



## MEMORANDUM

**DATE:** April 27, 2016

**TO:** Mike Moore, Contract Planner, City of Milpitas

**FROM:** Theresa Wallace, Associate/Project Manager  
Judith H. Malamut, AICP, Principal

**SUBJECT:** California Environmental Quality Act (CEQA) Exemption Memo for the 730-750 E. Capitol Avenue Project, Milpitas, California

This memorandum and attachments provide a description of the 730-750 E. Capitol Avenue Project (project) and substantial evidence to confirm that the potential project is exempt from further environmental analysis per Section 15168(c) of the California Environmental Quality Act (CEQA). The approximately 9.38-acre project site is located at 730-750 E. Capitol Avenue in Milpitas, Santa Clara County. The proposed project would involve the demolition of all existing structures and associated pavements on the site and grading and construction of two residential buildings with a total of 582 residential units, 5,000 square feet of retail space, and associated improvements.

Attachment A provides a project description of the proposed project. This attachment includes a description of the project, location, existing site characteristics, the proposed project and required approvals and entitlements. The City of Milpitas (City) is the CEQA lead agency for the project.

The responses in an environmental checklist (Attachment B) prepared for the project demonstrate for each CEQA topic that because the proposed project was evaluated and impacts were mitigated to the degree possible as part of the Milpitas Transit Area Specific Plan (TASP) Project and Final Environmental Impact Report (FEIR), no additional CEQA review is required. CEQA Guidelines 15168(c)(4) recommends using a written checklist or similar device to confirm whether the environmental effects of a subsequent activity were adequately covered in a program EIR. The responses contained in the checklist confirm that the project was considered within the scope of the evaluation within the TASP FEIR and no new impacts were identified and no new mitigation measures are required.

The City can approve the 730-750 E. Capitol Avenue Project as being within the scope of the TASP covered by its FEIR and no new environmental document for the purposes of CEQA clearance is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 730-750 E. Capitol Avenue Project is exempt from further review under CEQA. This analysis finds that a Notice of Exemption may be prepared for the project and filed with the Santa Clara County Clerk.

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**ATTACHMENT A**  
**PROJECT DESCRIPTION**

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## **PROJECT DESCRIPTION**

The following describes the proposed 730-750 East Capitol Avenue Project (project), which is located within the Milpitas Transit Area Specific Plan (TASP). This section includes a summary description of the project's location and existing site characteristics, required approvals, and entitlements. The City of Milpitas (City) is the lead agency for review of the project under the California Environmental Quality Act (CEQA).

### **A. PROJECT SITE**

The following section describes the location and site characteristics for the project site and provides a brief overview of the existing land uses within and in the vicinity of the site.

#### **1. Location**

The approximately 9.38-acre project site is located at 730-750 East Capitol Avenue and is situated south of Montague Expressway and the Great Mall Shopping Center in the southern portion of the City of Milpitas, Santa Clara County. The irregularly-shaped project site is bounded by East Capitol Avenue on the north; the elevated tracks of the new Bay Area Rapid Transit (BART) system on the east; a Pacific Gas & Electric Company (PG&E) easement and the Penitencia Creek East Channel of the Santa Clara Valley Water District (SCVWD) on the south; and the currently under construction 450 Montague Project by Lennar Homes to the west.

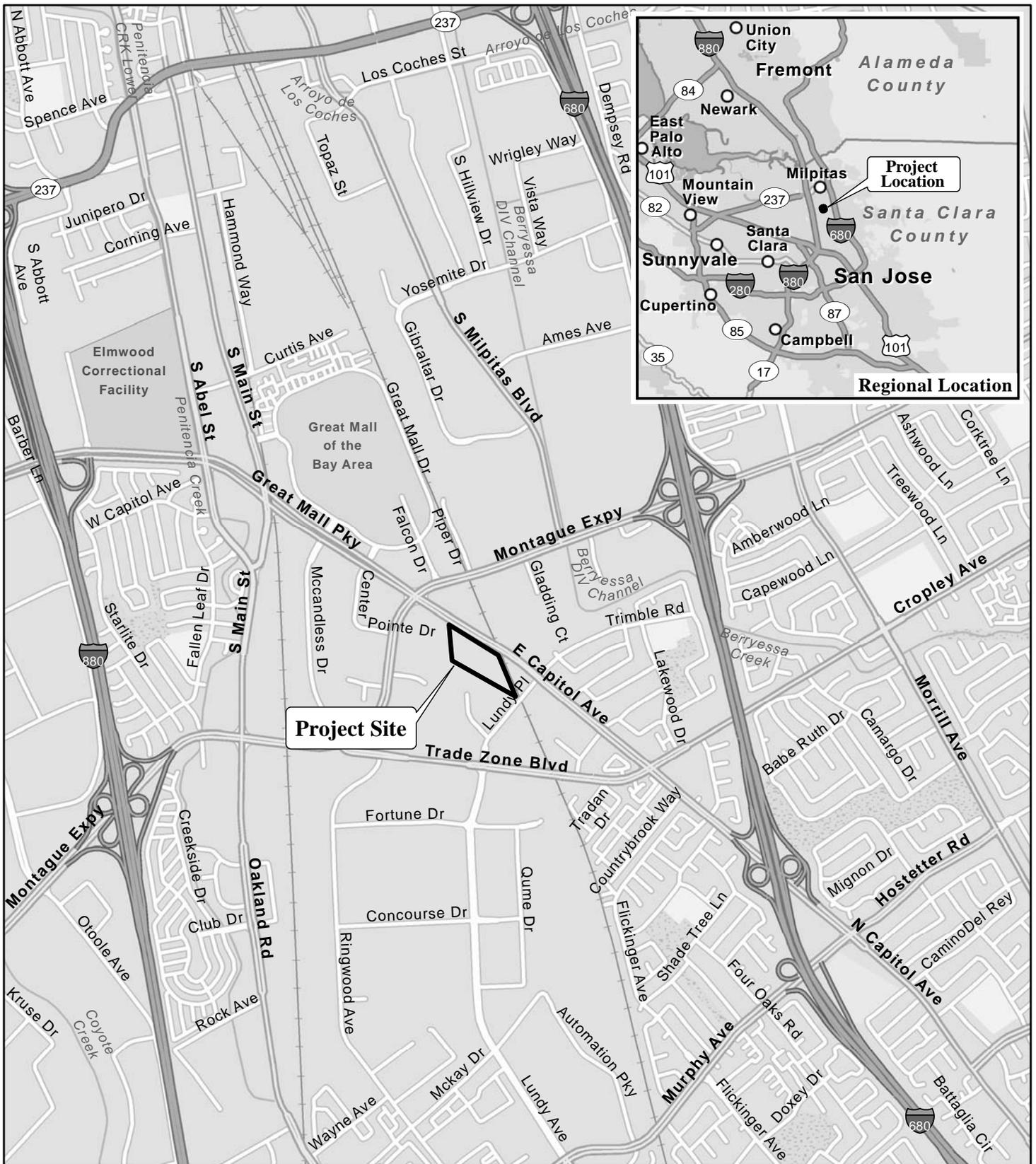
Regional vehicular access to the project site is provided by Interstate 880 (I-880) located to the west and by Interstate 680 (I-680) located to the east of the site. The future Milpitas BART station is currently under construction and will be co-located with the existing Valley Transportation Authority (VTA) light rail station, immediately north of the project site and south of the intersection of Great Mall Parkway/East Capitol Avenue and the Montague Expressway.

Figure 1 shows the site's regional and local context. Figure 2 depicts an aerial photograph of the project site and surrounding land uses.

#### **2. Site Characteristics and Current Site Conditions**

The project site is generally level and consists of three parcels of land (Assessor's Parcel Numbers [APN] 086-37-015, 086-37-026, and 086-37-027) that make up the two building sites.

The 730 East Capitol Avenue site encompasses approximately 4 acres and is located on the west side of the project site and includes APNs 086-37-015 and 086-37-026. This portion of the site currently contains a 19,000-square-foot warehouse building and associated hardscape and landscaping. The warehouse has been vacant for six years and was used from the late 1970s through early 2009.

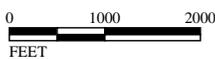


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FIGURE 1



 Project Boundary



SOURCE: ESRI STREETMAP NORTH AMERICA (2012).

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730-750 E. Capitol Avenue Project  
Project Location and Regional Vicinity Map



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FIGURE 2



 Project Site



*730-750 E. Capitol Avenue Project  
Site and Surrounding Land Uses*

SOURCES: GOOGLE EARTH, MARCH 2015; LSA ASSOCIATES, INC., 2016.

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The 750 East Capitol Avenue site encompasses approximately 5 acres and is located on the east side of the project site and includes APN 086-37-027. This portion of the site currently contains a 2,000-square-foot structure along with associated parking on the western end of the parcel. The building was previously used as a truck terminal with a dock and office space. The eastern portion of this parcel is currently vacant.

The entire project site consists of buildings and paved surfaces, with small areas of bare ground interspersed throughout. There are a total of 51 trees located on the site, including 29 protected trees as defined by the City of Milpitas.<sup>1</sup> However, there are no trees designated with Heritage status. Access to the site is currently provided via three driveways on East Capitol Avenue. Existing site conditions are depicted in Figure 3, including all easements that affect site development.

### **3. Existing General Plan and Zoning**

The project site is currently designated in the General Plan as Urban Residential (URR) and as Very High Density Transit Oriented Residential (RS-TOD) in the TASP. The site is zoned as Multi-Family Residential (R5). The project site is also located within the Trade Zone/Montague subdistrict of the TASP.

### **4. Milpitas Transit Area Specific Plan**

In 2008, the City of Milpitas adopted the Milpitas TASP<sup>2</sup> as a guide for development and redevelopment of its light industrial corridor near the future Milpitas BART and current VTA station. The goals of the TASP are to create an attractive and livable neighborhood within walking distance of the future Milpitas BART and VTA light rail transit stations and to transform the older, light industrial area into a residential and commercial area that would meet demand for housing, offices, and shopping in the Bay Area. Milpitas designated the TASP to accommodate substantial growth, minimize impacts on local roadways, and reduce urban sprawl at the periphery of the region.

Environmental impacts associated with implementation of the TASP were evaluated in the Final Environmental Impact Report<sup>3</sup> (TASP FEIR). The TASP FEIR, certified in 2008, evaluates the environmental impacts of approximately: 1) 7,100 units of residential development; 2) 18,000 new residents; 3) 4,200 new jobs; 4) 1.0 million square feet of office space; 5) 285,000 square feet of retail space; and 6) 175,000 square feet of hotels.

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<sup>1</sup> HortScience, Inc., 2015. *Arborist Report, 730-750 E. Capitol, Milpitas, CA*. December 22.

<sup>2</sup> Milpitas, City of, 2008. *Milpitas Transit Area Specific Plan*. June. Amended December 2011.

<sup>3</sup> Milpitas, City of, 2008. *Milpitas Transit Area Specific Plan Final Environmental Impact Report*. May.

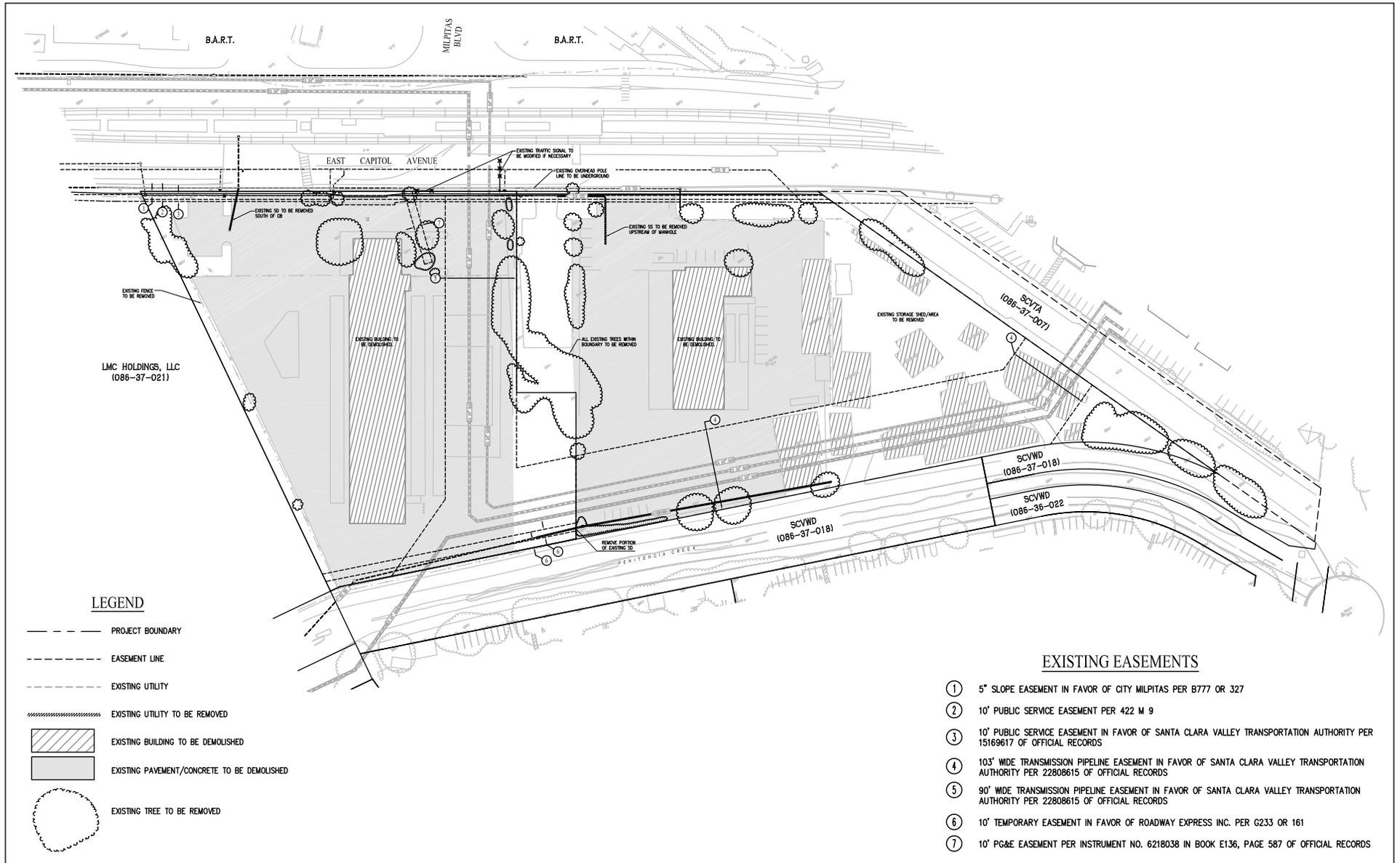


FIGURE 3

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SOURCE: ANTON DEV. CO., MARCH 2016.

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730-750 E. Capitol Avenue Project  
Existing Site Conditions

The TASP identifies subdistricts within the planning area, each having its own policies related to street design, land use, building height, setbacks, parks and building design. The project site is located within the Trade Zone/Montague subdistrict of the TASP study area. The Trade Zone/Montague subdistrict is identified as being an attractive residential district with ample green space that would serve transit users as it is located directly adjacent to the BART station and VTA light rail. The Capitol Avenue Corridor is specifically identified as providing mid-rise and high-rise mixed use buildings that will buffer lower density residential uses from traffic and BART noise.

## 5. Surrounding Land Uses

The project site is located within in the light industrial land-use corridor of Milpitas that is predominantly developed with commercial office parks and other buildings for industrial uses. New residential units as part of the TASP have been constructed within the vicinity of the project site. Additionally, approximately 489 residential units are currently under construction immediately adjacent to the proposed project site at the intersection of Montague Expressway and East Capitol Avenue (450 Montague Project). The project site is located immediately south of East Capitol Avenue from the under-construction Milpitas BART station and is within proximity to the Great Mall Shopping Center in Milpitas, located approximately 0.5 miles northwest of the project site.

## B. PROPOSED PROJECT

This section provides a description of the proposed project as identified in the materials provided by Anton Development Company (the project applicant) that are dated March 3, 2016. The project applicant proposes to demolish the existing buildings, landscaping and associated parking on the site and construct a high-density, residential mixed-use development.

The proposed project would include the construction of two buildings on the site that would provide a total of 582 residential units and 5,000 square feet of retail space. The buildings would also include residential amenity space and parking as well as open space and parkland located at the southern end of the site adjacent to the Penitencia Creek East Channel. Each of the two buildings would include a parking garage, including a total of 385 spaces within the Building A garage and 487 spaces within the Building B garage. Figure 4 depicts the overall conceptual site plan for the proposed project.

The TASP FEIR evaluated the environmental impacts associated with implementation of the entire TASP of which the proposed project is a part of. Table 1 shows the housing units and population assumptions evaluated within the TASP FEIR, the number of approved units, and under construction units. As shown, the development associated with the proposed project is within the amount of growth evaluated and cleared within the TASP FEIR.

**Table 1: Existing and Proposed Housing Units and Population with the Specific Plan Area**

	Evaluated Within The TASP FEIR	Approved	Proposed Project	Remaining Development Available
Housing Units	7,109 <sup>a</sup>	5,853	582	674
Population	17,915 <sup>a</sup>	14,750 <sup>b</sup>	1,467 <sup>b</sup>	1,699

<sup>a</sup> Milpitas, City of, 2008. *Final Transit Area Specific Plan EIR*.

<sup>b</sup> Estimated population associated with approved units, under construction units, and the proposed project was determined by using the residents per unit evaluated within the TASP FEIR (17,915 residents / 7,109 units = 2.52 residents per unit).

Source: Sarah Fleming, 2016. Senior Planner, City of Milpitas. April 26.

## 1. Building Program

The proposed project would result in the demolition of all existing buildings and surface pavements on the site and the development of two mixed-use buildings with a total of 582 residential units and 5,000 square feet of retail space that would occupy two new lots at 730-750 East Capitol Avenue. Building A would be situated on the west side of the site and Building B would be situated on the east side of the site; the two buildings would be separated by a new roadway: the southerly extension of Milpitas Boulevard. Ground floor commercial uses would be located on and oriented towards East Capitol Avenue. Building heights would range from six to seven stories and would not exceed 75 feet. The buildings would be set back 49 feet from East Capitol Avenue. The development program for each building is further described below.

**a. Building A.** Building A would be located on the western portion of the project site and would include a total of 285,783 gross square feet of uses, including 1,800 square feet of commercial use, 279,557 square feet of residential use, a 1,626-square-foot leasing office, and a 2,800-square-foot fitness center. Commercial space would be located at the ground level on the northern side of the building and would face the East Capitol Avenue frontage. A total of 266 residential units would be located within Building A, including approximately 45 studio, 150 one-bedroom, and 71 two-bedroom units. Studio units would average 514 square feet, one-bedrooms would average 697 square feet, and two-bedroom units would average 1,056 square feet. Residential uses would be located at ground level along East Capitol Avenue and internal street frontages. Residential units would also occupy the remaining levels of the building. Indoor residential support areas would be located on the ground and top floors and would consist of the leasing office and fitness center, respectively. Figure 5 depicts the conceptual ground level site plan for Building A. Figures 6a and 6b depict conceptual building elevations from the north, east, west and south street frontages, respectively. In addition, Figure 7 depicts the conceptual Building A sections.

**b. Building B.** Building B would be located on the eastern portion of the project site and would include a total of 370,035 gross square feet of uses, including 3,200 square feet of commercial use, 361,535 square feet of residential use, a 2,100-square-foot leasing office, and a 3,200-square-foot fitness center. Commercial space would be located at ground level on the western side of the building and would also face the East Capitol Avenue frontage. A total of 316 residential units would be located within Building B, including approximately 30 studio, 168 one-bedroom, and 118 two-bedroom units. Studio units would average 520 square feet, one-bedrooms would average 709 square feet, and two-bedroom units would average 1,103 square feet. Residential uses would be located at ground level along East Capitol Avenue and internal street frontages. Residential units would also occupy the remaining levels of the building. Indoor residential support areas would be located on the ground and top floors and would consist of the leasing office and fitness center, respectively. Figure 8 depicts the conceptual ground level site plan for Building B. Figures 9a and 9b depict conceptual building elevations from the north, east, west and south street frontages, respectively. In addition, Figure 10 depicts the conceptual Building B sections.



FIGURE 4

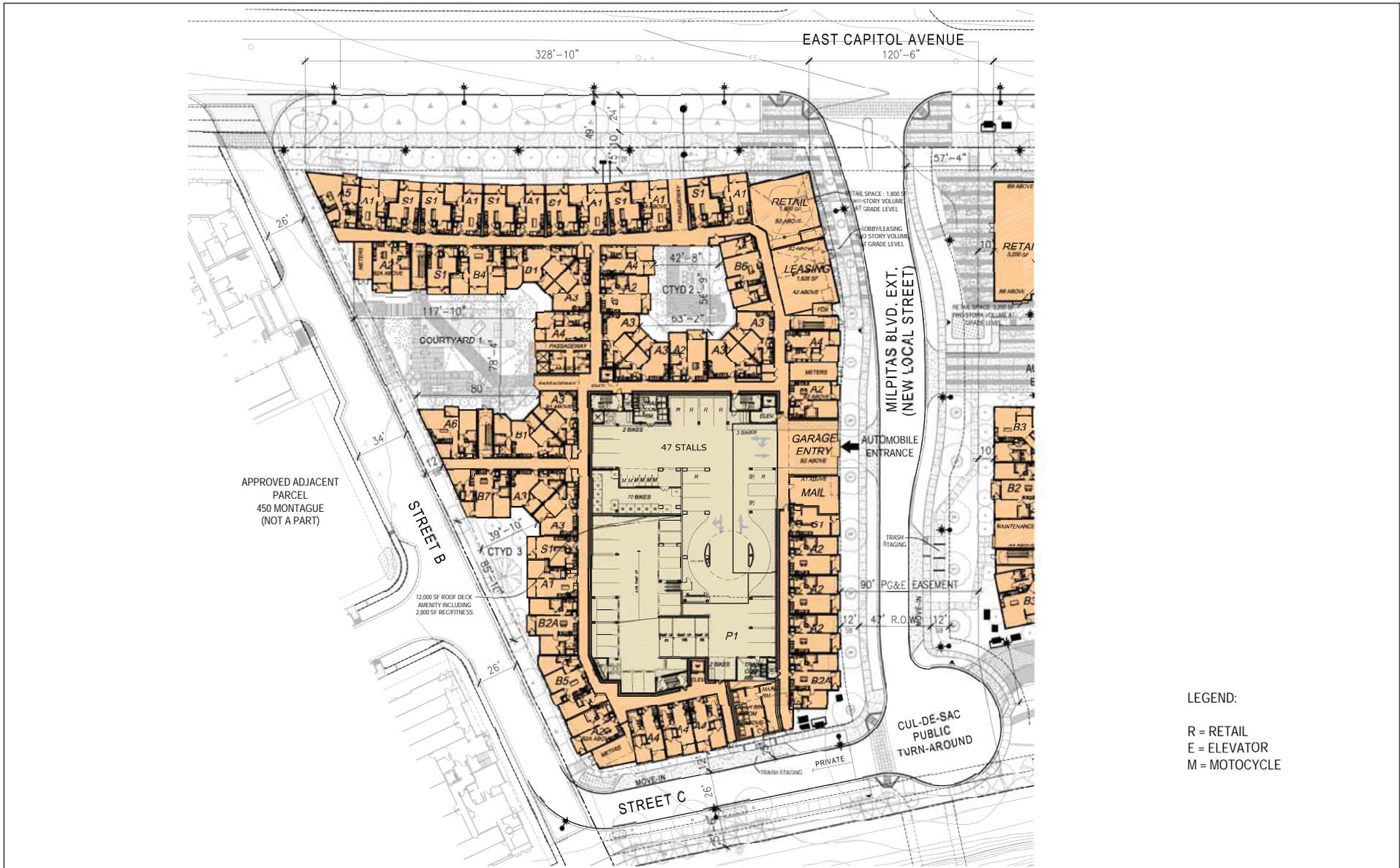
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SOURCE: ANTON DEV. CO., MARCH 2016.

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730-750 E. Capitol Avenue Project  
Conceptual Site Plan



LEGEND:  
 R = RETAIL  
 E = ELEVATOR  
 M = MOTOCYCLE

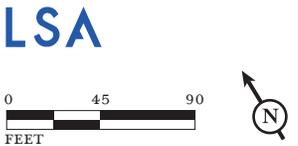


FIGURE 5

730-750 E. Capitol Avenue Project  
 Conceptual Building A Site Plan

SOURCE: ANTON DEV. CO., MARCH 2016.  
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North Elevation - E. Capitol Avenue



East Elevation - Milpitas Boulevard Extension (new street)

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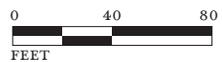


FIGURE 6a

SOURCE: ANTON DEV. CO., MARCH 2016.

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730-750 E. Capitol Avenue Project  
Conceptual Building A Elevations



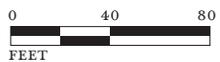
West Elevation - Street B (new street)



South Elevation - Street C (new street)

FIGURE 6b

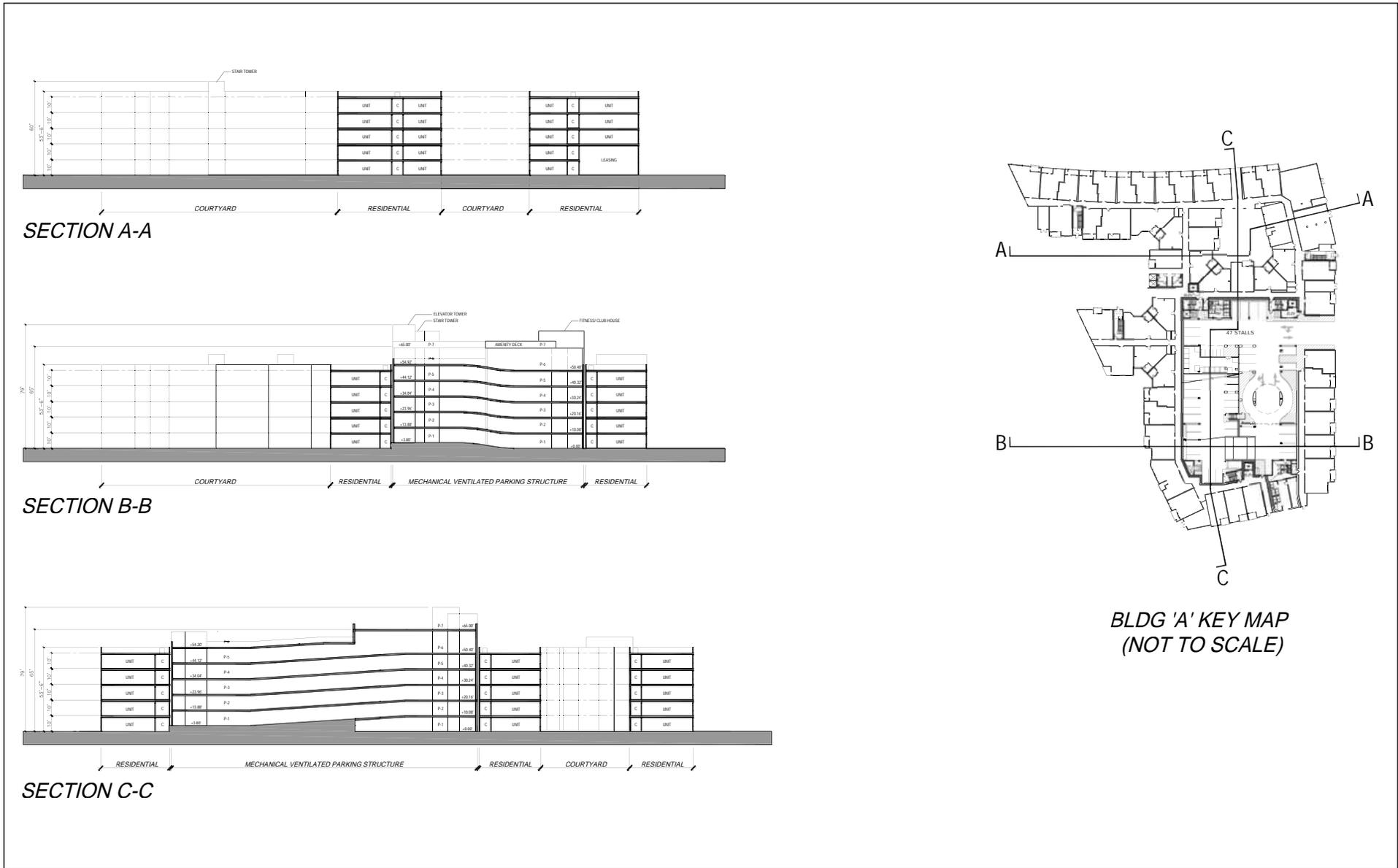
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SOURCE: ANTON DEV. CO., MARCH 2016.

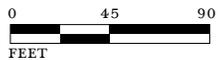
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730-750 E. Capitol Avenue Project  
Conceptual Building A Elevations



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FIGURE 7



SOURCE: ANTON DEV. CO., MARCH 2016.

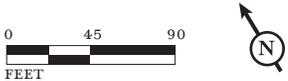
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730-750 E. Capitol Avenue Project  
Conceptual Building A Sections



LEGEND:  
 R = RETAIL  
 E = ELEVATOR  
 M = MOTORCYCLE

LSA FIGURE 8



SOURCE: ANTON DEV. CO., MARCH 2016.  
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North Elevation - E. Capitol Avenue



West Elevation - Milpitas Boulevard Extension (new street)

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FIGURE 9a

730-750 E. Capitol Avenue Project  
 Conceptual Building B Elevations



South Elevation - Open Space/Penitencia Creek



East Elevation - (Fire Lane, Railroad Tracks)

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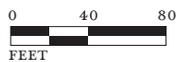
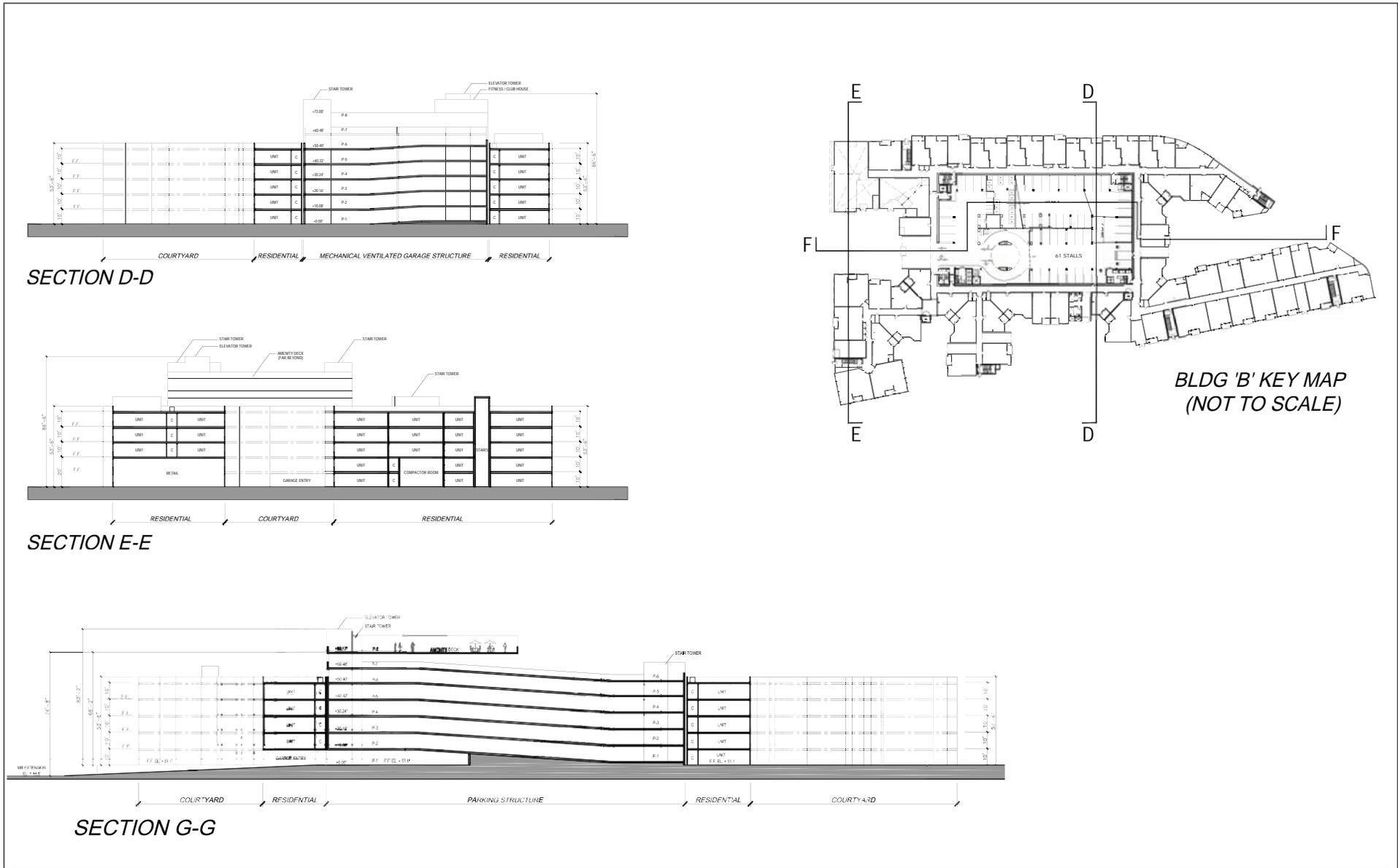


FIGURE 9b

SOURCE: ANTON DEV. CO., MARCH 2016.

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730-750 E. Capitol Avenue Project  
Conceptual Building B Elevations



LSA

FIGURE 10

NOT TO SCALE

SOURCE: ANTON DEV. CO., MARCH 2016.

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730-750 E. Capitol Avenue Project  
Conceptual Building B Sections

## 2. Access, Circulation and Parking

Existing driveways would be removed and new curb cuts would be provided as part of site development. New interior streets would be created and would provide connections to East Capitol Avenue and the adjacent 450 Montague Project site. Specifically, the project site would be bisected by a new local roadway, identified as the Milpitas Boulevard Extension. The new roadway would extend south of East Capitol Avenue and terminate at a temporary cul-de-sac within the project site (the TASP anticipates the future extension of Milpitas Boulevard across Penitencia Creek, as shown on the project site plans).<sup>4</sup> The new roadway would be located on the east side of Building A and west side of Building B. In addition, a new internal street would be located west of Building A, providing access to the interior of the site and the adjacent 450 Montague Project from East Capitol Avenue. Fire access lanes would also be located on the eastern and southern borders of the residential development.

A dedicated parking garage would be located within each residential building, with an access driveway connecting to the new Milpitas Boulevard Extension. A total of 872 parking spaces would be provided on site. To serve Building A uses, a total of 385 vehicle spaces (379 for residential use and 6 for commercial uses) would be provided within the Building A garage. A total of 487 vehicle spaces would be provided to serve Building B uses. Within the Building B garage, a total of 477 spaces would serve the residential use and 10 would serve the commercial uses. A total of 235 bicycle parking spaces would be provided, including 105 to serve Building A uses and 130 to serve Building B uses.

## 3. Open Space and Landscaping

The proposed project would include a total of 3.28 acres of public and private open space and landscaped areas. Private open space would consist of private patios and balconies within each residential unit. Common open space would consist of a total of 1.16 acres and would include various courtyards within the two buildings and on rooftop decks at the top of each building. Additionally, vegetation would be incorporated along internal and external roadway frontages. The proposed project also includes 2.12 acres of public open space, including a 1.89-acre public located park within the exiting PG&E easement at the southern edge of the project site, adjacent to Penitencia Creek, a 0.12-acre linear park located at the eastern edge of the site, with access from East Capitol Avenue, and a 0.11-acre dog park located at the southeastern corner of the site.

There are currently 51 existing trees on the site, including 29 protected trees. The project proposes the removal of 49 of the trees and the preservation of two evergreen ash trees. However, the arborist report prepared for the proposed project identified that project excavation activities would likely be too intensive and result in the trees not surviving. As such, project construction would result in the removal, either directly or indirectly, of all 51 trees from the site. A total of 348 trees would be planted on the site that would allow for replacement of trees per the City's Tree Ordinance.

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<sup>4</sup> A new 8-foot-wide vehicular/pedestrian bridge over Penitencia Creek is planned as a future project. The proposed project's Milpitas Boulevard Extension would be designed to accommodate the future approach to the bridge. However, this bridge is not included as part of the proposed project and therefore it is not evaluated in this document. Construction of this bridge would be subject to future environmental review, as needed.

Landscaping would be provided throughout the site, including planting strips along public roadways and within the internal courtyards.

#### **4. Utilities and Infrastructure**

The project site is located in an urban area and is currently served by existing utilities, including: water, sanitary sewer, storm drainage, electricity, and telecommunications infrastructure. The majority of existing utilities within the boundary of the project site would be removed. Existing and proposed utility connections are discussed below.

**a. Water.** Water service in the City of Milpitas is provided by the SCVWD. The proposed project includes the removal of all existing utilities, including water mains. As such, new connections would be provided as part of the project and would be a minimum of 8-inches in size.

**b. Wastewater.** The San José/Santa Clara Water Pollution Control Plant (WPCP) provides wastewater treatment for Milpitas. The City of Milpitas maintains existing sanitary sewer lines within the vicinity of the site, including a line along East Capitol Avenue. The proposed project includes the removal of all existing utilities, including on-site wastewater lines. The proposed project would connect to the City's existing line along East Capitol Avenue.

**c. Stormwater.** The existing buildings, paving, concrete, and other impervious surfaces account for approximately 7.16 acres (81 percent) of the site. The remaining 19 percent of the site is covered by pervious surfaces consisting of undeveloped open space and landscaped areas mostly along the eastern corner of the site and scattered throughout the site. An existing private storm drain line runs adjacent to the southern border of the project site and collects runoff from the southern portion of the site and discharges it through an existing outfall in Penitencia Creek. Runoff from the northern portion of the site is collected at various inlets and is discharged into a public storm drain pipe on East Capitol Avenue.

The proposed project would continue utilizing the existing storm drain line at the southern end of site but would treat the stormwater with a combination of bio-retention, raised planter and media filtration before runoff enters the storm drain system. In addition, the existing public storm drain line along East Capitol Avenue would be utilized for the northern portion of the site and the project includes a combination of bio-retention, raised planters and media filtration for that portion of the site as well.

Upon construction of the proposed improvements, approximately 5.98 acres (68 percent) of the project site would be covered by impervious surfaces and about 2.87 acres (32 percent) would be covered by landscaped areas including lawns, shrubs and trees. All walkways within these areas would be sloped to drain onto the surrounding landscaping.

Bio-retention areas would be incorporated into the landscape design to provide appropriate vegetation and water quality treatment features in open spaces and along street frontages. On-site drainage would be designed consistent with the C.3 requirements for Low Impact Development.

**d. Electricity and Natural Gas.** Electricity and natural gas services to the site are provided by Pacific Gas and Electric Company (PG&E). Existing underground utility connections and gas mains provide electricity and gas to the project site. The proposed project proposes the removal of all existing utilities and would require the construction of new electricity and gas connections to serve the project. New electrical lines (servicing the project only) would be installed underground.

To reduce energy usage, the project would incorporate green building measures in compliance with CALGreen's 2013 standard building measures for residential buildings and Title 24 requirements.

### **C. APPROVALS/PERMITS**

The following approvals and permits would be required for the project:

- Site Development Permit
- Demolition Permit
- Building Permit
- Encroachment Permit
- Tree Removal Permit

**ATTACHMENT B**

**PROGRAM EIR CHECKLIST  
PURSUANT TO CEQA GUIDELINES SECTION 15168**

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## PROGRAM EIR CHECKLIST PURSUANT TO CEQA GUIDELINES SECTION 15168

CEQA Guidelines Section 15168(c)(4) recommends using a written checklist or similar device to confirm whether the environmental effects of a subsequent activity were adequately covered in a program EIR. This checklist confirms that the 730-750 East Capitol Avenue Project is within the scope of the Transit Area Specific Plan EIR (TASP FEIR) and will have no effects and no new mitigation measures are required, and as such, the City can approve the 730-750 East Capitol Avenue Project as being within the scope of the TASP (or Specific Plan) covered by its EIR and no new environmental document is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 730-750 East Capitol Avenue Project is exempt from further review under CEQA.

### ENVIRONMENTAL CHECKLIST

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>I. AESTHETICS.</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### DISCUSSION

As described in more detail in the project description (Attachment A), the 9.38-acre site currently includes a 2,000-square-foot structure previously used as a truck terminal, 19,000-square-foot warehouse building and associated hardscape, paved driveways and parking areas, and limited landscaping. The proposed project would result in the demolition of all existing structures and pavement on the site and the removal off all existing trees. The project would construct a new mixed-use development on the site consisting of two six- to seven-story buildings and associated open spaces, landscaping and circulation improvements. Buildings would be set back from the East Capitol

Avenue frontage, in accordance with TASP Policy 4.46. The project site is located in the Trade Zone/Montague subdistrict of the TASP. Specific policies that apply to all subdistricts are outlined further below and would be applicable to the proposed project.

As noted in the TASP FEIR, implementation of the Specific Plan will enhance the visual and aesthetic character of the planning area by incorporating specific development standards to ensure that impacts to visual resources are less than significant. These development standards and design guidelines are detailed in Section 5 of the Specific Plan and include policies related to street design, land use, building height, setbacks, parks and building design in order to create a unique character for each subdistrict within the Specific Plan area.

The primary potentially significant impact to scenic resources identified in the TASP FEIR was the potential for 12- to 24-story buildings along Montague Expressway to block scenic views of the eastern foothills (Impact 3.2-1). The proposed project would include two buildings that would range from six to seven stories and would not exceed 75 feet, which is substantially less than what was assumed in the TASP FEIR. The project site is also located on East Capitol Avenue on a site where views of the eastern foothills are generally obscured by the VTA light rail line and are already intermittent. Additionally, given the heights of the proposed structures on the project site, intermittent views of the hills would still be available from the site. Therefore, the proposed project would have a less severe effect on scenic views of the foothills than was identified in the TASP FEIR.

The TASP FEIR determined that applicable policies (as outlined below) related to aesthetics ensure that impacts are less than significant. The design style and materials proposed for the 730-750 East Capitol Avenue Project are consistent with the policies outlined in the TASP and other relevant policy documents.

The TASP FEIR also addressed the loss of mature trees that serve as visual or scenic resources in the area, specifically on McCandless Drive. The proposed project is not located on or near McCandless Drive and, as such, would have no impact on the mature trees that exist on McCandless Drive. Other than the scenic trees on McCandless Drive, there are no scenic resources located within the Planning area.<sup>1</sup>

There are currently a total of 51 existing trees on the site, including 29 protected trees.<sup>2</sup> Of the existing trees, a total of 49 trees would be removed by the proposed project. However, the two trees proposed for preservation would likely not survive the project excavation activities. As such, the proposed project would result in the removal, either directly or indirectly, of all 51 trees from the site. All tree removal activities on the project site would be conducted in compliance with the City ordinance which requires a tree removal permit for the removal of any protected tree and compensation for lost trees as may be requested by the City. The proposed project includes the planting of approximately 348 new trees on the site which would increase the total number of trees by 297 over existing conditions.

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<sup>1</sup> Dyett and Bhatia, *Draft Environmental Impact Report, Milpitas Transit Area Specific Plan*, October 2007; and *Final Environmental Impact Report, Milpitas Transit Area Specific Plan*, May 2008.

<sup>2</sup> HortScience, Inc., 2015. *Arborist Report, 730-750 E. Capitol, Milpitas, CA* December 22.

The TASP FEIR found that there are potential significant impacts resulting from the introduction of new light and glare in the area (Impact 3.2-2), but concluded that Specific Plan Development Standards related to lighting will minimize light and glare impacts. The proposed project would not cause any new light and glare impacts.

The 730-750 East Capitol Avenue Project is generally consistent with the type of development analyzed in the TASP FEIR; it would reduce the height of the buildings from what was assumed in the TASP FEIR, would be consistent with the TASP policies relating to aesthetics, and would substantially increase the number of trees on the property in comparison to existing conditions. As such, there is no new impact on visual and aesthetic resources.

### **APPLICABLE MITIGATION**

No new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **Midtown Plan Policies**

- *Policy 6.13: Require the undergrounding of new utilities.*
- *Policy 6.14: Prioritize the undergoing of existing above ground facilities within the Midtown Area for the use of PG&E Rural 20A money. Consider using other financial resources to complete the undergoing of utilities, as necessary.*

#### **TASP Development Standards**

- Utilities shall be underground or in subsurface conduits and accessible.

#### **TASP Policies**

These policies apply specifically to the Trade Zone/Montague Corridor Subdistrict:

- *Policy 4.46: Create a deep landscape setback along Capitol Avenue to separate residences from noise and heavy traffic on Capitol Avenue. See Figure 5-11, Chapter 5 of the Specific Plan.*

This policy applies to the entire Planning Area:

- *Policy 6.41: Construct a continuous trail network as delineated in the Transit Area Plan through land dedication and improvements by property owners in coordination with the Santa Clara Valley Water District and the City of Milpitas*

Other Specific Plan Development Standards:

5. *Lighting*

- a. Lighting should be designed and placed to direct lighting to appropriate surfaces and minimize glare into adjacent areas.
- b. The light source used in outdoor lighting should provide a white light for better color representation and to create a more pedestrian-friendly environment.
- c. Low pressure sodium lamps are prohibited.
- d. To reinforce the pedestrian character of the area, light standards along sidewalks should be approximately 12 to 16 feet in height.
- e. The use of uplighting to accent interesting architectural features or landscaping is encouraged

**CONCLUSION**

The TASP FEIR adequately evaluated the potential aesthetic impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

<b>Potentially Significant Impact</b>	<b>Less Than Significant Impact with Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
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**II. AGRICULTURAL AND FORESTRY RESOURCES.**

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to a non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

There are no agricultural or forestry resources located within or near the project site. The Specific Plan area is predominantly urbanized and is classified as “Urban and Built-Up Land” by the State Department of Conservation. The City of Milpitas does contain prime farmland between North McCarthy Boulevard and Coyote Creek, north of Route 237. However, this prime farmland is not located within the boundaries of the TASP. The proposed project is also not located on land that is currently under a Williamson Act contract. In addition, the City does not contain woodland or forestland cover, nor land zoned for timberland production

Therefore, the proposed project would not result in a significant impact to agriculture or forestry resources.

**APPLICABLE MITIGATION**

No new mitigation measures are required.

**CONCLUSION**

There would be no agriculture or forestry impacts associated with the 730-750 East Capitol Avenue Project.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>III. AIR QUALITY.</b> Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) 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 (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

### Clean Air Plan Consistency

An air quality plan describes air pollution control strategies to be implemented by a city, county, or region classified as a non-attainment area. The main purpose of an air quality plan is to bring an area into compliance with the requirements of federal and State air quality standards.

The Bay Area Air Quality Management District (BAAQMD) guidelines were referenced to determine if a project would conflict with or obstruct implementation of an applicable air quality plan, which for the TASP FEIR was the 2005 Bay Area Ozone Strategy.<sup>3</sup> In forecasting future stationary and mobile source emissions and preparing the regional air quality plan, the BAAQMD uses growth projections prepared by ABAG. The BAAQMD based its 2005 Bay Area Ozone Strategy on population projections in the 2003 ABAG Projections.<sup>4</sup> The TASP FEIR found that population increases in the City are anticipated to exceed population increases accounted for by the 2003 ABAG Projections, thus

<sup>3</sup> Bay Area Air Quality Management District, 2006. *Bay Area 2005 Ozone Strategy*.

<sup>4</sup> Association of Bay Area Governments, 2003. *Projections 2003*.

resulting in a significant and unavoidable impact (Impact 3.6-1) related to consistency with the applicable federal Environmental Protection Agency (EPA) Clean Air Plan (CAP).

The proposed project would locate future residents within walking distance of public transportation, jobs, restaurants, and services. Implementation of the TASP includes policies that address transportation and land use that are consistent with the CAP. TASP Policy 3.21 would provide continuous pedestrian sidewalks and safe bike routes throughout the TASP Area; Policy 3.22 encourages walking and biking routes to schools and major destinations; and Policy 3.33 requires new development within the TASP Area to provide incentives for alternative modes of transit, which support the CAP. The proposed land use and zoning of the 730-750 East Capitol Avenue Project would result in a building density at the project site that is similar to what was evaluated in the TASP. Therefore, the population growth associated with the proposed project is consistent with the TASP and would not result in any new impacts related to consistency with the CAP.

The TASP FEIR identified measures to reduce air emissions such as encouraging the use of pedestrian walkways and bikes, and designing streets for slower speeds, but concluded that air quality impacts would be significant and unavoidable. The project would implement the TASP measures and would not increase the previously-identified impacts. Thus conclusions about compliance with the CAP in the TASP FEIR remain applicable to the project.

### **Regional Air Pollutant Emissions**

The TASP FEIR identified that development of projects under the TASP could further contribute to non-attainment of air quality standards. The TASP FEIR also identified that buildout of the TASP could place sensitive land uses (land uses that could house sensitive receptors) near local intersections or roadways associated with air pollutant emissions that exceed (worsen) State or federal ambient air quality standards.

The 730-750 East Capitol Avenue Project would develop the site with new residential and commercial uses, similar to what the TASP envisioned. The new uses would result in mobile air quality impacts from increased vehicle trips to and from the project site and air quality impacts such as emissions generated from the use of landscaping equipment and consumer products. Therefore, the proposed project would also contribute to the significant regional and local air quality impacts identified in the TASP FEIR. The TASP FEIR identified policies which provide measures to reduce vehicle trip generation and thus vehicle emissions from the project. Although the policies would reduce air quality impacts, regional emissions would remain significant and unavoidable as identified in the TASP FEIR. The proposed project, however, would not result in any new or more significant regional or local air quality impacts than described and evaluated in the TASP FEIR.

### **Construction-Related Impacts**

Construction activities would cause temporary adverse effects on local air quality. Construction activities such as earthmoving, construction vehicle traffic and wind blowing over exposed earth would generate exhaust emissions and fugitive particulate matter emissions that affect local and regional air quality. Construction activities are also a source of organic gas emissions. Solvents in adhesives, non-water-based paints, thinners, some insulating materials, and caulking materials would evaporate into the atmosphere and would participate in the photochemical reaction that creates urban

ozone. Asphalt used in paving is also a source of organic gases immediately after its application. Construction dust could affect local air quality at various times during construction of the project. The dry, windy climate of the area during the summer months creates a high potential for dust generation when, and if, underlying materials are exposed to the atmosphere. The effects of construction activities would be increased dustfall and locally elevated levels of particulate matter downwind of construction activity.

Development of the proposed project would result in similar construction-related, short-term air quality impacts as those impacts identified in the TASP FEIR. Implementation of TASP Policy 5.16 would reduce construction-related air quality impacts; therefore, the proposed project would also not result in any new or more significant construction-related air quality impacts than were evaluated in the TASP FEIR. This impact would remain less than significant.

### **Local Community Risk and Hazard Impacts to Sensitive Receptors**

The TASP FEIR identified a variety of pollutant or toxic air emissions, such as diesel exhaust and those from dry cleaning facilities, in addition to emissions that could be released from construction projects and operations associated with the proposed project. TASP Policy 5.23 requires project sponsors to inform future and/or existing sensitive receptors of any potential health impacts resulting from nearby sources of dust, odors, or toxic air contaminants, and where mitigation cannot reduce these impacts. As identified in the TASP FEIR, this information could be disseminated through rental agreements, real property disclosure statements, and/or mailed notices to existing residents and property owners; and would include, but would not be limited to: location of dry cleaners, proximity to diesel emission from trucks and passenger vehicles, and light duty industrial operations.

The project site is located adjacent to the future BART/VTA light rail line. TASP Policy 5.25 requires an analysis of the impact on future sensitive receptors located within 500 feet of active rail lines or roadways if traffic exceeds 100,000 vehicles per day. If the results show that the carcinogenic human health risk exceeds the 10 people in a million standard for carcinogenic human health impacts established by the BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents. The proposed project would be required to comply with Policy 5.25 by incorporating filters with a MERV rating of 11 or higher; therefore, implementation of the project would not result in any new air quality impacts related to the exposure of sensitive receptors to risk and hazards.

### **Objectionable Odors**

The TASP FEIR did not address potential odor impacts for the proposed project. The project would not include any activities or operations that would generate objectionable odors and, once operational, the project would not be a source of odors. Therefore, the project would not create objectionable odors affecting a substantial number of people. The proposed project would not increase impacts beyond those evaluated in the TASP FEIR and would have a less-than-significant impact related to odors.

## APPLICABLE MITIGATION

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the TASP FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

## APPLICABLE POLICIES

The proposed project would comply with the following policies.

### General Plan Policies

- *Policy 3.d-G-2: Provide adequate bicycle parking and end-of trip support facilities for bicyclists at centers of public and private activity.*
- *Policy 3.d-I-9: Require developers to make new projects as bicycle and pedestrian “friendly” as feasible, especially through facilitating pedestrian and bicycle movements within sites and between surrounding activity centers.*
- *Policy 3.d-I-10: Encourage developer contributions toward pedestrian and bicycle capital improvement projects and end-of-trip support facilities.*
- *Policy 3.d-I-14: Include evaluation of bicycle facility needs in all planning applications for new developments and major remodeling or improvement projects.*
- *Policy 3.d-I-15: Encourage new and existing developments to provide end-of-trip facilities such as secure bicycle parking, on-site showers and clothing storage lockers, etc.*
- *Policy 2.b-I-2: Consider locating housing in close proximity to industrial developments where they can be served by existing city services and facilities.*

### TASP Policies

- *Policy 3.21: Provide continuous pedestrian sidewalks and safe bike travel routes throughout the entire Transit Area and within development projects. New development shall install sidewalks per the street design standards in Chapter 5 [of the Specific Plan]. The City and/or private property owner shall install sidewalks in areas where they currently do not exist, and where new development is not anticipated during the Plan timeframe. City staff will review individual development applications to ensure that adequate pedestrian facilities are provided and are consistent with the Transit Area Plan's pedestrian improvements.*
- *Policy 3.22: Private development shall be encouraged to provide direct walking and biking routes to schools and major destinations, such as parks and shopping, through their property.*
- *Policy 3.27: Every resident of the Transit Area shall be able to safely walk and bike to the BART and VTA light rail stations. As projects are constructed, make sure that all the routes are continuous and designed to be attractive and safe for pedestrians.*
- *Policy 3.33: Require new development within the Transit Area to facilitate the use of alternative modes of transportation through programs such as carpool parking, the VTA's*

*EcoPass Program, shuttles to transit stations and lunchtime destinations, assistance to regional and local ridesharing organizations, alternative work schedules, telecommuting, etc. Establish a Transportation Demand Management (TDM) program for this purpose, as described in Policy 3.16.*

- *Policy 5.23: Require project sponsors to inform future and/or existing sensitive receptors (such as day care facilities, schools, nursing homes) of any potential health impacts resulting from nearby sources of dust, odors, or toxic air contaminants, and where mitigation cannot reduce these impacts.*
- *Policy 5.24: Allow only natural gas fireplaces, pellet stoves or EPA-Certified wood-burning fireplaces or stoves. Conventional open-hearth fireplaces shall not be permitted.*
- *Policy 5.16: During review of specific development proposals made to the City, sponsors of individual development projects under the Specific Plan shall implement the BAAQMD's approach to dust abatement. This calls for "basic" control measures that should be implemented at all construction sites, "enhanced" control measures that should be implemented in addition to the basic control measures at construction sites greater than four acres in area, and "optional" control measures that should be implemented on a case-by-case basis at construction sites that are large in area, located near sensitive receptors or which, for any other reason, may warrant additional emissions reductions (BAAQMD, 1999).*
- *Policy 5.25: For new residential development that is proposed within 500 feet of active rail lines where vehicles emit diesel exhaust, or roadways where total daily traffic volumes from all roadways within 500 feet of such location exceed 100,000 vehicles per day, will, as part of its CEQA review, include an analysis of toxic air contaminants (which includes primarily diesel particulate matter (DPM)). If the results show that the carcinogenic human health risk exceeds the 10 people in a million standard for carcinogenic human health impacts established by the BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents.*

## CONCLUSION

The TASP FEIR adequately evaluated the air quality impacts of the 730-750 East Capitol Avenue Project. Therefore, potential impacts would be less-than-significant and additional mitigation is not required.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>IV. BIOLOGICAL RESOURCES.</b> Would the project:				
a) 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 regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) Through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or State habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

The TASP FEIR found that the Specific Plan would largely have minimal impacts on biological resources. However, the TASP FEIR concluded that proposed development within the Specific Plan would result in removal of landscaping and disturbance to habitat, which could affect wildlife, including burrowing owl, nesting birds and common wildlife species (Impacts 3.8-1 and 3.8-2). The TASP FEIR also found that development activities near jurisdictional hydrologic features, such as Lower Penitencia Creek, could result in significant impacts (Impacts 3.8-4 and 3.8-5). The TASP FEIR concluded that implementation of the proposed policies of the General Plan and Specific Plan would ensure that impacts to biological resources are less than significant.

The only record of special-status species occurring in the area is the burrowing owl. The TASP FEIR notes that development of vacant and ruderal lots could result in a loss of burrowing owls or their nests and requires specific policies to reduce impacts to burrowing owl habitat. However, since the project site is approximately 81 percent developed with impervious surface area, the project site is not considered to provide suitable habitat for burrowing owls and the proposed project would not be required to comply with TASP Policy 5.26 related to burrowing owl habitat. Therefore, there would be no new impacts related to special-status species as a result of the proposed project.

The TASP states that nesting habitat for non-listed special-status raptor species occurs on and near the TASP area as many species will exploit large ornamental trees for cover, nesting, or stop over locations during migration, especially with the availability of water drainages nearby. Removal of large, mature trees can cause direct mortality to nesting birds and their young and construction disturbance can cause nest abandonment resulting in indirect losses to avian species.

A biological assessment was conducted for the project site.<sup>5</sup> The biological assessment identified the possibility for raptors and other birds protected by the Migratory Bird Treaty Act to nest in some of the trees on the site. Due to the possible presence of protected bird species on the site, the assessment found that a nesting bird survey would be required. The survey must be conducted 14 days prior to scheduled site work and would provide specific avoidance measures to reduce potential impacts on any nests encountered until the young have fledged. General Plan Policies 4.b.I-4 and 4.b.-I-5 and Specific Plan Policy 5.27 (discussed below) address impacts to special-status nesting raptors and other nesting birds. The proposed project would be required to comply with these requirements to ensure that potential impacts to nesting birds would be less than significant.

The City implements a tree and planting ordinance to protect significant trees,<sup>6</sup> which requires approval of a permit for tree removal. According to the City ordinance, any tree that is located on developed commercial or industrial property or on vacant, undeveloped property is protected if the trunk measures 37 inches or greater circumference at 4.5 feet above the ground. There are currently a total of 51 trees on the project site, including 29 protected trees. The proposed project would result in the removal of all existing trees on the site. A tree removal permit is required to remove any protected tree and compensation for lost trees may be requested by the City. Tree removal would also comply with all City requirements to minimize impacts on biological resources during removal. As part of the landscape plan, the applicant proposes to plant 348 new trees throughout the project site as part of the landscaping of the project.

Penitencia Creek, which is located immediately south of the project site, is protected under Section 404 of the Clean Water Act. The TASP EIR found that while development could have an impact on wetlands and other waterways associated with Penitencia Creek (Impacts 3.8-4 and 3.8-5), direct impacts on the creek are not likely to occur due to required setbacks from the creek (a minimum of 25 feet from top of bank or from a maintenance road if one exists for creation of a public trail) in addition to required side or rear yard setbacks. The General Plan also requires the project applicant to

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<sup>5</sup> Barnett Environmental, 2016. *Biological & Wetland Resources 730-750 East Capitol Avenue, Milpitas, CA 95035*. February 3.

<sup>6</sup> Milpitas, City of. Municipal Code, Title X, Street and Sidewalks, Section 7 – Tree Protection and Heritage Tree Program.

coordinate with appropriate agencies such as the U.S. Army Corps of Engineers, California Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB) if necessary. The General Plan and TASP policies outlined below ensure that impacts would be less than significant. Therefore, the 730-750 East Capitol Avenue Project would have no direct impact on Penitencia Creek.

The 730-750 East Capitol Avenue Project is consistent with the type of development analyzed within the TASP FEIR. Demolition and tree removal activities would be conducted in conformance with Specific Plan Policy 5.27 and would comply with the City's Tree Ordinance. As such, there is no new impact on biological resources.

### **APPLICABLE MITIGATION**

No new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **General Plan Policies**

- *Policy 4.b-I-4 Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.*
- *Policy 4.b-I-5 Utilize sensitive species information acquired through biological assessments, project land use, planning and design.*

#### **TASP Policies**

- *Policy 5.27: To mitigate impacts on non-listed special-status nesting raptors and other nesting birds, a qualified biologist will survey the site for nesting raptors and other nesting birds within 14 days prior to any ground disturbing activity or vegetation removal. Results of the surveys will be forwarded to the U.S. Fish and Wildlife Service (USFWS) and CDFG (as appropriate) and, on a case-by-case basis, avoidance procedures adopted. These can include construction buffer areas (several hundred feet in the case of raptors) or seasonal avoidance. However, if construction activities occur only during the non-breeding season between August 31 and February 1, no surveys will be required.*
- *Policy 5.29: Per Figure 5-23 G and Tables 5-1 and 5-2 [of the Specific Plan], a minimum 25 foot setback from the top of bank of any creek or drainage channel, or from a maintenance road if one exists, shall be provided.*
- *Policy 5.30: Prior to new development in areas that border creeks and with potential riparian habitat, applicants will be required to coordinate with the CDFG, as required by law. Coordination will include evaluation of existing riparian habitat and development of avoidance, minimization, and/or compensatory measures sufficient to procure a Streambed Alteration Agreement with the CDFG.*
- *Policy 5.31: For properties adjacent to any waterway in the study area, the following requirements shall apply:*

- *Any plans for construction over the Santa Clara Valley Water District (SCVWD) fee or easement lands require review and issuance of a permit.*
- *The SCVWD’s Milpitas Pipeline, located at the north end of the study area and adjacent and parallel to the rail line continuing south onto Capitol Avenue at the southern end of the study area, shall be shown on all future plans.*
- *Projects should generally be consistent with the recommendations developed by the Water Resources Protection Collaborative in the “Guidelines and Standards for Land Use Near Streams.”*
- *Policy 5.32: Consistent with current City practice, all new development located on or adjacent to Penitencia and Berryessa Creek will be required to comply with the standards and guidelines for land uses near streams, as adopted by the City of Milpitas. Any development or construction activity to be conducted on or adjacent to SCVWD property or easements, such as creek crossings, shall be required to obtain applicable permits from the SCVWD prior to such construction activity.*

**Municipal Tree and Planting Ordinance**

- *The Tree and Planting Ordinance of the City of Milpitas protects significant trees, as defined by the Ordinance, including heritage trees, throughout the city. A tree removal permit is required to remove any protected tree and compensation for lost trees may be requested by the City (Ord.201.1, 3/1/88).*

**CONCLUSION**

The TASP FEIR adequately evaluated the potential biological impacts of the 730 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>V. CULTURAL RESOURCES.</b> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>V. CULTURAL RESOURCES.</b> Would the project:				
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

The TASP FEIR concluded that the potential impact of development within the Specific Plan area on cultural resources, including historic, archeological and paleontological resources and human remains would be less than significant. However, the TASP FEIR concluded that disturbance to cultural resources could occur during grading and development of individual project sites within the Specific Plan area, and that there is a reasonable possibility that archeological deposits could be uncovered and identified during grading (Impacts 3.13-2 and 3.13-3). The TASP FEIR identifies several national, State and local laws and policies in the General Plan, Midtown Plan and TASP that would reduce the potential impacts on known or undiscovered cultural resource to less than significant levels.

There are no known historic or cultural resources within the project site.<sup>7,8</sup> The existing structures that would be demolished as part of the project are approximately 40 years old, are typical of industrial buildings located throughout the State, and are not likely to yield important information about the State or region's history. The project applicant would be required to adhere to all applicable State laws if human remains are discovered during project construction, and would be required to follow TASP Policies 5.34 and 5.35 during earth moving activities. Construction of the 730-750 East Capitol Avenue Project would not result in any new impacts to cultural resources.

## APPLICABLE MITIGATION

No new mitigation measures are required.

## APPLICABLE POLICIES

Pursuant to CEQA Guidelines 15064.5 (f), if potentially significant cultural resources are discovered during ground-disturbing activities associated with project preparation, construction, or completion, work shall halt in that area until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate treatment measures in consultation with Santa Clara County and other

<sup>7</sup> Milpitas, City of, 2016. Cultural Resources Register. Available online at: [https://www.ci.milpitas.ca.gov/\\_pdfs/plan\\_cultural\\_resources.pdf](https://www.ci.milpitas.ca.gov/_pdfs/plan_cultural_resources.pdf) (accessed on April 1).

<sup>8</sup> Dyett & Bhatia, 2007. *City of Milpitas Transit Area Specific Plan DEIR. Chapter 3.13 Cultural Resources*. October.

appropriate agencies and interested parties. For example, a qualified archaeologist shall follow accepted professional standards in recording any find including submittal of the standard Department of Parks and Recreation (DPR) Primary Record forms (Form DPR 523) and locational information to the California Historical Resources Information Center Office (Northwest Information Center). The consulting archaeologist shall also evaluate such resources for significance per California Register of Historical Resources eligibility criteria (Public Resources Code Section 5024.1; Title 14 CCR Section 4852). If the archaeologist determines that the find does not meet the CEQA standards of significance, construction shall proceed. On the other hand, if the archaeologist determines that further information is needed to evaluate significance, the Planning Department staff shall be notified and a data recovery plan shall be prepared.

All future development in the TASP Area will be in accordance with State laws pertaining to the discovery of human remains. Accordingly, if human remains of Native American origin are discovered during project construction, the developer and/or the Planning Department would be required to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (PRC Sec. 5097). Sections 21083.2 and 21084.1 of the PRC states that if any human remains are discovered or recognized in any location on the project site, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

- The Santa Clara County Coroner/Sheriff has been informed and has determined that no investigation of the cause of death is required; and
- If the remains are of Native American origin,
  - The descendants of the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98, or
  - The Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission

### **TASP Policies**

- *Policy 5.34: Any future ground disturbing activities, including grading, in the Transit Area shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines § 15064.5 regarding discovery of archeological sites and burial sites, and Guidelines §15126.4(b) identifying mitigation measures for impacts on historic and cultural resources. (Reference CEQA §§ 21083.2, 21084.1.) In the event that buried cultural remains are encountered, construction will be temporarily halted until a mitigation plan can be developed. In the event that human remains are encountered, the developer shall halt work in the immediate area and contact the Santa Clara County coroner and the City of Milpitas. The coroner will then contact the Native American Heritage Commission (NAHC) which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods.*

- *Policy 5.35: All grading plans for development projects involving ground displacement shall include a requirement for monitoring by a qualified paleontologist to review underground materials recovered. In the event fossils are encountered, construction shall be temporarily halted. The City's Planning Department shall be notified immediately, a qualified paleontologist shall evaluate the fossils, and steps needed to photo-document or to recover the fossils shall be taken. If fossils are found during construction activities, grading in the vicinity shall be temporarily suspended while the fossils are evaluated for scientific significance and fossil recovery, if warranted.*

## CONCLUSION

The TASP FEIR adequately evaluated the potential cultural resource impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>VI. GEOLOGY AND SOILS.</b> Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>VI. GEOLOGY AND SOILS.</b> Would the project:				
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

The TASP FEIR concluded that the geologic and soil impacts in the Specific Plan area are primarily related to potential ground shaking and associated ground failure (liquefaction), soil expansion, settlement, and soil erosion during construction activities. Since the Specific Plan area is not located within an Earthquake Fault Hazard Zone, the likelihood of surface fault rupture is minimal. In addition, the TASP FEIR found that slope instability hazards are also minimal because the surface area in the Specific Plan area is relatively level.

The TASP FEIR determined that impacts related to ground shaking, liquefaction, settlement, and soil erosion are less than significant when projects are built in accordance with General Plan Policy 5.a.-I-3, the City of Milpitas Municipal Code, and NPDES General Construction Permit requirements (Impacts 3.5-1, 3.5-2, and 3.5-3). Specifically, the TASP FEIR states that State of California building codes and construction standards contained in Title 24 of the California Code of Regulations reduce impacts to a less-than-significant level. The 730-750 East Capitol Avenue Project would be designed and constructed in accordance with these requirements.

Projects associated with implementation of the Specific Plan would be required to comply with NPDES General Construction Permit requirements. Project applicants would be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) to minimize the discharge of pollutants, including silt and sediment, during construction. The SWPP would need to include measures to control erosion and effectively manage runoff and retain sediment on-site during construction.

Additionally, in accordance with the City Code, building permit applications for subdivisions and projects with extensive grading (for example, projects that move more than 1,000 cubic yards of cut and fill and have cuts and/or fill more than 10 feet deep) must be accompanied by a preliminary soils report. The report must address site soil conditions, including expansive soils, settlement, and erosion, and provide recommendations to offset potential soils problems. Compliance with the recommendations included in the preliminary soils report and geotechnical investigation would help reduce potential liquefaction hazards to less-than-significant levels.

The 730-750 East Capitol Avenue Project is consistent with the type of development analyzed in the TASP FEIR and is required to adhere to General Plan and TASP policies relating to building

standards and emergency service needs. A Preliminary Stormwater Control Plan was prepared for the project and provides Best Management Practices (BMPs) to be implemented at the project site in accordance with NPDES permits and Santa Clara County Urban Runoff Pollution Prevention guidance.<sup>9</sup>

In addition, a Geotechnical Investigation Report was prepared for the project site.<sup>10</sup> The report concluded that construction of the proposed project at the project site is feasible, provided that recommendations provided are addressed in project design. The findings of the geotechnical report indicated that the project site is bound by the following geotechnical constraints: 1) presence of moderately compressible clays that can result in differential settlement; 2) presence of undocumented fill on the site that can undergo highly variable swell or settlement and may not adequately support the proposed residential structures; 3) presence of moderately expansive soils that could damage planned structures; 4) shallow groundwater that could significantly impact grading and underground construction; 5) potential for liquefaction-induced settlements; and 6) soil corrosion potential to buried metallic improvements.<sup>11</sup>

The geotechnical report makes specific recommendations to lessen these constraints, including: 1) once the building loads, foundation type, and distance between garage and adjacent residential foundations has been chosen, the differential settlement needs to be checked; 2) verify the backfill material during construction by potholing during mass grading operations; 3) reduce the potential for damage to planned structures by ensuring slabs-on-grade have sufficient reinforcement and would be supported on a layer of non-expansive fill; at-grade footings should extend below the zone of season moisture fluctuation. If structures are underlain by expansive soils, such as under post-tensioned mat foundations, the foundation system should be capable of tolerating or resisting any potentially damaging soil movement. Moisture changes in the surficial soils should be limited by using positive drainage away from buildings as well as limiting landscaping watering; 4) dewatering and shoring of utility trenches in some isolated areas of the site; and 5) retain a corrosion engineer to review the corrosion test results and develop specific corrosion design recommendations.

Implementation of measures identified in the geotechnical report would be required as a Condition of Approval. In addition, the project applicant is required to conduct a site-specific design-level geotechnical study that provides specific recommendation that the project must implement. Since the 730-750 East Capitol Avenue Project would comply with TASP policies, including implementing the recommendations of the preliminary geotechnical report, there is no new impact related to geology and soils.

## **APPLICABLE MITIGATION**

No new mitigation measures are required.

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<sup>9</sup> Carlson, Barbee & Gibson, Inc., 2015. *Stormwater Control Plan for 730-750 East Capitol Avenue, Milpitas, CA*. December.

<sup>10</sup> Cornerstone Earth Group, 2014. *Geotechnical Investigation, 730 East Capitol, Milpitas Multifamily Development*. March 3.

<sup>11</sup> Ibid.

## APPLICABLE POLICIES

The proposed project would comply with the following policies.

### General Plan Policies

- *Policy 5.a-I-3: Require projects to comply with the guidelines prescribed in the City's Geotechnical Hazards Evaluation manual. Mandatory compliance with building codes and construction standards established in the California Building Code, the requirements of the Seismic Hazards Mapping Act and the City of Milpitas Municipal Code, and policies contained in the City of Milpitas General Plan would reduce seismic-related ground shaking and liquefaction to less than significant levels.*

### TASP Policies

- *Specific Plan Policy 5.36: Require construction projects that disturb one or more acres to prepare a Stormwater Pollution Prevention Plan (SWPPP) that, when properly implemented, would reduce or eliminate impacts on surface water quality during construction.*
- *Specific Plan Policy 5.37: Require construction projects to comply with the Santa Clara County National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges.*

## CONCLUSION

The TASP FEIR adequately evaluated the potential geology and soil impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>VII. GREENHOUSE GAS EMISSIONS.</b> Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

The TASP FEIR found that the primary sources of greenhouse gas (GHG) emissions related to urban development in the TASP area are anticipated to continue to be from combustion of fossil fuels by motor vehicles and from electric power generation. Short-term impacts are anticipated from construc-

tion activity that would occur during the implementation of the TASP. Since the GHG emission rate is related to growth, the TASP promotes policies that reduce energy consumption and fuel usage by encouraging development patterns that would reduce the vehicles miles traveled (VMT) per capita and proposes a variety of actions and policies that can reduce emissions to less than significant levels.

The TASP FEIR found that the rate of increase in VMT would be less than the rate of increase in population due to the mixed-use and transit area nature of new development proposed under the TASP. The TASP FEIR found that while the population is expected to increase significantly in the area, a large percentage of that population would use transit options made available to them which in turn would reduce vehicle use. The TASP FEIR also found that the increase in VMT will not prevent the reduction of statewide GHG emissions to 1990 levels.

Individual projects incrementally contribute toward the potential for global climate change on a cumulative basis in concert with all other past, present, and probable future projects. While individual projects are unlikely to measurably affect global climate change, each of these projects incrementally contributes toward the potential for global climate change on a cumulative basis, in concert with all other past, present, and probable future projects.

The TASP FEIR analyzed the potential GHG emissions that would result from buildout of the TASP. The TASP was designed to provide residential uses in proximity to retail and commercial uses and to transit, such as the BART station, to minimize the use of vehicles and generation of VMT. TASP policies also encourage the development of pedestrian friendly streets and bikeways to promote alternative forms of transportation. The proposed project would incorporate the TASP policies by: providing continuous pedestrian sidewalks and safe bike travel routes, consistent with Policy 3.21; providing direct walking routes to schools and major destinations such as retail developments consistent with Policy 3.22; encouraging children to walk to school by providing safe routes consistent with Policy 3.23; and providing bikeways and bike storage and providing parking areas that encourage carpooling and use of low emission vehicles consistent with TASP Policies 3.28, 3.31, 3.33 and 3.34. The TASP FEIR concluded that implementation of these measures would reduce impacts from GHG emissions for the TASP to less-than-significant levels. As the proposed project would remain in compliance with these policies, the project's impact on GHG emissions would also be less than significant.

Regarding electricity consumption, the TASP FEIR found that the increase in total demand for electrical energy as a result of the TASP would be reduced to less-than-significant levels by requiring compliance with State, local, and TASP energy efficiency policies. These policies (outlined below) will ensure that the additional energy that homes and businesses consume would not impede achievement of the Statewide reduction in emissions mandated by the California Climate Solutions Act of 2006 and will ensure that the impact of increased energy consumption in the TASP area would be less than significant. Additionally, the proposed project would encourage and support energy efficiency and green building techniques that would reduce energy-related GHG emissions, similar to the previously approved TASP FEIR.

Implementation of the proposed project would not result in an increase in GHG emissions beyond those analyzed in the TASP FEIR and impacts would remain less than significant.

The TASP FEIR did not include an evaluation of the project's compliance with the City's 2013 Climate Action Plan which was not in place at the time the EIR was certified. The Climate Action

Plan includes GHG reduction goals, policies, and actions for new and existing development projects. The proposed project includes transit oriented development in addition to the TASP policies listed below, which are consistent with the Climate Action Plan's transportation and land use goals. Therefore, the project would be in conformance with the City's Climate Action Plan.

The 730-750 East Capitol Avenue Project adheres to the building guidelines of the TASP, is consistent with the Milpitas CAP, and promotes reductions in GHG emissions through high-density development in close proximity to transit. To reduce energy usage, the project would incorporate green building measures in compliance with CALGreen 2013 standard building measures for residential buildings and Title 24 requirements. Additionally, while the proposed project would remove all 51 existing trees, the project would plant a total of 348 new trees on the site, following the City's standards, which would help offset GHG emissions. The proposed project would result in no new or more severe impacts related to GHG emissions than analyzed in the TASP FEIR and further analysis is not required.

### **APPLICABLE MITIGATION**

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the TASP FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **TASP Policies**

- *Policy 3.16: Establish and implement a travel demand management (TDM) program in order to encourage alternate modes of travel and thereby reduce automobile trips. Establish a funding mechanism to pay for the costs of the program, including the cost of a transportation coordinator to administer the program. The program would include a ride-matching program, coordination with regional ride-sharing organizations, and provision of transit information; and could also include sale of discounted transit passes and provision of shuttle service to major destinations.*
- *Policy 3.21: See this policy in Section III, Air Quality.*
- *Policy 3.22: See this policy in Section III, Air Quality.*
- *Policy 3.23: Encourage children to walk or bike to school by expanding existing safe walking and bicycling routes to schools into the Transit Area.*
- *Policy 3.28: Provide continuous bicycle circulation through the project site and to adjacent areas by closing existing gaps in bicycle lanes and bicycle routes, per Figure 3-5 [of the Specific Plan].*
- *Policy 3.31: Require provision of bicycle and pedestrian facilities such as weather protected bicycle parking, direct and safe access for pedestrians and bicyclists to adjacent bicycle routes and transit stations, showers and lockers for employees at the worksite, secure short-term parking for bicycles, etc.*

- *Policy 3.33: See this policy in Section III, Air Quality.*
- *Policy 5.6: Require the use of Energy Star appliances and equipment in new residential and commercial development, and new City facilities.*
- *Policy 5.7: Require at least 50 percent of all new residential development to be pre-wired for optional photovoltaic roof energy systems and/or solar water heating.*
- *Policy 5.8: Incorporate cost-effective energy conservation measures into all buildings being constructed by the City in the Transit Area, including construction, operations and maintenance. These measures can include but are not limited to:*
  - *Energy efficient light fixtures, including solar powered systems, for streetscapes, parks, and public buildings which have limited glare and spillover;*
  - *Automatic lighting systems in public buildings and offices; and*
  - *Life-cycle costing of capital projects so that the environmental, societal, and economic costs are evaluated over the project's long-term operation.*

**CONCLUSION**

The TASP FEIR adequately covered the GHG emissions impacts of the 730-750 East Capitol Avenue Project and no new impacts related to GHG emissions would result.

	<b>Potentially Significant Impact</b>	<b>Less Than Significant Impact with Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>VIII. HAZARDS AND HAZARDOUS MATERIALS.</b>				
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>VIII. HAZARDS AND HAZARDOUS MATERIALS.</b>				
Would the project:				
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project located within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

The TASP FEIR concluded that due to past land uses and previously reported hazardous material releases and spills in the TASP area, there are potential impacts associated with existing soil and groundwater contamination in areas of the Specific Plan (Impact 3.4-1). These potential impacts include the risk of upset during demolition and construction activities and could pose a health risk to humans and the environment. All projects implemented as part of the Specific Plan are subject to existing hazardous materials regulations for the use, transport and disposal of hazardous materials. The TASP FEIR found that any impact from potential exposure during construction can be reduced to a less-than-significant level with implementation of TASP policies.

Existing structures that would be demolished in the Specific Plan area could include hazardous building materials such as asbestos, polychlorinated biphenyls (PCBs), or lead-based paint. TASP Policy 5.21 requires applicants to submit information to the City regarding asbestos-containing building materials, PCBs, and lead-based paint in existing buildings proposed for demolition. The 730-750 East Capitol Avenue Project would be required to comply with TASP Policy 5.21, reducing this impact to a less-than-significant level.

All new development within the Specific Plan area must comply with Section 19827.5 of the California Health and Safety Code, which requires that local agencies not issue demolition or alteration permits until an applicant has demonstrated compliance with notification requirements under applicable federal regulations regarding hazardous air pollutants, including asbestos. Full compliance with Title 17 and Title 8 of the California Code of Regulations is also required, which includes implementing work practice standards related to the evaluation and abatement of lead in public and residential buildings and covers construction work where an employee may be exposed to lead.

Phase I and II Environmental Site Assessment (ESA) Reports were prepared for the project site, as needed. The results and findings of these reports are discussed below.

**730 East Capitol Avenue Property.** The Phase I ESA for the 730 East Capitol Avenue property found that the site was previously used for farming and agricultural purposes prior to its current industrial configuration between 1977 and 1978.<sup>12</sup> The Phase I ESA identified three fuel-related underground storage tanks (USTs) previously located on the project site in conjunction with the former trucking operations. Diesel-range total petroleum hydrocarbons (TPHd) and benzene, toluene, ethylbenzene and xylene (BTEX) components were identified in the soil samples collected from beneath the UST piping at the project site. The USTs were removed from the site in 1995 under agency oversight and given a status of “No Further Action” (NFA) by the Milpitas Fire Department and later by the SCVWD. The Phase I ESA concluded the former USTs represent a historic recognized environmental condition for the project site, as they involve a past release of petroleum products, which have been addressed to the satisfaction of the applicable regulatory agencies.

A Phase II ESA<sup>13</sup> was conducted to determine the current extent of contaminants in soil gas and groundwater at the project site. The Phase II ESA included collection of soil vapor samples at seven locations across the project site. Soil and groundwater sampling was taken adjacent to each of the soil vapor samples. In addition, six additional soil vapor wells were analyzed for the presence of volatile organic compounds (VOCs). The soil vapor survey detected the following three compounds on the project site:

- Benzene was detected at concentrations slightly above the San Francisco Bay Regional Water Quality Control Board Environmental Screening Level (ESL) for a residential setting;
- Dichlorodifluoromethane (Freon-12, or CFC-12) was detected on the site; however, an ESL has not been established for this compound; and
- Tetrachloroethene (PCE) was detected at concentrations of 0.21 micrograms per liter which is equal to the ESL for soil gas in a residential setting.

The Phase II ESA compared the soil vapor results to ESLs for screen-level purposes only. The combined data set (soil vapor and groundwater) was evaluated to determine if constituents detected in

<sup>12</sup> Kennedy Jenks Consultants, 2014. *Phase I Environmental Site Assessment & Limited Asbestos and Lead Survey 730 East Capitol Avenue Milpitas, California*. March 19.

<sup>13</sup> Kennedy Jenks Consultants, 2015. *Limited Subsurface Assessment Results, 730 East Capitol Avenue Milpitas, California*. September 24.

soil vapor and groundwater were indicative of a release at the site that presented a risk to the proposed future residential development, per the San Francisco Bay RWQCB.

The soil and groundwater investigation found that only one analyte, cis-1,2-dichloroethene (cis-1,2-DCE) was found on the site. However, the concentration measured was lower than the California Maximum Contaminant Level for drinking water. No extractable hydrocarbons were detected above the analytical reporting limits and no analytes were detected. Due to the isolated nature and low concentration of this detection, it was determined that additional investigation or action with respect to the proposed project is not warranted.

The Phase II ESA found that the project site is suitable for residential development due to benzene detections in soil vapor being limited to the northeastern side of the building. The benzene detected at the site reflects incidental minor surface releases from motor vehicles that are common in parking areas. CFC-12 and PCE was found in distant portions of the site and were not detected in any of the groundwater samples collected from the site indicating that an actionable onsite source for these constituents is not indicated.

**750 East Capitol Avenue Property.** The Phase I ESA prepared for 750 East Capitol Avenue found that the site was previously used for agricultural purposes and was cultivated with orchards from the early 1940s through the late 1970s before being developed and utilized as a truck terminal facility with loading docks and office space.<sup>14</sup> The Phase I ESA identified minor soil or groundwater impairments associated with historic uses on the property.

The Phase I ESA identified one historic Recognized Environmental Condition (REC) on the site. The property is listed as a closed leaking underground storage tank on the RWQCB's GeoTracker database. Specifically, a leak was identified from a 15,000-gallon diesel underground storage tank located on the property in 1996. The underground storage tank and associated piping were subsequently removed that same year and the SCVWD issued a case closure letter for the site in 1997.

The Phase I ESA also included a review of regulatory databases and site reconnaissance which identified features of the property not considered to be RECs. A 2011 Phase I report for the property suggested that a 10,000-gallon gasoline underground storage tank may exist on the property but this finding could not be confirmed. In addition, elevated levels of lead and chromium were encountered on the site in previous studies. If the soil at these locations of the property is excavated for disposal, additional characterization and testing for chromium and lead would be required prior to determining the appropriate options. If any unknown underground structures and/or potentially contaminated or odiferous soils is encountered during grading activities, an environmental professional should be contacted.

The nearest school to the project site is Northwood Elementary School at 2760 Trimble Road, approximately 0.5 miles east of the project site. Since there are no schools within 0.25 miles of the project site, no impacts related to handling hazardous materials near a school would occur. The project site is located approximately 3.5 miles northeast of the nearest public use airport, Norman Y.

<sup>14</sup> ENGEO Incorporated, 2015. *Phase I Environmental Assessment, 750 E. Capitol Avenue Milpitas, CA*. October 13.

Mineta San Jose International Airport (SJIA). As the project site is not located within the SJIA Airport Influence Area, no safety hazards from the airport would be anticipated. No private airstrips are located in the project vicinity.<sup>15</sup> The proposed project would not be expected to impair implementation or interfere with an adopted emergency plan. TASP Policies 6.49, 6.50, and 6.52 would ensure that adequate emergency services are available. The project site is not located in or adjacent to a wildland area and would not be subject to wildland fire risks.

The 730-750 East Capitol Avenue Project is consistent with the overall vision of transforming the area from industrial to a new, transit-oriented, mixed-use neighborhood. Since the proposed project would comply with TASP policies, including Policy 5.20, 5.21 and 5.22, there are no new impacts on hazards and hazardous materials.

### **APPLICABLE MITIGATION**

No new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **TASP Policies**

- *Policy 5.20: Property owners shall work with the City of Milpitas Fire Department, the Santa Clara County Department of Environmental Health (SCCDEH), the California Department of Toxic Substances Control (DTSC), and/or the State Water Resources Control Board (SWRCB), whichever has jurisdiction, to resolve issues related to contamination that could potentially impact future land uses in the project area. The lateral and vertical extent of contamination shall be determined, remediation activities completed, and land use restrictions implemented, as necessary, prior to the issuance of development permits on parcels with known contamination.*

*For parcels with known contamination, appropriate human health risk assessments (HHRAs) shall be conducted based on proposed land uses by a qualified environmental professional. The HHRAs shall compare maximum soil, soil gas, and groundwater concentrations to relevant environmental screening levels (ESLs<sup>2</sup>) and evaluate all potential exposure pathways from contaminated groundwater and soil. Based on the findings of the HHRAs, if appropriate, engineering controls and design measures shall be implemented to mitigate the potential risk of post-development vapor intrusion into buildings.*

*For parcels with no identified contamination, a Phase I study shall be completed to review potential for ground water, soil, or other contamination related to previous land uses. If any potential for contamination is determined to exist that could adversely affect human health for residential uses, a Phase II level analysis shall be conducted per City, State, and*

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<sup>15</sup> Santa Clara County Airport Land Use Commission, 2011. *Comprehensive Land Use Plan, Santa Clara County, Norman Y. Mineta San Jose International Airport, Figure 8: Airport Influence Area.* May 25.

*Federal requirements. If contamination is found to exist, procedures for contaminated sites as described in the paragraph above shall be followed.*

- *Policy 5.21: Project applicants shall submit information to the City regarding the presence of asbestos-containing building materials, PCBs, and lead-based paint in existing buildings proposed for demolition, additions, or alterations. The information shall be verified prior to the issuance of demolition permits by the City of Milpitas Building Inspection Division for any existing structures or buildings in the project area. If it is found that painted surfaces contain lead-based paint and/or the structures contain asbestos-containing building materials, measures to ensure the safe demolition of site structures shall be incorporated into the project Demolition Plan. The Demolition Plan shall address both onsite and offsite chemical and physical hazards. Prior to demolition, hazardous building materials associated with lead-based paint and asbestos-containing building materials shall be removed and appropriately disposed of in accordance with all applicable guidelines, laws, and ordinances. The demolition of buildings containing asbestos would require retaining contractors who are licensed to conduct asbestos abatement work and notifying the Bay Area Air Quality Management District (BAAQMD) ten days prior to initiating construction and demolition activities. Regarding lead based paint, Cal-OSHA regulates all worker exposure during construction activities associated with lead-based paint. The Cal-OSHA-specified method of compliance includes respiratory protection, protective clothing, housekeeping, hygiene facilities, medical surveillance, and training.*
- *Policy 5.22: At sites with known contamination issues, a Risk Management Plan (RMP) shall be prepared to protect the health and safety of construction workers and site users adjacent to construction activities. The RMP shall include engineering controls, monitoring, and security measures to prevent unauthorized entry to the construction site and to reduce hazards outside of the construction site. The RMP shall address the possibility of encountering subsurface hazards and include procedures to protect workers and the public. The RMP shall also include procedures for managing soils and groundwater removed from the site to ensure that any excavated soils and/or dewatered groundwater with contaminants are stored, managed, and disposed of in accordance with applicable regulations and permits. Protocols for the handling, transport, and disposal of both known and previously unidentified hazardous materials that may be encountered during project development shall be specified. If prescribed exposure levels are exceeded, personal protective equipment shall be required for workers in accordance with OSHA regulations. Finally, the RMP shall also include procedures for the use, storage, disposal, of hazardous materials used during construction activities to prevent the accidental release of these materials into the environment during construction.*

## CONCLUSION

The TASP FEIR adequately evaluated potential impacts related to hazards and hazardous materials at or affecting the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>IX. HYDROLOGY AND WATER QUALITY.</b> Would the project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>IX. HYDROLOGY AND WATER QUALITY.</b> Would the project:				
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding of as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

The TASP FEIR determined that implementation of the Specific Plan would have minimal impacts on the hydrology and water quality of the Specific Plan area. Potential impacts to groundwater and to streams and rivers are not likely to occur, and the Specific Plan area is expected to maintain the same drainage pattern upon build-out, utilizing existing street gutters and storm drains. Furthermore, the Specific Plan area is also not subject to inundation by seiche, tsunami or mudflow. Potential impacts would be related to stormwater and flooding (Impacts 3.10-3) and water quality (Impacts 3.10-1 and 3.10-2). The TASP FEIR concluded compliance with specific municipal policies, General Plan and TASP policies would reduce the impacts related to stormwater quality, runoff, and flooding to less-than-significant levels.

During the construction period, grading and excavation activities would result in exposure of soil to runoff, potentially causing erosion and entrainment of sediment in runoff. This condition could cause erosion and increase sedimentation in storm drains or waterways within the area. In addition, there is the potential for release of chemicals such as fuels, oils, paints and solvents from construction sites. The chemicals could be transported to nearby surface waterways, groundwater in stormwater runoff, wash water and dust control water. General Plan Policies 4.d-G-1 and 4.d-I-1 and TASP Policies 5-36 and 5-37 would help reduce construction related water quality impacts to less-than-significant levels.

In addition, construction projects are required to prepare a Stormwater Control Plan, which requires implementing Best Management Practices (BMPs) to control stormwater peak flows and pollutant levels. This requirement is stipulated in Provision C.3 of the Santa Clara County National Pollutant Discharge Elimination System (NPDES). All projects within the Specific Plan area must comply with NPDES requirements, including the proposed project. The applicant submitted a Stormwater Control Plan as part of the project application materials.<sup>16</sup> The City will confirm that this plan conforms to all applicable local and State requirements.

The proposed increase in population and traffic associated with the project could increase discharge of pollutants in stormwater runoff beyond current levels after partial or full build-out of the Specific

<sup>16</sup> Carlson, Barbee & Gibson, Inc., 2015, op. cit.

Plan. However, full compliance with the Santa Clara County NPDES permit guidelines for storm-water discharge, General Plan Policy 4.d-G-1, Midtown Policy 6.8, and TASP Policies 5-36 and 5-37 would ensure the impacts would be less than significant.

The Specific Plan area is within a Federal Emergency Management Agency (FEMA)-designated floodplain. As such, the City has conducted area-wide storm drainage planning that includes Master Grading and Storm Drainage Plans for each subdistrict of the Specific Plan area. The proposed project must comply with the requirements of the Master Grading and Storm Drainage Plans for the Trade Zone/Montague subdistrict. Additional impacts related to the floodplain could occur, however, several local and TASP policies identified in the TASP FEIR would reduce the impact to less-than-significant levels.

Since the 730-750 East Capitol Avenue Project is located in a FEMA special flood area, a flood study was prepared for the project site.<sup>17</sup> The Flood Study found that the project would result in a decrease in the 100-year water surface elevation at many points downstream and throughout the site and would have no more than 0.3 feet of impact at any neighboring privately-owned property. The study also found cumulative impacts to neighboring properties would be less than 1 foot and therefore comply with the City of Milpitas Floodplain Ordinance section XI-15-4.3(a)(4).

The Flood Study also states that the project must comply with the following requirements from FEMA and the City of Milpitas to be removed from the floodplain:

- The City of Milpitas floodplain ordinance section X1-15-5.1(c)(1)(i) requires that the lowest residential floor must be elevated above the highest adjacent grade to a height exceeding the depth of number specified in feet on the FIRM by at least one 1 foot, or elevated at least three 3 feet above the highest adjacent grade if no depth is specified.
- FEMA requires the lowest adjacent grade to a structure be higher than the base flood elevation to remove the building from the flood hazard area. A CLOMR-F and LOMR-F should be filed with FEMA during planning and after construction respectively to remove the proposed buildings from the floodplain.

The Floodplain Study concluded that based on the current grading plan, the project elevations are in compliance with the above requirements. The 730-750 East Capitol Avenue Project conforms to the TASP FEIR, and, therefore, there is no new impact on hydrology and water quality.

## **APPLICABLE MITIGATION**

No new mitigation measures are required.

## **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

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<sup>17</sup> Schaaf & Wheeler Consulting Civil Engineers, 2016. *730-750 East Capitol Avenue Flood Study*. January 15.

### **City of Milpitas Municipal Policies**

- Standards of Construction (Section XI-15-5.1) – specify requirements for anchoring, construction materials and methods, and elevation and flood-proofing
- Standards for Utilities (Section XI-15-5.2) – specify requirements for new and replacement water supply and sanitary sewage systems, and on-site waste disposal systems
- Standards for Subdivisions (Section XI-15-5.3)
- Floodways (Section XI-15-5.6) – specify requirements and constraints for encroachments, and other flood hazard reduction provisions

### **General Plan Policies**

- *Policy 4.d-G-1: Protect and enhance the quality of water resources in the Planning Area.*
- *Policy 4.d-I-1: Continue implementing the National Pollutant Discharge Elimination System (NPDES) requirements of the Regional Water Quality Control Board – this is implemented through Chapter 16 of the City’s Zoning Ordinance.*

### **TASP Policies**

- *Policy 5.36: Require construction projects that disturb one or more acres to prepare a Stormwater Pollution Prevention Plan (SWPPP) that, when properly implemented, would reduce or eliminate impacts on surface water quality during construction.*
- *Policy 5.37: Require construction projects to comply with the Santa Clara County National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharge.*
- *Policy 6.1: Minimize damage associated with flooding events and comply with regulations stipulated by FEMA and the National Flood Insurance Program.*
- *Policy 6.2: New development within a FEMA-designated flood hazard zone must follow the City’s construction standards for such areas, as currently laid out in Section XI-15 ‘Floodplain Management Regulations’ of the Milpitas Municipal Code.*
- *Policy 6.3: New development must maintain the Transit Area’s urban design standards. In particular, first floor commercial space must be within two feet of the elevation of the public sidewalk. The design and development standards in Chapter 5 [of the proposed Plan] must be followed, as well as the FEMA construction standards. This policy is particularly important regarding the location and appearance of on-site parking and the accessibility of ground floor retail from sidewalks. FEMA’s construction standards require a building’s floor plate to be one foot above flood level. Rather than elevate a building on stilts and require store access via stairs or ramps, the ground floor should be accessible via a sloping sidewalk. On streets fronted by ground floor commercial, no sidewalk shall be more than two feet above or below the floor level of adjacent commercial space, as specified in Chapter 5. The sidewalk needs to be designed so that the grade of its slope complies with federal, state, and local standards for disabled access.*
- *Policy 6.4: Provide storm drain infrastructure to adequately serve new development and meet City standards.*

- *Policy 6.5: Ensure that runoff in storm drains does not lower water quality within or outside of the Transit Area by implementing Best Management Practices (BMPs) in new developments within the Transit Area.*
- *Policy 6.6: Construct the improvements within the Transit Area that were identified in the 2001 Storm Drainage Master Plan, and any other improvements identified in updates to the Master Plan.*
- *Policy 6.7: Prepare Master Grading and Storm Drainage Plans for each subdistrict of the Transit Area prior to approval of Zoning Permits for new buildings in that subdistrict.*

**Midtown Specific Plan Policies**

- *Policy 6.8: Encourage creativity in design of new development in order to reduce stormwater runoff, increase percolation, and improve water quality.*

**CONCLUSION**

The TASP FEIR adequately evaluated the hydrology and water quality impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>X. LAND USE AND PLANNING.</b> Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

The TASP FEIR concluded that while implementation of the Specific Plan would significantly change the land use designations and pattern of development for the area, impacts related to land use would be minimal. Implementation of the Specific Plan does not result in the division of an established community because the area was primarily developed with industrial uses prior to the development of the Specific Plan. In addition, there is no habitat conservation or natural community conservation plans within the Specific Plan area.

Existing land use designations in the Specific Plan would change from industrial to residential, mixed-use, and parks/community facilities over a period of 20 years. The changes that occur as a result of the Specific Plan are seen as positive and will include the development of street and trail connections and pedestrian bridges across major arterials to connect resident and employees with jobs, services, parks and transit. New zoning districts associated with the Specific Plan include: MXD2, MXD3, and R5 and edits the “- TOD” Combining District to include MXD2-TOD, MXD3-TOD, R3-TOD, R5-TOD, and MPTOD and revises C2-TOD. These amendments ensure that potential impacts related to inconsistency and altered land use designations are less than significant.

Under the Specific Plan, the proposed project site is designated as Very High Density Transit Oriented Residential. The entire project site is located within the Transit Oriented Development Overlay (TOD) district and is entitled to development density bonuses of up to 25 percent with a Use Permit. Additionally, a portion of the site fronting the proposed Milpitas Boulevard Extension is designated a Neighborhood Retail Location which requires 5,000 square feet of local serving retail space on the ground floor. The Very High Density Transit Oriented Residential designation permits housing residential, neighborhood commercial and live/work uses. Permitted densities for residential uses range from a minimum of 41 units per acre average gross density to 60 units per acre maximum average gross density; and, within the TOD district, allowable densities range from 41 to 75 dwelling units/gross acre (90 units/gross acre with CUP). In addition, building heights of 4 to 6 stories (12 stories on arterials and 20 stories with CUP) are permitted. Small local-serving commercial uses are permitted at the ground floor level, including retail, restaurants and personal service uses. The 730-750 East Capitol Avenue Project complies with the standards of the Very High Density Transit-Oriented Residential land use designation and would develop in the lower range of the density and intensity standards from what was assumed in the TASP FEIR.

The TASP FEIR also found that proposed uses would be more compatible with the adjacent residential and commercial uses than existing uses. However, over the planning horizon, the City expects there would be temporary incompatible land uses in the area until the build-out of the Specific Plan is complete. Policies are included in the Specific Plan to address temporary neighboring incompatible land uses. The Specific Plan includes streets, landscaped areas, parks and linear parks that create buffers between the different types of land uses. Conformance with TASP policies (outlined below) will ensure that temporary conflicts between land uses would be less than significant.

The Specific Plan area is intended to be a cohesive neighborhood identified by a similar look and feel in its public spaces and a consistent orientation toward walking and transit usage. However, the area is currently bisected by regional arterial roadways and rail lines that create discrete areas with varying development environments. As a planning and development strategy, the Specific Plan created subdistricts to capitalize on and accommodate these identified areas. Each subdistrict has a carefully chosen plan of land uses, local street grid, and open space assigned to it to generate a character that takes into account existing and future physical conditions as well as expected market demand. Each subdistrict has individual development criteria for setbacks and building location and placement, which would reduce the impact of interactions between adjacent potentially incompatible uses.

The proposed project is within the Trade Zone/Montague subdistrict. The Trade Zone/Montague subdistrict is located east of Montague Expressway and south of Capitol Avenue, extending to the City limits on Trade Zone Boulevard and Lundy Street. The goal of this subdistrict is to create an

attractive residential district, with ample green space in the form of a sports field and a creekside park, plus trails along Penitencia Creek. Land Use Policy 4.44 for the Trade Zone/Montague Subdistrict of the Specific Plan requires all projects within this subdistrict to create an interior street parallel to Capitol Avenue in an effort to create a “quiet front door” and “residential character” for the residents. The proposed project includes two internal roads, Street B and Street C. In addition, the Milpitas Boulevard Extension would run perpendicular to the site and serve as the primary connection into the site. Street C conforms to Policy 4.44 as it is parallel to East Capitol Avenue and would serve as the connection between the Milpitas Boulevard Extension and the proposed 450 Montague project street network. As such, the proposed project would conform to the development standards of the subdistrict, which lessens the impact of incompatible adjacent uses.

Since the land use impacts of the 730-750 East Capitol Drive Project are consistent with the impacts identified in the TASP FEIR, and because the project would comply with the building standards of the Specific Plan, there is no new impact on land use.

### **APPLICABLE MITIGATION**

No new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **TASP Policies**

- *Policy 3.8: Allow contiguous developments to build at higher or lower residential densities, so long as their average density falls between the designated minimum and maximum.*
- *Policy 3.9: Maintain the Midtown Plan’s gross floor area policy, which excludes all areas of a building devoted to parking from FAR calculations.*
- *Policy 3.38: The open space requirements of the Midtown Milpitas Specific Plan (Policy 3.2.4) shall apply to the entire area of the Transit Area Specific Plan.*

#### **Trade Zone/Montague Corridor Subdistrict Policies**

- *Policy 4.43 (TR-M): Create a new street that aligns with the Milpitas Boulevard Extension with a traffic signal that allows left and right turns from Capitol Avenue.*
- *Policy 4.44 (TR-M): Create an interior street parallel to Capitol Avenue.*
- *Policy 4.45 (TR-M): Do not locate curb cuts for driveway or garage access on Capitol Avenue.*
- *Policy 4.46 (TR-M): Create a deep landscape setback along Capitol Avenue to separate residences from noise and heavy traffic on Capitol Avenue. See Figure 5-11, Chapter 5 of the Specific Plan.*
- *Policy 4.47 (TR-M): Create a street connection between Sango Court and the new residential area to the south and east when the Sango Court area redevelops for residential use.*

- *Policy 4.48 (TR-M): Provide street connections from residential and mixed use development on Montague Expressway to the park and residential neighborhoods within this subdistrict.*
- *Policy 4.49 (TR-M): Create street connections, bike connections, and pedestrian connections across the creek channel.*
- *Policy 4.50 (TR-M): Prevent cut-through traffic avoiding the Montague/Capitol intersection.*
- *Policy 4.51 (TR-M): Create a deep landscape setback along Trade Zone Boulevard to buffer residential uses from the office/R&D/industrial uses across the street in San Jose, and to provide an overall attractive street appearance.*
- *Policy 4.52 (TR-M): Access to private parking should be from local streets that do not abut a park.*
- *Policy 4.53 (TR-M): Provide 30 foot landscape setbacks with a double row of trees between the BART track and residential buildings.*
- *Policy 4.54 (TR-M): Provide very high-density residential near BART and light rail stations, served by a linear park along the drainage-way. Provide high-density residential development at the interior of the subdistricts, serviced by neighborhood parks with sports fields.*
- *Policy 4.58 (TR-M): Buildings fronting on Capitol Avenue must be designed to minimize impacts of traffic, noise and pollution on the residential units that face Capitol Avenue.*

**CONCLUSION**

The TASP FEIR adequately evaluated the land use impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	<b>Potentially Significant Impact</b>	<b>Less Than Significant Impact with Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>XI. MINERAL RESOURCES.</b> Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

The City of Milpitas General Plan does not identify mineral resources within the Specific Plan area. Therefore, the 730-750 East Capitol Avenue Project would have no impact on mineral resources.

**CONCLUSION**

The TASP FEIR adequately evaluated the mineral resource impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>XII. NOISE.</b> Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

### Construction-Period Impacts

The proposed project would be consistent with the buildout projected for the TASP, and would implement the policies identified in the TASP FEIR to reduce potential noise impacts to less-than-significant levels. Construction of the project would adhere to the noise standards and requirements set forth in the City's Municipal Code and General Plan. The project would implement the measures identified in the TASP for addressing noise, including providing disclosures to future residents per Policy 5.17, and requiring temporary buffers if residents are placed next to existing industrial uses per Policy 5.19.

As described in the TASP FEIR, construction noise impacts would vary depending on proximity to sensitive receptors, the presence of intervening barriers, and the number, types, and duration of construction equipment used. Compliance with the General Plan and TASP policies would ensure that construction noise impacts would be less than significant.

The City's Noise Abatement Ordinance would restrict construction hours to between 7:00 a.m. and 7:00 p.m. The City's General Plan Policy 6-I-13 would minimize construction noise impacts by restricting the hours of operation, technique, and equipment used. Additionally, TASP Policy 5.15 requires that construction noise be mitigated to the extent feasible to reduce exposure of sensitive receptors.

The proposed project would not result in any new or more significant construction-period noise impacts than were described in the TASP FEIR. Implementation of the Noise Ordinance, the City of Milpitas General Plan, and the TASP, as included in the TASP FEIR, would reduce construction noise impacts to a less-than-significant level.

### Groundborne Vibration Impacts

Construction activities are known sources of groundborne vibration. Vibration impacts could occur during construction of the proposed project, which would require the use of heavy excavation equipment, and the possible use of pile-driving equipment. To determine potential construction vibration impacts, an impact evaluation is described below.

When assessing annoyance from groundborne noise, vibration is typically expressed as root mean square (rms) velocity in units of decibels of 1 micro-inch per second. Vibration levels, different from noise levels, are written as vibration velocity decibels (VdB). However, construction vibration impacts on building structures are generally assessed in terms of peak particle velocity (PPV). Therefore, for purposes of this analysis, project-related impacts are expressed in terms of PPV.

Typical groundborne vibration levels measured at a distance of 25 feet from heavy construction equipment in full operation, such as vibratory rollers, range up to approximately 0.210 PPV. Based on the Federal Transit Administration (FTA) data, large bulldozers generate 0.089 PPV at 25 feet and small bulldozers generate 0.003 PPV at 25 feet. Loaded trucks generate 0.076 PPV at 25 feet, an impact pile driver generates 0.644 PPV at 25 feet, and a sonic pile driver generates 0.170 PPV at 25

feet. Except for the impact driver, these vibration levels would not be expected to cause damage to residential buildings of typical northern California construction.

As stated in the TASP FEIR, the proposed project is mixed-use and therefore could expose sensitive receptors to unacceptable levels of groundborne vibration, specifically from operation of the VTA light rail line and BART trains along the proposed BART expansion into the TASP Area. The nearest proposed residential uses would be approximately 130 feet from the VTA light rail line and approximately 55 feet from the future BART tracks. The Santa Clara Valley Transit Authority's BART Expansion SEIR indicated that vibration impacts at existing receptors in the Planning Area and within 100 feet of the proposed tracks would be mitigated to a less-than-significant level (less than the 72 VdB significance threshold for frequent events affecting Category 2 land uses) by either using a floating slab track or by using tire derived aggregate under ballasted track.<sup>18</sup> As this mitigation would reduce vibration at the source, future residential uses proposed along the BART alignment would also experience less than significant vibration impacts. In addition, TASP Policies 5.13 and 5.14 would ensure that vibration levels within buildings would be less than the FTA criteria.

Therefore, the proposed project would not result in any new or more significant groundborne vibration impacts than were described in the TASP FEIR. In addition, implementation of TASP policies would reduce potential groundborne vibration impacts on future or existing sensitive receptors to less-than-significant levels.

### **Operational-Period Impacts**

The TASP FEIR requires implementation of TASP Policy 5.10 which requires new development in the TASP area to adhere to the standards and guidelines in the Milpitas General Plan that govern noise levels, which would include implementation of General Plan Policies 6-I-2 through 6-I-16. Policy 6-I-2 requires an acoustical analysis for projects located within a "conditionally acceptable" or "normally unacceptable" exterior noise exposure area and require mitigation measures to reduce noise to acceptable levels.

The proposed project would result in an increase in people living close to transit stations which could expose sensitive receptors to higher noise levels from train and future BART activity. An Environmental Noise Assessment was prepared for the proposed project, which included an analysis of potential noise impacts on the proposed project.<sup>19</sup> Results of the analysis are discussed below.

The project site is bordered by an existing VTA Light Rail to the north. Noise generated by the VTA light rail may adversely affect the project site and be a significant source of noise. The exterior VTA light rail noise exposure was calculated at the nearest proposed outdoor activity areas and residential building facades. Offsets were applied at certain outdoor activity areas to account for the partial shielding of those areas from view of the tracks by proposed structures. The results of the analysis are

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<sup>18</sup> Transportation Authority, Santa Clara Valley, 2010. *BART Silicon Valley Environmental Impact Report*. November.

<sup>19</sup> Bollard Acoustical Consultants, Inc., 2016. *Environmental Noise Assessment Anton Milpitas Mixed-Use Development*. March.

shown in Table 1, below. Table 1 lists the nearest exterior noise-sensitive areas including courtyards, rooftop areas, and parks.

**Table 1: Predicted VTA Light Rail Noise Exposure at the Project Site**

Noise Sensitive Location <sup>a</sup>	Distance from Centerline of Tracks (feet)	Offset <sup>b</sup> (dB)	Predicted Noise Level (dB L <sub>dn</sub> )		
			1 <sup>st</sup> Floor	2 <sup>nd</sup> Floor	Upper Floors
Nearest Residential Facades	130	0	56	57	58
Garden Courtyard	200	-10	43	–	–
Tot Lot Courtyard	230	-10	42	–	–
Entertainment Courtyard	240	-10	42	–	–
Sports Bar Rooftop Deck <sup>c</sup>	240	-10	–	–	44
Wine Bar Rooftop Deck <sup>d</sup>	300	-10	–	–	43
Proposed Public Park	300	-10	41	–	–

Notes:

<sup>a</sup> See Figure 3 in the Environmental Noise Assessment for Noise-Sensitive Locations.

<sup>b</sup> Minimum offset due to proposed intervening buildings.

<sup>c</sup> Rooftop deck is on the 8<sup>th</sup> floor of Building B.

<sup>d</sup> Rooftop deck is on the 7<sup>th</sup> floor of Building A.

Source: Bollard Acoustical Consultants, Inc., 2016.

As shown above in Table 1, an offset of -10 dB was applied to all the courtyards and rooftop decks due to shielding by the intervening buildings. As a result, the greatest noise exposure would be 43 dB L<sub>dn</sub> at the Garden Courtyard and 41 dB L<sub>dn</sub> at the proposed public park. In addition, the resulting noise level at the rooftop common areas would be 44 dB L<sub>dn</sub> 43 dB L<sub>dn</sub>, respectively. Therefore, the project would be in compliance with the with the City’s exterior standard of 65 dB L<sub>dn</sub> and no mitigation would be required.

Table 1 shows that predicted light rail noise exposure at first-floor residential building facades on the project site would be 56 dB L<sub>dn</sub>. Predicted light rail noise exposure at second- and third-floor building facades on the project site would be 57 dB and 58 dB L<sub>dn</sub>, respectively. To achieve compliance with the 45 dB L<sub>dn</sub> interior standard, an exterior-to-interior noise reduction of up to 13 dB would be required. Standard residential construction, including stucco siding, STC-27 windows, door weather-stripping, exterior wall insulation, and composition plywood roof, would result in an exterior to interior noise reduction of approximately 15 dB with windows open and approximately 25 dB with windows closed.<sup>20</sup> With implementation of standard construction, the proposed project would meet the City’s 45 dB L<sub>dn</sub> interior noise level standard.

In addition to the VTA light rail noise, the project site is subject to operational BART noise. The BART tracks are planned to pass under East Capitol Avenue and are gradually elevated to ground-level near the southeast end of the project site. Although the below-ground operations would not be audible at the project site, the above-ground operations would not benefit from the same underground shielding.<sup>21</sup> The exterior BART noise levels were calculated at the nearest proposed outdoor activity

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

areas and residential building facades. Offsets were applied at certain outdoor activity areas to account for the partial shielding of those areas from view of the tracks by proposed structures. The results of the analysis are shown in Table 2 below.

**Table 2: Predicted BART Noise Exposure at the Project Site**

Noise- Sensitive Location <sup>a</sup>	Distance from Centerline of Tracks (feet)	Offset <sup>b</sup> (dB)	Predicted Noise Level (dB L <sub>dn</sub> )
Proposed Public Park	50	0	61
Nearest Residential Facades	55	0	60
Tot Lot Courtyard	60	0	60
Sports Bar Rooftop Deck <sup>c</sup>	300	-10	39

Notes:

<sup>a</sup> See Figure 3 in the Environmental Noise Assessment for Noise-Sensitive Locations.

<sup>b</sup> Minimum offset due to proposed intervening buildings.

<sup>c</sup> Rooftop deck is on the 8<sup>th</sup> floor of Building B.

Source: Bollard Acoustical Consultants, Inc., 2016.

As indicated in Table 2 above, the proposed public park would be exposed to noise levels of 61 dB L<sub>dn</sub> generated by future BART operations. The nearest courtyard, Tot Lot Courtyard, would be exposed to noise levels of 60 dB L<sub>dn</sub>. An offset of -10 dB was applied to the Sports Bar Rooftop Deck because the proposed buildings would block the line of sight to the BART tracks.<sup>22</sup> As a result, the noise level would be 39 dB L<sub>dn</sub> at that location. Therefore, the project would be in compliance with the City’s exterior standard of 65 dB L<sub>dn</sub> and no mitigation would be required.

Table 2 shows that predicted BART noise exposure at nearest residential building facades on the project site would be 60 dB L<sub>dn</sub>. To comply with the 45 dB L<sub>dn</sub> interior standard, an exterior-to-interior noise reduction of 15 dB would be required of the proposed building facades. Standard residential construction, as discussed above, would result in an exterior to interior noise reduction of approximately 15 dB with windows open, and approximately 25 dB with windows closed. With implementation of standard construction, the proposed project would meet the City’s 45 dB L<sub>dn</sub> interior noise level standard.

### Stationary Noise Source Impacts

The proposed long-term use of the project site is mixed-use transit oriented development. Potential long-term stationary source impacts at the project site would be primarily associated with transportation activities and operations associated with delivery truck activities. The proposed commercial uses could result in noise from mechanical equipment and other on-site sources (e.g., air-conditioning or other mechanical ventilation equipment, delivery loading docks or areas, emergency generators), which would create noise at the nearby sensitive receptors. However, the proposed project would not increase stationary source noise impacts above those analyzed in the TASP FEIR.

<sup>22</sup> Ibid.

### Aircraft Noise Source Impacts

According to the City’s current and projected noise contours for San José International Airport, the project site is not within an area exposed to aircraft noise levels greater than 60 dB CNEL. Therefore, per TASP FEIR analysis, aircraft noise would have no impact on the project site.

### Traffic Noise Impacts

The primary traffic noise sources in the project vicinity are generated by traffic on East Capitol Avenue. The Environmental Noise Assessment prepared for the project calculated future traffic noise levels at the nearest noise-sensitive locations to East Capitol Avenue. These results are shown below in Table 3.

**Table 3: Future East Capitol Avenue Noise Exposure at the Project Site**

Noise- Sensitive Location <sup>a</sup>	Distance from Centerline of Roadway (feet)	Offset <sup>b</sup> (dB)	Predicted Noise Level (dB Ldn)
Nearest 1 <sup>st</sup> Floor Residential Facades	130	0	66
Nearest Upper-Floor Facades	130	+3	69
Garden Courtyard	200	-10	53
Tot Lot Courtyard	230	-10	52
Sports Bar Rooftop Deck <sup>3</sup>	240	-10	52
Wine Bar Rooftop Deck <sup>4</sup>	300	-10	50
Proposed Public Park	300	-10	50

Notes:

<sup>a</sup> See Figure 3 in the Environmental Noise Assessment for Noise-Sensitive Locations.

<sup>b</sup> Positive offset due to reduced ground absorption; Negative offset due to proposed intervening buildings.

<sup>c</sup> Rooftop deck is on the 8<sup>th</sup> floor of Building B.

<sup>d</sup> Rooftop deck is on the 7<sup>th</sup> floor of Building A.

Source: Bollard Acoustical Consultants, Inc., 2016.

As indicated in Table 3, an offset of -10 dB was applied to all exterior noise-sensitive areas due to shielding by proposed intervening buildings.<sup>23</sup> As a result, the greatest noise exposure would be 53 dB L<sub>dn</sub> at the Garden Courtyard. The Tot Lot Courtyard would be exposed to a noise level of 52 dBA L<sub>dn</sub> and the proposed public park would be exposed to a noise level of 50 dB L<sub>dn</sub>. Therefore, future traffic noise levels at the nearest outdoor activity areas would be in compliance with the City’s exterior standard of 65 dB L<sub>dn</sub> and no mitigation would be required.

The residential facades along the East Capitol Avenue would be exposed to higher future traffic noise levels than other areas of the site because they are closer to the roadway. As shown in Table 3, the first-floor facades of the proposed residences would be exposed to an exterior noise level of approximately 66 dB L<sub>dn</sub>. Due to reduced ground absorption of sound at elevated locations, traffic noise levels are expected to be approximately 2 to 3 dB higher at the upper-floor facades, resulting in

<sup>23</sup> Ibid.

an exterior noise level of approximately 69 dB  $L_{dn}$ .<sup>24</sup> Given a future worst-case exterior noise level of 69 dB  $L_{dn}$ , a building facade noise reduction of 24 dB would be required to achieve an interior noise level of 45 dB  $L_{dn}$ .

As discussed above, standard residential construction results in an exterior to interior noise reduction of at least 15 dB with windows open and 25 dB with windows closed. Although standard residential construction would reduce noise levels within compliance, it would not provide an appreciable margin of safety relative to the City's 45 dB  $L_{dn}$  standard.<sup>25</sup> Therefore, the following specific measures are recommended to further ensure the project meets City noise standards and to reduce the potential for adverse reaction of future residents of the development to passenger rail passby noise; these recommendations will be included in the Conditions of Approval for the proposed project.<sup>26</sup>

1. Mechanical ventilation (air conditioning) shall be provided for all residences in this development to allow the occupants to close doors and windows as desired to achieve compliance with the applicable interior noise level criteria.
2. Disclosure statements shall be provided to all prospective tenants of this development informing them of the brief periods of elevated noise levels due to train passbys.
3. To provide a margin of safety for East Capitol Avenue traffic noise relative to the City's interior noise standard, and to reduce the potential for adverse reaction to single-event noise generated during train passbys, all residential windows adjacent to East Capitol Avenue and the future BART tracks should be upgraded to STC 32. Where residences are separated from either East Capitol Avenue or the future BART tracks by an interior hallway, this recommendation would not be applicable.<sup>27</sup>

With implementation of standard construction and the above recommended Conditions of Approval, the proposed project would meet the City's 45 dB  $L_{dn}$  interior noise level standard.

Implementation of these recommended measures would ensure that operational noise impacts on future or existing sensitive receptors are less than significant.

## **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

### **General Plan Policies**

- *Policy 6-G-1: Maintain land use compatibility with noise levels similar to those set by State guidelines.*
- *Policy 6-G-2: Minimize unnecessary, annoying, or injurious noise.*

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

- *Policy 6-I-2: Require an acoustical analysis for projects located within a conditionally acceptable or normally unacceptable exterior noise exposure area. Require mitigation measures to reduce noise to acceptable levels.*
- *Policy 6-I-3: Prohibit new construction where the exterior noise exposure is considered clearly unacceptable for the use proposed.*
- *Policy 6-I-4: Where actual or projected rear yard and exterior common open space noise exposure exceeds the normally acceptable levels for new single-family and multifamily residential projects, use mitigation measures to reduce sound levels in those areas to acceptable levels.*
- *Policy 6-I-5: All new residential development (single family and multifamily) and lodging facilities must have interior noise levels of 45 dB DNL or less. Mechanical ventilation will be required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels.*
- *Policy 6-I-6: Assist in enforcing compliance with noise emissions standards for all types of vehicles, established by the California Vehicle Code and by federal regulations, through coordination with the Milpitas Police Department, Santa Clara County Sheriff's Department, and the California Highway Patrol.*
- *Policy 6-I-9: Enforce the provisions of the City of Milpitas Noise Ordinance and the use of established truck routes.*
- *Policy 6-I-13: Restrict the hours of operation, technique, and equipment used in all public and private construction activities to minimize noise impact. Include noise specifications in requests for bids and equipment information.*

### **TASP Policies**

- *Policy 5.10: New development in the Transit Area shall adhere to the standards and guidelines in the Milpitas General Plan that govern noise levels. The particular policies of note are Policies 6-I-1 through 6-I-16.*
- *Policy 5.11: Construct masonry walls to buffer residential uses from BART and UPRR train tracks. These walls will be constructed by residential developers. They may be located within the landscaped buffer along the tracks*
- *Policy 5.13: Apply the FTA groundborne vibration criteria (presented in Table 5-5) as review criteria for development projects in the vicinity of vibration sources such as BART trains and heavy rail trains.*
- *Policy 5.14: Project applicants shall conduct a vibration impact analysis for any sites adjacent to or within 300 feet of active UPRR and BART alignments to demonstrate that interior vibration levels within all new residential development (single family and multifamily) and lodging facilities would be at acceptable levels. If needed, require mitigation measure to reduce vibration to acceptable levels.*
- *Policy 5.15: Prior to issuance of building permits, applicants shall demonstrate that noise exposure to sensitive receptors from construction activities has been mitigated to the extent feasible pursuant to the City's Noise Abatement Ordinance. Mitigation may include a combination of techniques that reduce noise generated at the source, increase the noise*

*insulation of the receptor or increase the noise attenuation rate as noise travels from the source to the receptor.*

- *Policy 5.17: In all rental and sale agreements, provide disclosures to future residents about all surrounding industrial uses, including UPRR train tracks and operations, and permanent rights of such industrial uses to remain. Describe potential impacts including but not limited to: noise, groundborne and airborne vibration, odors, and use of hazardous materials.*
- *Policy 5.18: Day care facilities, schools, nursing homes, and other similar sensitive receptors shall be located away from sites which store or use hazardous materials, in accordance with State and City standards. Adequate buffers to protect occupants of these sensitive uses shall be provided, including but not limited to walls, fences, landscaping, large building setbacks, and additional exit routes over and above minimum code requirements.*
- *Policy 5.19: Require the installation of temporary buffers—fences, walls, or vegetation—when residential uses are developed adjacent to existing industrial uses. The type of buffer must be reviewed and approved by the City Planning Department. The temporary buffers may be removed if and when an adjacent site is redeveloped as a non-industrial use.*

## CONCLUSION

With implementation of the recommended noise Conditions of Approval, the proposed project would not result in a significant increase in noise levels. In addition, with implementation of the applicable TASP and General Plan Policies, the project would not create any new noise-related impacts.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>XIII. POPULATION AND HOUSING.</b> Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## DISCUSSION

Implementation of the Specific Plan would transform a predominantly industrial area by adding high intensity residential developments near transit to maximize transit ridership and to create a vibrant residential community that is in close proximity to jobs, parks and retail uses.

The TASP FEIR evaluated potential environmental impacts associated with approximately 7,100 residential units and 18,000 new residents within the Specific Plan area. The TASP FEIR assumes that the population growth is concentrated in this area and that the Specific Plan would increase the City's housing stock by 39 percent and its population by 28 percent based on 2006 estimates from the California Department of Finance.<sup>28</sup>

The TASP FEIR concluded that the population and growth impacts associated with the Specific Plan are adequately addressed by the City's Housing Element. Table 4 below includes the housing and population assumptions evaluated within the TASP FEIR and also shows existing and proposed housing development within the Specific Plan area. As the population and housing units proposed by the project would fall within the total development anticipated by the TASP FEIR, the project would result in no new impacts associated with population and housing.

**Table 4: Existing and Proposed Housing Units and Population with the Specific Plan Area**

	<b>Evaluated Within The TASP FEIR</b>	<b>Approved</b>	<b>Proposed Project</b>	<b>Remaining Development Available</b>
Housing Units	7,109 <sup>a</sup>	5,853	582	674
Population	17,915 <sup>a</sup>	14,750 <sup>b</sup>	1,467 <sup>b</sup>	1,699

<sup>a</sup> Milpitas, City of, 2008. *Final Transit Area Specific Plan EIR*.

<sup>b</sup> Estimated population associated with approved units, under construction units, and the proposed project was determined by using the residents per unit evaluated within the TASP FEIR (17,915 residents / 7,109 units = 2.52 residents per unit).

Source: Sarah Fleming, 2016. Senior Planner, City of Milpitas. April 26.

## APPLICABLE MITIGATIONS

No new mitigation measures are required.

## CONCLUSION

The TASP FEIR adequately evaluated the population and housing impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

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<sup>28</sup> Dyett and Bhatia, *Draft Environmental Impact Report, Milpitas Transit Area Specific Plan*, October 2007; and *Final Environmental Impact Report, Milpitas Transit Area Specific Plan*, May 2008.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
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**XIV. PUBLIC SERVICES.**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

i. Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v. Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

The Specific Plan area contains portions of three school districts: the Milpitas Unified School District (MUSD), Berryessa Union School District (BUSD), and East Side Union School District (EUSD). The TASP FEIR evaluated the impact that the Specific Plan’s anticipated 18,000 residents, and associated increase in expected student population, would have on the three school districts. The TASP FEIR concluded that build-out of the Specific Plan will require at least one new elementary school within MUSD and the expansion of existing facilities. The TASP FEIR identified a significant and unavoidable impact related to an increased demand for school facilities (Impact 3.9-1).

The project site falls within the Berryessa Union School District and the East Side Union High School District attendance boundaries. Projected student enrollment rates associated with the build-out of the TASP are as follows: 233 students for EUSD and 330 students for BUSD.<sup>29</sup>

Due to the project’s location, school-aged children would be expected to attend Northwood Elementary and Morrill Middle School in the Berryessa Union School District.<sup>30</sup> Northwood Elementary has a current student enrollment of 471 and a capacity of 648.<sup>31</sup> The TASP identifies the

<sup>29</sup> Dyett and Bhatia, 2008. *Milpitas Transit Area Specific Plan*, p. 3.9-8. May.

<sup>30</sup> Berryessa Union School District, 2016. Berryessa Union Elementary SchoolFinder. Website: [www.schfinder.com/berryessaunionsd](http://www.schfinder.com/berryessaunionsd) (accessed April 5, 2016).

<sup>31</sup> Gower, Ely, 2016. Account Technician II, Berryessa Union School District. Personal Communication with LSA Associates, Inc. April 5.

elementary school generation rate for the district as 0.046 students per unit.<sup>32</sup> As such, the proposed project would generate 26.8 new students that would attend Northwood Elementary. Morrill Middle School has a current enrollment of 709 students and a capacity of 1,024 students. The TASP identifies the middle school generation rate to be 0.016 students per unit. Based on this rate, the proposed project would generate 9.3 that would attend Morrill Middle School. The number of elementary and middle-school students generated by the proposed project would be within the capacity range for these two schools.

High-school aged students would be expected to attend Independence High School in the East Side Union High School District. Independence High School has a current enrollment of 2,968 students and a capacity to serve a total of 3,943 high school students.<sup>33</sup> The student generation rate for Independence High School is 0.078 students per multi-family housing unit. Since the proposed project would develop 582 residential units, the expected number of high school aged students generated from the proposed project would be 45.4, which is within the existing capacity of Independence High School.

Policies in the General Plan, Midtown Plan and Specific Plan would reduce the impact and include coordination with the school districts to update their comprehensive facilities plans, update school fees for developers, and consider joint use agreements for potential shared facilities; as well as applicant payment of school impact fees pursuant to State Government Code 65995 to 65998, which is a means of offsetting development's school impacts. As indicated above, residential growth associated with implementation of the proposed project would fall within the growth parameters evaluated within the TASP FEIR and the proposed project's impacts on schools have been adequately analyzed in the TASP FEIR; as such, the project would not result in a new impact to school facilities.

The TASP FEIR concluded that the fire department would need to expand an existing fire station and/or construct a new station, in addition to providing additional staff and equipment, to adequately serve the development associated with implementation of the Specific Plan (Impact 3.9-2). The TASP FEIR noted that under the National Fire Protection Association (NFPA) standard of one firefighter per 1,000 residents, 18 new firefighters would be needed to serve buildout of the Specific Plan. Policies contained in the Milpitas General Plan and the Specific Plan would help to ensure that even with new development anticipated in the Specific Plan, Milpitas Fire Department response times remain consistent with National Fire Protection Association Standard 1710. Given this, impacts to the provision of fire services are anticipated to be less than significant. As the population and housing units proposed by the project would fall within the total development anticipated by the TASP FEIR, the project would result in no new impacts associated with fire services.

As noted in the TASP FEIR, implementation of the Specific Plan would increase the long-term demand for police assistance and new staff and equipment would be required (Impact 3.9-3); however, a new police station would not be warranted. An addition of 26.3 police offers would be needed to service the Specific Plan's increase in population. Policy 6.45 of the Specific Plan would ensure that there are adequate police services in place to serve the Specific Plan area, including the

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<sup>32</sup> Dyett and Bhatia, 2008. *Milpitas Transit Area Specific Plan*, p. 3.9-8. May.

<sup>33</sup> Battle, Marcus, 2016. Associate Superintendent, East Side Union High School District. Written communication with LSA Associates, Inc. March 31.

proposed project. As such, the TASP FEIR concluded that the impacts to police services would be less than significant. The 730-750 East Capitol Avenue Project also adheres to policies in the Specific and General Plan, and because the population and housing units proposed by the project would fall within the total development anticipated by the TASP FEIR, the project would not result in new impacts associated with fire services.

The TASP FEIR concluded that the combination of Parks/Plazas and Linear Parks meets the expected park requirements for the TASP Area given the anticipated population associated with implementation of the Specific Plan. All land shown in the Specific Plan as parks or landscape buffers with trails must be dedicated as public parks to meet the requirements (or an equivalent amount of land if park locations are adjusted). The TASP FEIR concludes that the impacts to parks would be less than significant because of various policies regarding open space requirements, park land dedication and in-lieu fees for new development. The Specific Plan also provides numerous policies related to parks which are incorporated into the Parks and Recreation section (Section XV, Recreation) of this checklist. The 730-750 East Capitol Avenue Project includes landscape buffers on all street frontages that would meet the requirements for public open space in the TASP and would also provide a public park on the south side of the site, adjacent to Penitencia Creek

The TASP FEIR adequately evaluates public service impacts and the proposed project's impacts are adequately included in and analyzed by the TASP FEIR. Therefore, the 730-750 East Capitol Avenue Project has no new impact on public services.

#### **APPLICABLE MITIGATION**

No new mitigation measures are required.

#### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

##### **General Plan Policies**

- *Policy 2.c-I-1: Continue working with Milpitas Unified School District (MUSD), Berryessa Union High School District, and East Side Union School District in its update of the comprehensive facilities plan and to ensure adequate provision of school facilities.*
- *Policy 2.c-I-3: Work with MUSD, Berryessa Union High School District, and East Side Union School District to monitor statutory changes and modify school fees when necessary to comply with statutory changes. Following this policy will permit the MUSD to update school fees for developers to cover the cost of constructing a new school and expanding Milpitas High School.*
- *Policy 5.c-I-1 Maintain a response time of four minutes or less for all urban service areas.*

##### **Midtown Specific Plan Policies**

- *Policy 6.20: Coordinate with the school districts in planning for adequate public school facilities.*

## TASP Policies

- *Policy 5.3: All streets (public & private) shall be consistent with the street sections in Chapter 5 [of the proposed Plan] and shall meet any additional Milpitas Fire Department fire apparatus design requirements for access and firefighting operations.*
- *Policy 6.43: The City will ensure that all school impact fees are paid from individual projects prior to the issuance of any building permits.*
- *Policy 6.44: The City and the school districts located in the Transit Area should consider entering into a joint use agreement, allowing public use of a new school's playfields when not in use by students, and public use of rooms in the school building for community meetings and events. Any new school site should include outdoor active recreation facilities, which would be counted toward the Transit Area's public parks requirement. The school building should include facilities that can be accessed and used for community events.*
- *Policy 6.46: Coordinate with the affected school districts on facilities needed to accommodate new students and define actions the City can take to assist or support them in their efforts.*
- *Policy 6.50: The Fire Department shall conduct a "standards of cover" analysis to determine the Transit Plan's precise impact on the department's staffing and equipment, and any required facility needs. Identify and evaluate potential sites for an expanded or new fire station near the Transit Area if the standards of cover analysis determines it is warranted.*
- *Policy 6.51: Additional fire department staff will be hired, equipment purchased, and facilities built to provide an adequate level of service—as determined by City Council—for the residents, workers, and visitors of the Transit Area. New equipment and facilities shall be funded by the Community Facilities District fee and new staff paid from the City's General Fund. These facilities are not expected to be sited within the Transit Area.*
- *Policy 6.52: If a new fire station is built to meet the service needs of the Transit Area, it must be sited and developed in such a way to not create substantial adverse physical impacts or significant environmental impacts. The new station should be chosen to minimize noise and traffic impacts on existing land uses.*
- *Policy 6.53: The Fire Department shall update the City's emergency and disaster response plans to take the location and type of new development, and future traffic levels, into account.*

## CONCLUSION

The TASP FEIR adequately evaluated the public service impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>XV. RECREATION</b>				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

Public parks identified in the Specific Plan have three main forms: Parks/Plazas, Linear Parks, and Landscape Buffers. The TASP FEIR concluded that the combination of Parks/Plazas and Linear Parks would meet the expected park requirements for the Specific Plan area given the anticipated population at full implementation of the TASP. All land shown in the TASP as parks or landscape buffers with trails must be dedicated as public parks to meet the requirements (or an equivalent amount of land if the park locations are adjusted), and recreation impacts would be considered less than significant.

The TASP provides a guide for future trails and parks within the TASP area,<sup>34</sup> including the creation of a network of trails and trail loops, especially along Penitencia Creek. The TASP includes several policies related to project sites that are adjacent to the proposed network of trails and Penitencia Creek. The proposed project is located along Penitencia Creek and the project’s Milpitas Boulevard Extension would accommodate the approach to a future bridge over the creek (which is not proposed as part of the project) to provide access to the area south of the site. In addition, the project includes 2.12 acres of public open space along Penitencia Creek which is consistent with the requirements of the TASP. Specifically, the southern portion of the project site is identified as Parks/Plazas/Community Facilities and Linear Park and Trails in the TASP while the Milpitas Boulevard Extension is designated as part of the alignment of the Transit Area Walking/Jogging Loop (Figure 3-6).

The proposed project’s Building A would provide approximately 10,545 square feet (0.48 acres) of common open space on the site, including two interior courtyards. The Entertainment Courtyard would be approximately 7,500 square feet and the Garden Courtyard would be approximately 3,045 square feet in size. Additional common space would include a roof top deck (12,165 square feet). Building A would provide private open space in the form of private patios and balconies within each residential unit.

<sup>34</sup> Dyett & Bhatia, 2008. *Milpitas Transit Specific Plan. Figure 3.6.* June.

The proposed project's Building B would provide approximately 16,975 square feet (0.68 acres) of common open space on the site, including three interior courtyards. The "Chill" Courtyard would be approximately 3,530 square feet, the Entertainment Courtyard would be approximately 4,870 square feet and the "Tot Lot" Courtyard would be approximately 8,575 square feet. Additional common space would include a roof top deck (13,033 square feet). Building B would provide private open space in the form of private patios and balconies within each residential unit.

The proposed project also includes 2.12 acres of public open space including a 1.89-acre public park within the existing PG&E easement, a 0.12-acre linear park and a 0.11-acre dog park. Both buildings would provide landscape buffers, including an approximately 49-foot-wide landscaped buffer with a 10-foot-wide sidewalk on East Capitol Avenue. The proposed project would conform to the open space and landscape buffer requirements outlined in the TASP.

The TASP FEIR adequately evaluated the environmental impacts associated with implementation of the Specific Plan, including parks and recreation impacts. Development of the proposed project would fall within the development assumptions evaluated within the TASP FEIR. Therefore, the proposed project has no new impact on parks and recreation.

### **APPLICABLE MITIGATION**

No new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **Midtown Plan Policies**

- *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*
- *Policy 3.26: Encourage new or expanding office and public/quasi-public uses to provide publicly accessible outdoor open spaces (plazas, gardens, arcades) as a part of new development. Ensure that open spaces are linked to sidewalks and pedestrian paths.*

#### **TASP Policies**

- *Policy 3.38: The open space requirements of the Midtown Milpitas Specific Plan (Policy 3.24) shall apply to the entire area of the Transit Area Specific Plan. Parks are required at a ratio of 3.5 acres per 1,000 people, with at least 2.0 of those acres publicly accessible. Land dedicated for public parks or trails shall fulfill the park land requirements. In addition, 20 percent of a landscape buffer area along a street or public right of way may count towards the public park requirements, when it includes trails or wide sidewalks connected to an overall pedestrian/bike circulation network.*
- *Policy 3.39: Develop between 32 and 47 acres of public park space in the Transit Area, with a goal of around 36 acres. This target is based on the Midtown Milpitas Specific Plan's parks standard of 2.0 acres of public park land per 1,000 residents, applied against*

*the minimum and maximum population expected in the Transit Area. The 36 acre goal, which includes parks, plazas and linear parks, is generated from the Transit Area's expected final population.*

- *Policy 3.40: Locate and size parks as shown on Figure 3-6, Parks, Public Spaces, and Trails [of the Specific Plan]. Minor adjustments to the location of parks may be necessary to facilitate a better site plan, respond to site specific constraints, or to accommodate phasing of a project. Smaller parks may be combined to form a larger neighborhood park within the same subdistrict as long as there is no reduction in park area. Complete elimination or relocation of a park outside of a subdistrict requires an amendment to the Specific Plan. If a school is located on a site designated as a park, it may be counted as a park if a joint use agreement is established to allow public use of open space and buildings for recreation purposes after school hours and on weekends. If no such joint use agreement is established, an alternative park site shall be designated.*
- *Policy 3.41: Park land dedication and in-lieu fees required of new development. Park land shall be dedicated as part of the approval of any new development, if a park site is designated on the property as shown in Figure 3-6 [of the Specific Plan]. Land dedication is required for Parks/Plazas/Community Facilities and Linear Parks and Trails in the locations and amounts shown on Figure 3-6 [of the Specific Plan].*

*Dedication of the land shown on Figure 3-6 cannot be substituted by in-lieu fees. If a development's parkland obligation as determined by City ordinances is not satisfied by the require land dedication, it must pay an in-lieu fee which shall be spent to acquire and develop other parks within the Transit Area. If a development provides more than its fair share of park land, it will be compensated by the City at fair market value, using in-lieu fees paid by new development and other available sources.*

- *Policy 3.42: If a public utility easement (such as the one existing between Capitol Avenue and Penitencia Creek East Channel) is developed as a publicly-accessible pathway or linear park that connects two public streets, it can be counted toward a development's park dedication requirement.*
- *Policy 3.43: New development must pay for the construction of public parks and streets surrounding the parks (or half-streets if bordering an adjacent development site). In addition to dedicating or contributing toward the land for new public parks, projects under this Specific Plan must also pay for the improvement of the parks with appropriate landscaping and recreation facilities. Covering this cost can be handled by paying a fee to the City or by direct development of parkland, or both. The cost and/or actions expected of projects will be determined by the City.*
- *Policy 3.44: The design and programming of new parks must be approved by the City's Parks and Recreation Department.*
- *Policy 3.45: Private development within the Transit Area must meet the private open space requirements on a project-by-project basis.*
- *Policy 3.48: The park along the Penitencia Creek East Channel shall provide a pedestrian path along the creek; BBQ's; a tot lot; open space areas for frisbee and similar informal recreation, and other passive recreation facilities.*

- *Policy 3.50: The park in the center of the Trade Zone/Montague subdistrict shall provide sports fields for soccer, baseball, basketball, and/or other sports that have a high demand in Milpitas. There shall be ample perimeter landscaping to create an attractive setting for the surrounding housing; and a tot lot shall be included. A community center could also be included. Sports fields should serve both children and adult sports leagues.*
- *Policy 3.51: Parks will have public streets abutting at least three sides. Parks shall be surrounded by streets on three sides in order to: provide parking for the park on the street; enhance security of the park by having residents overlook the park and police vehicles able to drive by; and provide noise and visual separation for residents and offices from the activities in the park. If approved by the City, a park can also have public streets on two sides and a public right-of-way, such as a trail, or a railroad right-of-way along the third side.*
- *Policy 3.54: Include a network of trails along Penitencia Creek and railroad right of ways. These bike/pedestrian trails will connect into the citywide trail network, pedestrian overcrossings of expressways, and the Transit Area's continuous network of bike lanes. They will be located on both sides of Lower Penitencia Creek and on the east side of the Union Pacific railroad tracks that run between Main Street and McCandless Drive.*
- *Policy 3.55: Complete a Trail Loop connecting the whole Transit Area. The trail loop goes from McCandless Drive and Lower Penitencia Creek; along Penitencia Creek East Channel, across Montague Expressway, west along the creek channel, then northeast across Capitol Avenue, then across Montague Expressway, along Piper Drive, and across the Great Mall back to Centre Pointe and McCandless. It is shown on Figure 3-6 [of the Specific Plan].*

*The Trail Loop provides a clear and easy way for people to access the BART and LRT station, move between different subareas of the Transit Area, and offers a roughly 1.5 to 2 mile jogging and walking and biking path for recreational use.*
- *Policy 3.57: All properties along the trail network will need to set aside land for the trails. This land will count towards the required public park land dedication requirement. Refer to Figure 3-7 [of the Specific Plan] for required dimensions. If trail easements already exist or are acquired within the rail line or flood control right of way, these easements may be used in lieu of land on development sites.*

## CONCLUSION

The TASP FEIR adequately evaluated the recreation impacts of the 730-750 East Capitol Avenue Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>XVI. TRANSPORTATION/TRAFFIC.</b> Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio of roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted polices, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION**

This section compares traffic impacts from the proposed project with impacts identified in the TASP FEIR. A Traffic Analysis (TIA) was conducted for the proposed project and is referenced in this section. The report includes an analysis to ensure that sufficient traffic operations are maintained with the construction of the Milpitas Boulevard Extension and completion/occupancy of the 730-750 East Capitol Avenue Project and 450 Montague Project.<sup>35</sup>

**Trip Generation**

The TIA uses trip generation rates and site trip generation calculation procedures from the TASP. The trip generation data are used to assign trips to project driveways and adjacent streets and to conduct a site access operational analysis. The 730-750 East Capitol Avenue Project is expected to generate approximately 4,019 daily trips, with 303 trips occurring during the AM peak hour and 378 trips

<sup>35</sup> Kimley-Horn and Associates, Inc. 2016, 730-750 E. Capitol Avenue Development Traffic Analysis. March 3.

occurring during the PM peak hour.<sup>36</sup> As indicated in the TIA, these trip generation estimates do not include reductions for mixed-use internalization or transit use.

### **Intersection Level of Service Impacts**

The TIA results conclude that as a result of the proposed project, the intersection of East Capitol Avenue/Milpitas Boulevard Extension would operate at LOS C during the AM peak hour and LOS D for the PM peak hour, which are both within the City's established target of LOS D.

The focused TIA concludes that the project would not cause any significant traffic impacts to the surrounding area. The 730-750 East Capitol Avenue Project conforms to the development parameters anticipated in the TASP and evaluated in the TASP FEIR, and there are no new transportation impacts associated with the proposed project.

### **Site Circulation and Access**

The proposed 730-750 East Capitol Avenue Project site would be bisected by the planned Milpitas Boulevard Extension, with the 730 East Capitol Avenue site located on the north side of the street, and the 750 East Capitol Avenue site located south of the street extension. Each site would have a dedicated parking garage with an access driveway connecting to the Milpitas Boulevard Extension.

The Milpitas Boulevard Extension is planned to be constructed west of East Capitol Avenue in conjunction with the 730 and 750 East Capitol Avenue Project. While connectivity would be provided via new local street connections through the adjacent 450 Montague site, this analysis considers the Milpitas Boulevard Extension to be the primary connection between the proposed and the surrounding street network. Prior to construction of the Milpitas Boulevard Extension, all traffic exiting the 450 Montague Project to access westbound Montague Expressway or northbound East Capitol Avenue/Great Mall Parkway would need to egress the site at the East Capitol Avenue driveway and make a U-turn at the Milpitas Boulevard Extension intersection to travel northbound. With completion of the proposed 730-750 East Capitol Avenue Project and the Milpitas Boulevard Extension, the temporary driveway on East Capitol Avenue would be converted to right-in only and the 450 Montague Project would have full access at the East Capitol Avenue/Milpitas Boulevard Extension signalized intersection.<sup>37</sup>

Based on a queuing analysis, the TIA recommends the following improvement options in order to limit Milpitas Boulevard Extension queuing issues and improve access to the 730-750 East Capitol Avenue access driveways:

#### *Improvement Option A:*

- Widen the eastbound approach at the East Capitol Avenue/Milpitas Boulevard Extension intersection to provide width for third approach lane, a dedicated right-turn lane with a 120-foot long storage pocket.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

- Restripe the eastbound intersection approach as follows:
  - 1 left-turn lane
  - 1 shared through/left-turn lane
  - 1 right-turn lane

*Improvement Option B:*

- Relocate the 750 East Capitol Avenue garage access driveway to the west approximately 250 feet from the East Capitol Avenue/Milpitas Boulevard Extension intersection crosswalk/stop bar.

Based on the project site plans, the right-of-way provided for the Milpitas Boulevard Extension west of East Capitol Avenue is 64 feet. Within this right-of-way width, the following dimensions, shown in Table 5, are recommended for the street cross-section elements, listed in order from north side of the street to south side:

Additional right-of-way width would be required to accommodate the recommended new eastbound right-turn pocket identified in Improvement Option A above. These dimensions are predominantly consistent with the typical cross section dimensions identified for new local streets in the TASP Design Guidelines.<sup>38</sup>

**Pedestrian, Bicycle, and Transit Facilities**

As indicated in the TASP FEIR, the current sidewalk network within the TASP area is deficient and would not meet future demand generated by new and higher density land uses. The TASP includes: 1) sidewalks on both sides of all existing and proposed streets in its area, 2) pedestrian links between various uses such as connections to open space, and 3) a multi-use path along Penitencia Creek.

The TASP also included two pedestrian bridges; one would be adjacent to the project site over Montague Expressway at Penitencia Creek. The TASP would also separate sidewalks on high speed streets from traffic by a landscaped buffer.

Bicycle circulation was shown as lacking on Trade Zone Boulevard which is not within the project area. Based on measures included as part of the TASP, bicycle circulation would be improved.

Development due to the TASP would generate additional transit trips that existing and planned bus, light rail, and BART transit lines would be able to accommodate. Impacts from development of the project site were also analyzed for the TASP analysis. The proposed project would not cause any

**Table 5: Right-of-Way Width**

Street Cross Section Element	Width (feet)
Sidewalk	5
Planting Strip	7
Parking Lane/Curb Extension	11
Westbound Travel Lane	11
Eastbound Travel Lane #1	11
Eastbound Travel Lane #2	11
Planting Strip	7
Sidewalk	6
<b>Total</b>	<b>64</b>

Source: Kimley-Horn and Associates, Inc. 2016.

<sup>38</sup> Ibid.

additional or more severe impacts to sidewalks, bicycle circulation, or transit services than were identified in the TASP FEIR.

### **APPLICABLE MITIGATION**

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the TASP FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

### **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

#### **TASP Policies**

- *Policy 3.12: Preserve adequate right-of-way along Capitol Avenue, Great Mall Parkway, and Montague Expressway to accommodate future regional roadway improvements. Final dimensions of right-of-way acquisition are not yet known. The detailed street sections in Chapter 5 [of the Specific Plan] include notes about right-of-way acquisition, to the extent that information is currently available.*
- *Policy 3.15: Review individual development applications to ensure that adequate street right-of-way, bicycle facilities, pedestrian facilities and landscaping are provided and are consistent with the Transit Area Plan circulation policies and street design standards in Chapter 5 [of the Specific Plan].*
- *Policy 3.16: Establish and implement a travel demand management (TDM) program in order to encourage alternate modes of travel and thereby reduce automobile trips. Establish a funding mechanism to pay for the costs of the program, including the cost of a transportation coordinator to administer the program. The program would include a ride-matching program, coordination with regional ride-sharing organizations, and provision of transit information; and could also include sale of discounted transit passes and provision of shuttle service to major destinations.*
- *Policy 3.17: New streets shall be located as generally shown on the Street System Map, Figure 3-2.*
- *Policy 3.18: New development must dedicate land for new public streets and pay for their construction.*
- *Policy 3.21: Provide continuous pedestrian sidewalks and safe bike travel routes throughout the entire Transit Area and within development projects.*
- *Policy 3.22: Private development shall provide direct walking and biking routes to schools and major destinations, such as parks and shopping, through their property.*
- *Policy 3.28: Provide continuous bicycle circulation through the project site and to adjacent areas by closing existing gaps in bicycle lanes and bicycle routes, per Figure 3-5 [of the Specific Plan]. Gaps exist on Capitol Avenue between Montague Expressway and Trimble Road, and on Trade Zone Boulevard between Montague Expressway and Lundy Place. Capitol Avenue only needs to be re-striped to add a bike lane. Trade Zone Boulevard*

*generally contains sufficient width to accommodate two travel lanes and bike lanes in each direction; however, the westbound lanes on Trade Zone jog south slightly, so right-of-way acquisition will likely be required to push the curb further north to maintain a consistent section and to add bike lanes. Bike routes should be upgraded to bike lanes as part of any Montague widening project.*

- *Policy 3.29: A Class III bicycle route shall be created on the internal roadways (from the Milpitas Boulevard Extension/Capitol Avenue intersection to Tarob Court) to provide a continuous bicycle connection between Milpitas Boulevard and the existing bicycle lanes on Lundy Street, as indicated on Figure 3-5 [of the Specific Plan].*
- *Policy 3.32: Coordinate with VTA to provide sufficient amenities (such as transit shelters) at all transit stops within the Transit Area.*
- *Policy 6.32: The City shall establish and assess a transportation impact fee program, known as the Regional Traffic Fee, to contribute toward traffic improvements to be undertaken in whole or in part by the County of Santa Clara or City of San Jose. This fee will go toward the East/West Corridor Study, Montague Expressway Widening project, and Calaveras Boulevard (SR 237) Overpass Widening project, as well as other local and regional improvements.*
- *Policy 6.33: The City shall establish and assess a transportation impact fee program to provide improvements to mitigate future traffic operations on the roadway segments within the City of Milpitas. All projects within the Transit Area Plan will be required to pay this fee.*
- *Policy 6.34: The new traffic impact fee program should include fair-share payments toward the following improvement: At the West Calaveras Boulevard/I-880 northbound ramps, convert the northbound center left turn lane to a shared left-turn/right-turn lane. The City of Milpitas will coordinate with Caltrans to implement this improvement.*
- *Policy 6.35: The new traffic impact fee program should include fair-share payments toward the following improvement: At the intersection of Tasman Drive/McCarthy Boulevard, the southbound (McCarthy Boulevard) shared through/right-turn lane will be converted to an exclusive right-turn lane with overlap signal phasing. The southbound right-turn will have a green arrow and enter the intersection at the same time as the eastbound left-turn movement. Eastbound left-turns will be prohibited. The City of Milpitas will implement this improvement.*
- *Policy 6.36: The new traffic impact fee program should include fair-share payments toward the following improvement: Coordinate the traffic signals at the Tasman Drive / I-880 southbound ramps and the Great Mall Parkway/I-880 northbound ramps with one another as well as adjacent intersections, particularly Tasman Drive/Alder Drive, in order to improve operations in the Great Mall Parkway/Tasman Drive corridor north of the Transit Area. The City of Milpitas will coordinate with Caltrans to implement this improvement.*

## CONCLUSION

The TASP FEIR and TIA adequately evaluated the transportation impacts of the 730-750 East Capitol Avenue Project. The proposed project would be required to comply with TASP policies related to

transportation including the traffic impact fees and City of Milpitas 2008 CFD (TASP area) tax rates. Therefore, the 730-750 East Capitol Avenue Project would not create any new transportation impacts.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
<b>XVII. UTILITIES AND SERVICE SYSTEMS.</b> Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, State, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DISCUSSION:**

The TASP FEIR concluded that development associated with implementation of the Specific Plan would result in less-than-significant impacts on utilities and services systems, including water supply, wastewater treatment, stormwater drainage and solid waste disposal. The TASP FEIR anticipates impacts related to additional demand for water, sewer flow capacity, and recycled water lines (Impacts 3.11-1, 3.11-2, 3.11-3, 3.11-4, 3.11-5, and 3.11-6). Policies are included in the Specific Plan

that address these impacts and include the installation of additional pipes, water efficiency measures and the purchase of water and sewer treatment capacity as needed. The TASP FEIR also describes how the Specific Plan area is already developed and therefore will require upgrading of existing infrastructure in lieu of adding new infrastructure.

The TASP FEIR describes how the transition from industrial to high density residential in the Specific Plan area will decrease the amount of stormwater runoff. The Specific Plan area would add more landscaping and the amount of impervious surface area over time will actually decrease, resulting in less stormwater runoff in the area. Therefore, implementation of the Specific Plan would not require any storm drain improvements.

The TASP FEIR concluded that there would be a substantial increase in water demand as a result of the build-out of the Specific Plan – average daily demand would be 2.65 mgd in comparison to the City's 2002 Master Water Plan prediction of 1.55 mgd (Impact 3.11-1). This increase in demand for water would require improvements to existing water infrastructure both in the Specific Plan area and affected pressure zones. The capacity of the existing turnout delivering water from the Santa Clara Valley Water District (SCVWD) system could be exceeded during peak hours of demand. As such, an additional 20-inch turnout would be needed to supply the additional water needed to the Specific Plan area which would eliminate the need for any pipeline improvements in the SCVWD pressure zones. The Specific Plan includes additional policies that would ensure that impacts to the provision of water would be less than significant.

The TASP FEIR found that additional allotments of water needed to serve new growth (Impact 3.11-2) would be approximately 1.0 mgd, and that this increase would be offset by the supplies available from the SCVWD. During droughts, the City has the ability to run emergency wells and increase the use of recycled water to offset potable water demand. The Specific Plan includes numerous policies that would provide additional water supply allocations, including the use of recycled water.

The TASP FEIR determined that sewer flow capacity as a result of the build-out of the Specific Plan would exceed the capacity planned for in the City's Sewer Master Plan (Impact 3.11-3) by a total of 2.20 mgd over 2007 conditions. This increased demand for capacity would require extensive improvements to the sewer pipelines within the Specific Plan area. Policies in the Specific Plan would reduce the impact to less than significant. In addition, the TASP FEIR found that no improvements are needed for the City's Main Pump Station, as wet weather flow is not expected to exceed capacity.

The TASP FEIR found that Citywide cumulative wastewater generation would exceed the City's current Water Pollution Control Plant (WPCP) capacity rights and would be considered cumulatively considerable (Impact 3.11-4). Policies in the Specific Plan are in place that would help meet wastewater treatment capacity demands, including the purchase of additional treatment plant capacity from the cities of San Jose and Santa Clara, the owners of the WPCP. This additional capacity would enable the City to meet the cumulative wastewater treatment demands generated by cumulative growth and development throughout the City, including the net increase in demand attributable to the Specific Plan area. However, the City's need to acquire an additional 1.0 mgd of WPCP capacity is based on the ability to serve all planned growth and development within the City. The need for this additional WPCP capacity will not be triggered until such time in the future when full General Plan build-out and Transit Area Specific Plan build-out is realized.

The TASP FEIR found that the build-out of the Specific Plan would generate approximately 2.20 mgd of additional sewage flows above current levels and, when added to the existing wastewater disposal rate at the WPCP, it would be below the RWQCB trigger threshold of 120 mgd. Therefore the Specific Plan estimated sewage flow would be considered less than significant. However, the RWQCB has specific requirements designed to off-set cumulative regional increases in sewer flows and discharge into the San Francisco Bay, primarily through water recycling and water conservation. The TASP FEIR concluded that the amount of recycled water demand associated with the Specific Plan is not sufficient to fully offset the increased sewer flows and discharge into the Bay. TASP policies 6.16, 6.17 and 6.20 are designed to reduce this impact to a less-than-significant level.

The TASP FEIR concluded that new mainlines for water recycling would need to be installed and would have a less than significant impact because they would be installed on existing and proposed roads.

The increase in residential density under the Specific Plan would cause an increase in the amount of solid waste generation by approximately 7,400 pounds per day. The TASP FEIR concludes that policies to implement recycling programs as well as solid waste source and reduction programs would reduce the impacts to less than significant. The City is also required to negotiate new agreements to handle long-term solid waste disposal after closure of the Newby landfill in 2023, which would also reduce the impact to a less-than-significant level.

Since the TASP FEIR adequately addresses utilities and service systems, and the development associated with the 730-750 East Capitol Avenue Project falls within the development assumptions evaluated in the TASP FEIR, the proposed project has no new impact on utilities and public services. In addition, the 730-750 East Capitol Avenue Project must comply with the Municipal Code requirements and Conditions of Approval identified by the City related to utilities and service systems, including water supply, water easement, sewer, storm drainage, solid waste and property management.

## **APPLICABLE MITIGATION MEASURES**

No new mitigation measures are required.

## **APPLICABLE POLICIES**

The proposed project would comply with the following policies.

### **TASP Policies**

- *Policy 6.9: The City of Milpitas will implement improvements to the Main Sewage Pump Station and the force mains which convey flows to the WPCP in general accordance with those improvements identified in the "Functionality and Operation Report" as prepared for the City by Winzler & Kelly Engineers, November 2005.*
- *Policy 6.10: The City of Milpitas will acquire up to 1.0 mgd of wastewater treatment capacity at the WPCP if necessary. The final amount to be acquired, if any, and the timing of the acquisition will be based on studies of actual usage and the pace of development in the city. The City shall monitor the increase in actual sewage flows and the amount of new*

*development approved on an annual basis to determine when additional capacity is required.*

- *Policy 6.13: Provide water supply for the Transit Area from the Santa Clara Valley Water District per the Water Supply Assessment.*
- *Policy 6.16: Reduce water consumption through a program of water conservation measures, such as use of recycled water, water-saving features, and drought-tolerant landscaping.*
- *Policy 6.17: The City of Milpitas will require that water saving devices, as required by the California Plumbing Code, be installed in all residential, commercial, industrial and institutional facilities within the Transit Area. Such devices are capable of reducing the amount of water used indoors, resulting in substantial wastewater flow reductions.*
- *Policy 6.18: Construct recycled water mains along Great Mall Parkway, Capitol Avenue, as Montague Expressway, Sango Court, and into the Piper/Montague subdistrict, as shown in Figure 6-3 [of the Specific Plan].*
- *Policy 6.19: Per the Midtown Specific Plan, require new development to include recycled water lines for irrigation.*
- *Policy 6.20: The City of Milpitas will require that recycled water be used to irrigate all parks, plazas, community facilities, linear parks, landscaped front yards and buffer zones. Recycled water may also be used for landscape irrigation on vegetated setbacks and private common areas. The City shall also require, where reasonable and feasible, that commercial uses, schools and non-residential mixed use developments be provided with dual plumbing to enable indoor recycled water use for non-potable uses to the extent feasible.*
- *Policy 6.21: Require existing irrigation users to convert to recycled water when it becomes available.*
- *Policy 6.22: Upgrade and expand the water distribution system such that it will be adequate to serve new development in the Transit Area.*
- *Policy 6.23: All new development shall participate to the maximum extent practical in solid waste source reduction and diversion programs.*
- *Policy 6.24: Before the expiration of its current waste disposal contract, the City shall negotiate new agreements to handle the long-term disposal of its solid waste past the closure of the Newby Island Sanitary Landfill.*

#### **Midtown Specific Plan Policies**

- *Policy 6.17 Implement existing recycling programs in the Midtown Area.*
- *Policy 6.18 Promote recycling of demolition and construction debris*

#### **CONCLUSION**

The TASP FEIR adequately evaluated the utilities and service system impacts of the 730-750 East Capitol Avenue Project. In addition, the 730-750 East Capitol Avenue Project must comply with the Municipal Code requirements and Conditions of Approval identified by the City related to utilities

and service systems, including water supply, water easement, sewer, storm drainage, solid waste and property management.

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