. INTRODUCTION

In accordance with Sections 15088, 15089, and 15132 of the California Environmental Quality Act (CEQA) Guidelines, the City of Milpitas (the "City") has prepared this Final Environmental Impact Report ("Final EIR") for the 1000 Gibraltar Drive Project ("proposed Project" or "Project"). This Final EIR includes the following chapters: I) Introduction; II) Response to Comments; III) Corrections and Additions to the Draft Supplemental EIR ("Draft EIR"); and IV) Mitigation Monitoring and Reporting Program.

A. LOCATION AND SETTING

The Project site is located at 1000 Gibraltar Drive in the City of Milpitas (APN: 086-42-033). The 28.91-acre Project site is within the south-central portion of the City of Milpitas and is surrounded by light industrial and commercial uses. The Project site is bounded by South Milpitas Boulevard to the east, Gibraltar Drive to the south and west, and by a multi-tenant office building to the north (Figures III-1 and III-2).

The Project site is currently developed with a vacant, 397,009-square foot corporate campus including four office buildings and research/development facilities ranging from one to two stories in height with surface parking lots along the site periphery (Figure III-3). The existing on-site floor to area ratio (FAR) is .31. The entire site is landscaped with a large number and variety of ornamental trees.

The Project site and surrounding uses are located within the City's Industrial Zone M2, under the General Plan land use designation of Manufacturing (MFG). The Project site is bounded by Milpitas Boulevard to the east, Gibraltar Drive on the south and west and the north by a multi-tenant office building. A more detailed description of the Project site's regional and local setting is provided in Section III, Environmental Setting, of the Draft EIR.

B. SUMMARY OF THE PROPOSED PROJECT

The proposed Project consists of a new 491,040-square foot tilt-up concrete creative industrial building with two supporting offices at 1000 Gibraltar Drive in the City of Milpitas. Approximately 486,130 square feet of warehouse and 4,910 square feet of office space is proposed. A FAR of .38 is also proposed. The proposed building has been designed to accommodate up to two separate tenants with proposed uses including Advanced Manufacturing, E-Commerce, Light Assembly, Warehouse/Distribution, and possibly other uses permitted within the City's Industrial (M2) zone. A more detailed description of the proposed Project is provided in Section III, Project Description, of the Draft EIR.

C. ENVIRONMENTAL REVIEW PROCESS

Pursuant to CEQA Guidelines §15063, the City prepared an Initial Study (Appendix A to the Draft EIR), which concluded that the proposed Project could result in potentially significant environmental impacts, and an Environmental Impact Report ("EIR") would be required. The City

circulated a Notice of Preparation (NOP) (Appendix A to the Draft EIR) of a Draft EIR for the proposed Project to the State Clearinghouse and interested agencies and persons on June 15, 2020 for a 30-day review period and conducted a scoping meeting on June 25, 2020. The NOP and scoping meeting solicited comments from identified responsible and trustee agencies, as well as interested parties regarding the scope of the EIR. Comment letters submitted to the City in response to the NOP as well as comments from the public scoping meeting are included in Appendix B of the Draft EIR.

The Draft EIR was made available to various public agencies, citizen groups, and interested individuals for a 52-day public review period from December 23, 2020 through February 12, 2021. The City also conducted a virtual public meeting on the Draft EIR to accept written comments on the Draft EIR on February 1, 2021.

The Draft EIR was circulated to state agencies for review through the State Clearinghouse of the Governor's Office of Planning and Research. Copies of a Notice of Availability (NOA) of the Draft EIR were also sent to citizens surrounding the Project site, interested groups and agencies. In addition, on December 23, 2020, the *Mercury News* included a notice regarding the availability of the Draft EIR. Copies of the Draft EIR were made available for review at the San Mateo County Library and online at the City's website, https://www.ci.milpitas.ca.gov/1000gibraltardrive.

The purpose of the review period is to provide interested public agencies, groups and individuals the opportunity to comment on the adequacy of the Draft EIR and to submit testimony on the possible environmental effects of the proposed Project.

This document, together with the Draft EIR, makes up the Final EIR as defined in the CEQA Guidelines Section 15132 as follows:

> *The Final EIR shall consist of:*
>
> *(a) The Draft EIR or a revision of the draft.*
>
> *(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.*
>
> *(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.*
>
> *(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.*
>
> *(e) Any other information added by the Lead Agency.*

As Lead Agency under CEQA, the City must provide each public agency that commented on the Draft EIR with a copy of its responses to comments at least 10 days before certifying the Final EIR. In addition, the Lead Agency may also provide an opportunity for members of the public to review the Final EIR before certification, although this is not a requirement of CEQA.

D. USE OF THIS DOCUMENT

The Final EIR allows the public and Lead Agency to review any revisions to the Draft EIR, comments, and responses to comments before consideration of project approval. This Final EIR (which includes the Draft EIR, incorporated by reference) will serve as the environmental document used by the City when considering approval of the Project. After completing the Final EIR and before approving the project, the Lead Agency must make the following three certifications (CEQA Guidelines Section 15090):

- The Final EIR has been completed in compliance with CEQA.
- The Final EIR was presented to the decision-making body of the Lead Agency, and the decision-making body reviewed and considered the information in the Final EIR prior to approving the project.
- The Final EIR reflects the Lead Agency's independent judgment and analysis.

In addition, if an EIR that has been certified for a project identifies one or more significant environmental impacts, the Lead Agency must adopt findings of fact (CEQA Guidelines Section 15091[a]). For each significant impact, the Lead Agency must make one of the following findings.

- Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Each finding must be accompanied by a brief explanation of the rationale for the finding. In addition, the Lead Agency must adopt, in conjunction with the findings, a program for reporting or monitoring the changes that it has either required in the project or made a condition of approval to avoid or substantially lessen impacts (CEQA Guidelines Section 15091[d]). These measures must be fully enforceable through permit conditions, agreements, or other measures. This program is referred to as the Mitigation Monitoring and Reporting Program (MMRP) and is provided in Section IV of this Final EIR.

In addition, when a Lead Agency approves a project that would result in significant and unavoidable impacts that are disclosed in the Final EIR, the agency must state in writing its reasons for supporting the approved action (CEQA Guidelines Section 15093[b]). This statement of overriding considerations must be supported by substantial information in the record, including

the Final EIR. Because the proposed Project would result in significant and unavoidable impacts, the City is required to adopt a statement of overriding considerations if it approves the Project.

II. RESPONSE TO COMMENTS

A. OVERVIEW

The purpose of the public review of the Draft Environmental Impact Report (Draft EIR) is to evaluate the adequacy of the environmental analysis in terms of compliance with CEQA. The Draft EIR was prepared in accordance with §15151 of the CEQA Guidelines, which defines the standards for EIR adequacy:

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

The purpose of each response to a comment on the Draft EIR is to address the significant environmental issue(s) raised by each comment. This typically requires clarification of points contained in the Draft EIR. Section 15088 (b) of the CEQA Guidelines describes the evaluation that CEQA requires in the response to comments by stating:

> *The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.*

Section 15204(a) (Focus of Review) of the CEQA Guidelines helps the public and public agencies to focus their review of environmental documents and their comments to lead agencies. Case law has held that the Lead Agency is not obligated to undertake every suggestion given them, provided that the agency responds to significant environmental issues and makes a good faith effort at disclosure. Section 15204.5(a) of the CEQA Guidelines clarifies this for reviewers by stating:

> *In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional*

> *specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a Lead Agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.*

This guideline encourages reviewers to examine the sufficiency of the environmental document, particularly in regard to significant effects, and to suggest specific mitigation measures and project alternatives. Given that an effect is not considered significant in the absence of substantial evidence, subsection (c) advises reviewers that comments should be accompanied by factual support. Section 15204(c) of the CEQA Guidelines states:

> *Reviewers should explain the basis for their comments, and, should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.*

B. LIST OF THOSE WHO COMMENTED ON THE DRAFT EIR

The City of Milpitas received a total of ten comment letters on the Draft EIR. The City conducted a virtual Draft EIR public meeting on February 1, 2021, to allow interested parties an opportunity to comment on the adequacy of the Draft EIR. No written comments were accepted at this virtual public meeting, however, a total of five people provided oral comments. Each oral commenter and comment letter has been assigned a corresponding letter designation, and comments within each written comment letter are also numbered.

Oral and written comments made during the 52-day public review of the Draft EIR intermixed points and opinions relevant to the Project's merits with points and opinions relevant to the potentially significant environmental effects of the Project. The responses acknowledge or note comments addressing points and opinions relevant to the Project's merits, and discuss as necessary the points relevant to the environmental review required by CEQA. Table II-1 lists the persons who provided oral and written comments on the Draft EIR to the City during the public review period.

Table II-1
List of Commenters on the Draft EIR

Oral Comments and Written Correspondence Alpha	Date of Oral Comment or Written Comment Letter	Commenter
Oral Comments		
February 1, 2021 Public Meeting		
A	February 1, 2021	Carmena Estores
B	February 1, 2021	Ciera Nguyen
C	February 1, 2021	Ernest A.
D	February 1, 2021	Nicholar Kotsakis
E	February 1, 2021	Barbara Jo Navarro
Written Comments		
Agencies and Individuals		
F	January 5, 2021	Srikanth Gopalan
G	January 5, 2021	Kinh Curotto
H	January 5, 2021	Salvatore Ventura
I	February 8, 2021	Ben Aghegnehu, County of Santa Clara
J	February 9, 2021	Heather Arias, California Air Resources Board
K	February 12, 2021	Lola Torney, Santa Clara Valley Transportation Authority
L	February 11, 2021	Greg Nudd, Bay Area Air Quality Management District
M	February 11, 2021	Alesia Hsiao, Bay Area Air Quality Management District
N	January 28, 2021	Janet Laurain, Adams Broadwell Joseph & Cardozo
O	February 12, 2021	Paige Fennie, Lozeau Drury LLP

February 1, 2021 Draft EIR Public Meeting

Commenter A – Carmena Estores

The commenter expresses support for the proposed Project, and encourages the business to look ahead to use solar, and prepare for electric vehicles. The commenter also thanks the business for investing in Milpitas.

Response to Commenter A – Carmena Estores

This comment is noted. Please refer to Section III of the Draft EIR (Project Description) for the energy-savings features of the proposed Project. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

February 1, 2021 Draft EIR Public Meeting

Commenter B – Ciera Nguyen

The commenter expresses support for the proposed Project, and also expresses concern about the existing trees along the sidewalks at the Project site. The commenter states that there are a lot of sidewalks around the property and a lot of people walk along them after school or work and the commenter wants to make sure the walking path will keep the trees, while also expressing the need for new businesses.

Response to Commenter B – Ciera Nguyen

This comment is noted. At the Draft EIR public meeting, the Project Applicant stated that the intent is to keep all of it (the pathway, and 90% retention of the mature trees around the Project site). The Project Applicant further stated that during construction, the pathway will remain accessible, either by providing a fence on the inside of the path or by adding curb cuts. The Project Applicant mentioned enhancing the path by adding a parcourse around the Project site. As per page III-14 of the Drat EIR, the Tree Survey (Appendix B to the Draft EIR) found 183 protected trees within the Project site. Of these protected trees, approximately 88 would be removed by the proposed Project. The Project would comply with the City's Tree Ordinance, including the replacement of protected trees at a 2:1 replacement of every protected tree. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

February 1, 2021 Draft EIR Public Meeting

Commenter C – Ernest A.

The commenter expresses support for the proposed Project, stating that the size works especially if they can hire more employees. The commenter expresses desire to continue using the pathway during construction.

Response to Commenter C – Ernest A.

This comment is noted. At the Draft EIR public meeting the Project Applicant states that the intent is to keep all of it (the pathway, and 90% retention of the mature trees around the Project site). The Project Applicant further stated that during construction, the pathway will remain accessible, either by providing a fence on the inside of the path or by adding curb cuts. The Project Applicant mentioned enhancing the path by adding a parcourse around the Project site. As per page III-14 of the Drat EIR, the Tree Survey found 183 protected trees within the Project site. Of these protected trees, approximately 88 would be removed by the proposed Project. The Project would comply with the City's Tree Ordinance, including the replacement of protected trees at a 2:1 replacement of every protected tree. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

February 1, 2021 Draft EIR Public Meeting

Commenter D – Nicholas Kotsakis

The commenter expresses support for the proposed Project, and understood the traffic impacts. The commenter expresses that the traffic impacts and more cars mean that people are working and we need that right now. The commenter is mainly concerned about the path and would prefer the path remain open during construction.

Response to Commenter D – Nicholas Kotsakis

This comment is noted. At the Draft EIR public meeting the Project Applicant stated that the intent is to keep all of it (the pathway, and 90% retention of the mature trees around the Project site). The Project Applicant further stated that during construction, the pathway will remain accessible, either by providing a fence on the inside of the path or by adding curb cuts. The Project Applicant mentioned enhancing the path by adding a parcourse around the Project site. As per page III-14 of the Drat EIR, the Tree Survey found 183 protected trees within the Project site. Of these protected trees, approximately 88 would be removed by the proposed Project. The Project would comply with the City's Tree Ordinance, including the replacement of protected trees at a 2:1 replacement of every protected tree. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

February 1, 2021 Draft EIR Public Meeting

Commenter E – Barbara Jo Navarro

The commenter expresses support for the proposed Project, congratulating the Applicant and the City on the Project. The commenter expresses that the building is remarkable and in a great location. The commenter emphasizes that the special attention to trees and the walking path is fantastic. The commenter appreciates the process used to communicate the Project to the community, and believes that the proposed Project is a great move forward for Milpitas, and can't wait for the building to be completed.

Response to Commenter E – Barbara Jo Navarro

This comment is noted. The commenters appreciation is acknowledged. At the Draft EIR public meeting the Project Applicant stated that the intent is to keep all of it (the pathway, and 90% retention of the mature trees around the Project site). The Project Applicant further stated that during construction, the pathway will remain accessible, either by providing a fence on the inside of the path or by adding curb cuts. The Project Applicant mentioned enhancing the path by adding a parcourse around the Project site. As per page III-14 of the Drat EIR, the Tree Survey found 183 protected trees within the Project site. Of these protected trees, approximately 88 would be removed by the proposed Project. The Project would comply with the City's Tree Ordinance, including the replacement of protected trees at a 2:1 replacement of every protected tree. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter F

FW: [BULK] Public Comment on Project: 1000 Gibraltar Drive

3 messages

Tue, Jan 5, 2021 at 11:59 AM

From: Srikanth Gopalan <sg4931@gmail.com>
Sent: Tuesday, December 29, 2020 5:06 PM
To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>
Cc: Srikanth Gopalan <sg4931@gmail.com>; Jessica Garner <jgarner@ci.milpitas.ca.gov>
Subject: [BULK] Public Comment on Project: 1000 Gibraltar Drive

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Ms. Thompson

I am totally against this ill-advised project. F-1

Over the past several years the character of the city of milpitas has changed and continues to change. It is no longer the gritty industrial town it used to be. Moreover, due to the nice location of the city of Milpitas the need of the hour is more housing for the workforce. We do not need more of the legacy business here especially the ones involving smoke belching and polluting type like the one being proposed as part of this project. Already the amount of truck traffic and the pollution caused by them is very high and add to that the Union Pacific presence. It is totally unacceptable. F-2

Why should such legacy businesses be located in prime locations such as Milpitas? Why can't they be situated farther out? People have to stay in prime locations which is convenient for them to get to work. Wouldn't the city earn more revenue by encouraging more housing to be built? F-3

It is very very disappointing that the city simply does not get it. Or the lobbyists have way too much influence over the city. Perhaps it is time to start an online petition campaign to force a change in thinking. F-4

I truly hope good sense prevails and this proposal and any such other proposals that may be under consideration are rejected outright and the time/talent of the city employees put to more productive use. F-5

Thanks.

Sincerely

Srikanth Gopalan

Response to Comment Letter F:

Srikanth Gopalan

Response to Comment F-1

The commenter provides an opening comment and expresses opposition to the proposed Project. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment F-2

This comment describes the character of the City of Milpitas from the commenter's perspective. The commenter believes that due to the City's location, the current need is housing for the workforce, rather than more "legacy" businesses. The commenter believes the proposed Project is a "smoke belching" and "polluting type" "legacy business." The commenter expresses concern regarding the transportation impacts the proposed Project could create, specifically the truck traffic in addition to the presence of the Union Pacific. Regarding the commenter's concern about Project traffic, please refer to Section IV.E of the Draft EIR for a detailed analysis of potential transportation impacts associated with the proposed Project. The Project is not associated with Union Pacific and does not contribute to any traffic associated with Union Pacific. Transit services in the Project area, including the Santa Clara Valley Transportation Authority (VTA), Alameda-Contra Costa (AC) Transit, and Bay Area Rapid Transit (BART) are discussed in pages IV.E-9 and IV.E-10 of the Draft EIR. Regarding the commenter's concern about air pollution and the Project being a "smoke belching" and "polluting type," please refer to Section IV.B of the Draft EIR for a detailed analysis of potential Air Quality impacts associated with the proposed Project, and Section IV.C of the Draft EIR for a detailed analysis of potential GHG impacts associated with the proposed Project. The Project does not represent a "smoke belching" land use (e.g., factory type project) as suggested by the comment.

Response to Comment F-3

This comment expresses an opinion in opposition of the Project, and prefers housing as an alternative. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment F-4

This comment expresses the commenter's disappointment in the City's actions. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment F-5

This comment provides a closing statement. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter G

FW: Draft Environmental Impact Report

1 message

Tue, Jan 5, 2021 at 1:36 PM

From: Kinh Curotto <kcurotto@Devcon-const.com>
Sent: Tuesday, January 5, 2021 1:00 PM
To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>
Subject: Draft Environmental Impact Report

Hi Rozalynne,

This link below, which was mentioned in a recent notification sent via mail, doesn't work: http://www.ci.milpitas.ca.gov/1000gibraltardrive

G-1

Sincerely,

Kinh Curotto | Sr. Asst. to Justine Pereira/Mktg. Coordinator

DEVCON CONSTRUCTION

INCORPORATED

690 Gibraltar Drive

Milpitas, CA 95035

Phone: (408) 942-8200

Fax: (408) 262-2342

Response to Comment Letter G:
Kinh Curotto

Response to Comment G-1

This comment expresses concern regarding the link to the Draft EIR. This comment was addressed by the City of Milpitas Planning Department by fixing the technical issue regarding the link to the Draft EIR, and the issue was resolved the week of January 4, 2021 during the 52-day public review period of the Draft EIR. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter H

From: salvatore ventura <salvoventura@gmail.com>
Sent: Tuesday, December 29, 2020 4:22 PM
To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>
Subject: Draft EIR for 1000 Gibraltar Drive

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello Rozalynne,

my name is Salvatore Ventura, I am a Milpitas resident. H-1

I was trying to access the Draft EIR for the 1000 Gibraltar Drive project, however the website link included in the mail communication is currently not working due to "Database error: Error establishing a database connection". H-2

The link in question is:

http://www.ci.milpitas.ca.gov/1000gibraltardrive H-3

Please let me know when the website can be restored so I can access the Draft EIR. H-4

Happy Holidays and Happy New Year.

Best,

Salvatore

Response to Comment Letter H:
Salvatore Ventura

Response to Comment H-1

This comment expresses concern regarding the link to the Draft EIR on the City's website. This comment was addressed by the City of Milpitas Planning Department by fixing the technical issue regarding the link to the Draft EIR, and providing the link to the Draft EIR under the topic area "CEQA Documents" on the webpage. This was done during the week of January 4, 2021 during the 52-day public review period of the Draft EIR. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter I

County of Santa Clara

Roads and Airports Department
Planning, Land Development and Survey

101 Skyport Drive
San Jose, CA 95110-1302
(408) 573-2460 FAX 441-0276

February 8, 2021

Rozalynne Thompson,
Senior Planner,
City of Milpitas, Planning Department
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
rthompson@ci.milpitas.ca.gov

SUBJECT: Public Notice of Availability Draft Environmental Impact Report for 1000 Gibraltar Dr. Project

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Notice of Availability Draft Environmental Impact Report for 1000 Gibraltar Dr. Project, and is submitting the following comments: I-1

- Since the proposed project would impact Montague/Milpitas intersection and cannot be mitigated, it is recommended that the project pay fair-share to the Montague/680 widening improvement lead by County Highway Design Section. I-2
- Project to provide Traffic Control Plan if County facilities are used for construction trucks. I-3

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or ben.aghegnehu@rda.sccgov.org I-4

Thank you.

Response to Comment Letter I:
Ben Aghegnehu, County of Santa Clara

Response to Comment I-1

This comment acknowledges the opportunity to review the Draft EIR for the proposed Project and introduces ensuing comments. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment I-2

The comment refers to a Project impact on the Montague/Milpitas intersection that cannot be mitigated and recommends that the Project pay a fair-share to the Montague/I-680 widening improvement being led by the County Highway Design Section. Section IV.E (Transportation) of the Draft EIR assesses traffic impacts using vehicle miles of travel (VMT) as opposed to intersection level of service (LOS), as required by the Office of Planning and Research in its implementation of the requirements of Senate Bill 743 (Steinberg, 2013). Based on this implementation, intersection level of service is no longer allowed to be used as a CEQA impact criteria. Therefore, since no intersection impact is identified, no mitigation is required. However, level of service analysis is provided in a separate document, as described below.

It is noted that the Local Transportation Analysis Report prepared for the Project (Appendix G to the Draft EIR) as a separate document outside the CEQA review identifies certain area intersections which would operate below the County's LOS standard both without the Project and with the Project, under Existing, Near-Term, and Cumulative conditions. However, these findings are separate from the Draft EIR analysis and are not identified as significant impacts. In addition, the intersection of Montague/South Milpitas is not one of the intersections found to operate below County standards, both without and with the Project.

Response to Comment I-3

The comment requests that the Project provide a Traffic Control Plan if County facilities will be used for Project construction trucks. The City of Milpitas will require the Project to prepare a Traffic Control Plan to manage the impacts of construction trucks on approach routes to the Project site as a Condition of Approval for the Project.

Response to Comment I-4

The commenter provides closing statements and includes the commenter's contact information. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter J

CALIFORNIA
AIR RESOURCES BOARD

February 9, 2021

Rozalynne Thompson
Senior Planner
City of Milpitas - Planning Department
455 East Calaveras Boulevard
Milpitas, California 95035-5411
Submitted via email: rthompson@ci.milpitas.ca.gov

Dear Rozalynne Thompson:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the 1000 Gibraltar Drive (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020069024. The Project would result in the demolition of existing on-site buildings and the construction of a 491,040 square-foot warehouse building. Once in operation, the Project would introduce 3,303 daily vehicle trips, including 377 daily heavy-duty truck trips, along local roadways. The Project is located within the City of Milpitas (City), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

CARB submitted a comment letter, which is attached to this letter, on the Notice of Preparation (NOP) for the DEIR released in June 2020. CARB's comments, dated July 14, 2020, highlighted the need for preparing a health risk assessment (HRA) for the Project and encouraged the City and applicant to implement all existing and emerging zero-emission technologies to minimize exposure to diesel particulate matter (diesel PM) and nitrogen oxides (NO_x) emissions for all neighboring communities, and to minimize the greenhouse gases that contribute to climate change. Due to the Project's proximity to residences already disproportionately burdened by multiple sources of pollution, CARB's comments expressed concerns with the potential cumulative health risks associated with the construction and operation of the Project. J-1

I. It Is Unclear Whether the Proposed Project Would Include Cold Storage Space

The air pollutant emissions and cancer risks reported in the DEIR were estimated under the assumption that the Project would not be used for cold storage. However, Chapter IV.C (Greenhouse Gas Emissions) of the DEIR includes a greenhouse gas reduction measure that would require the applicant to provide electrical connections for trucks with transport refrigeration units (TRU). TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport and are commonly associated with cold storage warehouse operations. Since the Project description in the DEIR did not explicitly state that J-2

the proposed warehouse buildings would not include cold storage space, there is a possibility that trucks and trailers visiting the Project site would be equipped with TRUs.[1]

TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating would be exposed to diesel exhaust emissions that would result in significant cancer risk. CARB urges the applicant and City to clearly define the Project's description, so the public can fully understand the potential environmental effects of the Project on their communities.

If the Project will not be used for cold storage, CARB urges the City to include one of the following design measures in the Final Environmental Impact Report (FEIR): J-2 Cont.

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project site; or

- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

If the City does allow TRUs within the Project site, CARB urges the City to model air pollutant emissions from TRUs in the FEIR, as well as include potential cancer risks from TRUs in the Project's revised HRA. The revised HRA should account for all potential health risks from Project-related diesel PM emission sources such as backup generators, TRUs, and heavy-duty truck traffic.

II. The DEIR Did Not Model Mobile Air Pollutant Emissions Using CARB's 2021 Emission Factor Model (EMFAC2021)

The City and applicant modeled the Project's air pollutant emissions using mobile emission factors obtained from CARB's 2014 Emission Factors model (EMFAC2014). Since the public release of EMFAC2014 in May 2015, CARB has made many updates to the EMFAC model. These updates are reflected in EMFAC2017, released in May 2018, and EMFAC2021, released in January 2021. Some of the updates to the EMFAC model included updates to the heavy-duty truck activity and emission rates, and implementation of CARB's latest regulations. J-3

EMFAC2014 underestimated diesel PM emission rates from diesel heavy-duty trucks due to limited in-use test data for engine model year 2010 and newer, thus the Project's mobile source diesel PM emissions are likely underestimated in the DEIR. CARB urges the City and

[1] Project descriptions "must include (a) the precise location and boundaries of the proposed project, (b) a statement of the objectives sought by the proposed project, (c) a general description of the project's technical, economic and environmental characteristics, and (d) a statement briefly describing the intended use of the EIR." (*stopthemilleniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) "This description of the project is an indispensable element of both a valid draft EIR and final EIR." (Ibid.) Without explicit acknowledgment in the project description that the proposed project will not include cold storage facilities, the current project description fails to meet the bare minimum of describing the project's technical and environmental characteristics.

applicant to model and report the Project's air pollution emissions from mobile sources using emission factors found in CARB's latest EMFAC2021. Mobile emission factors can be easily obtained by running the EMFAC2021 Web Database: https://arb.ca.gov/emfac/emissions-inventory. J-3 Cont.

III. The Health Risk Assessment Does Not Account for All Emission Sources of Diesel Particulate Matter When Evaluating the Project's Cancer Risk Impacts

The HRA prepared for the Project and presented in Appendix F (Air Quality and Greenhouse Gas Emissions Data) of the DEIR, concluded that residences near the Project site would be exposed to diesel PM emissions that would result in cancer risks of 0.89 chances per million during Project construction and 3.1 chances per million during Project operation. Since the Project's cancer risks are below the Bay Area Air Quality Management District's (BAAQMD) 10 chances per million significance threshold, the DEIR concluded that the Project would result in a less than significant impact on public health. CARB has reviewed the Project's HRA and is concerned that the Project's cancer risk impacts may have been underestimated for the reasons detailed below.

The HRA did not account for haul trucks along local roadways during Project construction. According to Chapter IV.B (Air Quality) of the DEIR, a total of 4,852 one-way heavy-duty truck trips would be required to transport asphalt and cement to the site during Project construction. Based on CARB's review of Appendix F, the City did not account for the potential cancer risk impacts that could result at residences located adjacent to the Project's truck haul routes. To better understand the Project's potential impacts on public health, CARB urges the City to account for cancer risks from heavy-duty trucks during Project construction in the FEIR. J-4

When modeling the Project's health risk impacts, it was assumed in the HRA that each heavy-duty truck accessing the Project site would have a diesel PM emission rate of 0.00242 grams per second. Based on CARB's review of Appendix F of the DEIR, it is unclear if the latest emission factors from EMFAC were used to estimate mobile diesel PM emission rates. In addition, the HRA did not account for mobile diesel PM emissions while trucks are transiting and idling within the Project site. When estimating cancer risks from Project-related truck activities, the City should obtain idling emission factors for trucks loading/unloading goods within the Project site and exhaust emission factors for trucks transiting at speeds of five miles per hour (mph) within the project site and 25 mph along local roadways. To better understand the Project's potential impacts on public health, the City should revise the Project's HRA using the latest diesel PM emission factors obtained from EMFAC2021 and report the revised cancer risks in the FEIR.

IV. The DEIR Does Not Include All Feasible Mitigation Measures to Reduce the Project's Significant and Unavoidable Impact on Air Quality

Chapter IV.B (Air Quality) of the DEIR reports the Project's operational air pollution emissions for the years 2022, 2023, and 2024. As shown in Table IV.B-8 (Estimated Unmitigated and J-5

Mitigated Project Operation Emissions) of the DEIR, the Project's operational emissions of nitrogen oxides (NO_x), would exceed the BAAQMD's significance threshold under the 2022 and 2023 operational scenarios. The table also shows the Project's operational air pollution emissions under the 2024 operational scenario are expected to be below the BAAQMD's significance threshold. Consequently, the DEIR concludes the Project would result in a significant and unavoidable impact on air quality. To reduce the Project's significant impact on air quality, the DEIR included Mitigation Measure Air-1 (MM Air-1) and Mitigation Measure Air-2 (MM Air-2).

MM Air-1 would require any tenant-owned vehicles above 14,000 pounds gross vehicle weight rating accessing the Project site to be solely powered by 2010 or newer engine models. Since the Project's operational air pollution emissions were not found to exceed the BAAQMD's significance thresholds under the 2024 operational scenario, the DEIR states that compliance with MM Air-1 would end in 2024. MM Air-1 is nearly identical to CARB's Truck and Bus Regulation, which requires trucks, by law, to have 2010 or newer model year engine by January 1, 2023.[2] Once the Project is fully operational in the year 2022, trucks with a model year of 2006 or older would already have been required to comply with the regulation. Although complying with CARB's regulations would reduce the Project's mobile source air pollutant emissions, the Project would have to comply with these regulations by law, which would not expire in 2024 as stated in MM Air-1. Compliance with laws and regulations should not be used exclusively to mitigate the Project's impact on air quality. J-5 Cont.

MM Air-2 would require the applicant to either implement a Project-specific offset program to achieve a total annual reduction of 1.8 tons of NO_x or pay a mitigation offset fee to BAAQMD's Bay Area Clean Air Foundation. The offset fee is to be determined at the time of the impact. CARB urges the City and applicant to implement all feasible mitigation measures to reduce the Project's significant and unavoidable impact on air quality prior to implementing an offset program or paying into the Bay Area Clean Air Foundation.

CARB urges the City to not rely solely on existing regulations and off-site credits to mitigate the Project's air quality impacts. CEQA requires that all feasible mitigation measures be incorporated into the EIR before a lead agency can determine if an impact is still significant and unavoidable (see California Public Resources Code§ 21081; title 14 CCR § § 15092, 15126.2(b)). To meet this requirement, CARB urges the City and applicant to implement all applicable air pollutant emission reduction measures provided in Appendix A of this letter.

V. Conclusion

CARB is concerned about the potential public health impacts should the City approve the Project. As concluded in Chapter IV.B (Air Quality) of the DEIR, the Project's operation would expose residences to NO_x emissions that would result in a significant and unavoidable impact J-6

[2] CARB. Truck and Bus Regulation Compliance Requirement Overview. June 18, 2019. Accessible at https://ww3.arb.ca.gov/msprog/onrdiesel/documents/fsregsum.pdf

on air quality. The Project's air quality analysis should be revised in the FEIR using the latest version of EMFAC (i.e., EMFAC2021). The Project's HRA should be revised in the FEIR to Project site. The FEIR should specify whether the proposed warehouse buildings would be used for cold storage. Should the City allow the Project to be used for cold storage, the City should update the Project's air quality analysis and HRA to account for the increase in air pollution and cancer risks resulting from trucks and trailers with TRUs visiting the Project site. Lastly, to reduce the Project's impact on public health, CARB urges the City to implement all applicable mitigation measures listed in Attachment A of this letter.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments. J-6 Cont.

CARB appreciates the opportunity to comment on the DEIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, via email at stanley.armstrong@arb.ca.gov.

Sincerely,

Heather Arias, Chief
Transportation and Toxics Division

Attachment

cc: See next page.

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Continued next page.

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ATTACHMENT A

July 14, 2020

Rozalynne Thompson
Senior Planner
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035
Submitted via email: rthompson@ci.milpitas.ca.gov

Dear Rozalynne Thompson:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Notice of Preparation (NOP) for the 1000 Gibraltar Drive Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020069024. The Project includes the demolition of on-site buildings and the development of a single warehouse building totaling 491,040 square feet. The proposed Project is within the City of Milpitas, California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Freight facilities, such as warehouse and distribution facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change.[1] CARB has reviewed the NOP and is concerned about the air pollution and health risk impacts that would result should the City approve the Project.

I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities

The Project, if approved, will expose nearby disadvantaged communities to elevated levels of air pollution. Residences are located approximately 440 feet south of the Project's southern boundary. In addition to residences, six schools (Laneview Elementary School, John Sinnott Elementary School, Rancho Milpitas Middle School, Milpitas Montessori School, Robert Randall Elementary School, and Pearl Zanker Elementary School) are located within 1 mile of the Project. The community is surrounded by existing toxic diesel particulate matter (diesel PM) emission sources, which include existing industrial uses and vehicular traffic along Interstate 680 (I-680). Due to the Project's proximity to residences already disproportionately burdened by

[1] With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

multiple sources of air pollution, CARB is concerned with the potential cumulative health impacts associated with the construction and operation of the Project.

The State of California has placed additional emphasis on protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017). AB 617 is a significant piece of air quality legislation that highlights the need for further emission reductions in communities with high exposure burdens, like those in which the Project is located. Diesel PM emissions generated during the construction and operation of the Project would negatively impact the community, which is already disproportionally impacted by air pollution from traffic on I-680.

II. The DEIR Should Quantify and Discuss the Potential Cancer Risks from On-site Transport Refrigeration Units

Since the Project description does not explicitly state that the proposed industrial land uses would not be used for cold storage, there is a possibility that trucks and trailers visiting the Project site would be equipped with transport refrigeration units (TRU).[2] TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating, would be exposed to diesel exhaust emissions that would result in a significant cancer risk impact.

CARB urges the City to model air pollutant emissions from on-site TRUs in the DEIR, as well as include potential cancer risks from on-site TRUs in the Project's health risk assessment (HRA). The HRA prepared for the Project should account for all potential health risks from Project-related diesel PM emission sources such as backup generators, TRUs, and heavy-duty truck traffic, and include all the air pollutant reduction measures listed in Attachment A of this comment letter.

In addition to the health risks associated with operational emissions, health risks associated with construction emissions should also be included in the air quality section of the DEIR and the Project's HRA. Construction of the Project would result in short-term diesel emissions from the use of both on-road and off-road diesel equipment. The Office of Environmental Health Hazard Assessment's (OEHHA) guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing residences near the Project site during construction.

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[2] TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.

The HRA prepared in support of the Project should be based on the latest OEHHA guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments),[3] and the South Coast Air Quality Management District's (SCAQMD) CEQA Air Quality Handbook.[4] The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, state, and local rules and regulations. By evaluating health risks using both baselines, the public and City planners will have a complete understanding of the potential health impacts that would result from the Project.

III. Conclusion

To reduce the exposure of toxic diesel PM emissions in disadvantaged communities already disproportionally impacted by air pollution, the final design of the Project should include all existing and emerging zero-emission technologies to minimize diesel PM and oxides of nitrogen (NO_x) emissions, as well as the greenhouse gases that contribute to climate change. CARB encourages the City and applicant to implement the measures listed in Attachment A of this comment letter to reduce the Project's construction and operational air pollution emissions.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

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[3] Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.

[4] SCAQMD's 1993 Handbook can be found at: http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook.

CARB appreciates the opportunity to comment on the NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the DEIR as part of the comment period. If you have questions, please contact Michaela Nucal, Air Pollution Specialist via email at michaela.nucal@arb.ca.gov.

Sincerely,

Richard Boyd, Chief
Risk Reduction Branch
Transportation and Toxics Division

Attachment

cc: See next page.

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ATTACHMENT A

Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers

The California Air Resources Board (CARB) recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommended by CARB, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.

2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.

3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved equal or exceed that of a Tier 4 engine.

4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.

5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NO_x) standard starting in the year 2022.[1]

[1] In 2013, CARB adopted optional low-NO_x emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NO_x emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model year 2010 and later. CARB's optional low-NO_x emission standard is available at: https://www.arb.ca.gov/msprog/onroad/optionnox/optionnox.htm.

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB is available to assist in implementing this recommendation.

Recommended Operation Measures

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.

2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.[2]

3. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.

4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.

5. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.

6. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.

7. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

[2] CARB's Technology Assessment for Transport Refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

8. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[3] Periodic Smoke Inspection Program (PSIP),[4] and the Statewide Truck and Bus Regulation.[5]

9. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than 5 minutes while on site.

10. Include contractual language in tenant lease agreements that limits on-site TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted, and the health impacts fully mitigated.

11. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

12. Including language in tenant lease agreements, requiring the installing of vegetative walls[6] or other effective barriers that separate loading docks and people living or working nearby.

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[3] In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: https://www.arb.ca.gov/cc/hdghg/hdghg.htm.

[4] The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: https://www.arb.ca.gov/enf/hdvip/hdvip.htm.

[5] The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm.

[6] Effectiveness of Sound Wall-Vegetation Combination Barriers as Near-Roadway Pollutant Mitigation Strategies (2017) is available at: https://ww2.arb.ca.gov/sites/default/files/classic//research/apr/past/13-306.pdf

Response to Comment Letter J:
Heather Arias, California Air Resources Board

Response to Comment J-1

This comment provides an opening statement by thanking the City of Milpitas for providing the opportunity to comment on the Draft EIR, and summarizing the Project description. The commenter references a previous comment letter from the California Air Resources Board (CARB) on the Notice of Preparation for the Project released in June 2020, which is attached to this comment letter. This comment introduces ensuing comments which express concerns with the potential cumulative health risks associated with the construction and operation of the Project. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment J-2

The comment expresses concern that the Project could include cold storage space and introduce trucks and trailers with Transport Refrigeration Units (TRUs) visiting the Project site. The commenter recommends that the air quality analysis for pollutant emissions and health risk assessment (HRA) include TRUs as a source of emissions.

Section III (Project Description) on page III-15 and Section IV.B (Air Quality) on pages IV.B.21-22 of the Draft EIR have been revised to include emissions from possible use of TRU during Project operation. Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions. As demonstrated in the revised analysis, any TRU emissions would not be from stationary TRU operations, such as unloading and parking, and TRU emissions from transiting TRU operation on-site and off-site were included in the criteria air pollutant calculations and health risk assessment. These revisions do not change any of the impact significance conclusions of Section IV.B of the Draft EIR.

Response to Comment J-3

The comment recommends the mobile emissions of the Project to be modeled by CARB's Emission Factors (EMFAC) model 2021 version instead of the default version (2014) used by the California Emissions Estimator Model (CalEEMod). It should be clarified that the mobile emission factors for the Project's fleet were calculated using the EMFAC 2017 database outside of CalEEMod, and inserted into CalEEMod to obtain total mobile emissions. Therefore, the commenter's understanding that EMFAC 2014 was used by the Project analysis is incorrect. EMFAC 2021 was not made public until January 2021, and was not available in December 2020 when the Draft EIR was made public. Furthermore, even the latest beta version of CalEEMod (version 2020.4), undergoing internal testing as of February 2021, uses EMFAC 2017 rather than 2021.

Response to Comment J-4

The commenter states that the Health Risk Assessment (HRA) in Section IV.B (Air Quality) of the Draft EIR did not account for all potential sources of diesel particulate matter (DPM) and recommends including the following sources: haul trucks along local roadways during Project construction, and transiting and idling activities of trucks accessing the Project site during Project operation.

The City's air quality experts disagree with the recommendation that haul truck emissions would need to be included in the HRA. Based on the CalEEMod output for the Project (Appendix F), the total on-road construction PM_{10} emission was approximately 0.04 pounds per day, which is less than 10 percent lower than the approximately 0.61 pounds per day of total off-road construction PM_{10} emissions evaluated in the HRA. Furthermore, the local on-road construction PM_{10} emissions within 1,000 feet of the Project would be at least an order of magnitude lower than the total on-road construction emissions, which means the local on-road construction PM_{10} emissions would be less than 1 percent of the total PM_{10} emissions from off-road construction evaluated in the HRA. Therefore, it is unnecessary to quantify the contribution of PM_{10} emissions from haul trucks along local roadways to the Project's overall health risk impacts when more than 99 percent of the local PM_{10} emissions are from off-road construction equipment.

The City's air quality experts agree with the recommendation that transiting and idling activities of trucks accessing the Project site during operation should be included in the HRA. Pages IV.B-27 through IV.B-31 (and Attachment B to the Final EIR) include an updated HRA that revised the on-site mobile DPM emissions to include diesel vehicles traveling at 5 miles per hour (mph) and TRU on-site transiting, and revised the off-site DPM emissions to include diesel vehicles traveling at 25 miles per hour (mph) and TRU off-site transiting. The updated HRA also included new line sources to represent the on-site DPM emissions. Revisions to the HRA are detailed in Section III (Corrections and Additions to the Draft EIR) of this Final EIR.

Response to Comment J-5

The commenter states that Section IV.B (Air Quality) of the Draft EIR does not include all feasible on-site mitigation measures to reduce the significant and unavoidable impact related to nitrogen oxides (NOx) emissions. The main reason provided by the commenter is that NOx emissions reduction post-2023 in Mitigation Measure AIR-1 should not rely exclusively on the CARB's Truck and Bug Regulation to require all trucks to have 2010 or newer model year engine by January 1, 2023. The commenter urges the City and the Project Applicant to implement all feasible mitigation measures to reduce the Project's significant and unavoidable impact on air quality prior to implementing an offset program or paying into the Bay Area Clean Air Foundation.

In consideration of this comment and a similar comment (Comment L-2) from the Bay Area Air Quality Management District (BAAQMD), Mitigation Measure AIR-1 was updated to require

2014 or newer model year engines on all tenant-owned vehicles above 14,000 pounds gross vehicle weight rating and to monitor compliance during Project tenancy. Even with the updated and more stringent Mitigation Measure AIR-1, NOx emissions from Project operation would exceed the applicable CEQA threshold and would remain a significant unavoidable impact. Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

It should be noted that Mitigation Measure AIR-1 and the Project features considered, and incorporated when applicable, all the recommended operation measures in Attachment A to this comment letter. For example, the Project's features, such as pre-wiring for electric truck charging, electrical connections at loading docks, and the requirement of all-electric plug-in TRUs, meet the Recommended Operation Measures 1, 2, and 3, respectively. The Recommended Operation Measures 4 and 5 are difficult to implement for this Project, because vehicles accessing the Project site would not only include tenant-owned trucks, but also third-party vehicles such as vans and passenger cars. The City's experts would like to clarify that there is no effective protocol for monitoring and enforcing the use of third-party vehicles accessing the Project site (page IV.B-23 of Section IV.B, Air Quality). Therefore, Mitigation Measure AIR-1 and the Project features have exhausted feasible and enforceable mitigation measures.

Response to Comment J-6

This comment provides a concluding statement by summarizing comments from J-2 to J-5, which have been addressed, above. This comment does not state a new issue or express a new concern regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter K

Santa Clara Valley Transportation Authority

February 12, 2021

City of Milpitas Planning Department
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Attn: Rozalynne Thompson
By Email: planningdepartment@ci.milpitas.ca.gov

Dear Rozalynne,

VTA appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the 1000 Gibraltar Drive project. VTA has reviewed the document and has the following comments: K-1

Transportation Analysis

VTA supports the inclusion of Transportation Demand Management (TDM) measures and a VMT Strategy Report with annual monitoring required in the DEIR as a mitigation measure for the significant and unavoidable transportation impacts that would occur as part of this project. VTA recommends that the monitoring be conducted by either the City or a third-party, paid for by the project applicant/occupant, rather than allowing the monitoring to be conducted by the project applicant/occupant.

The DEIR references a 'Local Transportation Analysis' report that addresses non-CEQA transportation issues. This report was not included in the referral to VTA. Please share this document with us at the earliest convenience so we can confirm assumptions used in the Transportation Analysis, specifically for the CMP facilities. K-2

Bicycle Parking

The current DEIR does not indicate how much bicycle parking would be available on site. Chapter 10 of VTA's Bicycle Technical Guidelines (http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/vta_bicycle_technical_guidelines_complete.pdf) recommends one long-term parking space per 30 employees or per 15,000 sq. ft. VTA looks forward to reviewing plans with bicycle accommodations shown. K-3

Milpitas Metro Specific Plan Proximity

VTA has been working with the City of Milpitas to develop the Milpitas Metro Specific Plan, the update to the former Transit Area Specific Plan. This project is located just outside the Metro Plan area, but still less than a mile from the Milpitas BART Station and transit center. VTA appreciates all efforts by the City and the developer for minimizing traffic, air quality, and public life impacts that may arise from this industrial project and the heavy truck traffic anticipated so close to a transit hub. K-4

Thank you again for the opportunity to review this project. If you have any questions, please do not K-5

hesitate to contact me at 408-321-5830 or through email at lola.torney@vta.org.

K-5 Cont.

Sincerely,

Lola Torney
Transportation Planner III

ML2002

Response to Comment Letter K:
Lola Torney, Santa Clara Valley Transportation Authority

Response to Comment K-1

This comment provides an opening statement to the letter and does not raise specific issues regarding the contents of the Draft EIR. This comment is noted. No further response is required.

Response to Comment K-2

The comment supports the mitigation measure recommending travel demand management (TDM) measures, and a VMT Strategy Report with annual monitoring (Mitigation Measure TRANS-1 on page IV.E-30 of the Draft EIR). The comment recommends that the monitoring be conducted by either the City of a third party, paid by the Applicant, rather than the Project Applicant/occupant self-reporting. This comment is acknowledged, and the City will develop a mechanism for monitoring that ensures transparency and accuracy. Mitigation Measure TRANS-1 on page IV.E-30 of the Draft EIR has been revised to read as follows:

Mitigation Measure TRANS-1:

The Project applicant shall implement a travel demand management program for all employees with the goal of reducing the use of single-occupant vehicles for commuting. The measures most likely to be effective given the Project's location and expected use type include the following (measures are identified with the California Air Pollution Control Officers (CAPCOA) *Quantifying Greenhouse Gas Mitigation Measures* (August 2010) measure number and VMT reduction effectiveness range):

- Implement a commute trip reduction program with required implementation and monitoring (CAPCOA measure TRT-2, effectiveness range 4.2% - 21.0%);
- Provide ride-sharing programs (CAPCOA measure TRT-3, effectiveness range 1 – 15%);
- Implement subsidized or discounted transit program (CAPCOA measure TRT-4, effectiveness range 0.3% - 20%);
- Provide end-of-trip facilities (CAPCOA measure TRT-5, effectiveness based on effectiveness of measures TRT-2 and TRT-3);
- Implement commute trip reduction marketing (CAPCOA measure TRT-7, effectiveness range 0.8% - 4.0%);
- Implement car-sharing program (CAPCOA measure TRT-9, effectiveness range 0.4% - 0.7%);
- Restripe Green Bike lanes along property frontage; and
- Bike locker subsidy.

(a) VMT Strategy Report

- Prior to the issuance of an occupancy permit (Tenant to provide after 90 days of occupation), the Project Applicant (or Project site operator) shall prepare a VMT Strategy Report that includes the following items:
- Identification of a baseline Project home-based work VMT per employee estimate, which shall be determined using project-specific information derived from location-based data services such as StreetLight data which can estimate the trip generation, trip lengths, and VMT for the site. This shall be supplemented/verified by driveway counts, employee commute mode surveys, and employee residence data which can provide a second VMT estimate to verify the StreetLight estimate. Other methods may be approved by City staff if new data sources and methods become available by the time of the Project is occupied may be taken from this EIR or updated based on more detailed/relevant Project information available at the time of the preparation of the VMT Strategy Report.
- Identification of the Santa Clara County regional home-based work VMT per employee, also derived from StreetLight data to provide an apples to apples comparison to the Project-specific baseline.
- Identification of the percent reduction in VMT needed to achieve the target of 15 percent below the regional average.
- Identification of selected transportation demand management strategies per the above list, and others if appropriate.
- Demonstration of how the TDM strategies in the VMT Strategy Report would reduce the home-based work VMT per employee generated by the Project would be to 15 percent below the countywide average home-based work VMT per employee.

After implementing the transportation demand management strategies selected in the VMT Strategy Report upon occupancy of the Project, the effectiveness of these measures relative to the performance target noted previously must be monitored, as follows.

(b) Project Site VMT Monitoring Approach Monitoring

- The Project shall be monitored by the City or by the Project application/operator on an annual basis to determine the efficacy of the selected transportation demand management strategies in achieving the performance target of 15 percent below the regional average 14.31 home-based work VMT per employee. The monitoring shall include Project-generated VMT estimates compatible with the methodology used to estimate project baseline benchmark VMT so that performance comparisons can be made. The methodology for setting the baseline VMT and measuring the annual performance shall be defined in the VMT Strategy Report.
- An annual monitoring memorandum shall be submitted to City staff. If the Project site is found not to be in compliance with the mitigation measure, the Project must incorporate additional transportation demand management strategies to meet the performance

target. The Project applicant/operator may propose new strategies that develop over time to further reduce Project-generated VMT if substantial evidence is provided to support the efficacy of the strategy. If a 15% VMT reduction is achieved for three consecutive years, the project will no longer need to provide annual reporting.

(c) Alternative Monitoring Approach

The City of Milpitas may develop a citywide VMT monitoring program to allow global monitoring of City VMT, which may provide cost efficiencies and be a more effective way to track VMT generation by various uses in the City. The monitoring program could make use of emerging technologies including location-based services on cell phones and in vehicles to track trip lengths, along with traditional technologies such as driveway traffic counts. If such a program is developed, the Project could participate in the monitoring and demonstrate performance relative to the Project's VMT target.

The comment also requests a copy of the Local Transportation Analysis Report for review by the Santa Clara Valley Transportation Authority (VTA). The Local Transportation Analysis Report is included within the Draft EIR as Appendix G.

Response to Comment K-3

The comment inquires as to how many bicycle parking spaces will be provided and cites VTA's Bicycle Technical Guidelines recommendation of one space per 30 employees or one space per 15,000 square feet. Using the employee rate along with the Project's estimated number of employees (330), these recommendations give 11 bicycle parking spaces. Using the floor area rate along with the Project size (491,000 square feet), these recommendations give 33 bicycle parking spaces.

The Project Applicant proposes 36 bicycle parking spaces, half covered and half uncovered. Therefore, the Project would provide more bicycle parking than recommended by the VTA. It is also noted that the City of Milpitas does not maintain bicycle parking requirements for industrial uses.

Response to Comment K-4

The comment notes the Project's proximity to the Milpitas Metro Specific Plan (the update to the former Transit Area Specific Plan), and the Project's location less than a mile from the Milpitas BART Station. The comment expresses appreciation for efforts by the City and the developer to minimize traffic, air quality, and public life impacts of the Project. This comment is noted.

Response to Comment K-5

This comment provides a closing statement to the letter. This comment is noted. No further response is required.

Comment Letter L

February 11, 2021

Rozalynne Thompson
City of Milpitas Planning Department
455 East Calaveras Boulevard
Milpitas, CA 95053

Re: 1000 Gibraltar Drive Draft EIR

Dear Ms. Thompson,

Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Environmental Impact Report (DEIR) for 1000 Gibraltar Drive (Project). The proposed Project involves demolition of all existing on-site buildings, parking lots and associated improvements, and construction of a new 491,040-square foot tilt-up concrete creative industrial building with two supporting offices at the northwest and southwest corners and surface parking on all sides of the building. Approximately 486,130 square feet of warehouse and 4,910 square feet of office space is proposed. The proposed building has been designed to accommodate up to two separate tenants with proposed uses including Advanced Manufacturing, E-Commerce, Light Assembly, Warehouse/Distribution, and possibly other permitted uses within the City's Industrial (M-2) zone. L-1

The Air District staff appreciates and supports efforts to incorporate best practices into the Project's design and mitigation measures to minimize impacts such as installing on-site solar panels for a portion of the Project's energy consumption, installing on-site electrical vehicle charging units, and eliminating natural gas use at the Project site. However, even with the Project's design and mitigation measures included in the DEIR, the Project is expected to result in significant and unavoidable impacts to air quality and greenhouse gases.

Mobile Source Emissions Reduction Measures

The DEIR anticipates that Project operational-related nitrogen oxides (NOx) emissions, primarily from mobile sources, will lead to a significant and unavoidable impact after incorporating all available on-site control measures (Impact AIR-2). Staff recommends that all heavy-duty trucks entering or on the Project site be model year 2014 or newer to reduce NOx emissions. Staff further recommends the use of trucks with the best available NOx control technology offered at the time of Project construction and operations. L-2

Even with Project design features and an on-site mitigation measure, the DEIR finds that air quality impacts from the Project still exceeds thresholds. Therefore, Mitigation Measure AIR-2, Emissions Offsets would require the project applicant to offset the NOx emissions before 2024 below the threshold of significance by either implementing a specific offset program (e.g., equipment replacement), funding the implementation of an emission reduction project through payment of a mitigation offset fee to the BAAQMD's Bay Area Clean Air Foundation, or a combination of the two approaches, in an amount sufficient to mitigate residual emissions.

Please be aware that the Air District does not currently have a fee program for offsetting emissions. These are occasionally conducted on a case-by-case basis based on available projects. We recommend that Mitigation Measure AIR-2 replace "BAAQMD's Bay Area Clean Air Foundation" with "an independent third-party approved by the City, such as the Bay Area Clean Air Foundation…". This will allow the Project applicant to seek additional options if the Air District has no available projects at the time. Air District staff will follow up with the City to provide specific suggested language as requested. L-2 Cont.

Health Risk Assessment Methodology

Air District staff reviewed the health risk assessment (HRA) analysis and recommends that the DEIR analysis include evaluation of construction and operation activities to determine health risk to additional residential sensitive receptors as well as workers on-site. Staff recommends quantitatively evaluating potential impacts on the residential neighborhood approximately 820 feet west of the site boundary, just north of the Great Mall, and on the maximum exposed worker to determine significance and to maintain transparency between the Project and community members. L-3

The DEIR states that cumulative impacts are less-than-significant, however stationary sources were not included within the project assessment area. Air District staff recommends that emissions from stationary sources be quantified in addition to the Project's impacts. Staff recommends including the emissions from backup generators on the northern adjacent Flextronics International, USA Inc property as well as gas dispensing facilities and backup generators near the eastern Project site boundary. The Air District can provide technical assistance and support to ensure that best available data and methodologies are used in the HRA; please contact Air District staff to discuss further.

Greenhouse Gas Measures to Reduce Emissions

The DEIR states that as part of Mitigation Measure GHG-1 (GHG1), one option may be to increase installation of Level 2 EV charging stations from 22 to 37. However, it is unclear what percentage of parking spaces will have EV chargers installed. Likewise, although GHG1 calls for providing conduit for 50 EV charging stations for future EV trucks, it is unclear what percentage of truck parking/loading spaces will be EV capable. Air District staff recommends that the DEIR state the percentage of charging stations for both light-duty vehicles (i.e., passenger vehicles) and heavy-duty vehicles (i.e., trucks) relative to total parking spaces for the proposed measure, and that GHG1 commit to installation of additional EV supply equipment for both light- and heavy-duty applications. In addition, given the recent Executive Order N-79-20, which calls for all medium-and heavy-duty vehicles in the State to be zero-emission by 2045 for all operations where feasible, staff recommends the DEIR include a discussion of whether the proposed inclusion of electric vehicle charging infrastructure is fully consistent with the Executive Order and the broader goals of carbon neutrality. Lastly, the DEIR also states that the Project will commit to using 10 percent of renewable energy resources, however the details of this commitment are unclear. Air District staff recommends that the Project applicant clarify the commitment within the proposed measure. L-4

Compliance with Air District Permitting Requirements

The Project's proposed equipment (e.g., fire pump engine, boiler, etc.) may require Air District permits (Authority to Construct/Permit to Operate). To apply for an Authority to Construct/Permit to Operate, please L-5

visit https://www.baaqmd.gov/permits/apply-for-a-permit. If you have any questions regarding the Air District's permits, please contact Barry Young, Senior Advanced Projects Advisor, at byoung@baaqmd.gov or (415) 940-9641. L-5 Cont.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have questions regarding these comments, please contact Alesia Hsiao, Senior Environmental Planner, at (415) 749-5169 or ahsiao@baaqmd.gov, or Matthew Hanson, Environmental Planner, at (415) 749-8733 or mhanson@baaqmd.gov. L-6

Sincerely,

Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Director Margaret Abe-Koga
BAAQMD Chair Cindy Chavez
BAAQMD Director Rich Constantine
BAAQMD Director Rob Rennie

Response to Comment Letter L:
Greg Nudd, Bay Area Air Quality Management District

Response to Comment L-1

This comment provides opening statements including: acknowledging that the Bay Area Air Quality Management District (BAAQMD) has reviewed the Draft EIR; providing a summary of the proposed Project; and thanking the City of Milpitas for providing the opportunity to comment on the Draft EIR. The commenter also acknowledges the Project design features and mitigation measures to minimize air quality impacts and acknowledges that some air quality and greenhouse gas (GHG) impacts would still be significant after mitigation. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment L-2

The commenter raises two issues related to Mitigation Measure AIR-1 and Mitigation Measure AIR-2 included in Section IV.B (Air Quality) of the Draft EIR. The commenter recommends Mitigation Measure AIR-1 to require 2014 or newer model year engines to reduce NOx emissions. Please see Response to Comment J-5 for this update.

The commenter also recommends changes to Mitigation Measure AIR-2 to allow the Project Applicant to seek additional options for NOx offset programs if the BAAQMD has no available projects at the time. Mitigation Measure AIR-2 has been updated based on this comment and Comment M-1. Please reference Response to Comment M-1. Also refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

Response to Comment L-3

The commenter recommends a quantitative HRA on the residential neighborhood approximately 820 feet west of the Project site boundary and on the maximum exposed worker. The commenter also recommends including additional stationary sources of toxic air contaminants (TACs) emissions, including Flextronics International, USA Inc.

The HRA in Section IV.B (Air Quality) of the Draft EIR has been updated to include the residential neighborhood northwest of the Project site. Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions. However, as demonstrated in the revised HRA, health risk impacts at this residential receptor was approximately 70 percent lower than the health risk impacts at the maximally exposed sensitive receptor (MEIR) during Project construction, and approximately 50 percent lower than health risk impacts at the MEIR during Project operation. At the request of the commenter, the City's experts also included the additional stationary sources of TAC emissions within 1,000 feet of the Project site (See Revised Figure IV.B-1 in Section III of this Final EIR). However, only one existing stationary source of TAC emissions is within 1,000 feet of the residential receptor to the northwest of the Project site. The updated HRA acknowledged other sensitive receptors near the Project site, but

concluded that the MEIR location would still represent the worst-case scenario maximally impacted by Project construction and operation. The City's experts disagree with the commenter's suggestion to provide a quantitative HRA for the maximum exposed on-site worker, because CEQA does not require a project to evaluate its impact onto itself. Furthermore, off-site workers are also not a concern because the HRA for the MEIR (exposure starting in third trimester and 350 days of annual exposure for 70 years) sufficiently demonstrates that the Project's health risk impacts during construction and operation are less than significant at the Project level and cumulatively.

Response to Comment L-4

The commenter recommends adding clarification on the percentage of electric vehicle charging stations for both light-duty vehicles and heavy-duty vehicles relative to total parking spaces. Section III (Project Description) and Section IV.C (Greenhouse Gas Emissions) of the Draft EIR have been revised based on this comment. Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

The commenter also recommends the Draft EIR include a discussion of whether the proposed inclusion of electric vehicle charging infrastructure is fully consistent with the Executive Order N-79-20 and the broader goals of carbon neutrality. Pages IV.C-12 and IV.C-23 through 25 of the Draft EIR have been revised based on this comment. Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

Lastly, the commenter recommends the EIR clarify the commitment to using 10 percent of renewable energy resources. Pages III-15 and IV.C-23 through 25 of the Draft EIR have been revised based on this comment. Specifically, page III-15 of the Draft EIR has been revised include the following additional Project design features:

Trucks with Refrigeration Units (TRUs)

Future commercial and industrial operations with loading docks or dedicated delivery areas would provide electrical connections for trucks with refrigeration units (TRUs) and require that all electric-capable TRUs utilize the connections when in use. Such operations would be required to post signage at all loading docks and/or dedicated delivery areas directing electric-capable TRU operators to utilize the connections.

Other Energy Saving Features

- EV Charging: Truck Trailer- Conduits for 50 EV truck charging stations. Auto- 22 stalls (6% of total stall count)
- CALGreen also requires 29 car/van stalls reserved for clean air (electric and/or hybrid) vehicles. (8% of Parking count)
- For operations, the Project would incorporate mandatory and voluntary measures of the CALGreen Code. The Project would reduce energy and water consumption, preserve existing trees and plant approximately 250 new trees, provide for 22 electric vehicle charging stations and conduits for 50 EV truck charging stations.

- PG&E is the local power provider and offers 60% renewable sources

Mitigation Measure GHG-1 on pages IV.C-23 through IV.C-25 of the Draft EIR has been revised to read as follows:

Mitigation Measure GHG-1: Greenhouse Gas Reduction Plan

As a part of the application package for construction-related permits, the Project Applicant shall prepare a GHG Reduction Plan to demonstrate that the Project's GHG emissions per employee would be below the interim 2030 GHG threshold (2.9 metric tons carbon dioxide equivalent per service population) with the implementation of GHG reduction measures. Applicable GHG reduction measures include the following options:

- Implementation of the Transportation Demand Management ("TDM") Plan, described in Mitigation Trans-1;
- Increase installation of Level 2 charging stations from 22 (6 percent of total stalls) to 37 (10 percent of total stalls);
- Provide conduit for 50 EV charging stations (48 percent of total truck docks) either at the dock doors on in the truck court for future EV trucks;
- Site employers who own and operate truck fleets shall be required to inform their drivers of the anti-idling requirement;
- Future industrial operations shall prohibit idling of on-and-off road heavy-duty diesel vehicles for prolonged periods; and
- The Project will provide ~~commit to using~~ 10% of its electricity consumption by on-site solar installation at the building roof ~~renewable energy sources~~.

Other applicable GHG reduction measures that may be feasible include, but are not limited to, the following options:

- ~~Eliminating idling emissions from trucks and vans by providing electrical connections at the Project site (up to 9 percent reduction in total GHG emissions) for trucks with refrigeration units (TRU's) and require that all electric-capable TRU's utilize the connections when in use;~~
- Eliminating natural gas use at the Project site (approximately 3 percent reduction in total GHG emissions);
- Enroll in the program to purchase Silicon Valley Clean Air Energy Certificates;
- ~~Installation of solar panels on Project Site where 10% of the project's power is from solar panels;~~
- Other applicable action items included in the City of Milpitas Climate Action Plan; and
- Concrete Truck courts to reduce Heat Island effect.

Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

Response to Comment L-5

The commenter notes that the Project's proposed equipment (e.g., fire pump engine) may

require BAAQMD permits and provides point of contact for the Project Applicant regarding the permit application. The comment is noted by the City and the Project Applicant.

Response to Comment L-6

The commenter provides closing statements and includes the commenter's contact information. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter M

FW: BAAQMD Comment Letter: 1000 Gibraltar Drive Project - Attached

Tue, Feb 16, 2021 at 8:38 AM

From: Alesia Hsiao <ahsiao@baaqmd.gov>
Sent: Thursday, February 11, 2021 6:45 PM
To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>
Cc: Matthew Hanson <mhanson@baaqmd.gov>
Subject: RE: BAAQMD Comment Letter: 1000 Gibraltar Drive Project - Attached

Hi Rozalynne,

I wanted to follow up with you on the suggested language for 1000 Gibraltar Drive Draft EIR Mitigation Measure AIR-2, Emissions Offsets:

Please see suggested edits (with new text double underlined and deleted text with strikethrough below) to the mi ga on measure as follows:

2. ~~Pay a mitigation offset fee~~ Fund NOx emissions reductions projects to be completed by an independent third-party approved by the City, such as ~~to~~ the BAAQMD's Bay Area Clean Air Foundation (Independent Third Party) in an amount to be determined at the time of the impact. ~~The mitigation offset fee will be determined by the Planning Department in consultation with the Project Applicant and BAAQMD, and will be based on the type of projects available at the time of impact. This fee is intended~~ Funds shall be sufficient to ~~fund~~ sponsor emissions reduction projects to achieve an annual reduction of 1.8 tons of NOx.

For this option, the Project Applicant is required to enter into a Memorandum of Understanding (MOU) with the ~~BAAQMD's Foundation~~ Independent Third Party. The MOU will include details regarding the funds to be paid, administrative fee and the timing of the emissions reductions project(s). Acceptance of this fee by the ~~BAAQMD~~ Independent Third Party shall serve as an acknowledgement and commitment by the ~~BAAQMD~~ Independent Third Party to: (1) implement an emissions reduction project(s) with a time frame to be determined based on the type of project(s) selected, after receipt of the mitigation fee to achieve the emission reduction objectives specified above; and (2) provide documentation to the City of Milpitas Planning Department and the Project Applicant describing the amount of mitigation fee and the project(s) funded by the mitigation fee, including the amount of emissions of NOx reduced (tons) within the San Francisco Bay Area Air Basin from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation fee following implementation of the emission reduction project(s), the Project Applicant shall be entitled to a refund in that amount from the ~~BAAQMD~~ Independent Third Party. To qualify under this mitigation measure, the specific emissions reduction project must result in emission reduction within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement.

M-1

Thanks,

Alesia Hsiao, AICP | Senior Environmental Planner

Planning and Climate Protection Division

Bay Area Air Quality Management District

Office: 415-749-8419

Response to Comment Letter M:
Alesia Hsiao, Bay Area Air Quality Management District

Response to Comment M-1

This comment from BAAQMD recommends revisions to Mitigation Measure AIR-2 (Emissions Offsets) in the Draft EIR. Mitigation Measure AIR-2 on pages IV.B-24 and IV.B-25 of the Draft EIR have been revised to read as follows:

Mitigation Measure AIR-2: Emission Offsets

At the beginning of Project tenancy ~~For Project operation in 2022~~, the Project Applicant, with the oversight of City of Milpitas Planning Department, shall implement emission offset program(s), as necessary, to reduce Project emissions below 10 tons per year for a minimum of 3 years. The NOx emissions offset shall either be based on the existing EIR analysis (a reduction of 2.2 tons of NOx per year) or based on an updated NOx emissions inventory of the tenant-specific vehicle fleets and annual vehicle miles traveled. The Project Applicant shall participate in either of the following NOx offset programs ~~two options~~ or a combination of both to reduce Project NOx emissions below 10 tons per year:

1. Directly implement a specific offset program (such as requiring Project tenant(s) to replace equipment in the existing tenant-owned operation fleet) to reduce ~~achieve a total annual reduction of 1.8 tons of~~ Project NOx emissions below 10 tons per year, subject to the City of Milpitas Planning Department's approval. To qualify under this mitigation measure, the specific emissions offset Project must result in emissions reductions within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement. Prior to implementation of the direct offset projects, the Project Applicant must obtain Planning Department's approval of the proposed offset projects by providing documentation of the estimated ~~1.8 tons of~~ annual NOx reduction within the San Francisco Bay Area Air Basin. The Project sponsor shall notify the Planning Department within six months of completion of the offset projects for verification.

2. ~~Pay a mitigation offset fee~~ Fund NOx emissions reductions projects to be completed by an independent third-party approved by the City, such as ~~to~~ the BAAQMD's Bay Area Clean Air Third Foundation (Independent Party) in an amount to be determined at the time of the impact. ~~The mitigation offset fee will be determined by the Planning Department in consultation with the Project Applicant and BAAQMD, and will be based on the type of projects available at the time of impact. This fee is intended~~ Funds shall be sufficient to ~~fund~~ sponsor NOx emissions reduction offset projects to reduce the Project ~~achieve an annual reduction of 1.8 tons of~~ NOx emissions below 10 tons per year.

For this option, the Project Applicant is required to enter into a Memorandum of Understanding (MOU) with the ~~BAAQMD's Foundation~~ Independent Third Party. The MOU will include details regarding the funds to be paid, administrative fee and the timing of the emissions reductions project(s). Acceptance of this fee by the ~~BAAQMD~~ Independent Third Party shall serve as an acknowledgement and commitment by the ~~BAAQMD~~ Independent Third Party to: (1) implement an emissions reduction project(s) with a time frame to be determined based on the type of project(s) selected, after receipt of the mitigation fee to achieve the emission reduction objectives specified above; and (2) provide documentation to the City of Milpitas Planning Department and the Project Applicant describing the amount of mitigation fee and the project(s) funded by the mitigation fee, including the amount of emissions of NOx reduced (tons) within the San Francisco Bay Area Air Basin from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation fee following implementation of the emission reduction project(s), the Project Applicant shall be entitled to a refund in that amount from the ~~BAAQMD~~ Independent Third Party. To qualify under this mitigation measure, the specific emissions reduction project must result in emission reduction within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement.

If the Project Applicant is able to demonstrate that the NOx emissions generated by the Project are less than 10 tons per year for three consecutive years (i.e., NOx emissions offsets were not necessary over the three-year time period), then the Project Applicant may request authorization via a waiver to cease future monitoring and reporting of the NOx emission offset program(s). The waiver application shall contain a tenant-specific NOx emission inventory for review and approval by City of Milpitas Planning Department. If the Project operations will substantially expand, alter, or a change of tenancy will occur, the City of Milpitas may revoke the waiver.

Implementation of Mitigation Measures AIR-1 and AIR-2 would reduce the residual NOx emissions below the threshold of significance. However, because the offset program or offset fee required by Mitigation Measure AIR-2 cannot be determined to be real, verifiable, and enforceable at the time of preparation of this EIR, the Project's operational impacts related to emissions of criteria pollutant are considered ***significant and unavoidable***.

Refer to Section III (Corrections and Additions to the Draft EIR) of this Final EIR for these revisions.

Comment Letter N

FW: 1000 Gibraltar Drive Project

1 message

Tue, Feb 16, 2021 at 8:42 AM

From: Janet M. Laurain <jlaurain@adamsbroadwell.com>
Sent: Friday, February 12, 2021 12:57 PM
To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>
Subject: 1000 Gibraltar Drive Project

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Rozalynne,

Can you please send me the applicant contact information (name and phone/email address) for the 1000 Gibraltar Drive project? Is there a projected timeline for the Planning Commission and City Council hearings on this project? N-1

Also, I checked my emails and I did not find notice of the DEIR being released for public comment. We have a standing Request for Notice of CEQA Actions and Hearings on file with the City (See Attached). Can you please tell me if we were on the City's mailing list for notification of this project? N-2

Thank you, in advance, for your help.

Janet Laurain

Janet M. Laurain, Paralegal
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660
jlaurain@adamsbroadwell.com

3698-005acp - Annual CEQA request Cities 2020.pdf
134K

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RACHAEL E. KOSS
NIRIT LOTAN
AARON M. MESSING
WILLIAM C. MUMBY
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

**Admitted in Colorado*

January 28, 2020

VIA U.S. MAIL

Ms. Mary Lavelle
City Clerk
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

Mr. Ned Thomas
Director of Planning & Neighborhood Services
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: Renewal of Annual Request for Mailed Notice of Actions and Public Hearings

Dear Ms. Lavelle and Mr. Thomas:

We are writing to renew our annual request that City of Milpitas provide us notice, by U.S. Mail or email, of any and all environmental review documents, actions or hearings related to development projects or activities proposed to be permitted in City of Milpitas. This request includes:

1. Notice of any public hearing in connection with projects as required by California Planning and Zoning Law (Gov. Code §§ 65000 *et seq.*); and
2. Any and all notices prepared pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 *et seq.*), including:
   - Notices of determination that an Environmental Impact Report ("EIR") is required for a project;
   - Notices of any scoping meeting;
   - Notices of preparation of an EIR or a Negative Declaration ("ND") or Mitigated Negative Declaration ("MND") for a project;
   - Notices of an Addendum to a previous EIR, ND or MND;

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- Notices that a subsequent project is within the scope of a project covered by a master Environmental Impact Report;
- Notices of availability of an EIR;
- Notices of intent to adopt an ND or MND;
- Notices of approval and/or determination that an EIR has been certified; and
- Notices of determination that a project is exempt from CEQA.

N-3 Cont.

Pursuant to CEQA, the CEQA Guidelines and Government Code Section 65092, local agencies are required to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

In addition, we request a copy, via U.S. Mail or email, of all City of Milpitas Planning Commission and City Council meeting and/or hearing agendas, as required by Government Code Section 54954.1.

We are willing to pay any fees reasonably related to the costs of providing these services.

Please send the notices to:

N-4

Janet Laurain
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
jlaurain@adamsbroadwell.com

Please call me at 650-589-1660 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Janet Laurain

Janet Laurain
Paralegal

JML:acp
3698-005acp

Response to Comment Letter N:
Janet Laurain, Adams Broadwell Joseph & Cardozo

Response to Comment N-1

The commenter requests the Applicant's contact information, and inquires about a projected timeline for the Planning Commission and City Council hearings on the Project. Page III-14 of the Draft EIR states that the Project applicant is Overton Moore Properties. Its office is located at 19700 South Vermont Avenue, Suite #101 in Torrance, California. The Project site owner is Westport Capital Partners, 2121 Rosecrans Avenue, Suite 4325, El Segundo, California. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment N-2

The commenter expresses that they did not receive email notice of the Draft EIR being released for public comment. The commenter asks about being on the City's mailing list for notification of the Project, referencing a standing Request for Notice of CEQA Actions and Hearings on file with the City. Please refer to the following link: https://www.ci.milpitas.ca.gov/1000gibraltardrive in order to access the CEQA documentation for the proposed Project. The Draft EIR was made available to various public agencies, citizen groups, and interested individuals for a 52-day public review period from December 23, 2020 through February 12, 2021. The City also conducted a virtual public meeting on the Draft EIR to accept written comments on the Draft EIR on February 1, 2021. The Draft EIR was circulated to state agencies for review through the State Clearinghouse of the Governor's Office of Planning and Research. Copies of a Notice of Availability (NOA) of the Draft EIR were also sent to citizens surrounding the Project site (within a 1,000-foot radius), interested groups and agencies. In addition, on December 23, 2020, the *Mercury News* included a notice regarding the availability of the Draft EIR. Copies of the Draft EIR were made available for review at the San Mateo County Library and online at the City's website, https://www.ci.milpitas.ca.gov/1000gibraltardrive.This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment N-3

The commenter requests renewal of their annual request that the City provide any and all environmental review documents, actions or hearings related to development projects or activities proposed in the City of Milpitas. This comment is noted. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment N-4

In this comment, the commenter requests copies of all City Planning Commission and City Council meeting and/or hearing agendas. This comment is noted. The commenter provides

closing statements and includes the commenter's contact information. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Comment Letter O

LOZEAU DRURY LLP

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Oakland, CA 94612

www.lozeaudrury.com
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Via Email

February 12, 2021

Rozalynne Thompson, Senior Planner
City of Milpitas
Planning Department
455 East Calaveras Boulevard
Milpitas, CA 95035
rthompson@ci.milpitas.ca.gov

Re: Comment on Draft Environmental Impact Report, 1000 Gibraltar Drive Project (SCH No. 2020069024)

Dear Ms. Thompson:

This letter is submitted on behalf of the Laborers International Union of North America, Local Union No. 270 and its members living and/or working in or around the City of Milpitas ("LIUNA") regarding the Draft Environmental Impact Report ("DEIR") prepared for the 1000 Gibraltar Drive Project (SCH No. 2020069024) (the "Project"). After reviewing the DEIR, we conclude that the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. LIUNA requests that the City of Milpitas ("City") address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project. O-1

I. PROJECT DESCRIPTION

The Project proposes to demolish all existing on-site buildings, comprised of 397,009 square feet, parking lots, and associated improvements, and construct a 491,040-square foot tilt-up concrete industrial building with two supporting offices at the northwest and southeast corners and surface parking on all sides of the building and a proposed FAR of .38. Approximately 485,130 square feet of warehouse and 4,910 square feet of office space is proposed. O-2

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting O-3

CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

O-3
Cont.

The EIR is the very heart of CEQA "and the integrity of the process is dependent on the adequacy of the EIR." *Berkeley Jets*, 91 Cal. App. 4th 1109, 1355. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau*, 221 Cal.App.3d 692, 732. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env't*, 103 Cal.App.4th 98, 109.

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" *Berkeley Jets*, 91 Cal. App. 4th at p. 1355 (emphasis added) (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

More recently, the California Supreme Court has emphasized that:

> When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

O-3 Cont.

Sierra Club v. Cty. of Fresno (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405. "Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document." *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including 'detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" 6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197. "The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions." 6 Cal.5th at 516. Whether a discussion of a potential impact is sufficient "presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference." *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. As the Court emphasized:

> [W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems

> significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

Sierra Club v. Cty. of Fresno, 6 Cal.5th at 514.

CEQA requires that an environmental document include a description of the project's environmental setting or "baseline." CEQA Guidelines, § 15063(d)(2). The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA: O-3 Cont.

> …must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("*Save Our Peninsula*").

III. DISCUSSION

A. The City Unduly Restrains the Project's Alternatives and Their Implementation and Fails to Adopt the Environmentally Superior Alternative.

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. CEQA Guidelines § 15125.6. The analysis of project alternatives must contain a quantitative assessment of the impacts of the alternatives. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733-73. O-4

An overly narrow definition of project objectives renders the alternatives analysis inadequate. To narrowly define the primary "objective" of the proposed project itself constitutes a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. See, *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, holding that when project objectives are defined too narrowly an EIR's treatment of analysis may also be inadequate. As a leading treatise on CEQA compliance cautions, "[t]he case law makes clear that…overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy, Thomas, Moose & Manley, Guide to CEQA (Solano Books, 2007), p. 589.

CEQA prohibits a project sponsor from limiting its ability to implement the project in a way that precludes it from implementing reasonable alternatives to the project. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (alternatives may not be artificially limited

by applicant's prior contractual commitments that would prevent sponsor from implementing reasonable alternative).

CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *See also*, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). A "feasible" alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. Pub. Res. Code § 21061.1; CEQA Guidelines § 15364.

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

> The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Citizens of Goleta Valley v. Bd. of Supervisors (1988) 197 Cal.App.3d 1167, 1180-81; *see also*, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322.

O-4 Cont.

In addition, an environmentally superior alternative may not be rejected because it does not meet all of the Project's objectives. Inconsistency with only some of the Project Objectives is not necessarily an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. CEQA Guidelines § 15126.6(c), (f); *see also Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.

The objectives identified in the DEIR essentially limit the alternatives to the proposed project. The objectives include the project having to be a logistics center and to satisfy the demand for a logistics center. DEIR, p. III-26. As a result, no other use consistent with the General Plan and the current zoning is considered. The objectives to "redevelop and maximize the buildout potential" and to "[c]onstruct an infill development of up to approximately 500,000 square feet" unduly prohibit consideration of a more modest sized project, one that does not require demolition of the existing facility, or a different industrial use with less air quality, greenhouse gas ("GHG"), and transportation impacts. *Id*. *See* Milpitas Code of Ordinances, § XI-10-7.02.

The DEIR prepared for the Project only considers a no project alternative and an alternative with a 25 percent reduction in building area compared to the proposed Project. DEIR, pp. VI-5, VI-10.

The DEIR fails to formulate or consider alternatives that would reduce the significant air quality and GHG emissions and transportation impacts to less than significant levels. Additionally, the City failed to adopt the environmentally superior alternative that would reduce some of the Project's impacts. The DEIR states that the alternative with a 25 percent reduction in building area, the environmentally superior alternative, was not selected because it "would not meet all of the Project's objectives." DEIR, p. VI-14. This justification is insufficient and does not constitute substantial evidence that the alternative that would reduce the Project's impacts is infeasible. Without any such evidence, the City would abuse its discretion by approving a project with significant impacts that could be lessened or avoided by adopting a project alternative. O-4 Cont.

B. The DEIR Fails to Establish an Accurate Baseline for Sensitive Biological Resources and Fails to Adequately Analyze the Project's Impacts on Biological Resources.

Expert biologist Shawn Smallwood, Ph.D. has reviewed the DEIR and supporting documents prepared for the Project and visited the Project site on February 3, 2021. Based on his observations of the site and review of the DEIR, Dr. Smallwood points out numerous shortcomings in the City's baseline assessment of the presence of species at the site, failure to evaluate impacts that will result from the Project, and instances where the DEIR's assertions are insufficient or not supported by substantial evidence. *See* Exhibit A. O-5

1. The DEIR provides an inadequately baseline and fails to adequately analyze the Project's impacts on biological resources.

As Dr. Smallwood points out, the City did not perform any biological resource surveys at the site of the proposed Project and did not review available databases or information sources on the occurrence histories and occurrence likelihoods of special-status species of wildlife in the area. *Id*. at 8. Instead, the City simply assumed that special-status species cannot occur in an environment transformed by urban, commercial and industrial development. *See* Initial Study, pp. 27-28. However, as Dr. Smallwood asserts, this is incorrect. O-6

Dr. Smallwood visited the Project site on February 3, 2021 and observed at least 30 species of birds at the site, and 32 total species of vertebrate wildlife within two hours. Ex. A, pp. 1-2. Dr. Smallwood also reviewed eBird and iNaturalist for occurrence records of special-status species of vertebrate wildlife in the project area, which turned up 49 special-status species that could use the site for staging, stopover, flyover, foraging, cover, roosting or breeding. *See id*. at 8-9. Dr. Smallwood observed a Cooper's hawk hunting two Eastern gray squirrels on the Project site, mew gulls and California gulls kittling over the site and using it for lift in thermals generated by the vegetated areas, turkey vultures soaring upward in the site's thermals, numerous other bird species, and evidence of foraging on site, as well as the start of the breeding season. *Id*. at 1-2. The Project site also includes an abundance of various cavities and substrates, which bats roost on or within. *Id*. at 8. However, the City has not taken a look into the potential bat roosts on the site. In failing to establish an adequate baseline of biological resources, the DEIR fails to adequately analyze the Project's impacts to biological resources.

2. The DEIR fails to address the impacts on wildlife from additional traffic generated by the Project.

According to the DEIR, the Project will generate an average daily trip rate of 2,926 cars and vans and 377 heavy duty trucks. DEIR at IV.E-27. Yet the DEIR provides no analysis of the impacts on wildlife that will be caused by an increase in traffic on the roadways servicing the Project.

Vehicle collisions with special-status species is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains: O-7

> Across North America traffic impacts have taken devastating tolls on wildlife (Forman et al. 2003). In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally.

Ex. A, p. 12. Dr. Smallwood estimated that the front-end, blunt-force mortality as a result of the Project's traffic would be 82,302 birds annually. *Id*. at 13. An RDEIR is required to analyze and mitigate this potentially significant impact on wildlife.

3. The DEIR fails to address the Project's impacts on wildlife resulting from bird strikes.

Dr. Smallwood indicates that the Project, as proposed, will result in significant impacts on birds colliding with the Project's clear glass windows. Ex. A, p. 14. Specifically, Dr. Smallwood predicts "62 bird deaths per year" due to the Project. *Id*. The Project's plans show ample use of windows on portions of the building's facades. Based on the DEIR's depictions of the Project, Dr. Smallwood estimates that the Project would use at least 844.8 square meters of glass on the building's facades. *Id*. Despite emerging scientific literature about window collisions as one of the largest sources of avian mortality worldwide, the City and the DEIR do not assess this potential impact. O-8

In order to mitigate these potential impacts, Dr. Smallwood recommends adherence to available guidelines on building design intended to minimize collision hazards to birds, such as those by the American Bird Conservancy ("ABC"). *Id*. at 15. ABC recommends: (1) minimizing use of glass; (2) placing glass behind some type of screening (grilles, shutters, exterior shades); (3) using glass with inherent properties to reduce collisions, such as patterns, window films, decals or tape; and (4) turning off lights during migration seasons. *Id*. An RDEIR is required to analyze and mitigate this potentially significant impact.

4. The DEIR fails to adequately analyze the Project's impacts on wildlife movement. O-9

The DEIR states that "[b]ecause the Project site is within a developed urban area, there are no major wildlife movement corridors that pass through or are adjacent to the site." DEIR, p. IV.A-7. However, the protected and non-protected trees on the Project site provide nesting substrate to birds. Ex. A, p. 8. The proposed removal of 88 protected trees on the Project site would contribute to an ongoing trend of declining birds in North America. *Id*. As Dr. Smallwood discusses, a recent study documented a 29% decline in overall bird abundances across North America over the last 48 years, driven primarily to habitat loss and habitat fragmentation. *Id*. In removing the 88 protected trees, Dr. Smallwood estimates that the lost capacity of both breeders and annual fledgling production would total 32,320 birds over the first century of the Project's construction, resulting in a significant impact. *Id*. at 11.

Dr. Smallwood also notes that the DEIR's conclusion that no major wildlife movement corridors pass through or are adjacent to the site is based on a false CEQA standard. The primary phrase of the CEQA standard on wildlife movement goes to wildlife movement regardless of whether movement is channeled by a corridor. *Id*. "A site such as the proposed project site is critically important for wildlife movement because it composes an increasingly diminishing patch of open space within a growing expanse of anthropogenic uses, forcing more species of birds to use the site for stopover and staging during migration, dispersal, and home range patrol." *Id*. The proposed Project would cut birds and bats off from stopover, staging and roosting opportunities, forcing them to travel even farther between remaining stopover areas along migration routes, interfering with wildlife movement in the region. *Id*. With the removal of trees and the development of the Project, the site would no longer allow the existing movement of species through the site while hunting and foraging, such as the Cooper's hawk or other species observed at the Project site by Dr. Smallwood.

O-9 Cont.

C. The DEIR Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Failed to Adequately Analyze the Project's Air Quality Impacts.

The DEIR relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values for site-specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. Environmental consulting firm SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were unsubstantiated or inconsistent with information provided in the DEIR. *See* Exhibit B. This results in an underestimation of the Project's emissions. The EIR must be revised to disclose the full extent of the Project's air quality and greenhouse gas impacts.

O-10

1. The DEIR relies on an incorrect land use type.

The Project includes a tilt-up concrete creative industrial building. As such, the model should have modeled the proposed industrial space as "General Light Industry" yet the CalEEMod output files demonstrates that the models include the proposed industrial land use space as "Refrigerated Warehouse-Retail." *See* DEIR Appendix F, pp. 4, 45. By incorrectly modeling the proposed industrial land use space as warehouse space, the model may

O-11

underestimate the Project's construction-related and operational emissions and should not be relied upon to determine the Project's significance. Ex. B, p. 5. O-11 Cont.

2. The DEIR fails to include all required demolition.

The DEIR states that the proposed Project includes the demolition of all existing on-site buildings representing 397,009 square feet, parking lots, and associated improvements. DEIR, p. III-14. The air model calculates a default number of hauling trips based on the amount of demolition material input into the model. Ex. B, p. 6. However, the CalEEMod output files only include 989 demolition hauling trips, whereas if 397,009 square feet of demolition would require 1,724 trips. *Id*. The failure to include the total amount of required demolition results in the underestimation of emissions associated with fugitive dust, site removal, and exhaust from hauling trucks traveling to and from the site and therefore should not be relied on to determine the significance of the Project's air quality impacts. O-12

3. The DEIR makes unsubstantiated changes to off-road construction equipment unit amounts and usage hours.

The CalEEMod output files demonstrate the default off-road construction amounts and usage hours were altered in the Project's models. *See* DEIR Appendix F, pp. 7-9, 48-50. The justification provided for these changes is: "Update to project-specific information." *Id*. at pp. 5, 46. Additionally, the DEIR includes three construction assumptions, including construction schedule and equipment, material movement, and demolition. *See* DEIR, p. IV.B-20, Table IV.B-5. However, SWAPE states these justifications are insufficient for three reasons.

First, while the DEIR states that the default construction schedule and the list of off-road construction equipment were modified according to the information provided by the Project Applicant, the DEIR fails to mention the revised number of construction equipment pieces or justify the specific changes. Ex. B, p. 9. O-13

Second, the DEIR's claim that the daily hours of operation for each piece of equipment were modified to equal the corresponding total hours of operation for the equipment in each construction phase similarly fails to mention the revised off-road construction equipment usage hours or justify the specific changes. *Id*.

Third, the source provided for the construction assumptions is Appendix F, or the CalEEMod output files themselves. However, the Project documents should substantiate the changes included in the CalEEMod, not vice versa. *Id*.

By including these unsubstantiated changes to the default number of construction equipment pieces and hours, the models may underestimate the Project's construction-related emissions and should not be relied upon to determine the significance of the Project's air quality impacts.

4. The DEIR underestimates operational vehicle trip rates. O-14

According to the DEIR, the Project is expected to generate 3,303 average daily vehicle trips throughout operation. *See* DEIR Appendix G, p. 31. However, only 3,261.64 average weekday trips, 987.70 average Saturday trips, and 578.69 average Sunday trips are included in the models. Ex. B, p. 10. The average weekday, Saturday, and Sunday vehicle trip numbers are therefore underestimated by 41, 2,315, and 2,724 trips, respectively. *Id*. As such, the trip rates inputted into the model are underestimated and inconsistent with the information provided in the DEIR and should not be relied upon to determine Project significance.

O-14 Cont.

5. The DEIR makes unsubstantiated changes to operational vehicle fleet mix.

Review of the CalEEMod output files demonstrates that the models include several changes to the default operational vehicle fleet mix percentages. *See* DEIR Appendix F, pp. 6-7, 47-48. The operational fleet mix for "General Office Building" is assumed to consist of 50% light-duty auto ("LDA") and 50% light-duty trucks ("LDT1" and "LDT2"); the operational fleet mix for "Parking Lot" is assumed to consist of 20% LDA, 20% LDT1 and LDT2, 20% medium-duty trucks ("MDV"), and 40% light heavy-duty trucks ("LHD1" and "LHD2"); and the operational fleet mix for "Refrigeration Warehouse-Rail" is assumed to consist of 85% medium heavy-duty trucks ("MHD") and 15% heavy heavy-duty trucks ("HHD"). The justification provided for these changes is: "Fleet mix for commute trips, vans, and truck trips were based on another similar warehouse project." DEIR Appendix F, pp. 5, 46. This is inadequate for several reasons as described. *See* Ex. B, p. 13. By including unsubstantiated changes to the default operational vehicle fleet mix percentages, the model may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine the Project's significance.

O-15

6. The DEIR makes unsubstantiated changes to operational vehicle emission factors.

Review of the CalEEMod output files demonstrates that the mitigated 2023 model includes several changes to the default operational vehicle emission factors. *See* DEIR Appendix F, pp. 50-53. The justification provided for these changes is: "Emission Factor updated for 2010+ model year MHD and HHD trucks." *Id*. at 46. However, these changes are unjustified for two reasons. First, the justification fails to provide a source for the purported 2010+ model year MHD and HHD emission factors. Ex. B, p. 13. Second, the DEIR and associated documents fail to mention vehicle emission factors or justify the changes whatsoever. *Id*. at 13-14. Therefore, the model may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine the Project's significance.

O-16

7. The DEIR makes unsubstantiated changes to wastewater treatment system percentages.

O-17

Review of the CalEEMod output files demonstrates that the models include several changes to the default wastewater treatment system percentages. *See* DEIR Appendix F, pp. 10,

54. The model assumes the Project's wastewater would be treated 100% aerobically and the justification provided for the changes is: "Water treatment in this area does not include septic tank or lagoons." *Id*. at 5, 46. However, this justification is incorrect for two reasons. First, the DEIR fails to provide a source or substantiate the claim that wastewater treatment does not include septic tanks or lagoons. Ex. B, p. 14. Second, review of the City's website demonstrates that wastewater is treated at the City of San Jose wastewater treatment facility. *Id*. However, the City of San Jose's website demonstrates that anaerobic digestion in septic tanks is part of the wastewater treatment process. *Id*. at 14-15. As such, the model is incorrect in assuming that 100% of the Project's wastewater would be treated aerobically and the models may underestimate the Project's greenhouse gas emissions and should not be relied on to determine the Project's significance. O-17 Cont.

D. The Project Will Have a Significant Impact on Human Health.

1. The DEIR lacks substantial evidence to support its finding that the Project's emissions will not cause a significant health impact.

The DEIR incorrectly concludes that the Project will have a less-than-significant health risk impact. *See* DEIR, p. IV.B-30. Specifically, the DEIR states, "the Project's emissions of DPM and $PM_{2.5}$ during construction and operation would have a less-than-significant cumulative impact on nearby sensitive receptors; therefore, no mitigation measures are required." *Id*. at IV.B-29. However, as SWAPE explains, the DEIR's analysis of the Project's health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for two reasons. Ex. B, p. 18.

First, the DEIR indicates that the Project's exhaust PM_{10} emissions were assumed to be diesel particulate matter ("DPM"), but the exhaust PM_{10} emission rate utilized in the Project's health risk assessment ("HRA")) does not match the exhaust PM_{10} value reported by the Project's CalEEMod output files. *Id*. Both the DEIR and the "Health Risk Assessment Parameters and Results" section of Appendix F fail to explain how the exhaust PM_{10} was calculated otherwise. *Id*. O-18

Second, the DEIR's claim that the Project's health risk impacts would be less than significant because the Project's estimated cancer risk would not exceed the Bay Area Air Quality Management District ("BAAQMD") threshold of 100 in one million for cumulative sources is incorrect. *Id*. The BAAQMD provides both an individual project cancer risk threshold of 10 in one million and cumulative threshold "for all local sources" of 100 in one million. As such, the Project's construction-related and operational cancer risks should have been summed and compared to the BAAQMD threshold of 10 in one million for individual projects. *Id*. By incorrectly comparing the Project's cancer risk to the BAAQMD threshold of 100 in one million for all local sources, the DEIR fails to adequately evaluate the Project's potential health risk impacts. *Id*.

With the above inaccuracies, the DEIR's conclusion that the Project will not result in a significant impact on human health is not supported by substantial evidence.

2. SWAPE conducted a screening-level health risk assessment that indicates a significant health risk impact.

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction and operation. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. Ex. B, p. 18. SWAPE used a sensitive receptor distance of 225 meters to represent the maximally exposed individual and analyzed impacts to individuals at different stages of life based on OEHHA and BAAQMD guidance utilizing age sensitivity factors. *Id*. at 19-21.

O-19

SWAPE found that the excess cancer risk for children and infants over the course of Project construction and operation are approximately 27 and 29 in one million, respectively. *Id*. at 21. Moreover, the excess lifetime cancer risk over the course of a residential lifetime is approximately 60 in one million. *Id*. The risks to children, infants, and lifetime residents all exceed the BAAQMD's threshold of 10 in one million. SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. The City must prepare a revised EIR with an HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors in order to evaluate the Project's health risk impact and to include suitable mitigation measures.

E. The DEIR's Discussion of the Project's GHG Impacts is Insufficient and Not Supported by Substantial Evidence.

SWAPE's review of the EIR's discussion of the Project's GHG emissions has identified a number of flaws in the EIR's analysis. These include concerns stemming from the unsubstantiated inputs to the air modeling. Ex. B, p. 23. Second, the DEIR relies on an incorrect quantitative GHG threshold. *Id*. The DEIR relies on the "Interim 2030 GHG Threshold" of 2.9 MT CO_2e/SP/year. DEIR, p. IV.C-19. However, instead of calculating its own threshold, the DEIR should have relied on the AEP's "2030 Land Use Efficiency Threshold" of 2.6 MT CO_2e/SP/year, which is widely utilized by projects within the BAAQMD. Ex. B, p. 23.

Third, although the DEIR concludes that the Project's GHG emissions will be significant and unavoidable, SWAPE points out a long list of mitigation measures that were not considered or required by the EIR. *See id*. at 28-35. An agency may adopt a statement of overriding considerations only *after* it has imposed all feasible mitigation measures to reduce a project's impact to less than significant levels. CEQA Guidelines §§ 15126.4, 15091. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. Pub. Res. Code § 21002. As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has "[e]liminated or substantially lessened all significant effects on the environment where feasible." The City cannot proceed with adopting a statement of overriding considerations for the Project without first identifying and discussing all of the feasible mitigation measures to address the Project's GHG impacts. Prior to approving the Project, the

O-20

EIR should be revised to discuss and incorporate all feasible mitigation measures reducing its GHG impacts, including the measures identified by SWAPE. The DEIR's failure to consider other alternative industrial uses that might reduce the GHG impacts also leaves the City in a position precluding its adequate consideration of ways to avoid these significant impacts.

Fourth, the DEIR incorrectly relies on the City's Climate Action Plan ("CAP"). Ex. B, p. 25. The DEIR states that with mitigation measures consistent with the CAP, the Project would have a less-than-significant impact related to conflict with the applicable plan, policy, and regulations. *See* DEIR, p. IV.C-25. However, as SWAPE points out, the City's CAP is not qualified beyond 2020. Ex. B, p. 26. The City's CAP is outdated and inapplicable to the Project. *Id*.

O-2O Cont.

Lastly, the DEIR relies on the Project's consistency with CARB's 2017 Scoping Plan in order to determine the significance of the Project's GHG impact yet fails to consider the performance-based standards under the applicable CARB 2017 Scoping Plan. *See id*. at 26-27. The Project exceeds the CARB 2017 Scoping Plan performance-based daily VMT per capita projects and therefore conflicts with the CARB 2017 Scoping Plan and SB 375. As such, the DEIR's claim that the proposed Project would not conflict with the CARB 2017 Scoping Plan is incorrect and unsubstantiated.

IV. CONCLUSION

For the foregoing reasons, LIUNA believes that the 1000 Gibraltar Project DEIR is wholly inadequate. LIUNA urges the City to prepare an RDEIR that conforms with CEQA, as described above.

O-21

Sincerely,

Paige Fennie
LOZEAU DRURY LLP

Response to Comment Letter O:
Paige Fennie, Lozeau Drury LLP

Response to Comment O-1

This comment provides introductory statements, including the commenter's belief that the Draft EIR is flawed as it fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. This comment does not provide any specifics as to why the analysis in the Draft EIR is inadequate but serves as introductory text to the remainder of the comment. Therefore, no further response is warranted under this comment and the remainder of the commenter's concerns are addressed in further detail below.

The comment letter summarizes comments from the two reports prepared by Lozeau Drury's consultants and included as Exhibits A and B which are included in Attachment A to this Final EIR. Information provided in the two exhibits is summarized and addressed below.

Response to Comment O-2

This comment summarizes the Project description of the Draft EIR. The summary Project description provided is generally correct. For a more detailed description of the proposed Project, please refer to Section III, Project Description, of the Draft EIR. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment O-3

The comment cites a variety of information from CEQA, portions of the CEQA Guidelines, and certain CEQA case law, and but does not raise any specific environmental concern regarding the Draft EIR or the Project. The Draft EIR has been prepared in accordance with CEQA and the City's CEQA requirements. These citations regarding the purpose of CEQA are noted. This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment O-4

The comment cites a variety of information from CEQA, portions of the CEQA Guidelines, and certain CEQA case law related to the analysis of project alternatives. The comment states that the Project objectives included in the Draft EIR essentially limit the alternatives to the Project and fails to consider alternatives that would reduce the significant air quality, GHG, and transportation impacts to less-than-significant levels. The comment also states that the City failed to adopt the environmentally superior alternative that would reduce some of the Project's impacts.

Section VI (Alternatives to the Proposed Project) of the Draft EIR includes a range of potential alternatives to Project that could feasibly accomplish most of the basic objectives of the Project.

A total of nine Project objectives are listed on pages III-26 and VI-3 of the Draft EIR and they are not limited to only a logistics center. The alternatives would not meet the Project objectives to the same extent as the Project. The Draft EIR includes a reasonable range of alternatives that would reduce, but not eliminate the Project's significant and unavoidable impacts related to air quality, GHG, and transportation. Pages VI-3 and VI-4 of the Draft EIR considered other Project alternatives but these were rejected as infeasible for detailed study (CEQA Guidelines Section 15126.6(c)). Alternative B (Reduced Project Alternative) would reduce the Project square footage by 25 percent but would not eliminate the Project's significant and unavoidable impacts. Reducing the Project's square footage by 50% still would not eliminate the Project's significant and unavoidable impacts related to air quality, GHG, and transportation. The comment fails to identify other alternatives that would eliminate the Project's significant and unavoidable impacts. Lastly, the comment incorrectly states that Alternative B was not selected as the environmentally superior alternative. Page VI-14 of the Draft EIR states: "Based on the analysis provided above and in the Alternatives Comparison Table (see Table VI-1), it has been determined that Alternative B (Reduced Project Alternative) would be the environmentally superior alternative."

Response to Comment O-5

This comment provides opening statements regarding the Project's impacts on biological resources based on site observation and review of the Draft EIR by Dr. Smallwood (Attachment A to the Final EIR). This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft EIR; therefore, no further response is required.

Response to Comment O-6

This comment expresses concern regarding inadequate baseline and failing to analyze the Project's impacts on biological resources. Regarding the commenter's concern about biological resources impact assessment, please refer to Section IV.A of the Draft EIR for a detailed description of potential biological resource impacts associated with the proposed Project.

While eBird and similar databases referenced by Dr. Smallwood are a valuable resource and often referenced when determining species potential for occurrence, other factors were considered during the impacts assessment including current site conditions and habitats present, current land use, and adjacent land use and habitat. Birds may be observed flying between suitable habitat patches or during longer-distance migrations in a manner that is largely incidental to the conditions of the Project site.

Dr. Smallwood states that he observed 32 species of vertebrate wildlife at the Project site. Bird species (and other wildlife) are generally assessed based on the likelihood of a site to support critical life functions, rather than the potential for the species to simply fly over the site. The EIR biologists do not typically consider species that are observed only in aerial transit, well above a given site, to be present at the site. Natural and semi-natural habitats in the greater vicinity are

variable and include tidally-influenced marsh at Don Edwards San Francisco Bay National Wildlife Refuge, oak woodland and expansive hills in the open space east of San Jose, and other land cover types that are not comparable in quality or extent to the Project site.

Dr. Smallwood states that 49 special-status species could use the site for staging, stopover, flyover, foraging, cover, roosting or breeding, including FCG Birds of Prey and TWL ("Taxa to Watch List"; Shuford and Gardali 2008). Although the details of approaches may vary somewhat, species typically regarded as "special-status" in this context include those that have been formally listed, or are candidates for such listing under the federal Endangered Species Act (ESA) and/or California Endangered Species Act (CESA); CDFW Fully Protected Species (CFP); and, CDFW Species of Special Concern (SSC). Although SSCs generally have no special legal status, they are given special consideration under CEQA. Bat species are also evaluated for conservation status by the Western Bat Working Group (WBWG), a non-governmental entity; bats named as a "High Priority" or "Medium Priority" species for conservation by the WBWG are typically considered special-status. The majority of the observed species that Dr. Smallwood classifies as "special-status" are common and widespread species that are not typically given special consideration under CEQA or even included on CDFW's highly inclusive Special Animals List. For example, simply being referenced in the California Fish and Game Code (e.g., all birds of prey) does not indicate that a species is special-status.

Dr. Smallwood posits that special-status bat species were not sufficiently addressed in the Draft EIR. The California Fish and Game Code offers protection to bat species and their roosting habitat, including individual roosts and maternity colonies. While trees present at the Project site could provide temporary roosts (e.g., night roosts) for bat species, many of the trees at the Project site are relatively small, and do not provide suitably large/deep hollows for the establishment of maternity or hibernacula roosts. The site is also currently subjected to regular direct and indirect anthropogenic disturbance mainly consisting of vehicular and pedestrian traffic from adjacent development, which is a deterrent to roosting for several special-status bat species. Buildings have been well maintained and do not have broken windows or similar ingress/ egress points for bats. Based on this comment, Mitigation Measure BIO-1 on page IV.A-7 of the Draft EIR has been revised as follows:

- **Mitigation Measure BIO-1 Nesting Birds <u>and Roosting Bats</u>:** If feasible, all vegetation removal shall be conducted during the non-breeding season (i.e., September 1 to January 31) to avoid direct impacts to nesting birds. If such work is scheduled during the breeding season, a qualified biologist or ornithologist shall conduct a pre-construction survey to determine if any birds are nesting within the Project site. The pre-construction survey shall be conducted within 15 days prior to the start of work from March through May (since there is a higher potential for birds to initiate nesting during this period), and within 30 days prior to the start of work from June through July. If active nests are found during the survey, the biologist or ornithologist shall determine an appropriately sized buffer

around the nest in which no work shall be allowed until the young have successfully fledged. The size of the buffer shall be determined by the biologist or ornithologist in consultation with the California Department of Fish and Wildlife, and would be based on the nesting species, its sensitivity to disturbance, and the expected types of disturbance.

In order to avoid impacts to roosting bats, a pre-construction habitat assessment and survey(s) for bat roosts shall be conducted in any large trees (dbh >24 inches) within 100 feet of any planned work areas and in any buildings planned for demolition. This effort shall occur prior to the start of work to evaluate whether potential roost habitat occurs and to determine the type (i.e., maternity or non-maternity) and status (i.e., active or inactive) of the roost. If an active maternity or special-status bat roost is found, removal of maternity roost trees or building shall be avoided during the maternity roosting season or until a qualified biologist determines the roost has been vacated. Felled trees without maternity or special-status roosts shall be allowed to lay on the ground for one night to allow any undetected roosting bats to leave the tree before it is chipped or taken offsite.

Response to Comment O-7

This comment expresses concern regarding the impacts on wildlife from additional traffic generated from the Project. Using data regarding the number of birds estimated to be killed on roads at a national scale, Dr. Smallwood estimates that automobile traffic related to the Project would result in 82,302 bird deaths annually. However, Dr. Smallwood does not factor site conditions into this calculation. The Project site is developed and is within a highly urbanized area that is already subject to a high volume of traffic. Further, it is effectively impossible to accurately estimate how many birds may be killed by vehicles in these areas as a result of the Project, or by what magnitude any such general estimate would exceed existing baseline avian mortality on these roads. Thus, assessing the potential significance of such impacts under CEQA is exceedingly difficult if not infeasible. Finally, as Dr. Smallwood provides no site specific information as substantial evidence to support his speculative comment.

Response to Comment O-8

This comment expresses concern regarding the Project's impacts on wildlife resulting from bird strikes. There is increasing awareness that collision with buildings and structures is a noteworthy cause of avian mortality worldwide. A number of design factors are associated with the average rate of bird collisions, including the total extent of exterior glazing (glass; e.g., windows), size of individual contiguous glazing panels, glazing reflectivity, placement and types of landscaping, details of on-site artificial night lighting, and other factors.

The Draft EIR biologists reviewed an architectural design sheet for the proposed development within the Project site (Draft EIR "Figure III-2 – Exterior Elevations"). The design sheet shows the overall exterior of the proposed development. Glazing on the development overall is

minimal. Glazing on the industrial building consists of narrow windows, all of which are isolated from each other at regular intervals (versus being grouped/conjoined to form larger contiguous window panels). The elevations also feature forms of architectural relief (spatially-offset adjacent faces) as well as varied (opaque) materials and colors, all of which will "break up" the exterior visually (i.e., create "visual noise"), and increase the likelihood that birds will perceive the building overall as a solid surface. The two corner offices contain larger tracts of contiguous (directly adjacent) windows. However, the windows comprise a relatively small portion of the overall building, and are broken up into smaller areas by mullions (as opposed to a large contiguous glass panel). Overall, by current architectural/design standards, the development (as reflected in the designs referenced above) appears to provide a minimal risk of bird collisions. The number of birds that will collide with the building over time is virtually impossible to estimate, and thus speculative. In any event, these impacts are unlikely to be significant at a regional or even local scale. In particular, bird strikes (to the degree that such occur, if at all) are more likely to involve common (and not special-status) species given their relative abundance in the area and local conditions. Given this, and based on considered by the City's experts, there is no substantial evidence that the Project could have a significant impact to wildlife relating to bird strikes.

Response to Comment O-9

This comment expresses concern regarding the Project's impacts on wildlife movement. Based on surrounding land use and potential habitat, the City's experts determined that it is not warranted to consider the site critical to wildlife movement in the area. While some species, particularly flying species, can use "stepping stone" dispersal habitats, or closely spaced pockets of habitat between larger core habitat, above all, wildlife corridors must link two areas of core habitat and should not direct wildlife to developed areas or areas that are otherwise void of core habitat.[1] The Project site is a developed site surrounded by existing development and infrastructure. The majority of the bird species observed on-site are tolerant of anthropogenic activities and disturbance; these species often occur year-round, inclusive of successful breeding, in developed areas (e.g., Anna's hummingbird, northern mockingbird, black phoebe, house finch).[2, 3] Therefore, the City's experts determined that development of the Project site is not anticipated to result in any significant impacts to local or regional wildlife movement, let alone result in the loss of critically important habitat.

Response to Comment O-10

The comment states that the Project's CalEEMod input values were unsubstantiated or

[1] *Hilty, J. A., W. Z. Lidicker Jr, and A. M. Merenlender. 2019. Corridor Ecology: Linking Landscapes for Biodiversity Conservation. Second Edition. Island Press.*

[2] *Clark, C. J. and S. M. Russell (2020). Anna's Hummingbird (Calypte anna), version 1.0. In Birds of the World (A. F. Poole, Editor). Cornell Lab of Ornithology, Ithaca, NY, USA. https://doi.org/10.2173/bow.annhum.01*

[3] *Farnsworth, G., G. A. Londono, J. U. Martin, K. C. Derrickson, and R. Breitwisch (2020). Northern Mockingbird (Mimus polyglottos), version 1.0. In Birds of the World (A. F. Poole, Editor). Cornell Lab of Ornithology, Ithaca, NY, USA. https://doi.org/10.2173/bow.normoc.01*

inconsistent with information provided in the Draft EIR. The City's experts disagree with the comment and its supporting arguments in the letter's Exhibit B. The City's experts refute the commenter's supporting arguments from Exhibit B (see Attachment A to the Final EIR) in details, below, in responses to comments O-11 to O-17.

Response to Comment O-11

The commenter states that the CalEEMod land use should be "General Light Industry" instead of "Refrigerated Warehouse – Rail". The City's experts disagree with this statement. The land use selection in the Draft EIR accurately describes the Project's nature, which is a warehouse with possible cold storage use.

The commenter states that the square footage of the CalEEMod land use in the Draft EIR is underestimated by 40 square feet. The underestimation in the Draft EIR is a result of rounding square footage to the nearest hundred, and represents less than 0.01 percent of the total land use. The square footage in the CalEEMod output adequately describes the Project.

Response to Comment O-12

The commenter states that demolition hauling trips were not CalEEMod default. For clarification, the Project Applicant provided detailed construction schedules, truck trips, and equipment activities that are used to override the CalEEMod default values to ensure correct evaluation of construction activities.

Response to Comment O-13

The commenter states that construction equipment usages were not CalEEMod default. For clarification, the Project Applicant provided detailed construction schedules, truck trips, and equipment activities that are used to override the CalEEMod default values for construction activities.

Response to Comment O-14

The commenter states that the vehicle trip rates were modified incorrectly. The City's experts disagree with this statement. The CalEEMod input values for weekday vehicle trip rates are based on the traffic information provided by the City's experts, and Saturday and Sunday vehicle trip rates were adjusted according to CalEEMod defaults to reflect appropriate and real-world reductions in weekend activities. Page IV.E-23 of the Draft EIR states that the Project may serve a variety of potential industrial uses, but the expected use is a logistics/fulfillment center. Based on a review of a comparable fulfilment center in Newark, CA, an employment density of 330 employees was estimated along with daily and peak hour vehicle, van, and heavy truck trip estimates. Peak hour driveway counts were conducted on three mid-week days (April 21, 22, and 23, 2020) at the Newark site. An additional 24-hour driveway count was conducted on Tuesday, June 2, 2020. All four days of counts were averaged and used to develop peak hour trip generation rates. The daily trip generation rate was developed using the 24-hour count data. The employee density at the Newark site was estimated at 0.67 employees per thousand

square feet, based on data provided by the Project applicant. This translates to an estimated employment of 330 employees for the Project site (491,000 square feet times 0.67 employee per thousand square feet).

Therefore, the traffic input for CalEEMod accurately describes the Project's operation.

Response to Comment O-15

The commenter states that operational vehicle fleet mix was unsubstantiated. The City's experts disagree with this statement. Operational vehicle fleet mix was based on similar warehouse projects. . Please refer to Response to Comment O-14. Therefore, the traffic input for CalEEMod accurately describes the Project's operation.

Response to Comment O-16

The commenter states that the operational vehicle emission factors were unsubstantiated. Please refer to responses to Comment J-3 on the supporting data source for operational vehicle emission factors.

Response to Comment O-17

The commenter states that the City's water treatment facility uses anaerobic digestion in septic tanks as a part of the treatment process, and therefore the percentage of water treated by septic tanks in CalEEMod should be non-zero. Please refer to Page 35 of CalEEMod's Appendix A, Calculation Details for CalEEMod. According to CalEEMod's Appendix A, percentage of water treated by septic tanks should be non-zero only when wastewater generated by a development is treated "on-site in septic tanks". The Project does not propose any on-site wastewater treatment using septic tanks.

Response to Comment O-18

The commenter states that the Project's HRA is inadequate for two reasons: The exhaust PM_{10} emission rate used in the HRA does not match the exhaust PM_{10} value in CalEEMod output; and the health risks from Project construction and operation should be added and compared to the BAAQMD's health risk thresholds.

The Project's HRA has been updated to include exhaust PM_{10} emissions from all operational traffic in the Project's vicinity. Please refer to responses to comments J-2 and J-4, as well as Section III (Corrections and Additions to the Draft EIR) of this Final EIR for the updated HRA. The City's experts disagree with the comment stating that the Project's construction-related and operational cancer risks should be summed and compared to the BAAQMD's threshold of 10 in one million for individual projects. The commenter's understanding of the BAAQMD's CEQA threshold is incorrect. Please refer to Table 2-1 in the BAAQMD's 2017 CEQA Guidelines, in which it was stated that construction-related thresholds are the "same as operational thresholds" for "Risk and Hazards for new sources and receptors (Individual Project)". In other words, the

project-level operational cancer risk threshold of significance is 10 in a million, and the project-level construction cancer risk threshold of significance is *also* 10 in a million.

Therefore, the City's experts deem the Project's HRA adequate in determining the Project's health risk impact is less than significant.

Response to Comment O-19

The commenter states that the Project's health risk impacts would be significant according to the commenter's own air quality dispersion model. The City's experts disagree with the choice of air quality model used by the commenter, because AERSCREEN only produces worst-case scenario health risk impacts, without considering local meteorology and terrain, i.e. site-specific information. On the other hand, Industrial Source Complex Short Term Version 3 (ISCST3), used in the Draft EIR analysis, models pollutant dispersion using three years of meteorology data, as well as local terrain to account for factors such as the predominant wind directions, thereby providing a more representative analysis of air pollutant dispersion. Therefore, the HRA provided in the EIR relies a more complex air dispersion model and produces more accurate site-specific results compared to the AERSCREEN model used by the commenter.

Response to Comment O-20

The commenter states that the Draft EIR's GHG emissions analysis has several flaws, including reliance on the interim 2030 threshold, failure to exhaust all feasible mitigation measures, incorrect application of the City's Climate Action Plan, and inconsistency with the CARB's 2017 Scoping Plan. The City's experts disagree with the comment. First of all, the choice of the interim 2030 GHG threshold of 2.9 metric tons carbon dioxide equivalent per service population per year (MT CO_2e/SP/year) is substantiated in pages IV.C-18 through IV.C-20 of the Draft EIR. The Lead Agency employed its discretion in choosing 2.9 MT CO_2e/SP/year based on the substantial evidence presented in the Draft EIR.

Secondly, the Draft EIR has examined all possible mitigation measures and Project features that may reduce the Project's GHG emissions, and has included all those that are applicable and feasible for the Project, including but not limited to, pre-wiring for electric charging of heavy-duty trucks and on-site renewable energy generation. The GHG emissions analysis result in the recommendation in the EIR of all legally and technologically feasible GHG reduction measures.

Lastly, the Draft EIR correctly determines the consistency with the City's Climate Action Plan because it is the applicable local Climate Action Plan for the project-level consistency discussion. The Draft EIR does not include a discussion on the consistency with the CARB's 2017 Scoping Plan, because, as stated in the Regulatory Framework, CARB has not yet determined what amount of GHG emissions reductions it recommends from local government land use decisions.

Response to Comment O-21

This comment provides closing statements, deeming the Draft EIR inadequate and requesting for revisions and recirculation.

The attachments to the comment letter (Exhibits A and B included in Attachment A to the Final EIR) provided opinions on the adequacy Air Quality, GHG, and the Biological Resources Analysis. As stated in CEQA Guidelines Section 15151 regarding Standards for Adequacy of an EIR:

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

These comments do not identify any new significant impacts that were not already evaluated in the Draft EIR; therefore, recirculation of the Draft EIR is not warranted.

III. CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

The following corrections have been made to the 1000 Gibraltar Drive Project Draft Environmental Impact Report (Draft EIR) in response to the comments received during the public review period. Changes to the Draft EIR are listed by page number. Additions to the Draft EIR are identified by underlined text and deletions to the Draft EIR are identified by strikethrough text.

COVER

There are no changes to this page.

TITLE PAGE

There are no changes to this page.

NOTICE OF AVAILABILITY

There are no changes to this notice.

TABLE OF CONTENTS

There are no changes to the Table of Contents.

I. INTRODUCTION

There are no changes to this section.

II. EXECUTIVE SUMMARY

There are no changes to this section.

III. PROJECT DESCRIPTION

Page III-15 of the Draft EIR has been revised to include the following additional Project design features:

Trucks with Refrigeration Units (TRUs)

Future commercial and industrial operations with loading docks or dedicated delivery areas would provide electrical connections for trucks with refrigeration units (TRUs) and require that all electric-capable TRUs utilize the connections when in use. Such operations would be required to post signage at all loading docks and/or dedicated delivery areas directing electric-capable TRU operators to utilize the connections.

Other Energy Saving Features

- EV Charging: Truck Trailer- Conduits for 50 EV truck charging stations. Auto- 22 stalls

(6% of total stall count)

- CALGreen also requires 29 car/van stalls reserved for clean air (electric and/or hybrid) vehicles. (8% of Parking count)
- For operations, the Project would incorporate mandatory and voluntary measures of the CALGreen Code. The Project would reduce energy and water consumption, preserve existing trees and plant approximately 250 new trees, provide for 22 electric vehicle charging stations and conduits for 50 EV truck charging stations.
- PG&E is the local power provider and offers 60% renewable sources

IV.A IMPACTS FOUND TO BE LESS THAN SIGNFICANT

Mitigation Measure BIO-1 on page IV.A-7 and IV.A-8 of the Draft EIR has been revised to read as follows:

- **Mitigation Measure BIO-1 Nesting Birds and Roosting Bats:** If feasible, all vegetation removal shall be conducted during the non-breeding season (i.e., September 1 to January 31) to avoid direct impacts to nesting birds. If such work is scheduled during the breeding season, a qualified biologist or ornithologist shall conduct a pre-construction survey to determine if any birds are nesting within the Project site. The pre-construction survey shall be conducted within 15 days prior to the start of work from March through May (since there is a higher potential for birds to initiate nesting during this period), and within 30 days prior to the start of work from June through July. If active nests are found during the survey, the biologist or ornithologist shall determine an appropriately sized buffer around the nest in which no work shall be allowed until the young have successfully fledged. The size of the buffer shall be determined by the biologist or ornithologist in consultation with the California Department of Fish and Wildlife, and would be based on the nesting species, its sensitivity to disturbance, and the expected types of disturbance.

  In order to avoid impacts to roosting bats, a pre-construction habitat assessment and survey(s) for bat roosts shall be conducted in any large trees (dbh >24 inches) within 100 feet of any planned work areas and in any buildings planned for demolition. This effort shall occur prior to the start of work to evaluate whether potential roost habitat occurs and to determine the type (i.e., maternity or non-maternity) and status (i.e., active or inactive) of the roost. If an active maternity or special-status bat roost is found, removal of maternity roost trees or building shall be avoided during the maternity roosting season or until a qualified biologist determines the roost has been vacated. Felled trees without maternity or special-status roosts shall be allowed to lay on the ground for one night to allow any undetected roosting bats to leave the tree before it is chipped or taken off-site.

IV.B AIR QUALITY

Pages IV.B-10 and IV.B-11 of the Draft EIR have been revised to read as follows, including revisions to Figure IV.B-1:

Existing Sources and Levels of Local Air Pollution

In the Bay Area, stationary and mobile sources are the primary contributors of TACs and $PM_{2.5}$ emissions to local air pollution. In an effort to promote healthy infill development from an air quality perspective, the BAAQMD has prepared guidance entitled Planning Healthy Places.[1] The purpose of this guidance document is to encourage local governments to address and minimize potential local air pollution issues early in the land-use planning process, and to provide technical tools to assist them in doing so. Based on a screening-level cumulative analysis of mobile and stationary sources in the Bay Area, the BAAQMD mapped localized areas of elevated air pollution that: 1) exceed an excess cancer risk of 100 in a million; 2) exceed PM2.5 concentrations of 0.8 micrograms per cubic meter; or 3) are located within 500 feet of a freeway, 175 feet of a major roadway (with more than 30,000 annual average daily vehicle trips), or 500 feet of a ferry terminal. As shown on Revised Figure IV.B-1, Cumulative Sources of Toxic Air Contaminants, elevated levels of $PM_{2.5}$ and/or TAC pollution currently extend across the northwest portion of the Project site.

Sensitive Receptors

There are groups of people who are more affected by air pollution than others. CARB has identified the following persons who are most likely to be affected by air pollution: children under 14, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. Existing sensitive land uses near the Project site include multi-family residential buildings to the east, south, and west of the Project site.

Existing Odors

Other air quality issues of concern include nuisance impacts from odors; objectionable odors may be associated with a variety of pollutants. Odors rarely have direct health impacts, but they can be very unpleasant and lead to anger and concern over possible health effects among the public. According to the BAAQMD, the following odor sources are of particular concern: wastewater treatment plants, oil refineries, asphalt plants, chemical manufacturing, painting/coating operations, coffee roasters, food processing facilities, recycling operations and metal smelters.

[1] *Bay Area Air Quality Management District (BAAQMD), 2016. Planning Healthy Places; A Guidebook for Addressing Local Sources of Air Pollutants in Community Planning, May.*

The Project site is surrounded by light industrial and commercial uses, which may include one or more of these typical odor sources.

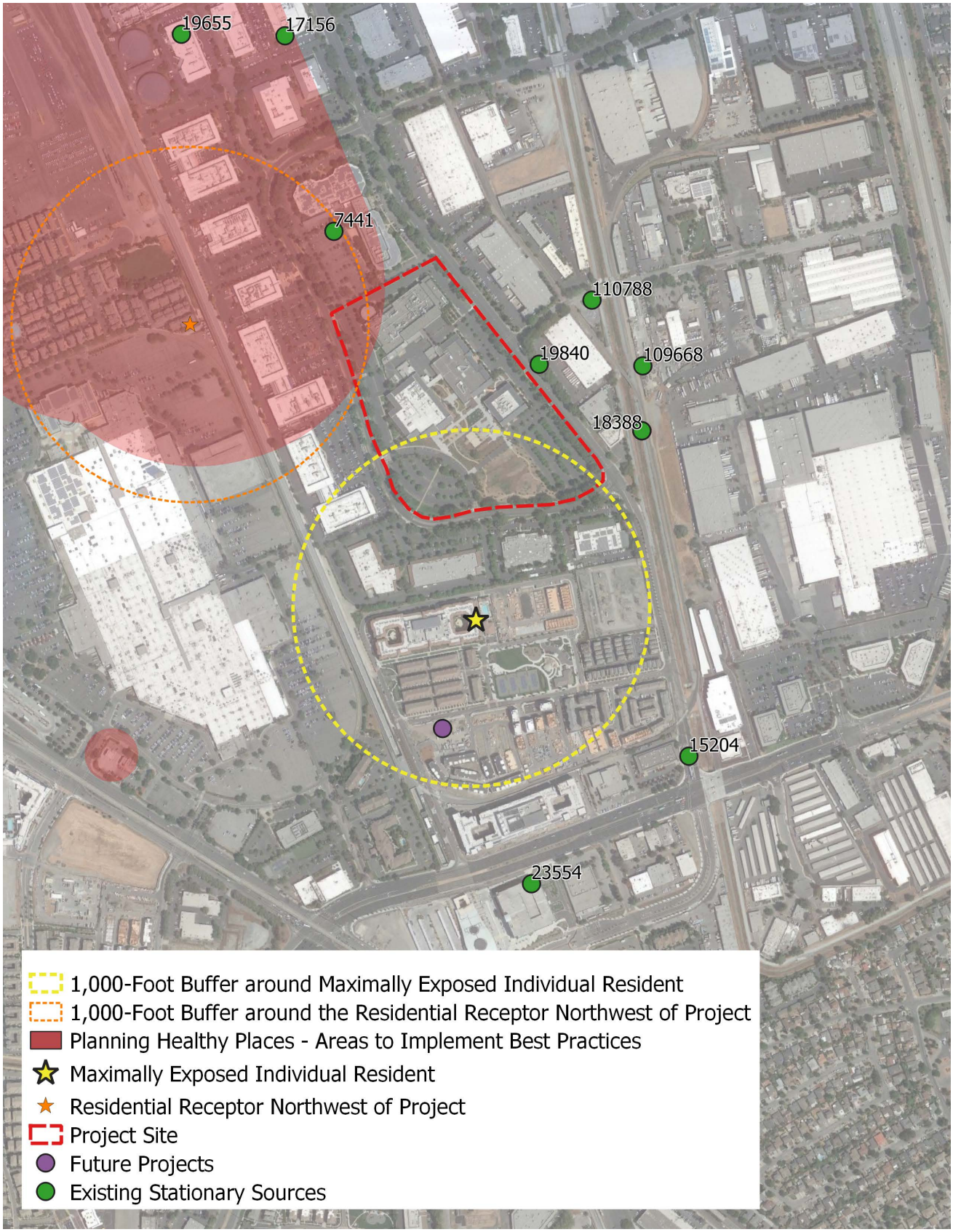

Figure IV.B-1. Cumulative Sources of Toxic Air Contaminants

Pages IV.B-20 through IV.B-24 of the Draft EIR have been revised to read as follows:

Operational Emissions of Criteria Air Pollutants

Project operation would generate criteria air pollutant emissions that could potentially affect regional air quality. The primary pollutant emissions of concern during Project operation would be ROG, NOx, and exhaust PM_{10} and $PM_{2.5}$ from mobile sources, energy use, area sources (e.g., consumer products and architectural coatings), and stationary sources. Since statewide vehicle emission standards are required to improve over time in accordance with the Pavley (Assembly Bill 1493) and Low-Emission Vehicle regulations (Title 13, California Code of Regulations, and Section 1961.2), Project emissions were estimated for ~~during~~ the earliest ~~first three~~ year~~s~~ of operation (2022~~, 2023, and 2024~~) to conservatively evaluate the effect of mobile emissions ~~improving over time~~.

Because the Project operation could include cold storage for future tenants, the Project's operation vehicle fleet may include trucks and/or trailers equipped with transport refrigeration unit (TRUs). Stationary activities of the Project's TRUs, such as daily unloading and seasonal parking, would not emit any criteria air pollutants~~,~~ because any TRUs entering the Project site are required to be plug-in capable and ~~to~~ utilize the Project's electrical connections when idling. Transiting activities of the Project's TRU on and off the Project site would emit hydrocarbons, NOx, and PM. Emissions from transiting TRU operations were calculated based on the assumptions in Table IV.B-7, and were included in the Project's total unmitigated operational emissions. Unmitigated emissions of ROG, NOx, PM_{10}, and $PM_{2.5}$ during Project operation were estimated using the CalEEMod input parameters summarized in Table IV.B-4 and additional assumptions summarized in Table IV.B-7.

Table IV.B-7
Operation Assumptions for CalEEMod

CalEEMod Input Category	CalEEMod Land Use Type
Daily Vehicle Trips[a]	Weekday daily trip rates for each trip type (heavy trucks, vans and other passenger cars, and commutes) were based on the Project trip generation from the traffic analysis. Weekend daily trip rates were adjusted based on CalEEMod default ratios between weekday trip rates and weekend trip rates.
Daily Vehicle Miles Travelled (VMT)[a]	Trip lengths for each trip type (heavy trucks, vans and other passenger cars, and commutes) were adjusted so that the resulting daily VMT is consistent with that in the traffic analysis.
Fleet Mix[b]	It was assumed that heavy truck trips consist of 85 percent medium-heavy duty trucks (MHD) and 15 percent heavy-heavy duty trucks (HHD); van and other passenger car trips consist of 40 percent light-heavy duty trucks (LHD), 20 percent medium duty trucks (MDV), 20 percent light-duty trucks, and 20 percent light-duty automobiles (LDA). Fleet age distribution for each vehicle type is default from California On-Road Mobile Source EMission FACtors (EMFAC) model.

Transport Refrigeration Unit (TRU) Operation	It was conservatively assumed that all heavy truck trips would be equipped with TRUs of 25 horsepower and 2014 model year, operating throughout the travel except when idling. CARB's Off-Road Diesel Equipment Emissions Factors 2017 Updates were used to calculate the emission factors of individual TRUs. Duration of TRU operation was calculated assuming that trucks would travel at 5 miles per hour on the Project site, at 25 miles per hour on local roadways near the Project site, and at 60 miles per hour for the rest of the trip.
Stationary Sources	A 175-horsepower diesel early suppression fast response (ESFR) fire pump would be required for the Project. It was assumed that the fire pump would be used for non-emergency operation up to 50 hours per year (for routine testing and maintenance).

Source:

[a]Fehr and Peers, 2020. Email titled: 1000 Gibraltar total VMT (transportation), from: Ellen Poling, to: Geoff Reilly. October 14.

[b]California Air Resources Board, 2017. EMFAC 2017 Handbook for Project-Level Analysis, V1.0.1. December 22.

CalEEMod, EMFAC 2017 Emissions Factors, TRU Emissions Calculations (Appendix F).

The annual average emissions of criteria pollutants and precursors during the first ~~three~~ years~~s~~ of Project operation are compared to the BAAQMD's thresholds of significance in Table IV.B-8. Unmitigated ROG and exhaust PM_{10} and $PM_{2.5}$ emissions from Project operation were below the thresholds of significance for each year evaluated; however, unmitigated NOx emissions from Project operation were above the threshold of significance ~~during the first two years of operation in 2022 and 2023. By 2024, the NOx emissions from Project operation were below the threshold of significance due to anticipated reductions in fleetwide average vehicle emissions over time~~. As shown in Table IV.B-8, approximately 98 percent of the Project's estimated NOx emissions are from mobile sources (e.g., trucks and light-duty vehicles) and are associated with running emissions from Project-generated vehicles miles travelled (VMT).

Table IV.B-8
Estimated Unmitigated and Mitigated Project Operation Emissions

Emission Scenario	Sources	Maximum Annual Emissions (Tons)				Average Daily Emissions (Pounds)			
				Exhaust				Exhaust	
		ROG	NOx	PM_{10}	$PM_{2.5}$	ROG	NOx	PM_{10}	$PM_{2.5}$
2022 Unmitigated	Area	2.19	<0.01	<0.01	<0.01	11.98	<0.01	<0.01	<0.01
	Energy	0.01	0.09	0.01	0.01	0.06	0.52	0.04	0.04
	Stationary	0.01	0.02	<0.01	<0.01	0.04	0.11	0.01	0.01
	On-Road Mobile	1.17	12.97	0.08	0.08	6.43	71.06	0.46	0.44
	TRUs	1.02	1.42	0.04	0.04	0.16	7.78	0.22	0.22
	Total	3.4	**13.1**	0.1	0.1	18.5	**71.6**	0.5	0.5
2022 With Mitigation Measure AIR-1	On-Road	~~1.02~~	~~11.70~~	~~0.09~~	~~0.09~~	~~5.57~~	~~64.12~~	~~0.51~~	~~0.48~~
	Mobile	1.01	10.660	0.08	0.08	5.54	58.41	0.46	0.44
	Total	3.2	~~**11.8**~~ **12.2**	0.1	0.1	17.6	~~**64.4**~~ **58.9**	0.5	0.5
~~2023 Unmitigated~~[a]	~~Mobile~~	~~1.04~~	~~10.0~~	~~0.06~~	~~0.06~~	~~5.71~~	~~54.81~~	~~0.35~~	~~0.34~~
	~~Total~~	~~3.2~~	~~**10.1**~~	~~0.1~~	~~0.1~~	~~17.7~~	~~**55.3**~~	~~0.4~~	~~0.4~~
~~2023 With Mitigation Measure AIR-1~~[a]	~~Mobile~~	~~0.97~~	~~9.28~~	~~0.08~~	~~0.07~~	~~5.33~~	~~50.85~~	~~0.42~~	~~0.40~~
	~~Total~~	~~3.2~~	~~9.4~~	~~0.1~~	~~0.1~~	~~17.4~~	~~51.4~~	~~0.5~~	~~0.4~~
~~2024 Unmitigated~~[a]	~~Mobile~~	~~0.99~~	~~9.60~~	~~0.06~~	~~0.06~~	~~5.44~~	~~52.59~~	~~0.34~~	~~0.32~~
	~~Total~~	~~3.2~~	~~9.7~~	~~0.1~~	~~0.1~~	~~17.5~~	~~53.1~~	~~0.4~~	~~0.4~~
BAAQMD's Thresholds		10	10	15	10	54	54	82	54

Note:
***Bold and shaded** means threshold exceedance.*
[a]Emissions from area, energy, and stationary sources were assumed to be the same as 2022.
Source: CalEEMod (Appendix F).

Trucks are significant contributors to the formation of ozone, $PM_{2.5}$, and DPM in California, especially trucks over 10,000 pounds gross vehicle weight rating ("GVWR"), which are responsible for over 70 percent of NOx emissions from on-road mobile sources as of 2019.[2] Over the last three decades, NOx emission standards for on-road trucks have become more stringent. For NOx, the standard has decreased from 6.0 grams per brake horsepower hour ("g/bhp-hr") in 1990 to 0.01 g/bhp-hr in 2010, which means that a heavy-duty truck manufactured in 2000 could

[2] *California Air Resources Board, 2019. Staff White Paper, California Air Resources Board Staff Current Assessment of the Technical Feasibility of Lower NOx Standards and Associated Test Procedures for 2022 and Subsequent Model Year Medium-Duty and Heavy-Duty Diesel Engines. April 18.*

be as high as 60 times more polluting than a heavy-duty truck with the same GVWR manufactured after 2010. CARB's Truck and Bus Regulation for trucks greater than 14,000 pounds GVWR also results in higher truck turnover rate by eliminating trucks powered by a 1999 or older model year engine by year 2015, and requiring all trucks to be powered by 2010 or newer models by year 2023.[3]

Consistent with, but more stringent than, the CARB's Truck and Bus Regulation, Mitigation Measure AIR-1: Tenant-Owned Vehicle Model Year Requirement, below, requires 2014~~0~~ or newer model year engines on all heavy-duty trucks more than 14,000 pounds GVWR owned by the project tenant accessing the Project site. ~~Mitigation Measure AIR-1 will be applicable until 2024, beyond which point the unmitigated vehicle emissions from the project would no longer contribute to an exceedance of NOx emissions thresholds.~~ As shown in Table IV.B-8, Mitigation Measure AIR-1 would reduce overall Project NOx emissions in 2022 ~~and 2023~~ by about 16~~0 and 7~~ percent~~, respectively~~; however, Project NOx emissions in 2022~~3~~ would remain above the threshold of significance with implementation of Mitigation Measure AIR-1.

No on-site mitigation options are available other than Mitigation Measure AIR-1: Tenant-Owned Vehicle Model Year Requirement. Although it is possible to reduce NOx emissions further by placing a limit on vehicle model years for the third-party vehicles (vans and other passenger cars) accessing the Project site, such measures are difficult to implement in an effective manner. Unlike tenant-owned vehicles, there is no effective protocol for monitoring third-party vehicles accessing the Project site. Therefore, additional off-site mitigation would be required to reduce the residual NOx emissions, a maximum of 2.2 ~~1.8~~ tons per year ~~for two years of operation before 2024~~, as shown in Table IV.B-8. Mitigation Measure AIR-2: Emissions Offsets would require the project applicant to offset the NOx emissions ~~before 2024~~ below the threshold of significance by either implementing a specific offset program (e.g., equipment replacement), funding the implementation of an emission reduction project through payment of a mitigation offset fee to the BAAQMD's Bay Area Clean Air Foundation, or a combination of the two approaches, in an amount sufficient to mitigate residual emissions. The BAAQMD recommends identifying offset programs located within the nine-county Bay Area in order to reduce the project's cumulative contribution to the region's existing air quality conditions.

Mitigation Measure AIR-1 on page IV.B-24 of the Draft EIR has been revised to read as follows:

Mitigation Measure AIR-1: Tenant-Owned Vehicle Model Year Requirement

At the beginning of Project tenancy, the Project Applicant shall submit proof of evidence to the City of Milpitas that any tenant-owned vehicles above 14,000 pounds gross vehicle weight rating (GVWR) accessing the Project site are solely powered by 2014 ~~2010~~ or newer engine models. Proof of evidence can include, but is not limited to: Department of Motor Vehicles registration

[3] *California Air Resources Board, 2019. The Road to 2020: Is Your Vehicle Ready? September.*

records; emission control labels on individual vehicles; or records from Truck Regulation Up-load, Compliance, and Reporting System (TRUCRS). ~~Compliance shall end in 2024.~~

Mitigation Measure AIR-2 on pages IV.B-24 and IV.B-25 of the Draft EIR has been revised to read as follows:

Mitigation Measure AIR-2: Emission Offsets

At the beginning of Project tenancy ~~For Project operation in 2022~~, the Project Applicant, with the oversight of City of Milpitas Planning Department, shall implement emission offset program(s), as necessary, to reduce Project emissions below 10 tons per year for a minimum of 3 years. The NOx emissions offset shall either be based on the existing EIR analysis (a reduction of 2.2 tons of NOx per year) or based on an updated NOx emissions inventory of the tenant-specific vehicle fleets and annual vehicle miles traveled. The Project Applicant shall participate in either of the following NOx offset programs ~~two options~~ or a combination of both to reduce Project NOx emissions below 10 tons per year:

1. Directly implement a specific offset program (such as requiring Project tenant(s) to replace equipment in the existing tenant-owned operation fleet) to reduce ~~achieve a total annual reduction of 1.8 tons of~~ Project NOx emissions below 10 tons per year, subject to the City of Milpitas Planning Department's approval. To qualify under this mitigation measure, the specific emissions offset Project must result in emissions reductions within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement. Prior to implementation of the direct offset projects, the Project Applicant must obtain Planning Department's approval of the proposed offset projects by providing documentation of the estimated ~~1.8 tons of~~ annual NOx reduction within the San Francisco Bay Area Air Basin. The Project sponsor shall notify the Planning Department within six months of completion of the offset projects for verification.

2. ~~Pay a mitigation offset fee~~ Fund NOx emissions reductions projects to be completed by an independent third-party approved by the City, such as ~~to~~ the BAAQMD's Bay Area Clean Air Third Foundation (Independent Party) in an amount to be determined at the time of the impact. ~~The mitigation offset fee will be determined by the Planning Department in consultation with the Project Applicant and BAAQMD, and will be based on the type of projects available at the time of impact. This fee is intended~~ Funds shall be sufficient to ~~fund~~ sponsor NOx emissions reduction offset projects to reduce the Project ~~achieve an annual reduction of 1.8 tons of~~ NOx emissions below 10 tons per year.

   For this option, the Project Applicant is required to enter into a Memorandum of Understanding (MOU) with the ~~BAAQMD's Foundation~~ Independent Third Party. The MOU will include details regarding the funds to be paid, administrative fee and the timing

of the emissions reductions project(s). Acceptance of this fee by the ~~BAAQMD~~ Independent Third Party shall serve as an acknowledgement and commitment by the ~~BAAQMD~~ Independent Third Party to: (1) implement an emissions reduction project(s) with a time frame to be determined based on the type of project(s) selected, after receipt of the mitigation fee to achieve the emission reduction objectives specified above; and (2) provide documentation to the City of Milpitas Planning Department and the Project Applicant describing the amount of mitigation fee and the project(s) funded by the mitigation fee, including the amount of emissions of NOx reduced (tons) within the San Francisco Bay Area Air Basin from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation fee following implementation of the emission reduction project(s), the Project Applicant shall be entitled to a refund in that amount from the ~~BAAQMD~~ Independent Third Party. To qualify under this mitigation measure, the specific emissions reduction project must result in emission reduction within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement.

If the Project Applicant is able to demonstrate that the NOx emissions generated by the Project are less than 10 tons per year for three consecutive years (i.e., NOx emissions offsets were not necessary over the three-year time period), then the Project Applicant may request authorization via a waiver to cease future monitoring and reporting of the NOx emission offset program(s). The waiver application shall contain a tenant-specific NOx emission inventory for review and approval by City of Milpitas Planning Department. If the Project operations will substantially expand, alter, or a change of tenancy will occur, the City of Milpitas may revoke the waiver.

Implementation of Mitigation Measures AIR-1 and AIR-2 would reduce the residual NOx emissions below the threshold of significance. However, because the offset program or offset fee required by Mitigation Measure AIR-2 cannot be determined to be real, verifiable, and enforceable at the time of preparation of this EIR, the Project's operational impacts related to emissions of criteria pollutant are considered ***significant and unavoidable***.

Pages IV.B-27 through IV.B-31 of the Draft EIR have been revised to read as follows:

Toxic Air Contaminants from Construction

The BAAQMD recommends evaluating the potential impacts to sensitive receptors located within 1,000 feet of a project. The Project's potential impacts to sensitive receptors from emissions of TACs are discussed below.

Construction would generate DPM and $PM_{2.5}$ emissions from the exhaust of off-road diesel construction equipment. The annual average concentrations of DPM and exhaust $PM_{2.5}$ during construction were estimated within 1,000 feet of the Project using the U.S. Environmental Protection Agency's Industrial Source Complex Short Term (ISCST3) air dispersion model. For this analysis, emissions of exhaust PM_{10} were used as a surrogate for DPM, which is a conservative assumption because more than 90 percent of DPM is less than 1 micron in diameter. The input parameters and assumptions used for estimating emission rates of DPM and $PM_{2.5}$ from off-road diesel construction equipment are included in Appendix F.

Daily emissions from construction were assumed to occur from 7AM to 7PM every day in accordance with the City of Milpitas ordinance. The exhaust from off-road equipment was represented in the ISCST3 model as a series of volume sources with a release height of 5 meters to represent the mid-range of the expected plume rise from frequently used construction equipment.

The model assumes a uniform grid of receptors spaced 20 meters apart around the Project site with receptor heights of 1.8 meters (approximately 5 feet, 11 inches, for ground-level receptors) for developing isopleths (i.e., concentration contours) that illustrate the air dispersion pattern from the various emission sources. The ISCST3 model input parameters included 3 years of BAAQMD meteorological data from Station 7905 located about 3.5 miles northwest of the Project.

Based on the annual average concentrations of DPM and $PM_{2.5}$ estimated using the air dispersion model (Appendix F), potential health risks were evaluated for the maximally exposed individual resident (MEIR) located about 470 feet south of the Project site. In addition, for informational purpose only, health risks were also evaluated for the next nearest sensitive receptor at the single-family residence 810 feet northwest of the Project site. The locations of the MEIR and the residential receptor northwest of the Project site are ~~is~~ shown in Figure IV.B-1, Cumulative Sources of Toxic Air Contaminants.

In accordance with guidance from the BAAQMD[4] and the Office of Environmental Health Hazard Assessment (OEHHA),[5] the health risk assessment calculated the incremental increase in cancer risk and chronic hazard index (HI) to sensitive receptors from DPM emissions during construction. The acute HI for DPM was not calculated because an acute reference exposure level has not been approved by OEHHA and CARB, and the BAAQMD does not recommend analysis of acute non-cancer health hazards from construction activity. The annual average concentrations of DPM at the sensitive receptors ~~MEIR~~ were ~~was~~ used to conservatively assess potential health risks to other nearby sensitive receptors.

It was conservatively assumed that the sensitive receptors ~~MEIR~~ would be exposed to an annual average DPM concentration over the entire estimated duration of construction (approximately

[4] Bay Area Air Quality Management District (BAAQMD), 2012. Recommended Methods for Screening and Modeling Local Risks and Hazards. May.

[5] Bay Area Air Quality Management District (BAAQMD), 2012. Recommended Methods for Screening and Modeling Local Risks and Hazards. May.

10.5 months). At both ~~MEIR~~ locations of residential receptors, the incremental increase in cancer risk from on-site DPM emissions during construction was assessed for a young child exposed to DPM for 10.5 months starting from infancy in the third trimester of pregnancy. This exposure scenario for the MEIR represents the most sensitive individual who could be exposed to adverse air quality conditions in the vicinity of the Project site. The input parameters and results of the health risk assessment are included in Appendix F.

Table IV.B-9 summarizes the estimated health risks at the MEIR and at the residential receptor northwest of the Project site due to DPM and $PM_{2.5}$ emissions from project construction and compares them to the BAAQMD's thresholds of significance. The estimated cancer risks and chronic HIs for DPM and annual average $PM_{2.5}$ concentrations from construction emissions were below the BAAQMD's thresholds of significance. Therefore, the impact from the Project's emissions of DPM and $PM_{2.5}$ during construction on nearby sensitive receptors would be ***less than significant***; therefore, no mitigation measures are required.

Table IV.B-9
Health Risks During Project Construction and Operation at the Maximally Exposed Individual Resident

Sensitive Receptor	Emission Source	Diesel Particulate Matter		Exhaust $PM_{2.5}$
		Cancer Risk (per million)	Chronic Hazard Index	Annual Average Concentration ($\mu g/m^3$)
MEIR	Project Construction	0.89	<0.01	0.01
	Unmitigated Project Operation	2.4 ~~3.1~~	<0.01	<0.01
Residential Receptor Northwest of the Project Site	Project Construction	0.28	<0.01	0.01
	Unmitigated Project Operation	1.2	<0.01	<0.01
	BAAQMD's Thresholds	10	1	0.3
	Exceed Threshold?	No	No	No

Notes: $\mu g/m^3$ = micrograms per cubic meter.
Source: Appendix F.

Toxic Air Contaminants from Operation

Two sources of TAC emissions would be present during Project Operation: the proposed emergency fire pump and the diesel vehicles equipped with TRUs accessing the Project site.

Emissions from the proposed fire pump was modelled as a point source. Because the exact location of the fire pump is not yet known, it was assumed that the fire pump would be located at a ground level near the southern edge of the proposed warehouse, which is the closest possible location to the MEIR. It was assumed that the point source would have a stack height of 3.66 meters, diameter of 1.83 meters, temperature of 739.8 degrees Celsius, and stack velocity of 45.3

meters per second. The emission rate for the proposed fire pump was calculated assuming the annual emissions from 50 hours of routine testing and maintenance would occur continuously (i.e., emissions occur 7 days a week, 24 hours per day, 365 days per year).

Emissions of DPM and $PM_{2.5}$ from diesel vehicles accessing the Project site and the accompanying TRU operations could pose a health risk to nearby sensitive receptors. Daily operations of trucks were assumed to occur 24 hours a day, 7 days a week. Emissions from on-road diesel vehicles during operation were modelled as line-area sources with a release height of 3 meters in the ISCST3 model along the circulation routes within the Project site and nearby roadways. The modelled roadways included the permitted truck routes in the vicinity of the Project site for local travel and the perimeter of the Project site for on-site transiting activities, as shown in Appendix F. For simplicity, all vehicles assessing the Project site were assumed to be diesel powered. PM_{10} emission factors for diesel vehicles travelling near the Project site and on the Project site were obtained from EMFAC 2017 for the speeds of 5 miles per hour (mph) and 25 mph, respectively. PM_{10} emission factors for the Project fleet were averaged by vehicle type and daily trips. Emission factors (grams per mile) were converted to emission rates (grams per second) assuming the same vehicle travel speeds as above. For TRU emissions on- and off-site, similar conversion from emission factors (grams per horsepower hour) to emission rates (grams per second) was done for both on-site transiting and off-site travel. ~~, and local emissions on the truck route segments were calculated by scaling total PM_{10} emissions using a ratio between the length of the modelled roadways and average trip length.~~ An air dispersion model similar to that of off-road construction was set up for the proposed Project. Details of calculations are included in Appendix F.

Based on the results of the air dispersion model (Appendix F), potential health risks were evaluated for the sensitive receptors (the MEIR and the residential receptor northwest of the Project) at the same locations as the sensitive receptors ~~MEIR~~ for Project construction, discussed above. It was conservatively assumed that the sensitive receptors ~~MEIR~~ would be exposed to an annual average DPM concentration for 30 years, which is consistent with OEHHA's guidance for evaluating cancer risk at the sensitive receptors. ~~MEIR.~~ Other parameters for the health risks calculation are similar to those used to evaluate the construction TAC emissions, and are included in Appendix F.

Estimates of the health risks at the MEIR and at the residential receptor northwest of the Project from exposure to DPM and exhaust $PM_{2.5}$ concentrations from diesel vehicles accessing the project site during operation are summarized and compared to the thresholds of significance in Table IV.B-9. At both sensitive receptors, ~~the MEIR,~~ the estimated excess cancer risks and chronic HIs for DPM and annual average $PM_{2.5}$ concentrations from the proposed fire pump and the diesel vehicles during project operation were below the thresholds of significance. Therefore, TAC emissions from project operation would have a less-than-significant impact on nearby sensitive receptors.

Cumulative Toxic Air Contaminants Emissions

In addition to a project's individual TAC emissions during construction and operation, the potential cumulative health risks to the MEIR from existing and reasonably foreseeable future sources of TACs were evaluated. The MEIR was evaluated because the project's contribution to health risks at the MEIR are at least three times greater than other nearby sensitive receptors, including the residential receptor northwest of the Project. The BAAQMD's online screening tools were used to provide conservative estimates of how much existing and foreseeable future TAC sources would contribute to cancer risk, HI, and $PM_{2.5}$ concentrations. The individual health risks associated with each source were summed to find the cumulative health risk at the MEIR.

Based on the BAAQMD's Permitted Stationary Sources Risks and Hazards Screening Tool,[6] no existing stationary source of TAC emissions were identified within 1,000 feet of the MEIR. As shown in Figure IV.B-1, ~~all the~~ there are five existing stationary sources of TAC emissions located within 1,000 feet of the Project, but more than 1,300 feet from the MEIR. The combined health risks from all the existing stationary sources near the Project site are less than 10 percent of the BAAQMD's cumulative health risk thresholds. Health risk impacts from these existing stationary sources would be substantially attenuated by the distance between individual sources and the sensitive receptors. According to BAAQMD guidance, concentrations of particulate matter tends to be reduced substantially or can even be indistinguishable from upwind background concentrations a distance 1,000 feet downwind from existing sources. Therefore, the cumulative health impacts from existing stationary sources beyond 1,000 feet of the MEIR are considered negligible. As shown in Figure III-8, Related Projects Map, there are two foreseeable future projects located within 1,000 feet of the MEIR. However, both of these projects are townhome development and would not include any stationary source of TAC emissions.

Preliminary health risk screening values at the MEIR from exposure to mobile sources of TACs were estimated based on the BAAQMD's Bay Area modelling of health risks from highways, railroads, and major roadways with an average annual daily traffic volume greater than 30,000 vehicles per day. According to the BAAQMD's modelling of mobile sources, nearby highways and major roadways contribute substantially to the existing health risks at the MEIR, as shown in Table IV.B-10.

Estimates of the cumulative health risks at the MEIR are summarized and compared to the BAAQMD's cumulative thresholds of significance in Table IV.B-10. The cumulative cancer risk and chronic HI from DPM emissions and annual average $PM_{2.5}$ concentrations at the MEIR were below the BAAQMD's cumulative thresholds. Therefore, the Project's emissions of DPM and $PM_{2.5}$ during construction and operation would have a ***less-than-significant*** cumulative impact on nearby sensitive receptors; therefore, no mitigation measures are required.

[6] *Baseline Environmental Consulting, 2021 ~~2020~~. Email communication between Ivy Tao at Baseline Environmental Consulting and Areana Flores at Bay Area Air Quality Management District titled: Stationary Source Information Request. February 25 ~~May 13~~.*

Table IV.B-10
Summary of Cumulative Health Risks at the Maximally Exposed Individual Resident

Emission Source	Source Type	Diesel Particulate Matter		Exhaust $PM_{2.5}$
		Cancer Risk (per million)	Chronic Hazard Index	Annual Average Concentration ($\mu g/m^3$)
Off-Road Diesel Construction Equipment	Project Construction	0.89	<0.01	0.01
On-Road Diesel Trucks and Fire Pump	Project Operation	2.4 ~~3.1~~	<0.01	<0.01
Highways	Existing Mobile Sources	10.5	NA	0.22
Major Roadways		3.7	NA	0.8
Cumulative Health Risks		17 ~~18~~	<0.1	0.3
BAAQMD's Threshold		100	10.0	0.8
Exceed Threshold?		No	No	No

Notes: $\mu g/m^3$ = micrograms per cubic meter; NA = not applicable.
Source:
BAAQMD's Bay Area Model of Health Risks from Highways, Railroads, and Major Roadways. Appendix F.

IV.C GREENHOUSE GAS EMISSIONS

Pages IV.C-12 of the Draft EIR has been revised to read as follows:

Executive Order B-55-18

Executive Order B-55-18, which was signed by Governor Brown in 2018, establishes a new statewide goal to achieve carbon neutrality by 2045, and achieve and maintain net negative emissions thereafter. The goal is supported by subsequent studies by Lawrence Livermore National Laboratory,[7] CARB,[8] and other entities, providing a portfolio of strategies for transportation, agriculture and industrial sectors, as well as carbon removal technologies.

Executive Order N-79-20

Executive Order N-79-20, which was signed by Governor Newson in 2020, provides a timeline for automakers to produce new ZEVs, and accelerates the development of charging and refuelling infrastructure, electric utilities, and others to plan for and support the increasing consumer

[7] *Lawrence Livermore National Laboratory, 2020. Getting to Neutral, Options for Negative Carbon Emissions in California. August.*

[8] *Energy and Environmental Economics, 2020. Achieving Carbon Neutrality in California, Pathways Scenarios Developed for the California Air Resources Board. October.*

demand for ZEVs. Under the order, all in-state sales of new passenger cars and trucks are to be zero-emission by 2035; all in-state sales of medium- and heavy-duty trucks and busses are to be zero-emission by 2045, but only where feasible; and all off-road vehicles and equipment sales are to be zero-emission by 2035 where feasible.

Mitigation Measure GHG-1 on pages IV.C-23 through IV.C-25 of the Draft EIR has been revised to read as follows:

Mitigation Measure GHG-1: Greenhouse Gas Reduction Plan

As a part of the application package for construction-related permits, the Project Applicant shall prepare a GHG Reduction Plan to demonstrate that the Project's GHG emissions per employee would be below the interim 2030 GHG threshold (2.9 metric tons carbon dioxide equivalent per service population) with the implementation of GHG reduction measures. Applicable GHG reduction measures include the following options:

- Implementation of the Transportation Demand Management ("TDM") Plan, described in Mitigation Trans-1;
- Increase installation of Level 2 charging stations from 22 (6 percent of total stalls) to 37 (10 percent of total stalls);
- Provide conduit for 50 EV charging stations (48 percent of total truck docks) either at the dock doors on in the truck court for future EV trucks;
- Site employers who own and operate truck fleets shall be required to inform their drivers of the anti-idling requirement;
- Future industrial operations shall prohibit idling of on-and-off road heavy-duty diesel vehicles for prolonged periods; and
- The Project will provide ~~commit to using~~ 10% of its electricity consumption by on-site solar installation at the building roof ~~renewable energy sources~~.

Other applicable GHG reduction measures that may be feasible include, but are not limited to, the following options:

- ~~Eliminating idling emissions from trucks and vans by providing electrical connections at the Project site (up to 9 percent reduction in total GHG emissions) for trucks with refrigeration units (TRU's) and require that all electric-capable TRU's utilize the connections when in use;~~
- Eliminating natural gas use at the Project site (approximately 3 percent reduction in total GHG emissions);
- Enroll in the program to purchase Silicon Valley Clean Air Energy Certificates;
- ~~Installation of solar panels on Project Site where 10% of the project's power is from solar panels;~~
- Other applicable action items included in the City of Milpitas Climate Action Plan; and

- Concrete Truck courts to reduce Heat Island effect.

For physical GHG reduction measures to be incorporated into the design of the Project, the measures shall be included on the drawings submitted for construction-related permits. If, after exhaustion of feasible physical design features and operational features specific to the Project, the Project's GHG emissions would still exceed the 2030 threshold, discussed above, the Project shall include the purchase of carbon credits as a reduction measure. The amount of carbon credits shall at least cover the difference between the interim 2030 threshold and the Project's GHG emissions after the consideration of design features, to be determined in the GHG Reduction Plan. The cost of carbon credit purchases shall be based on current market value at the time purchased and shall be based on the Project's operational emissions estimated in the GHG Reduction Plan or subsequent approved emissions inventory, which may result in emissions that are higher or lower than those estimated in the GHG Reduction Plan.

All carbon credits shall be purchased from a carbon offset registry (the registry) approved by CARB. The carbon credit shall be verifiable by the City of Milpitas and enforceable in accordance with the registry's applicable standards, practices, or protocols. The purchase of the carbon credits must substantively satisfy the requirements set forth in both subdivisions (d)(1) and (d)(2) of California Health and Safety Code §38562: real, permanent, quantifiable, verifiable, enforceable, and additional. The purchase of the carbon credits shall be approved by the City of Milpitas, and verified by an independent verifier who meets stringent levels of professional qualification (i.e., Accreditation Program for GHG Validation/Verification Bodies under the American National Standards Institute's National Accreditation Board, a GHG Emissions Lead Verifier accredited by CARB, or equivalent).

The amount of the carbon credits and the locations of the GHG-reducing programs generating these carbon credits shall be determined in accordance with the following preferences:

1. Off-site within the immediate neighbourhood surrounding the Project site, bounded by West Calaveras Boulevard to the north, Interstate 680 to the east, Montague Expressway to the South, and Interstate 880 to the west;
2. Within the City of Milpitas;
3. Within the San Francisco Bay Area Air Basin; and
4. Within the State of California.

Implementation of this mitigation measure will reduce the Project's GHG emissions to the maximum extent feasible, and is likely to reduce the Project's GHG emissions to below the applicable thresholds with the purchase of carbon credits. GHG reduction features in this mitigation measure would also make Project operation more consistent with the state-level plans and policies, such as the Sustainable Freight Action Plan and the recent executive orders on carbon neutrality and ZEVs. With the implementation of these GHG reduction features, especially the additional light-duty vehicle charging stations and pre-wiring for future use of heavy- and

medium-duty electric trucks, the Project goes beyond the 2019 Building Energy Efficiency Standards and municipal requirements to accommodate anticipated increases in the use of ZEVs.

Nevertheless, ~~However,~~ the full implementation of this mitigation measure hinges on the availability of carbon credits. There remains uncertainty of availability of sufficient carbon offset opportunities as well as uncertainty of reliabilities with carbon credit purchases through a third party. Therefore, the successful implementation of Mitigation Measure GHG-1 is considered speculative at this time. Thus, the Project's GHG emissions impact on the environment are conservatively considered ***significant and unavoidable***.

IV.D NOISE

There are no changes to this section.

IV.E TRANSPORTATION

Table IV.E-6 on page IV.E-29 of the Draft EIR has been revised as follows:

Table IV.E-6
Service Population (Employees + Residents) Summary

Area	Employees			
	Existing	Existing + Project	Cumulative No Project	Cumulative + Project
Project TAZ (1)	1,860	2,190	2,181	2,511
City of Milpitas	131,473	131,473	159,335	159,335
Santa Clara County	~~6,400,157~~ 2,896,757	~~6,400,157~~ 2,896,757	~~8,280,420~~ 3,856,423	~~8,280,420~~ 3,856,423
Alameda County	~~2,896,757~~ 2,377,156	~~2,896,757~~ 2,377,156	~~3,856,423~~ 3,036,586	~~3,856,423~~ 3,036,586
San Mateo County	~~2,377,156~~ 1,126,244	~~2,377,156~~ 1,126,244	~~3,036,586~~ 1,387,411	~~3,036,586~~ 1,387,411
Santa Clara/Alameda/ San Mateo Counties	6,400,157	6,400,157	8,280,420	8,280,420

(1) The traffic analysis zone (TAZ) containing the project site is TAZ 279. This TAZ contains other employment outside the Project site, which is currently vacant.

Mitigation Measure TRANS-1 on pages IV.E-30 through IV.E-32 of the Draft EIR has been revised to read as follows:

Mitigation Measure TRANS-1:

The Project applicant shall implement a travel demand management program for all employees with the goal of reducing the use of single-occupant vehicles for commuting. The measures most likely to be effective given the Project's location and expected use type include the following (measures are identified with the California Air Pollution Control Officers (CAPCOA) *Quantifying Greenhouse Gas Mitigation Measures* (August 2010) measure number and VMT reduction effectiveness range):

- Implement a commute trip reduction program with required implementation and monitoring (CAPCOA measure TRT-2, effectiveness range 4.2% - 21.0%);
- Provide ride-sharing programs (CAPCOA measure TRT-3, effectiveness range 1 – 15%);
- Implement subsidized or discounted transit program (CAPCOA measure TRT-4, effectiveness range 0.3% - 20%);
- Provide end-of-trip facilities (CAPCOA measure TRT-5, effectiveness based on effectiveness of measures TRT-2 and TRT-3);
- Implement commute trip reduction marketing (CAPCOA measure TRT-7, effectiveness range 0.8% - 4.0%);
- Implement car-sharing program (CAPCOA measure TRT-9, effectiveness range 0.4% - 0.7%);
- Restripe Green Bike lanes along property frontage; and
- Bike locker subsidy.

(a) VMT Strategy Report

- Prior to the issuance of an occupancy permit (Tenant to provide after 90 days of occupation), the Project Applicant (or Project site operator) shall prepare a VMT Strategy Report that includes the following items:
- Identification of a baseline Project home-based work VMT per employee estimate, which shall be determined using project-specific information derived from location-based data services such as StreetLight data which can estimate the trip generation, trip lengths, and VMT for the site. This shall be supplemented/verified by driveway counts, employee commute mode surveys, and employee residence data which can provide a second VMT estimate to verify the StreetLight estimate. Other methods may be approved by City staff if new data sources and methods become available by the time of the Project is occupied ~~may be taken from this EIR or updated based on more detailed/relevant Project information available at the time of the preparation of the VMT Strategy Report~~.
- Identification of the Santa Clara County regional home-based work VMT per employee, also derived from StreetLight data to provide an apples to apples comparison to the Project-specific baseline.
- Identification of the percent reduction in VMT needed to achieve the target of 15 percent below the regional average.
- Identification of selected transportation demand management strategies per the above list, and others if appropriate.
- Demonstration of how the TDM strategies in the VMT Strategy Report would reduce the home-based work VMT per employee generated by the Project ~~would be~~ to 15 percent below the countywide average home-based work VMT per employee.

After implementing the transportation demand management strategies selected in the VMT Strategy Report upon occupancy of the Project, the effectiveness of these measures relative to the performance target noted previously must be monitored, as follows.

(b) Project Site VMT Monitoring Approach ~~Monitoring~~

- The Project shall be monitored by the City or by the Project application/operator on an annual basis to determine the efficacy of the selected transportation demand management strategies in achieving the performance target of 15 percent below the regional average ~~14.31 home-based work VMT per employee~~. The monitoring shall include Project-generated VMT estimates compatible with the methodology used to estimate project baseline ~~benchmark~~ VMT so that performance comparisons can be made. The methodology for setting the baseline VMT and measuring the annual performance shall be defined in the VMT Strategy Report.
- An annual monitoring memorandum shall be submitted to City staff. If the Project site is found not to be in compliance with the mitigation measure, the Project must incorporate additional transportation demand management strategies to meet the performance target. The Project applicant/operator may propose new strategies that develop over time to further reduce Project-generated VMT if substantial evidence is provided to support the efficacy of the strategy. If a 15% VMT reduction is achieved for three consecutive years, the project will no longer need to provide annual reporting.

(c) Alternative Monitoring Approach

- The City of Milpitas may develop a citywide VMT monitoring program to allow global monitoring of City VMT, which may provide cost efficiencies and be a more effective way to track VMT generation by various uses in the City. The monitoring program could make use of emerging technologies including location-based services on cell phones and in vehicles to track trip lengths, along with traditional technologies such as driveway traffic counts. If such a program is developed, the Project could participate in the monitoring and demonstrate performance relative to the Project's VMT target.

V. GENERAL IMPACT CATEGORIES

There are no changes to this section.

VI. ALTERNATIVES TO THE PROPOSED PROJECT

There are no changes to this section.

VII. REFERENCES

There are no changes to this section.

VIII. PREPARERS TO THE EIR AND PERSONS CONSULTED

There are no changes to this section.

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IV. MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared pursuant to CEQA Guidelines (California Code of Regulations, Title 14), which state the following:

> *In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*
>
> *The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision-making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both.*

Table IV-1 lists the potentially significant impacts and proposed mitigation measures identified in the Final Environmental Impact Report (Final EIR). Table IV-1 describes the timing of implementation of the mitigation measures (i.e., when the measure will be implemented) and the City of Milpitas (City) staff or individual responsible for ensuring implementation of the measures. Finally, Table IV-1 describes the City staff or individual responsibility for monitoring the mitigation measures.

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Table IV-1
Mitigation Monitoring and Reporting Program

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
AESTHETICS				
Impact AES-1: Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area ***Significance of Impact Before Mitigation:*** Significant ***Significance of Impact After Mitigation:*** Less Than Significant	***Mitigation Measure AES-1:*** Outdoor lighting shall be designed to minimize glare and spillover to surrounding properties. The project design and building materials shall incorporate non-mirrored glass to minimize daylight glare. All lighting elements shall comply with Sections XI-10-54.17 of the City's Zoning Code and the proposed lighting plan shall be reviewed and approved by the City's Planning Department prior to issuance of a building permit.	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** Prior to issuance of Building Permit	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____
AIR QUALITY				
Impact AIR-2: Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard ***Significance of Impact before Mitigation:*** Significant ***Significance of Impact After Mitigation:*** Significant and Unavoidable	***Mitigation Measure AIR-1: Tenant-Owned Vehicle Model Year Requirement*** At the beginning of Project tenancy, the Project Applicant shall submit proof of evidence to the City of Milpitas that any tenant-owned vehicles above 14,000 pounds gross vehicle weight rating (GVWR) accessing the Project site are solely powered by 2014 or newer engine models. Proof of evidence of Tenant-Owned Vehicle Model Year Requirement include, but is not limited to: Department of Motor Vehicles registration records; emission control labels on individual vehicles; or records from Truck Regulation Up-load, Compliance, and Reporting System (TRUCRS).	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** During Project operation	***Monitoring Responsibility:*** City of Milpitas Planning Department City of Milpitas Public Works Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	Mitigation Measure AIR-2: Emission Offsets At the beginning of Project tenancy, the Project Applicant, with the oversight of City of Milpitas Planning Department, shall implement emission offset program(s), as necessary, to reduce Project emissions below 10 tons per year for a minimum of 3 years. The NOx emissions offset shall either be based on the existing EIR analysis (a reduction of 2.2 tons of NOx per year) or based on an updated NOx emissions inventory of the tenant-specific vehicle fleets and annual vehicle miles traveled. The Project Applicant shall participate in either of the following NOx offset programs or a combination of both to reduce Project NOx emissions below 10 tons per year: 1. Directly implement a specific offset program (such as requiring Project tenant(s) to replace equipment in the existing tenant-owned operation fleet) to reduce Project NOx emissions below 10 tons per year, subject to the City of Milpitas Planning Department's approval. To qualify under this mitigation measure, the specific emissions offset Project must result in emissions reductions within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement. Prior to implementation of the direct offset projects, the Project Applicant must obtain Planning Department's approval of the proposed offset projects by providing documentation of the estimated annual NOx reduction within the San Francisco Bay Area Air Basin. The Project sponsor shall notify the Planning Department within six months of completion of the offset projects for verification. 2. Fund NOx emissions reductions projects to be completed by an independent third-party approved by the City, such as the BAAQMD's Bay Area Clean Air Third Foundation			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	(Independent Party) in an amount to be determined at the time of the impact. Funds shall be sufficient to sponsor NOx emissions reduction offset projects to reduce the Project NOx emissions below 10 tons per year. For this option, the Project Applicant is required to enter into a Memorandum of Understanding (MOU) with the Independent Third Party. The MOU will include details regarding the funds to be paid, administrative fee and the timing of the emissions reductions project(s). Acceptance of this fee by the Independent Third Party shall serve as an acknowledgement and commitment by the Independent Third Party to: (1) implement an emissions reduction project(s) with a time frame to be determined based on the type of project(s) selected, after receipt of the mitigation fee to achieve the emission reduction objectives specified above; and (2) provide documentation to the City of Milpitas Planning Department and the Project Applicant describing the amount of mitigation fee and the project(s) funded by the mitigation fee, including the amount of emissions of NOx reduced (tons) within the San Francisco Bay Area Air Basin from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation fee following implementation of the emission reduction project(s), the Project Applicant shall be entitled to a refund in that amount from the Independent Third Party. To qualify under this mitigation measure, the specific emissions reduction project must result in emission reduction within the San Francisco Bay Area Air Basin that are real, surplus, quantifiable, enforceable, and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement. If the Project Applicant is able to demonstrate that the NOx			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	emissions generated by the Project are less than 10 tons per year for three consecutive years (i.e., NOx emissions offsets were not necessary over the three-year time period), then the Project Applicant may request authorization via a waiver to cease future monitoring and reporting of the NOx emission offset program(s). The waiver application shall contain a tenant-specific NOx emission inventory for review and approval by City of Milpitas Planning Department. If the Project operations will substantially expand, alter, or a change of tenancy will occur, the City of Milpitas may revoke the waiver.			
Impact AIR-3: Expose sensitive receptors to substantial pollutant concentrations ***Significance of Impact Before Mitigation:*** Significant ***Significance of Impact After Mitigation:*** Less Than Significant	***Mitigation Measure AIR-3: Fugitive Dust Control during Project Construction*** During Project construction, the contractor shall implement a dust control program that includes the following measures recommended by the Bay Area Air Quality Management District (BAAQMD): • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as	***Implementation Responsibility:*** Project Applicant/ Construction Contractor ***Implementation Frequency:*** During demolition, grading, and construction	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	soon as possible after grading unless seeding or soil binders are used. • A publicly visible sign shall be posted with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations. The above measures shall be included in contract specifications. In addition, an independent construction monitor shall conduct periodic site inspections, but in no event less than four total inspections, during the course of construction to ensure these mitigation measures are implemented and shall issue a letter report to the City of Milpitas Building Division documenting the inspection results. Reports indicating non-compliance with construction mitigation measures shall be cause to issue a stop work order until such time as compliance is achieved.			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
BIOLOGICAL RESOURCES				
Impact BIO-1: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites ***Significance of Impact Before Mitigation:*** Potentially Significant ***Significance of Impact After Mitigation:*** Less Than Significant	***Mitigation Measure BIO-1 Nesting Birds and Roosting Bats:*** If feasible, all vegetation removal shall be conducted during the non-breeding season (i.e., September 1 to January 31) to avoid direct impacts to nesting birds. If such work is scheduled during the breeding season, a qualified biologist or ornithologist shall conduct a pre-construction survey to determine if any birds are nesting within the project site. The pre-construction survey shall be conducted within 15 days prior to the start of work from March through May (since there is a higher potential for birds to initiate nesting during this period) and within 30 days prior to the start of work from June through July. If active nests are found during the survey, the biologist or ornithologist shall determine an appropriately sized buffer around the nest in which no work shall be allowed until the young have successfully fledged. The size of the buffer shall be determined by the biologist or ornithologist in consultation with the California Department of Fish and Wildlife, and would be based on the nesting species, its sensitivity to disturbance, and the expected types of disturbance. In order to avoid impacts to roosting bats, a pre-construction habitat assessment and survey(s) for bat roosts shall be conducted in any large trees (dbh >24 inches) within 100 feet of any planned work areas and in any buildings planned for demolition. This effort shall occur prior to the start of work to evaluate whether potential roost habitat occurs and to determine the type (i.e., maternity or non-maternity) and status (i.e., active or inactive) of the roost. If an active maternity or special-status bat roost is found, removal of maternity roost trees or building shall be avoided during the maternity roosting season or until a qualified biologist determines the roost has been vacated. Felled trees without maternity or special-status roosts shall be allowed to lay on the ground for one night to allow any undetected roosting bats to leave the tree before it is chipped or taken off-site.	***Implementation Responsibility:*** Project Applicant/ Construction Contractor ***Implementation Frequency:*** Prior to demolition	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
CULTURAL RESOURCES				
Impact CULT-1*:** Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5 ***Significance of Impact Before Mitigation: Potentially Significant ***Significance of Impact After Mitigation:*** Less Than Significant	***Mitigation Measure CULT-1 – Unanticipated Discovery Protocol for Archaeological Resources:*** If indigenous or historic-era archaeological resources are encountered during proposed Project development or operation, all activity within 100 feet of the find shall cease and the find shall be flagged for avoidance. The City and a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology, shall be immediately informed of the discovery. The qualified archaeologist shall inspect the find within 24 hours of discovery and notify the City of their initial assessment. If the resource is indigenous, the City shall also contact relevant California Native American Tribes to assist in determining if the resource may qualify as a tribal cultural resource. If the City determines, based on recommendations from the qualified archaeologist and, if the resource is indigenous, relevant California Native American Tribes, that the resource may qualify as a historical resource or unique archaeological resource (as defined in CEQA Guidelines § 15064.5), or a tribal cultural resource (as defined in PRC § 21074), the resource shall be avoided if feasible. Avoidance means that no activities associated with the proposed Project that may affect cultural resources shall occur within the boundaries of the resource or any defined buffer zones. If avoidance is not feasible, the City shall consult with appropriate Native American tribes (if the resource is indigenous) and other appropriate interested parties to determine treatment measures to avoid, minimize, or mitigate any potential impacts to the resource pursuant to Public Resources Code § 21083.2 and CEQA Guidelines § 15126.4. This shall include documentation of the resource and may include data recovery or other measures. Treatment for most resources would consist of, but would not be limited to, sample excavation, artifact collection, site documentation, and historical research, with the aim to target the	***Implementation Responsibility:*** Project Applicant/ Construction Contractor ***Implementation Frequency:*** During grading and construction	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	recovery of important scientific data contained in the portion(s) of the significant resource. The resource and treatment method shall be documented in a professional-level technical report to be filed with the California Historical Resources Information System. Work in the area may commence upon completion of approved treatment and under the direction of the qualified archaeologist.			
Impact CULT-2: Disturb any human remains, including those interred outside of dedicated cemeteries ***Significance of Impact Before Mitigation:*** Potentially Significant ***Significance of Impact After Mitigation:*** Less Than Significant	**Mitigation Measure CULT-2 – Unanticipated Discovery Protocol for Human Remains:** If human remains are uncovered during proposed Project construction, all work shall immediately halt within 100 feet of the find and the Santa Clara County Coroner shall be contacted to evaluate the remains and follow the procedures and protocols set forth in CEQA Guidelines § 15064.5(e)(1). If the Santa Clara County Coroner determines that the remains are Native American, the City shall contact the Native American Heritage Commission (NAHC), in accordance with Health and Safety Code § 7050.5(c) and Public Resources Code § 5097.98. As required by Public Resources Code § 5097.98, the City shall ensure that further development activity avoids damage or disturbance in the immediate vicinity of the Native American human remains, according to generally accepted cultural or archaeological standards or practices, until the City has conferred with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains.	***Implementation Responsibility:*** Project Applicant/ Construction Contractor ***Implementation Frequency:*** During grading and construction	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____
GEOLOGY AND SOILS				
Impact GEO-1: Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature ***Significance of Impact Before***	***Mitigation Measure GEO-1:*** The applicant shall inform its contractor(s) of the sensitivity of the project area for paleontological resources and shall include the following directive in the appropriate contract documents. The City	***Implementation Responsibility:*** Project Applicant/ Construction Contractor	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date***

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
Mitigation: Potentially Significant ***Significance of Impact After Mitigation:*** Less Than Significant	shall verify that the following directive is included in the appropriate contract documents: "The subsurface of the construction site may be sensitive for paleontological resources. The contractor shall provide information to construction crews on how to recognize paleontological resources. If paleontological resources are encountered during project subsurface construction, all ground disturbing activities within 25 feet of the find shall be redirected and the City and a qualified paleontologist contacted to assess the paleontological resources. Project personnel shall not collect or move any paleontological materials. Paleontological resources include fossil plants and animals, and such trace fossil evidence of past life as animal tracks." The City and a qualified paleontologist shall make recommendations for the treatment of the discovery. If found to be significant, and project activities cannot avoid the paleontological resources, adverse effects to paleontological resources shall be mitigated. Mitigation may include monitoring, recording the fossil locality, data recovery and analysis, preparation of a technical report, and providing the fossil material and technical report to a paleontological repository, such as the University of California Museum of Paleontology. Public educational outreach may also be appropriate. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City for review.	***Implementation Frequency:*** During grading and construction		_____
GREENHOUSE GAS EMISSIONS				
Impact GHG-1: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment	**Mitigation Measure GHG-1: Greenhouse Gas Reduction Plan:** As a part of the application package for construction-related permits, the Project Applicant shall prepare a GHG Reduction Plan to demonstrate that the Project's GHG emissions per employee would be below the interim 2030 GHG threshold (2.9 metric tons carbon	***Implementation Responsibility:*** Project Applicant ***Implementation***	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date***

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
Significance of Impact Before Mitigation: Significant ***Significance of Impact After Mitigation:*** Significant and Unavoidable	dioxide equivalent per service population) with the implementation of GHG reduction measures. Applicable GHG reduction measures include the following options: • Implementation of the Transportation Demand Management ("TDM") Plan, described in Mitigation Trans-1; • Increase installation of Level 2 charging stations from 22 (6 percent of total stalls) to 37 (10 percent of total stalls); • Provide conduit for 50 EV charging stations (48 percent of total truck docks) either at the dock doors on in the truck court for future EV trucks; • Site employers who own and operate truck fleets shall be required to inform their drivers of the anti-idling requirement; • Future industrial operations shall prohibit idling of on-and-off road heavy-duty diesel vehicles for prolonged periods; and • The Project will provide 10% of its electricity consumption by on-site solar installation at the building roof. Other applicable GHG reduction measures that may be feasible include, but are not limited to, the following options: • Eliminating natural gas use at the Project site (approximately 3 percent reduction in total GHG emissions); • Enroll in the program to purchase Silicon Valley Clean Air Energy Certificates; • Other applicable action items included in the City of Milpitas Climate Action Plan; and	***Frequency:*** During Project operation		_____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	• Concrete Truck courts to reduce Heat Island effect. For physical GHG reduction measures to be incorporated into the design of the Project, the measures shall be included on the drawings submitted for construction-related permits. If, after exhaustion of feasible physical design features and operational features specific to the Project, the Project's GHG emissions would still exceed the 2030 threshold, discussed above, the Project shall include the purchase of carbon credits as a reduction measure. The amount of carbon credits shall at least cover the difference between the interim 2030 threshold and the Project's GHG emissions after the consideration of design features, to be determined in the GHG Reduction Plan. The cost of carbon credit purchases shall be based on current market value at the time purchased and shall be based on the Project's operational emissions estimated in the GHG Reduction Plan or subsequent approved emissions inventory, which may result in emissions that are higher or lower than those estimated in the GHG Reduction Plan. All carbon credits shall be purchased from a carbon offset registry (the registry) approved by CARB. The carbon credit shall be verifiable by the City of Milpitas and enforceable in accordance with the registry's applicable standards, practices, or protocols. The purchase of the carbon credits must substantively satisfy the requirements set forth in both subdivisions (d)(1) and (d)(2) of California Health and Safety Code §38562: real, permanent, quantifiable, verifiable, enforceable, and additional. The purchase of the carbon credits shall be approved by the City of Milpitas, and verified by an independent verifier who meets stringent levels of professional qualification (i.e., Accreditation Program for GHG Validation/Verification Bodies under the American National Standards Institute's National Accreditation Board, a GHG Emissions Lead Verifier accredited by CARB, or equivalent). The amount of the carbon credits and the locations of the GHG-reducing programs generating these carbon credits shall be			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	determined in accordance with the following preferences: 1. Off-site within the immediate neighbourhood surrounding the Project site, bounded by West Calaveras Boulevard to the north, Interstate 680 to the east, Montague Expressway to the South, and Interstate 880 to the west; 2. Within the City of Milpitas; 3. Within the San Francisco Bay Area Air Basin; and 4. Within the State of California.			
HAZARDS AND HAZARDOUS MATERIALS				
Impact HAZ-1: Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment ***Significance of Impact Before Mitigation:*** Potentially Significant ***Significance of Impact After Mitigation:*** Less Than Significant	***Mitigation Measure HAZ-1:*** Mitigation Measure HAZ-1: A Soil Management Plan (SMP) shall be prepared by a qualified environmental professional to outline soil management protocols that would be implemented during Project construction to ensure that construction workers, the public, future site occupants, and the environment would not be exposed to hazardous materials (e.g., arsenic) that may be present in soil at the Project site. The SMP shall be submitted to the City for review and approval prior to issuance of demolition or grading permits. The SMP shall include, but not be limited to the following: • Procedures for soil management including identification and testing of contaminants, soil stockpiling procedures, soil reuse guidelines, and soil disposal methods. • Requirements for notification to the City and any applicable regulatory agency(ies) of previously unknown hazardous materials found in soil during development.	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** Prior to issuance of grading permits	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	• Guidelines for controlling dust during excavation and grading. All recommendations included in the SMP shall be implemented during the demolition, grading, and construction phase of the Project. Prior to the City's approval of building occupancy, the applicant shall provide the City with a report prepared by a qualified environmental professional documenting that soils on the Project site were managed in accordance with the SMP during demolition, grading, and construction, and that appropriate safeguards (e.g., capping of remaining arsenic impacted soil with clean fill or hardscape materials) have been incorporated into the project design, as necessary, to ensure that the public, future site occupants, and the environment would not be exposed to unacceptable health risks from residual hazardous materials in the subsurface of the Project site.			
TRANSPORTATION				
Impact TRANS-2: Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b) ***Significance of Impact Before Mitigation:*** Significant ***Significance of Impact After Mitigation:*** Significant and Unavoidable	***Mitigation Measure TRANS-1:*** The Project applicant shall implement a travel demand management program for all employees with the goal of reducing the use of single-occupant vehicles for commuting. The measures most likely to be effective given the Project's location and expected use type include the following (measures are identified with the California Air Pollution Control Officers (CAPCOA) *Quantifying Greenhouse Gas Mitigation Measures* (August 2010) measure number and VMT reduction effectiveness range): • Implement a commute trip reduction program with required implementation and monitoring (CAPCOA measure TRT-2, effectiveness range 4.2% - 21.0%); • Provide ride-sharing programs (CAPCOA measure TRT-3, effectiveness range 1 – 15%);	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** During Project operation	***Monitoring Responsibility:*** City of Milpitas Planning Department City of Milpitas Public Works Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	• Implement subsidized or discounted transit program (CAPCOA measure TRT-4, effectiveness range 0.3% - 20%); • Provide end-of-trip facilities (CAPCOA measure TRT-5, effectiveness based on effectiveness of measures TRT-2 and TRT-3); • Implement commute trip reduction marketing (CAPCOA measure TRT-7, effectiveness range 0.8% - 4.0%); • Implement car-sharing program (CAPCOA measure TRT-9, effectiveness range 0.4% - 0.7%); • Restripe Green Bike lanes along property frontage; and • Bike locker subsidy. (a) VMT Strategy Report • Prior to the issuance of an occupancy permit (Tenant to provide after 90 days of occupation), the Project Applicant (or Project site operator) shall prepare a VMT Strategy Report that includes the following items: • Identification of a baseline Project home-based work VMT per employee estimate, which shall be determined using project-specific information derived from location-based data services such as StreetLight data which can estimate the trip generation, trip lengths, and VMT for the site. This shall be supplemented/verified by driveway counts, employee commute mode surveys, and employee residence data which can provide a second VMT estimate to verify the StreetLight estimate. Other methods may be approved by City staff if new data sources and methods become available by the time of the Project is occupied. • Identification of the Santa Clara County regional home-based work VMT per employee, also derived from StreetLight data to provide an apples to apples comparison to the Project-specific baseline.			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	• Identification of the percent reduction in VMT needed to achieve the target of 15 percent below the regional average. • Identification of selected transportation demand management strategies per the above list, and others if appropriate. • Demonstration of how the TDM strategies in the VMT Strategy Report would reduce the home-based work VMT per employee generated by the Project to 15 percent below the countywide average home-based work VMT per employee. After implementing the transportation demand management strategies selected in the VMT Strategy Report upon occupancy of the Project, the effectiveness of these measures relative to the performance target noted previously must be monitored, as follows. (b) Project Site VMT Monitoring Approach • The Project shall be monitored by the City or by the Project application/operator on an annual basis to determine the efficacy of the selected transportation demand management strategies in achieving the performance target of 15 percent below the regional average. The monitoring shall include Project-generated VMT estimates compatible with the methodology used to estimate project baseline VMT so that performance comparisons can be made. The methodology for setting the baseline VMT and measuring the annual performance shall be defined in the VMT Strategy Report. • An annual monitoring memorandum shall be submitted to City staff. If the Project site is found not to be in compliance with the mitigation measure, the Project must incorporate additional transportation demand management strategies to meet the performance target. The Project applicant/operator may propose new strategies that develop over time to further reduce Project-generated VMT if substantial evidence is			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	provided to support the efficacy of the strategy. If a 15% VMT reduction is achieved for three consecutive years, the project will no longer need to provide annual reporting. (c) Alternative Monitoring Approach • The City of Milpitas may develop a citywide VMT monitoring program to allow global monitoring of City VMT, which may provide cost efficiencies and be a more effective way to track VMT generation by various uses in the City. The monitoring program could make use of emerging technologies including location-based services on cell phones and in vehicles to track trip lengths, along with traditional technologies such as driveway traffic counts. If such a program is developed, the Project could participate in the monitoring and demonstrate performance relative to the Project's VMT target.			
Cumulative Impact TRANS-5*: Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)* ***Significance of Impact Before Mitigation:*** Significant ***Significance of Impact After Mitigation:*** Significant and Unavoidable	***Mitigation Measure:*** See Mitigation Measure TRANS-1 above**.**	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** During Project operation	***Monitoring Responsibility:*** City of Milpitas Planning Department City of Milpitas Public Works Department	***Initials*** _____ ***Date*** _____
TRIBAL CULTURAL RESOURCES				
Impact TRIBAL CULT-1: Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074	***Mitigation Measure*:** See Mitigation Measures CULT-1 and CULT-2 above.	***Implementation Responsibility:*** Project Applicant	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
as either a site, feature, place, cultural landscape that is geographically defined in terms of size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k) ***Significance of Impact Before Mitigation:*** Potentially Significant ***Significance of Impact After Mitigation:*** Less than Significant		***Implementation Frequency:*** During grading and construction		***Date*** _____
Impact TRIBAL CULT-2: Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe,	***Mitigation Measure*:** See Mitigation Measure CULT-1 and CULT-2 above.	***Implementation Responsibility:*** Project Applicant ***Implementation Frequency:*** During grading and construction	***Monitoring Responsibility:*** City of Milpitas Planning Department	***Initials*** _____ ***Date*** _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
and that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe ***Significance of Impact Before Mitigation:*** Potentially Significant ***Significance of Impact After Mitigation:*** Less than Significant				