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Chair Sudhir Mandal and Honorable Members of the
Planning Commission
City of Milpitas
c/o Sheldon S. Ah Sing, Senior Planner
455 East Calaveras Boulevard
Milpitas, California 95035

Re: Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008, Citation Residential Project, 1200 Piper Drive (APN: 086-32-037 and 086-32-040)

Dear Chair Mandal and Honorable Members of the Planning Commission:

I am writing on behalf of DR Horton, Project Applicant for Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008, Citation Residential Project, 1200 Piper Drive (APN: 086-32-037 and 086-32-040) (collectively the "Harmony Project"). We are writing to suggest that the City of Milpitas consider an alternative process for reviewing the Harmony Project in compliance with the California Environmental Quality Act ("CEQA"). Specifically, we believe that the evidence in the record supports the City finding that under CEQA Guideline section 15168, the Harmony Project will not have any new effects and the City can approve the project as being within the scope of the project covered by the Program Environmental Impact Report ("EIR") prepared for the Milpitas Transit Area Specific Plan ("TASP").

Overview of Program EIRs

A Program EIR is an EIR prepared for a series of actions that can be characterized as one large project and are related:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

> (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
>
> (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

Cal. Code Regs. tit. 14, § 15168(a). Under the CEQA Guidelines, a Program EIR may render unnecessary the preparation of subsequent environmental documents on a series of actions if the program EIR contains a thorough analysis of the relevant environmental issues and evaluates the effects of the entire program specifically and comprehensively. *Id.* § 15168(c)(5). Indeed, by conducting a broader, more comprehensive evaluation of significant environmental impacts, the Program EIR better identifies a project's long term cumulative effects than a series of individual, activity-level analyses. *Id.* § 15168(b)(1)-(2). A Program EIR also allows for the lead agency "to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." *Id.* § 15168(b)(4). This ensures a more orderly and informed planning process.

Under the CEQA Guidelines, if the lead agency determines that a project is within the scope of a Program EIR and the project will have no new effects, "the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." *Id.* § 15168(b)(2). Although a specific format is not prescribed by CEQA, the Guidelines suggest documenting a determination that a project qualifies through preparation of a written checklist or similar device, such as an Initial Study. *Id.* § 15168(c)(4).

The TASP EIR Serves as a Program EIR

Recognizing the significant benefits of the Program EIR approach, the City certified the Transit Area Specific Plan Environmental Impact Report ("TASP EIR") as a "Program" EIR pursuant to CEQA Guideline 15168. The TASP EIR expressly envisioned that the City could rely on the TASP EIR for individual projects in certain circumstances:

> As a program EIR, this document focuses on the overall effects of the proposed Transit Area Plan. When specific development proposals for the Transit Area are submitted to the City, the City will determine whether the environmental effects of the proposed projects are addressed by this EIR. If the City finds that the proposals would not result in any additional environmental impacts beyond those considered in this EIR, no new environmental analysis would be required. If the City

> determines that a project would create potential environmental impacts not studied in this EIR, or that environmental conditions have changed substantially since the EIR was prepared, the City could require further environmental review to determine appropriate revisions to the project, conditions of approval, or mitigation measures.

TASP EIR at E-1. Accordingly, it is appropriate to use the TASP EIR as Program EIR for projects contemplated, analyzed and described in the TASP EIR. Indeed, given the City's investment of time and resources in developing the TASP EIR as a programmatic document, it would be in the public interest to use it as a Program EIR for projects falling within its scope.

The Harmony Project Falls Within the Scope of the TASP EIR

We respectfully submit that the proposed Harmony Project is within the scope of the TASP EIR and will have no new significant effects. Thus, the Project should be properly reviewed under the TASP EIR, in compliance with CEQA.

The Harmony Project is within the geographic area of the TASP EIR, and has environmental impacts either the same or less than those analyzed in the TASP EIR. The Harmony Project impacts are mitigated through compliance with the Transit Area Specific Plan policies and mitigation measures identified in the TASP EIR. *See* Cal. Code Regs. tit. 14, § 15168(a). The Transit Area Specific Plan encompasses 437 acres of land, including the Harmony Project. Although the Harmony Project includes proposed amendments to the Specific Plan, as well as the General Plan and Zoning, the amendments significantly reduce the density and intensity of use for each area subject to the "Rezone." For example, the 13.6 acres being rezoned from Mixed Use Very High Density (MXD3) to Multi-Family High Density (R3) could have been developed at a residential density of 41-60 units/acre with buildings of up to 12 stories or 150 feet under the Specific Plan as analyzed in the TASP EIR; however, under the rezoned R3 district, the mix of uses is limited to primarily residential with a density of 12-20 units/acre and buildings of up to 3.5 stories or 35 feet. The 10.87 acres being rezoned from Multi-Family High Density (R3) to Parks and Open Space (POS) similarly results in a significant reduction in density and intensity of use. The Harmony Project, as proposed, will have 276 units, which is fewer than was assumed in the TASP EIR. Accordingly, because the Harmony Project is within the area subject to the TASP EIR and the proposed uses are generally the same, if actually less significant, than those examined in the TASP EIR, the Harmony Project is within the scope of the TASP EIR.

While the document prepared by the City and circulated for public comment is labeled a Mitigated Negative Declaration, the contents of that document confirm that the Harmony Project is within the scope of the TASP EIR and will have no new impacts. Indeed, a careful

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review of the Harmony Project demonstrates that any impacts of the proposed project were identified and mitigated in the TASP EIR. For your convenience and consideration, we have prepared a worksheet that goes through each potential impact identified in the Initial Study for the Harmony Project and states how such impacts were properly analyzed and mitigated in the TASP EIR. This worksheet is enclosed with this letter.

We appreciate your consideration of this matter. Please let us know if you require any additional information or if we may be of any other assistance.

Sincerely,

Christopher J. Carr

Enclosure

HARMONY PROJECT
Program EIR Worksheet

Type of Impact	Consistency with TASP EIR	New Impact?
Aesthetics	• The TASP envisions this area to incorporate High Density Residential and Mixed Uses. The proposed development project would demolish the existing buildings, grade and prepare the 12.3 acre site for 276 single family attached homes and condos. The townhomes and condos will stand between three and four stories high, not to exceed 50' in height, and have a mixed variety of styles that complement one another. The style and materials proposed for the new homes are consistent with the Specific Plan and will be complementary to the approved project to the North and future development. Accordingly, the Project is consistent with the TASP and its aesthetic impacts are covered by the TASP EIR. • The one change is that some trees will be removed that were not identified for removal in the TASP EIR. However, any tree removal will be conducted in compliance with City ordinance, including the on-site replacement of trees at a 3.6:1 ratio.	• **No new impact** • The project is consistent with the aesthetic vision included in the TASP and analyzed in the TASP EIR. • Although trees will be removed, due to the replacement of the trees, this does not create a new significant aesthetic impact.
Agricultural	• As described in the TASP EIR, converting industrial land to mixed-use residential has no impact on agricultural or forest resources.	• **No new impact**
Air Quality	• The TASP EIR analyzed the air quality impacts of building 7,000 housing units, as well as commercial uses. The TASP EIR assumed a greater density of residential	• **No new impact** • Because the project proposes development that is less dense than that analyzed under the TASP

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	for the development project and the rezone project is also reducing density and intensity of use. • The project is consistent with all air quality related policies in the TASP and will include any related mitigation measure identified in the TASP EIR.	EIR and thus would result in less of an increase in population and vehicle miles traveled than previously studied, the project will not result in any new air quality related impacts.
Biological Resources	• The TASP EIR examined the impacts to biological resources of building out the planning area in a manner consistent with the Specific Plan. The TASP EIR noted that 90 percent of the planning area is developed, including numerous ornamental trees. • The one change is that some trees will be removed that were not identified for removal in the TASP EIR. However, any tree removal will be conducted in compliance with City ordinance and Specific Plan policies, including the on-site replacement of trees at a 3.6:1 ratio and measures to minimize impacts on biological resources, such as nesting birds.	• **No new impact** • There are approximately 187 trees located on the Development site. Of these trees, 55 are protected under the City's Tree Ordinance. In compliance with City ordinance, the applicant proposes planting 685 new trees onsite along with 52 trees following the upgraded City Trail, which runs parallel to the rear side of the property. The applicant will also comply all City requirements to minimize impacts on biological resources when removing trees. As a result of these measures, there will be no new biological impact.
Cultural Resources	• The TASP EIR analyzed the impacts to cultural resources as a result of developing the project site. The proposed project will comply with the policies in the Transit Area Specific Plan and the TASP EIR mitigation measures.	• **No new impact** • There is a remote possibility of disturbance of cultural resources during grading and/or development of property. Any remains discovered will be handled in compliance with City ordinance, Health and Safety Code section

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		7050.5 and Public Resources Code section 5097.94. However, this issue was addressed in the TASP EIR and there are no unusual circumstances with respect to cultural resources on the project site. As a result, the proposed project has no new impacts to cultural resources not previously studied in the TASP EIR.
Geology and Soils	• The TASP EIR analyzed geology and soils impacts as a result of developing the project site. The project area is located in a seismically active region and on a mapped liquefaction hazard zone. The soils on the site have a moderate potential for expansion. The project will comply with all policies and mitigation measures included in the TASP EIR relating to geology and soils.	• **No new impact** • The proposed project will comply with the policies in the Transit Area Specific Plan and the TASP EIR mitigation measures. Further, the TASP EIR assumed development of greater intensity, including buildings of up to 120 feet, but the proposed project includes a significant reduction in intensity and building height. As a result, the proposed project has no new geology and soils related impacts not previously studied in the TASP EIR.
Greenhouse Gas Emissions	• The TASP EIR analyzed the global climate change impacts associated with building out the Transit Area Specific Plan, including vehicle use, electric power generation and construction. According to that document, even though build out of the Transit Area Specific Plan would result in increased greenhouse gas emissions from increased vehicle miles traveled and increased energy consumption, compliance with the various Greenhouse Gas Policies minimizes greenhouse	• **No new impact** • Because the project reduces the density and intensity of use, resulting in less energy consumption and fewer vehicle miles traveled, the proposed project does not cause any increase in greenhouse gas emissions beyond what was analyzed in the TASP EIR and no further analysis is required.

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	gas emissions and reduces associated impacts to a less than significant level. • The proposed project is consistent with all Transit Area Specific Plan EIR Greenhouse Gas Policies, as set forth in Impact 3.12-1 and 3.12-2. • The proposed project reduces the density and intensity of development, resulting in fewer vehicle miles traveled and less energy consumption.	
Hazards and Hazardous Materials	• The TASP EIR analyzed potential impacts associated with hazardous materials and noted the potential for exposure to asbestos containing materials ("ACM") and lead based paint ("LBP") during construction. The TASP EIR concluded that any impact can be reduced to a level of less than significant through compliance with Specific Plan Policies, including Policy 5.21. • The proposed project will comply with Policy 5.21. The potential for exposure to ACM and LBP has been adequately analyzed in the TASP EIR and is not new information.	• **No new impact** • Although the Hazardous Materials Survey performed by Tetra Tech for the proposed development project site indicated that existing buildings contain some ACM and LBP, this issue is fully addressed in the TASP EIR. The proposed project will comply with all TASP policies, including Policy 5.21, so this does not present a new significant impact.
Hydrology and Water Quality	• The TASP EIR analyzed hydrology and water quality impacts associated with building out the Transit Area Specific Plan, including the project site. The TASP EIR concluded that through implementation of Specific Plan policies, including Policy 5.34, Policy 6.5 and Policy 6.7, among others, water quality impacts can be reduced to less than significant. The proposed project will comply	• **No new impact** • The proposed project does not pose any unique water quality issues and compliance with the TASP EIR policies and mitigation measures will reduce water quality impacts to a less than significant level.

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	with all water quality related policies and mitigation measures discussed in the TASP EIR.	• Further, since adoption of the TASP EIR, Provision C.3 of the City's NPDES permit has been made more stringent, meaning that water quality impacts will be reduced even further than assumed in the TASP EIR. Thus, water quality impacts were adequately analyzed in the TASP EIR and no new impacts will occur. No further analysis is required.
Land Use	• The Transit Area Specific Plan proposed transit-oriented residential and commercial redevelopment on land currently under industrial use. The vision of the Specific Plan is to redevelop this area surrounding present light rail stations and a future BART station into a new residential and commercial hub. This change in use was fully analyzed by the TASP EIR.	• **No new impact** • Because the proposed project is consistent with that overall land use vision in the TASP EIR, there will be no new land use impacts and no further analysis is required.
Noise	• The TASP EIR considered noise impacts associated with building out the Specific Plan area and determined that compliance with the various noise related policies set forth in the Specific Plan would reduce impacts to a less than significant level. • The proposed project is consistent with these policies and, as confirmed by the Environmental Noise and Vibration Study, the project meets all noise standards.	• **No new impact** • Because the TASP EIR fully addressed noise impacts relating to development in this area and the proposed project is consistent with the policies and mitigation measures in the TASP EIR, there are no new noise related impacts and no further analysis is required.
Public Services	• The TASP EIR addressed impacts to public services associated with buildout of the entire Specific Plan area. Because the proposed project reduces the density and	• **No new impact** • Because the proposed project is consistent with

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	intensity of use, its impact on public services is less than was analyzed in the TASP EIR. The proposed project is consistent with all policies and mitigation measures relating to public services included in the TASP EIR.	the policies and includes the mitigation measures in the TASP EIR and the proposed project reduces the density and intensity of use, there are no new public services related impacts.
Recreation	• The TASP EIR addressed impacts to recreation associated with buildout of the entire Specific Plan area. Part of the project is to rezone 10.87 acres of land from Multi-Family Residential High Density (R3) to Parks and Open Space, which amounts to a different configuration of the same amount of open space area as presently shown in the TASP. As such, the proposed project is consistent with the TASP EIR.	• **No new impact** • Because the proposed project reduces the density and intensity of use, yet maintains the same amount of parks, recreation related impacts are less than was analyzed in the TASP EIR. As such, recreation related impacts were fully addressed and no further analysis is required.
Transportation	• The TASP EIR analyzed traffic impacts associated with the buildout of the entire Specific Plan area. The rezoned areas will generate fewer trips than was assumed in the TASP EIR so there is a reduction in impact. • The proposed project with 276 units is also below the expected trip generation specified with the TASP EIR. • The proposed project is consistent with all traffic and transportation related policies and mitigation measures.	• **No new impact** • Because the project reduces the density and intensity of use and reduces the traffic related impacts, the proposed project does not cause a new impact and no further analysis is required.
Utilities and Service Systems	• The TASP EIR assessed impacts to utilities and service systems and included various policies to reduce impacts to a less than significant level. The utilities and services required for the proposed project are consistent with	• **No new impact** • Because the TASP EIR concluded that implementation of the Specific Plan policies

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	those analyzed in the TASP EIR. The proposed project is consistent with all utilities and service system related policies.	would reduce all impacts to utilities and service systems to a less than significant level, the proposed project is consistent with these policies, and the proposed project reduces the density and intensity, there will be no new impacts and no further analysis is required.