

**Certification of the 1355 California Circle
Final Program Environmental Impact Report**

**Adoption of
California Environmental Quality Act Findings,
Mitigation Measures, Mitigation Monitoring
Program, and Statement of Overriding
Considerations**

September 2023

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A. INTRODUCTION

The Draft Environmental Impact Report (DEIR) (State Clearinghouse No. 2022110251) has been prepared by the City of Milpitas (City) to evaluate the environmental effects of the residential development at 1355 California Circle (Project). The Project is described in **Section B**, below.

The City is the lead agency as defined in Section 15051(b) of the guidelines for implementing the California Environmental Quality Act (CEQA).

B. PROJECT SUMMARY

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

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

B.1 Proposed Townhomes

The proposed seven-plex and twelve-plex townhomes would be located next to each other and would encompass the majority of the Project Site.

Seven-Plex Townhomes

The Project would construct five three-storied townhome buildings containing seven units per building for a total of 35 dwelling units. All 35 dwelling units would be offered as “market rate” for sale units, ranging in size between 1,534 and 1,850 square feet. The seven-plex townhomes would encompass building numbers 1 through 5. Buildings 1 and 2 would have frontage onto California Circle. The seven-plex townhomes would have a total gross floor area of 16,954 square feet. These townhomes would utilize four different floor plans that consist of three and four-bedroom units, each varying in size and garage type.

Twelve-Plex Townhomes

The Project would also construct eight four-storied townhome buildings containing twelve units per building for a total of 96 dwelling units. All 96 dwelling units would be offered as “market rate” for sale units, ranging in size from 1,518 to 2,175 square feet. The twelve-plex townhomes would encompass building numbers 6 through 13. The townhomes would have a total gross floor area of 28,677 square feet. Additionally, the twelve-plex townhomes would utilize seven different plans that consist of predominantly

three-bedroom units with either two or three bathrooms. A portion of these units have an option to create a fourth bedroom loft.

The twelve-plex townhomes would range in size between 1,518 and 2,175 square feet. Approximately 14 units of the twelve-plex townhomes are adaptable multi-story dwelling units on an accessible route that complies with the California Building Code (CBC).

B.2 Proposed Apartment Complex

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

B.3 Project Objectives

In accordance with *State CEQA Guidelines* Section 15124, the specific project objectives identified below support the underlying purpose of the Project, assist the City as Lead Agency in developing a reasonable range of alternatives to evaluate in this EIR, and will ultimately aid the decision maker in preparing findings and overriding considerations, if necessary.

The objectives of the Project are as follows:

- Increase affordable housing opportunities, including housing designated for all Milpitas Unified School District (MUSD) staff, and help meet the City’s Regional Housing Needs Allocation (RHNA);
- Redevelop underutilized and vacated land; and
- Implement sustainable building practices to showcase energy efficiency and low water use.

C. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION PROCESS

At the outset of the environmental review process, the City prepared a Notice of Preparation (NOP) for the Project (State Clearinghouse No. 2022110251). The NOP was published and distributed to the State Clearinghouse, trustee agencies, responsible agencies, and other interested parties for a 30-day public review period from November 14, 2023, to December 14, 2022. A public scoping meeting was held on November 30, 2022. The Draft EIR was circulated for a 45-day public review period July 7, 2023, to August 21, 2023.

The Final EIR was distributed on September 29, 2023, more than 10 days prior to the October 11, 2023 Planning Commission hearing.

C.1 Incorporation of Final EIR by Reference

The EIR evaluated a Proposed Action, as well as alternatives to the Proposed Action. For purposes of these findings, the Project is defined to mean the project studied in the EIR.

The Final EIR consists of: (1) the Draft EIR, (2) all appendices to the Draft EIR (Appendices 1.0-1 through 3.14); (3) Chapter 1, "Introduction"; (4) Chapter 2, "Corrections and Additions"; (5) Chapter 3, "Mitigation Monitoring Program." The Final EIR Chapter 2 specifically includes the City's written responses to comments; a list of persons, organizations, and public agencies commenting on the DEIR; The City's written responses to specific comments on significant environmental points raised in the review and consultation process; and copies of comments, as required by *State CEQA Guidelines* Section 15132. The Final EIR consisting of the aforementioned components is hereby incorporated by reference into these findings.

D. FINDINGS REGARDING THE ENVIRONMENTAL REVIEW PROCESS AND THE CONTENT OF THE FINAL EIR

The City Council certifies that it has been presented with the Final EIR and that it has independently reviewed and considered the information contained in the Final EIR prior to making the following certifications and these findings.

Pursuant to *State CEQA Guidelines* Section 15090 (Title 14 of the California Code of Regulations, Section 15090) the Council certifies that the Final EIR has been completed in compliance with CEQA and the *State CEQA Guidelines*. The Council certifies the Final EIR for the actions described in these findings and in the Final EIR, for the Project as described above. The Council further certifies that the Final EIR reflects its independent judgment and analysis.

Pursuant to Public Resources Code Section 21081 and *State CEQA Guidelines* Section §15091, no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless the public agency makes one or more of the following findings with respect to each significant impact:

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

The City has made one or more of these specific written findings regarding each significant impact associated with the Project. Those findings are presented below, along with a presentation of facts in support of the findings. The City certifies these findings are based on full appraisal of all viewpoints, including all comments received up to the date of adoption of these findings, concerning the environmental issues identified and discussed.

The DEIR has been prepared as a "EIR" as defined by Section 15362 of the *State CEQA Guidelines*. This type of EIR examines the environmental impacts of a specific development project and should focus primarily on the changes in the environment that would result from development of the Project. The EIR examines all stages of the Project, including planning, construction, and operation. The EIR included an appropriate analysis of impacts in fifteen (15) environmental topics, analyzing the Project and alternatives, including a No Project Alternative. The EIR disclosed the environmental impacts expected to result from the implementation and development of the Project. Feasible mitigation measures were identified to avoid or minimize significant environmental effects.

The mitigation measures adopted as part of the Project are feasible and the DEIR mitigates the environmental impacts to the maximum extent feasible as discussed in the findings made below. The Findings in **Section E**, below, indicate where mitigation measures are not capable of reducing impacts to levels of less than significant.

It is the finding of the City Council that the proposed Final EIR fulfills environmental review requirements for the Project and that the document constitutes a complete, accurate, adequate, and good faith effort at full disclosure under CEQA, and reflects the independent judgment of the City Council.

In response to comments received, the Final EIR includes corrections and additions that correct minor errors and amplify and/or clarify information in the Draft EIR. All such changes made to the Draft EIR are shown in the Final EIR (Chapter 2.0, Corrections and Additions) in strikethrough and underline text.

It is the finding of the City Council that such clarifying changes and the corrections and additions as described in the Final EIR, have not presented any new, significant information requiring recirculation or additional environmental review under *CEQA Guidelines* Section 15088.5.

A Mitigation Monitoring Plan (MMP) for the Project has been adopted pursuant to the requirements of Public Resources Code Section 21081.6 to ensure implementation of the adopted mitigation measures to reduce significant effects on the environment and is included in the Final EIR document dated September 2023. The City is the custodian of the documents and other materials that constitute the record of the proceedings upon which certification of the EIR for the Project, is based, as described below in **Section D.1, Finding Regarding Location and Custodian of the Record**.

D.1 Finding Regarding Location and Custodian of the Record

The documents and other materials that constitute the record of proceedings on which the City's Findings of Fact are based, are located at 455 East Calaveras Boulevard, Milpitas, CA 95035.

The custodian of these documents is Lillian VanHua, Senior Planner. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 Cal. Code Regs. Section 15091(e).

For purposes of CEQA, the Record of Proceedings for the 1355 California Circle EIR consists of the following documents, at a minimum:

- The Notice of Preparation and all other public notices issued by the City in conjunction with the 1355 California Circle EIR.
- The Draft and Final EIRs, including appendices and technical studies included or referenced in the Draft and Final EIRs.
- All comments submitted by agencies or members of the public during the 30-day public comment period on the Draft EIR.
- The Mitigation Monitoring Program for the Project.
- All Findings and resolutions adopted by the City Council in connection with the Project, and all documents cited or referred to therein.

- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the 1355 California Circle EIR prepared by Impact Sciences, Inc., consultant to the City.
- All documents and information submitted to the City by responsible, trustee, or other public agencies, or by individuals or organizations, in connection with the reuse of the 1355 California Circle EIR, up through the date the City Council approved the Project.
- Minutes and/or summary transcripts of all public meetings and public hearings held by the City, in connection with the 1355 California Circle EIR.
- Any documentary or other evidence submitted to the City at such public meetings and public hearings.
- Matters of common knowledge to the City, including, but not limited to federal, state, and local laws and regulations.
- Any documents expressly cited in these Findings, in addition to those cited above.
- Any other materials required to be in the Record of Proceedings by Public Resources Code Section 21167.6(e).

D.2 Absence of Significant New Information

State CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The Guidelines provide examples of significant new information under this standard, as follows:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it.

- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

The Council recognizes that the Final EIR incorporates information obtained by the City since the DEIR was completed, and contains additions, clarifications, modifications, and other changes. With respect to this information, the Council finds as follows:

Various minor changes and edits have been made to the text the DEIR. These changes are generally of an administrative nature such as correcting typographical errors, making minor adjustments to the data, and adding or changing certain phrases to improve readability and enhance clarity. The City Council finds that these changes are of a minor, non-substantive nature and do not require recirculation of the DEIR.

In addition to the changes and corrections described above, the Final EIR provides additional information in response to comments and questions from the public. The City Council finds that this additional information does not constitute significant new information requiring recirculation, but rather that the additional information clarifies or amplifies an adequate EIR. Specifically, the City Council finds that the additional information including the changes described above, does not show that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

E. ENVIRONMENTAL IMPACTS

The City staff report, the EIR, written comments, written and oral testimony at public hearings, and these Findings and Statement of Overriding Considerations and other information in the administrative record serve as the basis for the City's environmental determination. The Final EIR includes revisions to the DEIR,

public comments, and City responses. Detailed analyses of potential environmental impacts and proposed mitigation measures for the Project are presented in the DEIR. Written comments and City responses, as well as some minor revisions to the impact and mitigation discussions, are provided in the Final EIR.

Presented below are the environmental findings made by this City Council after its review of the documents referenced above. Factual discussion in this document summarizes the information contained in the EIR and the administrative record upon which this Council bases its decision to certify the EIR and approve the Project.

The EIR prepared for the Project identifies one significant environmental impact within 15 issue areas, which cannot be fully mitigated and are therefore considered significant and unavoidable impacts. To the extent this impact remains significant and unavoidable, such impact is acceptable when weighed against the overriding social, economic, legal, technical, and other considerations set forth in the Statement of Overriding Considerations. The significant and unavoidable impact identified in the DEIR is discussed below, along with the appropriate findings per *State CEQA Guidelines* Section 15091. The City Council concurs with the conclusions in the DEIR that the issues and sub-issues discussed below can be mitigated below a significant impact threshold. For those issues that cannot be mitigated below a level that is less than significant, overriding considerations exist which make those impacts acceptable.

E.1 Differences of Opinion Regarding the Impacts of the Project

In making its determination to certify the Final EIR and to approve the Project, the City Council recognizes that the Project involves some controversial environmental issues and that a range of technical and scientific opinion exists with respect to those issues. The City Council has acquired an understanding of the range of this technical and scientific opinion by its review of the DEIR, the comments received on the DEIR and the responses to those comments in the Final EIR, as well as testimony, letters, and reports regarding the Final EIR and its own experience and expertise in assessing environmental impacts. The City Council has reviewed and considered, as a whole, the evidence and analysis presented in the DEIR, the evidence and analysis presented in the comments of the DEIR, the evidence and analysis presented in the Final EIR, the information submitted on the Final EIR, and the reports prepared by the experts who prepared the EIR, consultants, and by staff, addressing those comments. The City Council has gained a comprehensive and well-rounded understanding of the environmental issues presented by the Project. In turn, this understanding has enabled the City Council to make its decisions after weighing and considering the various viewpoints on these important issues. The City Council accordingly certifies that its findings are based on full appraisal of all of the evidence contained in the Final EIR, as well as the evidence and other information in the record addressing the Final EIR.

In making these findings, the City Council has considered the opinions of other agencies and members of the public, including opinions that disagree with some of the analysis and significance thresholds used in the EIR. City Council finds that the determination of significance thresholds is a judgment within the discretion of the City Council; the significance thresholds used in the EIR are supported by substantial evidence in the record, including the expert opinion of the EIR preparers and staff; and the significance thresholds used in the EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project.

E.2 Findings Regarding Impacts Identified in the EIR to be Less Than Significant or No Impact and Requiring no Mitigation

The following issues were identified during the scoping process as having the potential to cause significant impact. These issues were found in the EIR as having no potential to cause significant impact and therefore require no project-specific mitigation.

Aesthetics

Threshold AES-2 The Project Site would result in redevelopment and infill development within the existing developed urban environment. The views along road corridors would continue to be of a developed and urban landscape. Due to the distance, topography, and intervening landscape, trees, and structures, between the highway and the Project Site, and as described above, no identified or designated scenic views or vistas exist. As a result, implementation of the Project would have no impacts in relation to a scenic vista. (Final EIR 3.1-18)

Threshold AES-3 Implementation of the Project includes the development of five buildings containing seven-plex townhomes, eight buildings containing 12-plex townhomes, and a 75-unit apartment complex. Implementation of the Project would be consistent with the City's development standards and Zoning Ordinance. Therefore, potential impacts associated with scenic quality would be less than significant. No mitigation is required (Final EIR 3.1-18-3.1 to 26)

Threshold AES-4 The Project would generally be similar to the existing surrounding multifamily residential uses east of the Project Site. Pursuant to Section XI-10-57.17 (Lighting) of the Milpitas Municipal Code, exterior on-site lighting fixtures must use minimum wattage and would be shielded as not to be directly visible from off-site. Furthermore, the proposed new streetlights would adhere to the

City's Design Guidelines for streetlights. Therefore, impacts associated with light and glare would be less than significant. (Final EIR 3.1-26 to 3.1-27)

Air Quality

Threshold AQ-1 Area air quality planning, including the Bay Area 2017 Clean Air Plan, assumes that there will be emissions from new growth, but that such emissions may not impede attainment and may contribute to the attainment of applicable air quality standards within the Bay Area Air Quality Management District (BAAQMD). The Project would not result in construction air quality emissions that exceed the BAAQMD thresholds of significance. Therefore, the Project would not conflict with or obstruct implementation of the applicable air quality plan and impacts would be less than significant. (Final EIR 3.2-17 to 3.2-18)

Threshold AQ-3 Toxic Air Contaminants. As shown in Table 3.2-10, Construction Health Risk Summary, the maximum health risks at the nearest sensitive receptor (i.e., residences to the east of the Project Site) would be less than the BAAQMD thresholds of significance for incremental cancer risk, non-cancer risk, and annual PM2.5 concentrations. Health risks at locations farther than this maximum impact receptor would be further reduced, and thus impacts to sensitive receptors would be less than significant.

Carbon Monoxide HotSpots. The Project would not have the potential to increase traffic volumes at affected intersections to more than 44,000 vehicles per hour or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited. Therefore, the Project would not have the potential to cause or contribute to an exceedance of the California one-hour or eight-hour CO standards. Impacts with respect to localized CO concentrations would be less than significant. (Final EIR 3.2-23 to 3.2-25)

Threshold AQ-4 Construction activities associated with the Project may generate detectable odors from heavy-duty equipment exhaust and architectural coatings. However, construction-related odors would be short-term in nature and cease upon buildout. In addition, the Project would be required to comply with the California Code of Regulations, Title 13, sections 2449(d)(3) and 2485, which minimizes the idling time of construction equipment either by shutting it off when not in use or by reducing the time of idling to no more than five minutes.

This would reduce the detectable odors from heavy-duty equipment exhaust. Any odor impacts to existing adjacent land uses would be short-term and not substantial. As such, the Project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people and this impact would be less than significant. (Final EIR 3.2-26 to 3.2-27)

Biological Resources

Threshold BIO-2 As shown in Table 3-2, Summary of the Potentially Occurring Special-Status Plant and Animal Species, one natural community has historically been observed within the same USGS Quadrangle as the Project Site: the Northern Coastal Salt Marsh. However, the Project Site is a developed property with minimal nonnative vegetation and is not adjacent to a bay, harbor, or inlet. Thus, the Project Site would not provide a suitable habitat for the natural community. Therefore, the Project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community, and no impacts would occur. (Final EIR 3.3-23 to 3.3-24)

Threshold BIO-3 The Project Site does not contain any natural hydrologic or drainage features. Further, there are no State or Federally protected wetlands on-site. Therefore, Project implementation would not have a substantial adverse effect on state or federally protected wetlands. No impacts to protected wetlands would occur. (Final EIR 3.3-24)

Threshold BIO-5 The Project would adhere to the recommendations outlined in Appendix 3.3-1, Arborist Report, and remove all 49 trees on-site, including the nine street trees and 27 City Ordinance-sized protected trees. The Project Applicant would adhere to the requirements outlined in Title X, Chapter 2.0 of the Municipal Code and obtain all applicable permits from the City of Milpitas prior to the removal of any trees. In the event that the City seeks further cost recovery requirements for the removal of the existing protected tree, the Project Applicant will adhere to these requirements prior to the removal and any existing trees onsite. Adherence to the applicable regulatory requirements

outlined in the City's Municipal Code would ensure that impacts would be less than significant. (Final EIR 3.3-25 to 3.3-26)

Threshold BIO-6 The Project Site is not considered to be a Covered Activity under the Santa Clara Valley Habitat Plan. No other Habitat Conservation Plan, Natural Community Conservation Plan, or other approved habitat conservation plans apply to the Project Site. Therefore, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan, and no mitigation is required. (Final EIR 3.3-26 to 3.3-27)

Cultural Resources

Threshold CUL-1 The Project Site is not listed as a property with historic buildings in the City of Milpitas General Plan Environment Impact Report (November 2020). Further, historical maps and aerial photography analyzed in the Cultural Resources Report indicate that the Project Site remained as a vacant, undeveloped area until after 1980. Thus, the Cultural Resources Report determined that the Project Site has a low potential for encountering historic resources. As such, the Project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5 of the CEQA Guidelines, and no impacts would occur. (Final EIR 3.4-18)

Threshold CUL-3 In the unlikely event that human remains are uncovered during ground-disturbing activities, there are regulatory provisions to address the handling of human remains in California Health and Safety Code § 7050.5, PRC § 5097.98, and CEQA Guidelines § 15064.5(e). Pursuant to these codes, in the event that human remains are discovered, it requires that disturbance on the site shall be suspended, and the City of Milpitas and the Santa Clara County Coroner would be immediately notified. Compliance with these protocols would reduce impacts to a less than significant level. No mitigation is required. (Final EIR 3.3-21)

Energy

Threshold EN-1 Construction equipment would be maintained to applicable standards, and construction activity and associated fuel consumption and energy use would be temporary and typical of construction sites. It is also reasonable to assume

contractors would avoid wasteful, inefficient, and unnecessary fuel consumption during construction to reduce construction costs. Therefore, the Project would not involve the inefficient, wasteful, and unnecessary use of energy during construction, and the construction-phase impact related to energy consumption would be less than significant.

During operation, Project-related traffic would result in the consumption of petroleum-based fuels related to vehicular travel to and from the Project Site. The majority of the vehicle fleet that would be used by occupants and residents of the Project would consist of light-duty automobiles and light-duty trucks, which are subject to fuel efficiency standards, such as the Low Carbon Fuel Standard (LCFS) and Low-Emission Vehicle Program Standards. The Low Carbon Fuel Standard, in part, aims to reduce fuel consumption and providers of transportation fuels must demonstrate that the mix of fuels they supply for use in California meets the LCFS carbon intensity standards for each annual compliance period. For these reasons, the Project would not result in wasteful, inefficient, or unnecessary consumption of energy resources during construction or operation and impacts would be less than significant. (Final EIR 3.5-9 to 3.5-11)

Threshold EN-2

As part of the City's Green Building Regulations, the Project would be Build it Green or Leadership in Energy and Environmental Design (LEED) for Homes certified, which aims to increase energy efficiency. Additionally, per the RPS, the Project would utilize electricity provided by PG&E that would achieve 60 percent renewable energy by 2030 and 100 percent renewable energy by 2045. Therefore, the Project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency and impacts would be less than significant. (Final EIR 3.5-11 to 3.5-12)

Geology and Soils

Threshold GEO-1

Project impacts concerning strong seismic ground shaking would be addressed through compliance with State and local seismic and geologic safety laws, standards, and guidelines, including the Seismic Hazard Mapping Act and the 2022 CBC, among others. In general, the City regulates development (and reduces potential seismic and geologic impacts) through compliance with the 2022 CBC as adopted by the City pursuant to Milpitas Municipal Code Title II,

Chapter 3 (Adoption of the California Building Code) and project-specific design and construction recommendations. The CBC includes earthquake safety standards based on a variety of factors, including occupancy type, types of soils and rocks on-site, and strength of probable ground motion at the Project Site. Compliance with the CBC regulations would ensure that the Project would not expose people or structures to potential substantial adverse effects involving strong seismic ground shaking. Impacts would be less than significant, and no mitigation measures are required. (Final EIR 3.6-17 to 3.6-18)

Threshold GEO-2 As discussed above, the Project Site is located less than two miles from the southeast extension of the Hayward Fault, an earthquake fault line with an estimated MWMw of 6.9. On a movement magnitude scale (Mw), seismic events with a magnitude between 6.1 to 6.9 are classified as events that “may cause a lot of damage in very populated areas.” The Project would also be required to comply with the seismic design requirements for building, as detailed in the 2022 CBC. Therefore, compliance with the Geotechnical Report and the 20122 CBC, impacts related to strong seismic ground shaking would be less than significant and no mitigation measures are required. (Final EIR 3.6-18 to 3.6-19)

Threshold GEO-3 The Project would be constructed in accordance with the design recommendations as outlined in Section 7.0 of the Geotechnical Report. The Project would also be required to demonstrate compliance with the design requirements detailed under the CBC. Adherence to the foundation requirements outlined in the Geotechnical Report, as well as the seismic design parameters required by the CBC would be confirmed at a plan check and design review with the City of Milpitas. As such, compliance with applicable laws, standards, and guidelines, including the CBC, as adopted by reference in Title II, Chapter 3 Municipal Code, would ensure that Project implementation would not expose people or structures to potentially significant impacts involving liquefaction. Therefore, impacts regarding seismic related ground failure would be less than significant. (Final EIR 3.6-19 to 3.6-20)

Threshold GEO-4 The Project is not located within an area identified as having a potential for earthquake-induced landslides. No known landslides were observed at or near the site, nor is the site in the path of any known or potential landslides.

Therefore, the Project would not result in seismic-related ground failure related to landslides, and no impacts would occur in this regard. (Final EIR 3.6-20)

Threshold GEO-5

The required site grading and construction activities associated with the Project would disturb and expose soil and could, thus, accelerate erosion if effective soil erosion measures are not used. Per the National Pollutant Discharge Elimination System (NPDES), construction Projects of one acre or more, including the proposed Project, are regulated under the Statewide Construction General Permit. Projects obtain coverage under the Construction General Permit by developing and implementing a Stormwater Pollution Prevention Plan (SWPPP) estimating sediment risk from construction activities to receiving waters and specifying Best Management Practices (BMPs) that would be used by the Project to minimize the pollution of stormwater. Adherence to the NPDES and the implementation of a Construction General Permit would reduce construction-related impacts concerning soil erosion and loss of topsoil to less than significant. The Project would implement the appropriate LID-based measures that are approved by the City during the site plan review of the Project. Nevertheless, adherence to the San Francisco Bay Regional Water Quality Control Board and the preparation of a Stormwater Management Plan would reduce potential operational-related impacts concerning soil erosion and loss of topsoil to less than significant levels. (Final EIR 3.6-21 to 3.6-22)

Threshold GEO-6

Slope Stability and Landslides. The topography at the site is relatively flat, and the site is not located within an area identified as having a potential for slope instability. Thus, landslide and slope instability are not anticipated, and no impact would result.

Subsidence. The Project would adhere to the requirements outlined in the 2022 CBC related to soil treatment and excavation during construction. Therefore, adherence to the 2022 CBC and implementing the recommendations outlined in the Geotechnical Report would reduce impacts related to subsidence hazards to less than significant levels.

Lateral Spreading and Liquefaction. The grading and foundation recommendations presented in the Geotechnical Report would minimize the effects of liquefaction settlement. The Project would also be designed and constructed to comply with the 2022 CBC. These design requirements would

minimize the impacts from lateral spreading and liquefaction to less than significant. Adherence to the seismic design parameters of the 2022 CBC would be confirmed at plan check and building design review with the City of Milpitas. Nevertheless, Project impacts concerning lateral spreading and liquefaction would be less than significant and no mitigation measures are required.

Settlement and Soil Collapse. The grading and foundation recommendations presented in the Geotechnical Report would minimize the impacts of settlement and/or collapse to less than significant levels. Furthermore, the seismically induced settlement would be reduced by adhering to the seismic design parameters of the 2022 CBC. Therefore, impacts related to soil settlement and/or collapse would be less than significant and no mitigation measures are required. (Final EIR 3.6-22 to 3.6-23)

Threshold GEO-7

Based on the Geotechnical Report, the near surface soils underlying the Project Site are moderately expansive. To reduce the risks of potential differential movement of structures and associated utilities, the Project would implement the recommendations outlined in Section 8.0 of the Geotechnical Report, which provides recommendations to the structure of the proposed development's exterior concrete flatwork. Additionally, the Project would be required to be constructed in compliance with the CBC and the City's Municipal Code, that requires appropriate back fill, compaction of soils, and foundation design to ensure stable soils, which would be verified through the City's building permit plan check and permitting process. Adherence to the CBC and the City's Municipal Code and the implementation of the recommendations outlined in the Geotechnical Report would reduce impacts to less than significant levels. (Final EIR 3.6-23 to 3.6-24)

Threshold GEO-8

The Project would not include the use of septic tanks or alternative wastewater disposal systems, and no impacts would occur. (Final EIR 3.6-24)

Hazards and Hazardous Materials

Threshold HAZ-1

During construction the Project Applicant would comply with the recommendations outlined in the Phase I ESA and remove any observed flaking, peeling, or blistering Lead Based Paints (LBPs) prior to the demolition

of the existing on-site building. Additionally, the Project Applicant would comply with the BAAQMD rules and regulations pertaining to the handling of LBP materials. Further, the Project would comply with all applicable Occupational Safety and Health Administration (OSHA) regulatory requirements, including requirements for worker training, air monitoring and dust control. Coordination with the City and Milpitas Fire Department (MFD) and adherence to Cal/OSHA regulatory requirements would reduce potential construction-related questions to less than significant levels.

Adherence to these applicable laws and regulations governing the use, storage, transportation, and disposal of hazardous materials would ensure all potentially hazardous materials are used and handled in an appropriate manner and would minimize the potential for safety impacts. Therefore, substantial hazards to the public or the environment arising from the routine use, storage, transport, and disposal of hazardous materials during long-term operation of the Project would not occur. (Final EIR 3.8-19 to 3.8-22)

Threshold HAZ-3	The Project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. Therefore, the Project would not impact surrounding schools in this regard. (Final EIR 3.8-25)
Threshold HAZ-4	Based on the California Environmental Protection Agency's (CalEPA) Cortese List Data Resources, the Project Site is not reported on a list maintained pursuant to Government Code Section 65962.5. No impacts would occur in this regard. (Final EIR 3.8-25 to 3.8-26)
Threshold HAZ-5	The Project Site is located outside of the Airport Influence Area of the Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan. Therefore, the Project would not expose residents in the Project Site to excessive airport-related noise levels. No impacts would occur in this regard. (Final EIR 3.8-26 to 3.8-27)
Threshold HAZ-6	While temporary lane closures may be required, travel along surrounding roadways would remain open and would not interfere with emergency access in the vicinity of the Project Site. As discussed, the City maintains an EOP, which addresses the City's planned responses to natural and human-caused

disasters. The City of Milpitas Fire Department Office of Emergency Management trains City employees on disaster planning, updates the City's emergency plans, provides disaster preparedness information to residents and local businesses, and manages the CERT Program. The Project would not affect existing emergency operations and disaster planning. Therefore, impacts would be less than significant. (Final EIR 3.8-27)

Threshold HAZ-7

The Project Site does not interface with any wildlands, or an area classified as a Fire Hazard zone as identified by the California Department of Forestry and Fire Protection. Therefore, impacts related to exposure of people to wildland fires would not occur. As such, the Project would not expose people or structures to a significant risk of loss, injury, or death involving wildland fires. No impact would occur. (Final EIR 3.8-28)

*Hydrology***Threshold HYD-1**

Each phase of development of the Project would require compliance with applicable regulations to obtain demolition, excavation, grading, or construction permits from the City. The permitting process would ensure each phase of development would be implemented in compliance with the MRP process. In addition, the SWRCB Construction General Permit (that would be implemented through the City's permitting process), requires the implementation of BMPs to eliminate or reduce the discharge of pollutants in stormwater discharges, and prohibits the discharge of non-storm water from construction sites as these non-storm water discharges are likely to carry pollutants to receiving waters. Activities subject to the NPDES General Permit for construction must develop and implement a SWPPP that will identify BMPs that will be employed to prevent soil erosion and discharge of other construction-related pollutants, such as petroleum products, solvents, paints, and cement, that could contaminate nearby water resources. A monitoring program is generally required to ensure that BMPs are implemented according to the SWPPP and are effective at controlling discharges of pollutants that are related to storm water. Implementation of site-specific source control and treatment control BMPs in accordance with the City and County construction and stormwater management codes, and the SWMP would reduce these potential impacts related to stormwater quality. Applicable BMPs would be implemented in accordance with regional and local regulatory requirements,

including the MRP. Because the Project would not violate any water quality or waste discharge requirements, impacts would be less than significant. (Final EIR 3.9-18 to 3.9-21)

Threshold HYD-2

The Project would not result in the need for new or additional groundwater supplies. Therefore, the Project would not result in any groundwater extraction or depletion of groundwater supplies and is not anticipated to interfere with SCVWD's Groundwater Management Plan. Therefore, impacts related to groundwater recharge would be less than significant. (Final EIR 3.9-21 to 3.7-22)

Threshold HYD-3

Erosion and Flooding. Grading, excavation, and other construction activities associated with the Project could adversely affect water quality due to erosion resulting from exposed soils and the generation of water pollutants, including trash, construction materials, and equipment fluids. Associated construction activities would be subject to the NPDES Statewide General Construction Activity Stormwater Permit. Compliance with NPDES permit requirements and implementation of BMPs would ensure erosion and siltation and flooding would be less than significant.

Stormwater Drainage Systems. The Project would result in comparable amounts of impervious surfaces as existing conditions. Therefore, the Project is not anticipated to increase demand on the existing stormwater drainage systems. Impacts would be less than significant.

Surface Flows. Ground-disturbing activities during construction of the Project, including but not limited to grading and excavation, could have potential to result in temporarily altered drainage patterns that could redirect surface flows. However, BMPs employed as part of an SWPPP for the Project would include measures to secure disturbed soils and require proper drainage of the Project Site. Potential impacts to drainage pattern alterations, including how drainage pattern alterations could affect surface water runoff, erosion/siltation, flooding, and stormwater conveyance facilities would be less than significant. (Final EIR 3.9-22 to 3.9-25)

Threshold HYD-4

The City of Milpitas is not within a tsunami or seiche hazard area. Therefore, there would be no impacts related to the risk of release of pollutants due to inundation from a tsunami or seiche. However, the Project Site is located within

a 100-year FEMA Flood Hazard Zone. The Project would be required to comply with applicable regulations relating to the floodplain management regulations which would reduce potential impacts to a less than significant level. In addition, the Project Site not within the Coyote Dam and Reservoir identified dam inundation area and therefore is not at significant risk from a dam failure, and the Project would not exacerbate or increase any such risk. Impacts would be less than significant. (Final EIR 3.9-25 to 3.9-26)

Land Use and Planning

Threshold LAN-1 The Project Site is currently developed with an existing vacant industrial office building and paved surface parking lot. The proposed change in land use designation, to MXD Mixed Use, is intended to allow for the development of high-density residential uses such as townhomes and multi-family apartments on-site. The Project would not construct new storm channels or major roadways, nor would the Project close entire roadways or bridges that would physically divide the established community. Therefore, implementation of the Project would not be substantial to the point where an established community would be divided, and no impacts would occur. (Final EIR 3.10-9 to 3.10-10)

Threshold LAN-2 Implementation of the Project would require a General Plan Text Amendment to remove specific language that requires the “preparation or adoption of a Specific Plan for the California Circle area”. In addition, the Project would include a Zoning Map Amendment to change the Project Site’s current Industrial Park Zoning District to Mixed-Use (MXD), consistent with the NCMU land use designation. Although the proposed developments would be inconsistent with multiple development design standards that are specified for MXD zoning (see Table 3.10-2), implementation of the Planned Unit Development would void the Project’s inconsistencies with the City’s development standards for MXD zoning. Therefore, implementation of the Project would not conflict with the local policies and regulations adopted for

the purpose of avoiding or mitigating an environmental effect, and impacts would be less than significant. (Final EIR 3.10-10 to 3.10-26)

Noise

Threshold NOI-1

Construction Noise. As the existing exterior on-site noise level for the Project Site is 69.3 dBA Ldn, exterior-to-interior noise reductions from current construction standards would reduce interior noise levels to approximately 39.3 to 44.3 dBA Ldn, ensuring the Project is consistent with interior noise level standards. As shown in Table 3.11-6, construction activity would generate noise levels of up to 77.1 dBA Leq at the nearest sensitive receptor (Sensitive Receptor No. 1). As such, temporary construction noise would not exceed the FTA's 80 dBA Leq daytime construction threshold for residential uses, impacts would be less than significant.

Operation Noise. As shown in Table 3.11-7, Project Traffic Noise, the Project would increase local traffic noise levels by a maximum of 0.3 dBA Ldn along California Circle, south of the northbound I-880 on- and off-ramps. Where existing traffic noise levels are greater than 60 dBA Ldn and up to 65 dBA Ldn at the outdoor activity areas of noise-sensitive uses, a +3 dBA Ldn increase in roadway noise levels would be considered significant. Where existing traffic noise levels are greater than 65 dBA Ldn at the outdoor activity areas of noise-sensitive uses, a +1.5 dBA Ldn increase in roadway noise levels would be considered significant. Because the Project would increase local traffic noise levels by a maximum of 0.3 dBA Ldn along any segment, these thresholds would not be exceeded and impacts with respect to operational traffic noise would be less than significant. (Final EIR 3.11-20 to 3.11-25)

Threshold NOI-2

Construction activities associated with the Project would intermittently generate vibration in the Project Site vicinity when it reaches building walls and floors of sensitive receptors. Based on Table 3.11-8, construction equipment could reach vibration levels of 69 VdB at 100 feet, which is the distance to the nearest sensitive receptor (residential uses to the east). As such, the 80 VdB residential annoyance threshold would not be exceeded. Therefore, temporary construction vibration would not exceed human annoyance thresholds, and this impact would be less than significant. Based on Table 3.11-8, construction equipment would reach a maximum of 0.017 PPV (in/sec) at 75 feet, which is the

distance to the nearest off-site building to the north of the Project Site. These vibration levels would not exceed the most conservative 0.12 inch/sec PPV threshold for buildings extremely susceptible to vibration damage. As such, construction-related vibration impacts with respect to building damage would be less than significant (Final EIR 3.11-25 to 3.11-26)

Threshold NOI-3

The Project Site is not located in the vicinity of a private airstrip or airport land use plan. Additionally, the Project Site is located outside of the Airport Influence Area of the Norman Y. Mineta San Jose International Airport Comprehensive Land Use Plan. Therefore, the Project would not expose residents at the Project Site to excessive airport-related noise levels. No impact would occur in this regard. (Final EIR 3.11-27)

Population and Housing

Threshold POP-1

The Project would not induce substantial unplanned population growth exceeding existing local conditions (0.8 percent increase over the City's estimated 2022 population) or regional projections (0.03 percent of the City's projected 2040 population). Rather, the Project would assist the City in meeting its targeted number of required residential units allocated for low-income households per state housing law (RHNA). Further, the Project would help improve the City's job-housing balance by providing additional housing to the jobs-rich and high-resource City. Therefore, the Project would result in less than significant impacts. (Final EIR 3.12-16 to 3.12-19)

Threshold POP-2

The Project would demolish a currently unoccupied industrial office building and construct multi-family housing units in the form of seven-plex and twelve-plex townhomes, and an apartment building. Thus, the Project would not displace substantial numbers of existing people or housing, and no impacts would occur. (Final EIR 3.12-20)

Public Services and Recreation

Threshold PS-1

Construction activities would be subject to compliance with the latest adopted applicable State and local regulations in place to reduce risk of fire, such as installation of a temporary construction fencing to restrict site access and maintenance of a clean construction site. Project compliance with applicable State and local regulations related to fire protection would result in less than

significant construction related impacts and no mitigation measures are required. The Project would adhere to the latest adopted State and local design standards to ensure fire protection safety. Therefore, the increase in demand for MFD services would not result in delays to the either fire department's target response times, nor would the Project require the construction of new fire protection facilities or expansion of existing fire protection facilities, impacts would be less than significant. (Final EIR 3.13-8 to 3.13-10)

Threshold PS-2 Construction activities associated with the Project may create a temporary increase in demand for Milpitas Police Department (MPD) services at the construction site. Project compliance with the CBC requirements would not result in the need for additional police protection facilities and would not adversely impact service ratios, response times, or other performance standards, impacts would be less than significant. The Project Applicant would submit a Fire Department access plan to the City and the MFD for review and approval to ensure that emergency access and on-site vehicle circulation are feasible for MFD-operated fire trucks. The Project is not expected to result in any provisions of new or physically altered MPD facilities. Compliance with local regulations, as well as coordination with the City and MPD would ensure that impacts in this regard would be less than significant. (Final EIR 3.13-16 to 3.13-17)

Threshold PS-3 The increase in student enrollment from the Project is not projected to substantially increase beyond existing enrollment. The Project Applicant would be subject to California Government Code Section 65995 and AB 2926, which would require the Project Applicant to contribute its fair share of the cost of increasing demand for school facilities through payment of development impact fees to MUSD. The Project's conformance to California Government Code Section 65995 and the proposed mutual agreement with MUSD would ensure potential impacts to MUSD school facilities would be less than significant. Therefore, Project implementation would result in a less than significant impact on public schools and no mitigation measures are required. (Final EIR 3.13-25 to 3.13-26)

Threshold PS-4 The Project does not propose the construction of any new or physically altered library facilities. The Project would introduce up to 655 new residents to the City, thereby increasing demand for MPL facilities and resources. However, the Project is not expected to result in any negative the library's current services or

its ability to provide these services. Such, the Project would result in significant less than significant impacts to other public facilities. (Final EIR 3.13-30 to 3.13-31)

Threshold REC-1 Although outdoor recreational spaces are provided under the Project (i.e., paseos and outdoor recreation areas), these spaces are not open to the public and are intended for Project residents. To offset this increased need for parkland in the City, the Project Applicant would be required to pay a park developer fee in lieu of the Project parkland dedication per the Quimby Act and Section 9 (Improvements: Dedication of Land or Payment of Fee or Both, for Recreational Purposes) of the City's Municipal Code. The City would determine the "fair market value" for an acre of land in the City to determine said park fee. Payment of this fee would ensure that the Project's potential impacts on parkland capacities and existing parkland facilities would be reduced to less than significant levels. As such, impacts would be less than significant. (Final EIR 3.13-39 to 3.13-40)

Threshold REC-2 The Project Applicant would adhere to state and local law and regulations and pay the appropriate fees-in-lieu of parkland dedication. The Project includes open space and outdoor recreational areas. The outdoor recreational area would include a playground area, benches, turf areas, and picnic tables. The outdoor recreational area would serve as a recreational facility for residents on-site. Further, the Coyote Creek Trail located 0.12 miles west of the Project Site would serve as an existing recreational facility to Project residents and residents within a 0.25-mile distance to the Project. Therefore, less than significant impacts to recreational facilities would occur. (Final EIR 3.13-40)

Transportation

Threshold TRA-2 As shown in Table 3.14-2, for both years 2022 and 2040, the Project would yield a Vehicle Miles Traveled (VMT) lower than the VMT of the existing use. Therefore, the Project would result in a less-than-significant impact. (Final EIR 3.14-24 to 3.14-25)

Threshold TRA-3 Circulation. Project site plans and fire truck access plans would be subject to review and approval from the City and the Milpitas Fire Department. Upon approval of these plans, the proposed townhome community and apartment

complex would provide adequate vehicle circulation that would not increase safety hazards. Impacts would be less than significant.

Vehicle Queue Analysis and Site Distance. As shown in Table 3.14-3, there currently is and would be adequate vehicle storage to accommodate the expected maximum vehicle queues at both intersections at California Circle, impacts would be less than significant.

Site Access. The City would review both proposed access points as part of the site plan review process to confirm compliance with all applicable safety standards and considerations concerning the proposed access configurations. Additionally, the Project would comply with all site access requirements imposed by the City and the MFD to ensure that inadequate design features or incompatible uses, for the purpose of emergency access, do not occur. As such, the Project would not introduce incompatible uses to the area roadways and intersections, and impacts would be less than significant. (Final EIR 3.14-26 to 3.14-30)

Utilities and Service Systems

Threshold USS-1

The Project Site receives water supplies from the San Francisco Public Utilities Commission (SFPUC) and Valley Water (formerly Santa Clara Valley Water District). The Project's incremental increase in water demand would not exacerbate drought conditions and would not require or result in the construction of new water treatment facilities or expansion of existing facilities. Impacts would be less than significant. The Project Site is served by the San José-Santa Clara Regional Wastewater Facility (RWF), which has a wastewater treatment capacity of 167 million gallons per day (mgd). With adherence to applicable regulations, the Project would have adequate wastewater conveyance systems and impacts related to wastewater conveyance would be less than significant. Electricity services for the Project Site is provided by Pacific Gas and Electric Company (PG&E). It is not anticipated that existing transmission lines would need to be modified as a result of the Project. Potential impacts would be less than significant. Natural gas service for the Project Site is provided by PG&E which is regulated by the CPUC. The Project is not anticipated to require the relocation or construction of new or expanded natural gas facilities and impacts would be less than significant. The Project would only

install necessary telecommunications infrastructure to be used by residents, employees, and visitors of the Project. It is not anticipated that new infrastructure off-site will be required. Given the urbanized nature of the Project Site, construction of any telecommunications infrastructure needed for the Project would result in less than significant environmental impacts. (Final EIR 3.15-13 to 3.15-16)

Threshold USS-2 The Project would be required to comply with the Water Shortage Contingency Plan during drought conditions. Therefore, the Project would adhere to State and local regulations to reduce water consumption during drought conditions and the Project's incremental increase in water demand would have sufficient water supplies during normal years. Impacts would be less than significant. (Final EIR 3.15-16 to 3.15-17)

Threshold USS-3 The Project would install 10-inch underground sewer lateral connections along the proposed internal private streets near the center of the Project Site. The sewer laterals would connect to each townhome and the apartment complex. The proposed wastewater lateral connector would connect to existing offsite 24-inch sewer lateral located along California Circle. As such, the Project would have adequate wastewater conveyance systems and impacts would be less than significant. (Final EIR 3.15-17 to 3.15-18)

Threshold USS-4 According to the CalEEMod air quality and greenhouse gas emissions modeling for the Project, the Project would generate approximately 50.96 tons per year, or 0.14 tons per day. This would account for less than 0.01 percent of the Newby Island Landfill's permitted daily capacity of 4,000 tons per day. As a result, the generation of solid waste would not exceed available capacity. The Project would adhere to all State and local standards and impacts would be less than significant. (Final EIR 3.15-18 to 3.15-19)

Threshold USS-5 The City is required by Assembly Bill 939 to divert 75 percent of solid waste from landfills. The Project would be required to demonstrate compliance with all applicable regulations including Assembly Bill 939. The Project would not interfere with any federal, state, or local management and reduction statutes and

regulations related to solid waste. Impacts would be less than significant. (Final EIR 3.15-19)

E.3 Findings Regarding Impacts Analyzed in the EIR and Determined to be Significant but Mitigated to Less than Significant

This section includes findings for project impacts which are potentially significant, but which are mitigated to a less than significant level with the imposition of mitigation measures. The City Council finds that all potentially significant impacts of this project listed below can and will be substantially lessened or avoided by imposition of mitigation measures. Specific findings of the City Council for each impact are set forth below in this section.

The City hereby finds that the following potential environmental impacts can and will be mitigated to below a level of significance, with implementation of the mitigation measures recommended in the EIR.

Air Quality

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

Significance Before Mitigation: Less than significant.

Mitigation Measure

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

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

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.
- Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: While impacts would be less than significant without mitigation, the BAAQMD requires the implementation of the BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions. (Final EIR 3.2-18 to 3.2-23)

Biological Resources

Threshold BIO-1 Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or

special status species in local or regional plans, policies, or regulation, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

Significance Before Mitigation: Potentially significant

Mitigation Measure

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

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

The biologist shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Results of the pre-construction survey and any subsequent monitoring shall be provided to the City of Milpitas, California Department of Fish and Wildlife, and other appropriate agencies. This requirement shall be indicated on the site improvement plan and specifications for verification by the City of Milpitas prior to the initiation of construction activities.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: The Project would operate as multi-family residential uses. These uses are highly unlikely to disturb any potential nesting habitat on-site. However, given the health condition of the majority of existing trees on-site, construction activities associated with the Project would comply with the

recommendations outlined in the Arborist Report, and remove all 49 trees, including 27 protected trees. The Project will plant 269 new trees of various species, resulting in a replacement ratio of 10:1. Notwithstanding, the Project could potentially disturb and modify any critical habitats that may be present on-site for special-status bird species.

To reduce such impacts to the special-status migratory birds **Mitigation Measure MM BIO-1** would require a pre-construction clearance survey to be conducted on-site with a qualified biologist prior to the initiation of construction activities associated with the Project. In the event that an active nest is discovered during the pre-construction clearance survey, **Mitigation Measure MM BIO-1** would require all construction activities associated with the Project to stay outside of a 100 feet buffer around the discovered nest. Implementation of **Mitigation Measure MM BIO-1** would reduce such impacts to the special-status migratory birds to less than significant levels. (Final EIR 3.3-20 to 3.3-23)

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

Significance Before Mitigation: Potentially significant

Mitigation Measure

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

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Existing ornamental vegetation on-site has the potential to provide suitable nesting habitat for birds. The Migratory Bird Treaty Act (MBTA) governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, or nests. There are several mature trees present within the Project Site that may provide suitable habitat for nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code §§ 3500-5500. Birds may also nest on or within the vacant building on site.

To reduce such impacts the Project would implement **Mitigation Measure MM BIO-1**, which would halt the removal of any trees with active bird nests until said nesting becomes inactive. With the implementation

of **Mitigation Measure MM BIO-1**, direct and indirect impacts to protected nesting birds would be reduced to less than significant levels. (Final EIR 3.3-24 to 3.3-25)

Cultural, Tribal Cultural and Paleontological Resources

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

Significance Before Mitigation: Potentially significant

Mitigation Measure

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

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: In the event that archaeological resources are encountered during Project construction, **Mitigation Measure CUL-1** would require all construction efforts associated with the Project to halt immediately until a qualified archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action. If the archaeologist determines the resource constitutes a "unique archaeological resource", time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation would be made available to the

Applicant. With implementation of **Mitigation Measure CUL-1**, the Project would not cause a substantial adverse change in the significance of an archaeological resource or site pursuant to Section 15064.5 of the *CEQA Guidelines*, and impacts would be reduced to less than significant levels. (Final EIR 3.4-18 to 3.4-20)

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

- i) Listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
- ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?

Significance Before Mitigation: Potentially significant

Mitigation Measure

Refer to **Mitigation Measure MM CUL-1** above.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Project excavation could encounter native soils which has the potential to support undiscovered tribal cultural resources. If tribal cultural resources are encountered during Project construction, **Mitigation Measure CUL-1** would require all construction efforts associated with the Project to halt until an archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action which must be implemented. Implementation of **Mitigation Measure CUL-1** would ensure that appropriate protocols are in place in the event unknown cultural resources, including archaeological and tribal cultural resources, are discovered during ground-disturbing activities. As such,

impacts to tribal cultural resources would be reduced to less than significant levels. (Final EIR, pp. 3.4-21 to 3.4-22)

Geology and Soils

Threshold GEO-9 **Would the Project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?**

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM GEO-1 In the event a potentially significant paleontological resource is encountered during ground-disturbing activities, work within 100 feet of the discovery shall halt and a professional paleontologist who meets the qualification standards of the Society of Vertebrate Paleontology shall be retained by the Project Applicant immediately to evaluate the significance of the discovery. The City of Milpitas Planning Department shall be notified immediately. If the resource is found to be significant, the professional paleontologist shall systematically remove it from the site for laboratory preparation. Following laboratory preparation, the resource would be identified, cataloged, and inventoried in anticipation of curation. All collected and prepared resources would be curated and stored in an accredited repository.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Due to the present surface soils on-site and the historically developed nature of the Project Site and its immediate surrounding areas, the surface of the Project Site has a low potential for paleontological sensitivity. However, the soil conditions at the subsurface and bgs of the Project Site have an undetermined potential for paleontological sensitivity. In the event that a potentially significant paleontological resource is encountered during ground-disturbing activities, **Mitigation Measure MM GEO-1** would require all work within 100 feet of the discovery to halt and a qualified professional paleontologist to be retained to evaluate the find in consultation with the City. With implementation of **Mitigation Measure MM GEO-1**, impacts pertaining to paleontological resources would be reduced to a less than significant level. (Final EIR 3.6-25 to 3.6-26)

Greenhouse Gas

Threshold GHG-1 **Would the Project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?**

Threshold GHG-2 **Would the Project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gas emissions?**

Significance Before Mitigation: Less than significant

Mitigation Measure

MM GHG-1 Prior to the issuance of a building permit, the Project Applicant shall demonstrate compliance with relevant and applicable measures of the Climate Action Plan (CAP) Update by preparing and implementing a project-specific consistency review checklist. The City shall review this consistency review checklist as part of the Project plan review.

The consistency review checklist shall outline feasible, effective and applicable measures that will be required for the Project. Applicable and effective measures in reducing Project GHG emissions include, but are not limited to, the following:

- Utilize the latest energy-efficient construction equipment, when feasible;
- Install Energy Star appliances;
- Install on-site renewable energy, such as solar panels;
- Provide on-site electric vehicle charging stations and associated infrastructure; and
- Install water-efficient irrigation systems capable of using reclaimed water, when available.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: While impacts would be less than significant without mitigation, **Mitigation Measure GHG-1** would demonstrate the Project's compliance with applicable goals and measures set forth

in the Milpitas 2022 CAP Update. As such, the Project would comply with BAAQMD threshold “B” which states that projects must be consistent with a local GHG reduction strategy. (Final EIR 3.7-27 to 3.7-30)

Hazards and Hazardous Materials

Threshold HAZ-2 **Would the Project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?**

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM HAZ-1 Prior to issuance of a grading permit, a Soil Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience to establish appropriate management practices for handling impacted soil, soil vapor and ground water if encountered during construction activities. These documents shall include the following:

- Site control procedures to control the flow of personnel, vehicles and materials in and out of the Site.
- Measures to minimize dust generation, storm water runoff and tracking of soil off-Site.
- If excavation de-watering is required, protocols to evaluate water quality and discharge/disposal alternatives shall be described.
- Protocols for soil removal and subsequent subsurface soil sampling and evaluation.
- Protocols for conducting earthwork activities in areas where impacted soil, soil vapor and/or ground water are present or suspected. Worker training requirements, health and safety measures and soil handing procedures should be described.
- Protocols to be implemented if buried structures, wells, debris, or unidentified areas of impacted soil are encountered during construction activities.
- Protocols to evaluate the quality of soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be determined.
- Procedures to evaluate and document the quality of any soil imported to the Site.

- Soil containing chemicals exceeding residential (unrestricted use) screening levels or typical background concentrations of metals should not be accepted.
- Methods to monitor excavations for the potential presence of volatile chemical vapors.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Adherence to applicable federal and state regulations related to hazards and hazardous materials would ensure safety impacts pertaining to the potential for accidental conditions during Project operations would be less than significant. Subsequent to this removal, groundwater and soil vapor samples should be collected from this area to determine if elevated petroleum hydrocarbons or Volatile Organic Compounds remain. Additional vapor mitigation controls may be required based on the post-removal soil vapor concentrations. This area would be required to be backfilled with compacted clean fill material. Further, the Project would be subject to **Mitigation Measure MM HAZ-1** which would require a Soil Management Plan (SMP) to be prepared and implemented during grading and excavation activities. The SMP would detail the best management practices to properly manage impacted soil in a manner protective of human health and consistent with applicable Federal, State, and local laws. Subsequent to the subsurface evaluation previously discuss, the SMP would implement protocols for the removal of impacted soil. Further, the SMP would require all excavated soil generated from the Project Site that requires off-site disposal to be required to be characterized prior to disposal at a licensed disposal facility or other commercial property, as appropriate in consultation with a Phase II/Site Characterization specialist. Nevertheless, adherence to applicable federal and state laws and regulations and the implementation of **Mitigation Measure MM HAZ-1** would reduce impacts resulting from the construction-related accident conditions involving the release of hazardous materials to less than significant levels. (Final EIR 3.8-22 to 3.8-24)

Transportation

Threshold TRA-1 **Would the Project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?**

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM TRA-1 Prior to project construction initiation, the respective Applicants shall prepare a Traffic Management Plan (TMP) for approval by the City Traffic Engineer. The TMP shall specify that one direction of travel in each direction on adjacent roadways must always be maintained during project construction activities. If full lane closures are required and one direction of travel in each direction cannot be maintained, the TMP shall identify planned detours. The TMP shall include measures such as construction signage, limitations on timing for lane closures to avoid peak hours, temporary striping plans, and use of construction flag person(s) to direct traffic during heavy equipment use. The TMP shall include signage, lane closures, flag persons, etc., and shall specify that one lane of travel in each direction shall be maintained along City rights-of-way. Bicycle lanes and pedestrian sidewalks shall remain open and accessible, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity. Lastly the TMP shall detail plans that the Applicant would take to ensure that the Project Site would provide adequate emergency access. The TMP shall be incorporated into project specifications for verification prior to final plan approval.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Construction activities associated with the Project would require the demolition and reconstruction of the existing driveways within the eastern perimeter of the Project Site. These activities, such as demolition, minor excavation, and grading, may require temporary partial lane closure within the California Circle right-of-way, resulting in partial lane closures for bicyclists and pedestrians. Accordingly, **Mitigation Measure MM TRA-1** would require the Project Applicant to implement a Traffic Management Plan (TMP) to maintain vehicular and bicycle traffic circulation along California Circle and to the Project Site emergency access during construction activities. The TMP would include information detailing proposed signage, lane closures, flag persons, etc., and require that bicycle lanes, pedestrian sidewalks, and bus stops remain open and accessible, to the great extent feasible, during construction or be re-routed to ensure continued connectivity. With the implementation of **Mitigation Measure MM TRA-1**, the Project would not conflict with existing bicycle facilities, and impacts would be less than significant. (Final EIR 3.14-22 to 3.14-24)

Threshold TRA-4 Would the Project result in inadequate emergency access?**Significance Before Mitigation:** Potentially significant**Mitigation Measure**Refer to **Mitigation Measure MM TRA-1** above.**Finding**

The City Council finds that 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 Final EIR.

Supporting Explanation: Project construction activities would not result in inadequate emergency access during construction. However, short term construction activities may result in temporary lane closures along California Circle. As discussed above, implementation of **Mitigation Measure MM-TRA-1** would require the Project Applicant to implement a TMP to maintain emergency access during the construction process and minimize congestion. Additionally, The Project would not implement any offsite roadway network changes and therefore would not adversely affect emergency vehicle circulation on surrounding roadways. Thus, impacts concerning emergency access would be reduced to less than significant levels with mitigation incorporated. (Final EIR 3.14-30 to 3.14-31)

E.4 Findings Regarding Impacts Analyzed in the EIR and Determined to be Significant and Unavoidable

This section includes findings for project impacts which are determined to be significant even with the imposition of mitigation measures. These impacts cannot be mitigated to a less than significant level and therefore remain unavoidable. Although the City Council finds that all significant impacts of this project listed below cannot be substantially lessened or avoided by the imposition of mitigation measures or alternatives, the mitigation measures found in the EIR and listed below will be implemented to lessen the Project's impact. Specific findings of this City Council for each impact are set forth below in this section.

Aesthetics**Threshold AQ-2 Would the Project have a substantial adverse effect on a scenic vista?****Significance Before Mitigation:** Potentially Significant

Mitigation Measure

No feasible mitigation measures are available.

Findings

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

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

E.5 Other CEQA Required Analysis in the EIR

Cumulative Impact Analysis

Cumulative impacts are defined in *State CEQA Guidelines* §15355(b) as:

"The change in the environment which results from the incremental impact of the project when added to other closely related past, present, and probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."

Aesthetics

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

Significance Before Mitigation: Potentially Significant

Mitigation Measure

No feasible mitigation measures are available.

Findings

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

Supporting Explanation: Public views of both the Project Site and the open hillsides located east of the City are provided from McCarthy Boulevard (Key View 1), I-880 (Key View 2), and the Coyote Creek Trail (Key View 3). Due to the proposed height of the development, the Project would significantly obstruct public views of the hillsides from Key Views 2 and 3 and would completely block any view of the hillsides from Key View 1. Therefore, Project implementation would result in significant and unavoidable cumulative impacts to scenic vistas. (Final EIR 3.1-27 to 3.1-28)

Biological Resources

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

Significance Before Mitigation: Potentially significant

Mitigation Measure

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

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

The biologist shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Results of the pre-construction survey and any subsequent monitoring shall be provided to the City of Milpitas, California Department of Fish and Wildlife, and other appropriate agencies. This requirement shall be indicated on the site improvement plan and specifications for verification by the City of Milpitas prior to the initiation of construction activities.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Existing policies and regulations, in combination with **Mitigation Measure MM BIO-1**, will reduce impacts to sensitive habitats and biological resources to a less than significant level. As such, the Project would not substantially contribute to cumulative impacts on sensitive habitats and biological resources. (Final EIR 3.3-27 to 3.3-28)

Geology and Soils

Threshold GEO-9 Would the Project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM GEO-1 In the event a potentially significant paleontological resource is encountered during ground-disturbing activities, work within 100 feet of the discovery shall halt and a professional paleontologist who meets the qualification standards of the Society of Vertebrate Paleontology shall be retained by the Project Applicant immediately to evaluate the significance of the discovery. The City of Milpitas Planning Department shall be notified immediately. If the resource is found to be significant, the professional paleontologist shall systematically remove it from the site for laboratory preparation. Following laboratory preparation, the resource would be identified, catalogued, and inventoried in anticipation of curation. All collected and prepared resources would be curated and stored in an accredited repository.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Cumulative development throughout the City of Milpitas could potentially disturb unknown paleontological resources that could be present in the City. It is anticipated that Citywide development would have the potential to disturb paleontological resources. Potentially significant cumulative paleontological resource impacts could, however, be mitigated to below a level of significance through resource avoidance or recovery on a case by-case basis. As discussed under **Impact GEO-9**, the Project is not anticipated to disturb paleontological resources and **Mitigation Measure GEO-1** has been included to ensure that the impacts would not be cumulatively considerable as they would ensure on-site resources are protected or recovered. (Final EIR 3.6-26)

Hazards and Hazardous Materials

Threshold HAZ-2 **Would the Project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?**

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM HAZ-1 Prior to issuance of a grading permit, a Soil Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience to establish appropriate management practices for handling impacted soil, soil vapor and ground water if encountered during construction activities. These documents shall include the following:

- Site control procedures to control the flow of personnel, vehicles and materials in and out of the Site.
- Measures to minimize dust generation, storm water runoff and tracking of soil off-Site.
- If excavation de-watering is required, protocols to evaluate water quality and discharge/disposal alternatives shall be described.
- Protocols for soil removal and subsequent subsurface soil sampling and evaluation.

- Protocols for conducting earthwork activities in areas where impacted soil, soil vapor and/or ground water are present or suspected. Worker training requirements, health and safety measures and soil handing procedures should be described.
- Protocols to be implemented if buried structures, wells, debris, or unidentified areas of impacted soil are encountered during construction activities.
- Protocols to evaluate the quality of soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be determined.
- Procedures to evaluate and document the quality of any soil imported to the Site.
- Soil containing chemicals exceeding residential (unrestricted use) screening levels or typical background concentrations of metals should not be accepted.
- Methods to monitor excavations for the potential presence of volatile chemical vapors.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: Cumulative projects would be required to evaluate their project's likelihood and severity of accidental releases of hazardous materials on a project-by-project basis. Cumulative projects would also be required to comply with all applicable laws and regulations as appropriate; including Comprehensive Environmental Response Compensation and Liability Act (CERCLA), California Accidental Release Prevention (CalARP), California Human Health Screening Levels (CHHLs) and requirements outlined by the Department of Toxic Substances Control (DTSC) and the California Fire Code(CFC). The Project would result in a potentially significant impact reasonably foreseeable upset and accident conditions involving the release of hazardous materials. However, the Project Applicant would adhere to all applicable regulations and regulatory requirements. Further, implementation of **Mitigation Measure MM HAZ-1** would require the preparation of a Soil Management Plan (SMP) prior to the initiation of excavating activities. Therefore, adherence to regulatory requirements and **Mitigation Measure MM HAZ-1** would minimize impacts to be less than cumulatively considerable. (Final EIR 3.8-28 to 3.8-31)

Transportation

Threshold TRA-1 **Would the Project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?**

Significance Before Mitigation: Potentially significant

Mitigation Measure

MM TRA-1 Prior to project construction initiation, the respective Applicants shall prepare a Traffic Management Plan (TMP) for approval by the City Traffic Engineer. The TMP shall specify that one direction of travel in each direction on adjacent roadways must always be maintained during project construction activities. If full lane closures are required and one direction of travel in each direction cannot be maintained, the TMP shall identify planned detours. The TMP shall include measures such as construction signage, limitations on timing for lane closures to avoid peak hours, temporary striping plans, and use of construction flag person(s) to direct traffic during heavy equipment use. The TMP shall include signage, lane closures, flag persons, etc., and shall specify that one lane of travel in each direction shall be maintained along City rights-of-way. Bicycle lanes and pedestrian sidewalks shall remain open and accessible, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity. Lastly the TMP shall detail plans that the Applicant would take to ensure that the Project Site would provide adequate emergency access. The TMP shall be incorporated into project specifications for verification prior to final plan approval.

Finding

The City Council finds that 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 Final EIR.

Supporting Explanation: The Project would result in less than significant impacts upon implementation of **Mitigation Measure MM TRA-1**, which would require the Project Applicant to implement a TMP to ensure continued bicycle and pedestrian circulation during the construction activities. Planned development projects that are adjacent to Class II Bicycle Lanes would also be required to implement this mitigation measure to reduce potential impacts to existing bicycle circulation. With the implementation of **Mitigation Measure MM TRA-1**, cumulative impacts would be less than significant (Final EIR 3.14-22 to 3.14-24)

F. ALTERNATIVES TO THE PROJECT

State CEQA Guidelines §15126.6(a) requires an evaluation of “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.” The objectives of the Project are identified in Section 2.0, Project Description, of the DEIR, and in Section B of these Findings. Alternatives are used to determine whether or not a variation of the Project would reduce or eliminate significant project impacts within the basic framework of the objectives.

State CEQA Guidelines §15126.6(e) requires that, among other alternatives, a “no project” alternative be evaluated in comparison to the Project. *State CEQA Guidelines* §15126.6(e)(2) requires that the “no project” analysis “discuss the existing conditions … as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.”

The project alternatives evaluated in detail in the EIR were the following:

- No Project Alternative
- Specific Plan Alternative

F.1 Project Objectives and Legal Requirements

At the time of project approval, the lead agency’s decision-making body must determine whether the alternatives are feasible or not. The lead agency must consider whether specific “economic, legal, social, technological, and other considerations …make infeasible mitigation measures or alternatives identified in the environmental impact report.” (Pub. Res. Code, § 21081(a)(3); *State CEQA Guidelines* § 15091(a)(3)).

Importantly, CEQA gives lead agencies the authority to approve a project notwithstanding its significant environmental impacts, if the agency determines it is not “feasible” to lessen or avoid the significant effects. (Pub. Res. Code, § 21002). If specifically identified benefits of the project outweigh the significant unavoidable environmental impacts, the adverse impacts may be considered “acceptable,” thereby allowing for lead agency approval of the project, notwithstanding such adverse impacts, provided the agency adopts a statement of overriding considerations. (Pub. Res. Code, § 21081.1(b); *State CEQA Guidelines* § 15093).

As called for by the *State CEQA Guidelines*, the achievement of project objectives must be balanced by the ability of an alternative to reduce the significant impacts of the project. The objectives of the 1355 California Circle project are as follows:

- Increase affordable housing opportunities, including housing designated for all MUSD staff, and help meet the City's Regional Housing Needs Allocation (RHNA);
- Redevelop underutilized and vacated land; and
- Implement sustainable building practices to showcase energy efficiency and low water use.

CEQA does not require adoption of an alternative that does not adequately meet most of the basic project objectives as determined by the lead agency decision makers.

F.2 Findings Regarding Alternatives Considered in the EIR

Alternative 1 - No Project Alternative

The No Project Alternative is required by Section 15126.6(e)(2) of the *State CEQA Guidelines* and assumes that the Project would not be implemented. The No Project Alternative allows decision-makers to compare the impacts of approving the Project with the impacts of not approving the Project. However, "no project" does not necessarily mean that development will be prohibited. The No Project Alternative includes "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."¹ For purposes of this EIR, the No Project Alternative (Alternative 1) assumes the development of the proposed seven plex and twelve plex townhomes and apartment complex would not occur. The existing 90,000 square foot industrial office building, surface parking lot, and landscaping would remain, and no physical changes would be implemented.

Consideration of the No Project Alternative

As demonstrated in **Table 5.0-1, Alternative 1 Relationship to the Project Objectives**, Alternative 1 would not achieve any of the Project objectives. Alternative 1 would not redevelop the existing parcel or provide new housing in the City. No changes to the Project Site would occur under Alternative 1. Accordingly, impact areas driven by population would be determined to be less than significant, including energy, public services and utilities, including fire, police, school and library services, electricity, and natural gas consumption, as well as solid waste and wastewater generation, and water consumption, would be less

¹ CEQA § 15126.6[e][2]

than the Project. Furthermore, impact areas determined to be less than significant with mitigation or result in unavoidable and significant impacts such as aesthetics, biological resources, cultural resources, geology and soils, hazards and hazardous materials, and traffic/circulation would be reduced.

Findings

The Council finds that while the No Project Alternative results in less significant impacts to aesthetics, biological resources, cultural resources, geology and soils, hazards and hazardous materials, and traffic/circulation impacts compared to the Project, the alternative would not meet many of the key project objectives, and is environmentally and socially undesirable, and is therefore rejected.

Alternative 2 – Specific Plan Alternative

The Specific Plan Alternative (Alternative 2) would include the adoption and implementation of a California Circle Specific Plan bound by the I-880/California Circle on-and-off ramp, Dixon Landing Road, Lower Penitencia Creek, Fairview Avenue, and Cadillac Court (Plan Area),⁴ which includes the Project Site. The Specific Plan would serve both planning and regulatory functions, including land use regulations, circulation patterns, building and streetscape design standards, and development standards. Alternative 2 assumes that the Project could be implemented as a development project under the Specific Plan.

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

Consideration of the Specific Plan Alternative

As shown in Table 5.0-2, Alternative 2 would achieve all three of the Project objectives. Furthermore, most of the objectives would be met to a greater degree than the Project because the Specific Plan Area would be able to accommodate a greater amount of mixed-use development, thus providing greater opportunities for housing development and increased development intensity. The Specific Plan Alternative would eliminate the significant impact of the Project (aesthetics-visual impacts to scenic resources). Additionally, the Specific Plan Alternative would achieve all Project objectives to a greater degree. However, Alternative 2 could increase the amount of residential development compared to the Project. Thus, the Alternative would potentially increase the City's population and the demand for public services, recreational spaces,

and utility services (i.e., water, wastewater, and solid waste). Future development and redevelopment projects resulting from the Specific Plan Alternative would introduce additional commercial, industrial, and mixed-use development that would increase the development of the Project Site and uses surrounding the Project Site (Specific Plan Area).

Findings

The City Council finds that implementation of Alternative 2 could potentially result in similar environmental impacts to the Project but to a greater degree. Therefore, the Specific Plan Alternative would result in greater impacts than the Project and would ultimately be the inferior alternative. Thus, the alternative is environmentally and socially undesirable, and is therefore rejected.

G STATEMENT OF OVERRIDING CONSIDERATIONS

The Milpitas City Council hereby adopts this Statement of Overriding Considerations concerning the unavoidable significant impacts of the 1355 California Circle Project to explain why the benefits of the Project outweigh and override its unavoidable impacts.

The Final Environmental Impact Report (Final EIR) for the 1355 California Circle Project identifies and discusses significant environmental impacts that could occur as a result of implementation of the Project. The City Council made specific Findings pursuant to CEQA, on each of the significant environmental impacts of the Project and on mitigation measures and alternatives. Nevertheless, even with implementation of feasible mitigation measures, certain significant and unavoidable impacts related to aesthetics still remain.

In accordance with Section 15093 of the *State CEQA Guidelines*, the City Council hereby finds that following economic, legal, social, environmental, and other benefits of the 1355 California Circle Project outweigh its unavoidable, adverse environmental impacts discussed in the Findings, based on the considerations set forth herein:

G.1 Benefits of the 1355 California Circle Project

1. The Project will provide affordable housing opportunities, which will assist the City in meeting its share of the Regional Housing Needs Allocation for new and affordable residential units.
2. The Project's 206 multi-family housing units will help address the statewide housing crises
3. The Project will redevelop an underutilized and vacated parcel.

For the above-mentioned reasons, the City Council hereby finds that the benefits of the Project outweigh and override any adverse environmental impacts associated with the 1355 California Circle Project.

H. ADOPTION OF A MITIGATION MONITORING PROGRAM FOR THE CEQA MITIGATION MEASURES

Section 21081.6 of the Public Resources Code requires this City Council to adopt a monitoring or reporting program regarding the changes in the Project and mitigation measures imposed to lessen or avoid significant effects on the environment. The Mitigation Monitoring Plan (MMP), included as Chapter 3.0 in the Final EIR, is hereby adopted.