Final Environmental Impact Report

MILPITAS TRANSIT AREA SPECIFIC PLAN

MAY 2008 State Clearinghouse No. 2006032091

Final Environmental Impact Report

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Prepared by
Dyett & Bhatia
Fehr & Peers
RMC
City of Milpitas

Contents

1. Introduction 1-1

2. Comments on the Draft EIR and Responses 2-2-1

2.1 Comments 2-2-1

2.2 Responses to Comments 2-2-2

1 Introduction

This Program Final Environmental Impact Report (Final EIR) has been prepared on behalf of the City of Milpitas (City) in accordance with the California Environmental Quality Act (CEQA). The City is the lead agency responsible for ensuring that the proposed Milpitas Transit Area Specific Plan ("the Plan") complies with CEQA.

This Final EIR, which includes the Draft EIR, Comments on and Responses to Comments on the Draft EIR, and minor corrections and clarifications to the Draft EIR, is intended to disclose to City decision-makers, responsible agencies, and organizations, and the general public, the potential impacts of implementing the Plan. This program level analysis addresses potential impacts of activities associated with implementation of the Plan, which are described in Chapter 2, Project Description, of the Draft EIR.

This Final EIR, which has been prepared in compliance with the California Environmental Quality Act (CEQA), responds to comments addressing the Draft EIR. The Final EIR is intended to aid the City as it considers adoption of the Plan. This Response Addendum, combined with the Draft EIR, constitutes the Final EIR on the project. This Final EIR amends and incorporates by reference the Draft EIR, which is available as a separately bound document from the City of Milpitas Planning Department, 455 E. Calaveras Boulevard, in Milpitas.

The primary purpose of this Final EIR is to revise and refine the environmental analysis and mitigation measures in the Draft EIR in response to comments received during the 45-day public review period. The review period for the Draft EIR (State Clearinghouse No. 2006032091) was from November 7, to December 21, 2007.

The proposed Plan is largely self-mitigating; however, several impacts classified as significant and unavoidable have been identified in the Draft EIR in the issue areas of transportation, schools, and air quality, for which there are no feasible mitigation options to reduce them to levels that are less than significant. Other potentially significant impacts can be avoided or reduced to levels that are not significant through implementation of the policies or mitigation measures identified in the Draft EIR.

After issuance of this Final EIR and the 10-day review period mandated by CEQA guidelines, the City will hold public hearings to certify this EIR and to consider adoption of the proposed Plan. The City will determine the adequacy of this Final EIR, and, if determined adequate, will make findings and certify the document as compliant with CEQA.

Copies of the Final EIR have been mailed to agencies and other parties that received the Draft EIR or have requested the Final EIR. The Final EIR is also available at the City of Milpitas, Planning Department, 455 E. Calaveras Boulevard, in Milpitas and has been posted on the City's website—which can be found at: www.ci.milpitas.ca.gov.

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2 Comments on the Draft EIR and Responses

2.1 COMMENTS

Fifteen sets of written comments were received on the Draft EIR by the close of the 45-day comment period on December 21, 2007. Comments on the Draft EIR were received from the agencies and individuals listed in Table 2-1. Copies of the comment letters are included in this chapter in Section 2.2. Section 2.2 also provides a copy of the State Clearinghouse letter which acknowledges compliance with State Clearinghouse review requirements for draft environmental documents, pursuant to CEQA.

Table 2-1 Comment Letters Received on Draft EIR

Comment Set	*Commenting Agency or Individual*	*Date*
State Agencies		
1.	Department of Transportation (Caltrans)	December 19, 2007
2.	Public Utilities Commission	December 18, 2007
Regional Agencies		
3.	Bay Area Air Quality Management District	December 20, 2007
Local Agencies		
4.	County of Santa Clara	December 5, 2007
5.	City of San Jose	December 21, 2005
Districts and Authorities		
6.	Berryessa Union School District	December 21, 2007
7.	Milpitas Unified School District	December 20, 2007
8.	Santa Clara Valley Water District	December 21, 2007
9.	Santa Clara Valley Transportation Authority	December 21, 2007
Individuals		
10.	Berg & Berg Enterprises, Inc.	December 21, 2007
11.	DART Transportation Services	December 20, 2007
12.	Milpitas Station, LLC	December 19, 2007
13.	Professional Constructors Inc.	December 20, 2007
14.	YRC Worldwide Enterprise Services, Inc.	December 20, 2007
15.	Union Pacific Railroad Company	December 21, 2007

2.2 RESPONSES TO COMMENTS

Responses to each comment contained in the fifteen comment letters are listed on the following page, following the comment letters. Responses are keyed to comment numbers shown on the right hand side of each comment letter.

Additions to the Draft EIR are underlined; deletions are in ~~strikethrough~~ format.

STATE OF CALIFORNIA

GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

December 24, 2007

Scott Gregory, c/o Veronica Bejines
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

Subject: Milpitas Transit Area Specific Plan
SCH#: 2006032091

Dear Scott Gregory, c/o Veronica Bejines:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 21, 2007, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

> "A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2006032091
Project Title Milpitas Transit Area Specific Plan
Lead Agency Milpitas, City of

Type EIR Draft EIR

Description The Transit Area Specific Plan is a planning document intending to guide redevelopment of older industrial lands in the immediate vicinity of existing light rail stations and a future BART station to create a vibrant, high intensity transit-oriented district. Buildout of the Specific Plan is anticipated to result in construction of approximately 7,100 new residential units supporting approximately 18,000 new residents, approximately 1 million square feet of new office space, 285,000 square feet of retail space, and 175,000 square feet of hotels.

Lead Agency Contact

Name Scott Gregory, c/o Veronica Bejines
Agency City of Milpitas
Phone (510) 535-6690 **Fax**
email
Address 455 E. Calaveras Boulevard
City Milpitas **State** CA **Zip** 95035

Project Location

County Santa Clara
City Milpitas
Region
Cross Streets Montague Expressway and Capitol Avenue
Parcel No. Numerous
Township **Range** **Section** **Base**

Proximity to:

Highways I-880, I-660, Hwy. 237
Airports
Railways BART, VTA Light Rail
Waterways
Schools
Land Use Older industrial lands with a wide range of land use designations and zoning; including industrial, commercial, and residential.

Project Issues Aesthetic/Visual; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian

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Reviewing Agencies Resources Agency; Regional Water Quality Control Board, Region 2; Department of Parks and Recreation; Native American Heritage Commission; Public Utilities Commission; Department of Housing and Community Development; Office of Historic Preservation; Department of Fish and Game, Region 3; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Department of Toxic Substances Control

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Date Received 11/07/2007 **Start of Review** 11/07/2007 **End of Review** 12/21/2007

Note: Blanks in data fields result from insufficient information provided by lead agency.

COMMENT LETTER 1

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

DEPARTMENT OF TRANSPORTATION
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5535
FAX (510) 286-5559
TTY 711

Flex your power!
Be energy efficient!

December 19, 2007

SCL-GEN
SCL000179
SCH2006032091

Mr. Scott Gregory
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Dear Mr. Gregory:

Milpitas Transit Area Specific Plan – Draft Environmental Impact Report (DEIR)

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the DEIR and have the following comments to offer.

Forecasting

Limited and No Internal Trip Reductions

The Department notes that the Great Mall/Retail sub-district is excluded from the projections for the Milpitas Transit Area Specific Plan because it is an existing land use and no new redevelopment is planned as part of the project plan. Figure 2.3-1 Transit Area Specific Plan Land Use shows a ¼-mile radius of shopping center retail which only covers limited (approximately less than ¼ residential) high and very high density transit oriented residential land use. Therefore, the report should apply a housing-retail mixed-use reduction of 3% off retail instead of 13% under regional shopping center land use. Figure 2.3-1 also demonstrates that two hotels are ½ to ¾ miles away from the shopping center retail. Thus, a hotel-retail mixed-use reduction 10% off hotel should not apply. Under office park and multi-family residential land use, the housing-office mixed-use reduction 3% off office should not be applied because the residents do not necessarily work in the office park. The reduction may apply, if the project document justifies this through inclusion of an analysis of how many residential units within walking distance to office park are reserved for office workers. According to Figure 2.3-1, any trips generated between land uses beyond ¼ mile of walking distance will have a significant impact on the major local street system. Consequently, limited or no internal trip reductions are applicable to this project. 1-A

Pass-by and Non-pass-by Traffic Analysis and Diagram Needed

Table 3.3-8 applies 25% pass-by reduction to regional shopping center. The Department would like to review the regional shopping center pass-by and non-pass-by traffic analysis demonstrated by separate traffic diagrams. We are aware that two major shopping centers located on the southeast corner of Figure 2.3-1 and that two separate driveways connect each shopping center to 1-B

Capital Avenue. We believe the pass-by reduction is used for redistributing traffic per vehicle turning per lane in each direction. Pass-by reduction will not reduce the total amount of generated traffic, which should be fully reflected in Figure 3.3-12 Project Trip Assignment.

Community Planning

Impact #3.3-19 - Policy 3.15 (page E18) refers to reviewing "individual development applications to ensure that adequate...pedestrian facilities...are provided." In order to improve pedestrian access to transit and encourage transit trips, thus further lessening impacts to the state highways, the Department encourages the provision of enhanced pedestrian facilities in the project area. This should be inclusively described in the DEIR. 1-C

Transit

Page E-7 states, "...the mitigation of impacts to freeway operations cannot be guaranteed since the City of Milpitas does not have legal authority to mitigate freeway impacts. Thus, the project's impacts to the freeway system are considered significant and unavoidable." The Department disagrees with this statement and challenges the City's finding that freeway impacts are unavoidable. The assertion that the City does not have "legal authority" does not excuse the City of their "legal responsibility" to mitigate impacts per CEQA law. The Department is willing to work with the City to develop mitigation measures to avoid, minimize, rectify, reduce, and/or compensate for impacts to the freeway system. 1-D

Highway Operations

1. Significant Unavoidable Environmental Impacts, Transportation, page E-7: This document states *...the mitigation of impacts to freeway operations cannot be guaranteed since the City of Milpitas does not have legal authority to mitigate freeway impacts.* This is not an acceptable reason for not mitigating the impacts. Fair share fees should be collected for the project impacts to State facilities. These fees can be used for projects on I-880 (HOV lanes), SR 237 (auxiliary lanes) and any project that comes out of the Metropolitan Transportation Commission (MTC) freeway corridor study for I-680. The fair share fees can also be used for ramp metering, HOV bypass lanes on the on-ramps and widening ramps to provide additional storage for ramp meter queues. In addition, a transportation demand management program should be implemented to reduce vehicle trips. 1-E

2. 3.3.5, policy 6.36, page E-15: Need to analyze the NB I-880 ramp/Great Mall Parkway and SB I-880 ramp/Tasman Drive intersections together to determine if the signal coordinates of the two intersections will mitigate the project impacts. 1-F

3. Need to determine if any freeway ramps will be impacted; either due to volumes exceeding the capacity of the ramps or to queuing on the off-ramps, caused by downstream constraints. 1-G

4. Impact 3.3-6 Great Mall Parkway/ I-880 NB Ramps, page 3.3-81: Why would the proposed mitigation of widening the northbound I-880 off-ramp requiring the removal of a fence and soundwall be considered significant and unavoidable? This project should contribute fair share fees for this mitigation. In addition, providing a diagonal on-ramp to northbound I-880 with ramp metering could also improve this intersection. 1-H

5. Appendix B, LOS Calculations, I/S #28 Montague/Pecten Ct. Explain why the final volumes for the westbound through movement were reduced in the Project AM analysis compared to the Existing AM analysis. 1-I

6. Appendix B, LOS Calculations, I/S #37 Montague Expwy/ McCarthy Blvd. AM Project: The westbound movement at this intersection has a queue of greater than 4000 feet. This will impact the I-880 off-ramps. This impact should be mitigated. 1-J

7. Appendix B, LOS Calculations, I/S #38 E. Brokaw Rd/I-880 NB PM Project: The eastbound through movement at this intersection has a queue of greater than 4800 feet. This will impact the I-880 off-ramps. This impact should be mitigated. 1-K

Encroachment Permit
Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. 1-L

Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

See the website link below for more information.
http://www.dot.ca.gov/hq/traffops/developserv/permits/

Should you have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-5535.

Sincerely,

Timothy C. Sable

TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Scott Morgan (State Clearinghouse)

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1. Response to Department of Transportation (Caltrans)

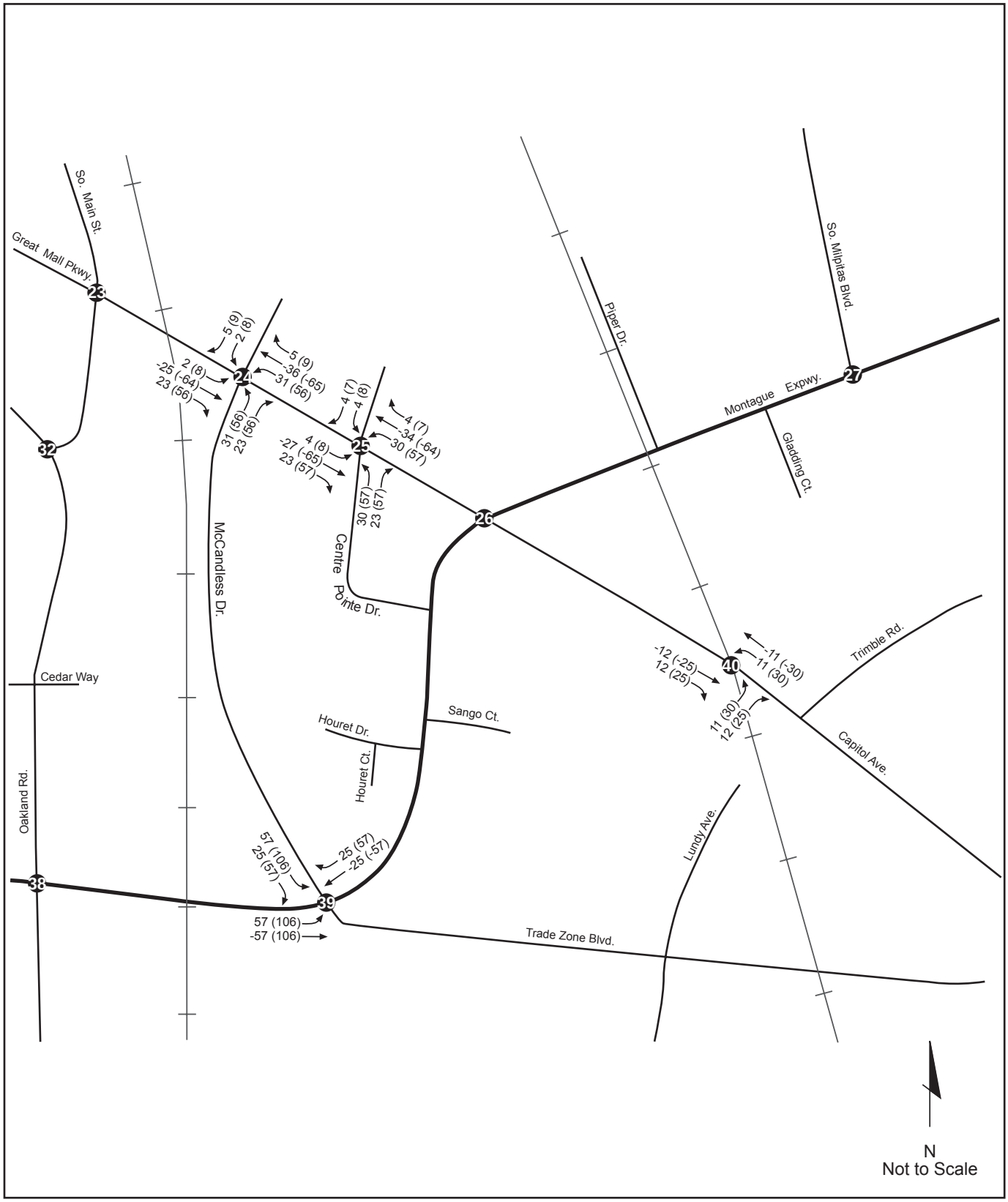
1-A: As shown on Figure 2.3-1, *Transit Area Specific Plan Land Use*, the proposed retail and mixed-use is provided on Capitol Avenue and on both sides of Montague Expressway. Thus, the majority of the proposed residential uses are located within a ¼ mile of retail or mixed use development. Similarly, the two proposed hotels are located approximately ¼ mi from the proposed retail development at Montague Expressway/Great Mall Parkway.

The commenter states the housing-office mixed use reduction should not be applied because residents do not necessarily work in the office park. It is reasonable to assume that a small percentage of employees live in close proximity to their jobs. Thus, the use of the relatively low housing-office reduction (3 percent) is appropriate.

The commenter concludes by stating limited or no internal trip reductions are applicable to the Plan. We disagree with this statement as the proposed mix of land uses encourages linked trips between the various uses. The reductions used in the analysis are consistent with VTA Transportation Impact Analysis Guidelines. Furthermore, as stated on page 3.3-42 of the DEIR, the proposed land uses were input to the VTA regional model and the subsequent outputs confirmed that the internalized trips within the Plan area are consistent with the allowable reductions. (The Plan trips are reduced by a total of 15 to 19 percent based on VTA guidelines and the model outputs show a reduction of 12 to 16 percent).

1-B: As stated on page 3.3-42, pass-by trips are included in the analysis of traffic that enters and exits the Planning Area but are not considered new trips to the street system beyond the Plan area boundaries. The pass-by trip assignment at the study intersections is attached on the following page.

1-C: Comment noted. The commentator has suggested the inclusion of enhanced pedestrian facilities in the project area. Enhanced pedestrian facilities are described throughout the entire Specific Plan document. Description of the proposed pedestrian facilities are provided in the Specific Plan on pages 3-24 – 3-29, Pedestrian and Bicycle Circulation, including Figure 3-5. Description of pedestrian trails is provided in Section 3.4, pages 3-30 – 3-37, and in Figure 3-6. Detailed street sections showing the required pedestrian facilities are shown in Figures 5-1 through 5-20. These are discussed in the Draft EIR on pages 3.3-90, and there is no need to add greater detail which repeats the content of the Specific Plan.



Milpitas Transit Area Specific Plan

FEHR & PEERS
TRANSPORTATION CONSULTANTS

PASSBY TRIP ASSIGNMENT

March 2008
SJ05-811

1-D: The addition of freeway mainline capacity is beyond the scope of individual development projects. However, the City of Milpitas is a partner agency in the High Occupancy Toll Lane project on I-680. Without any other current freeway improvement project to add mainline capacity or a funding mechanism to contribute towards such a project, in 2030 the Plan's impacts to the freeway system are considered significant and unavoidable. However, as stated on Page 3.3-88 (Policy 6.32) of the DEIR, the City has three current improvement studies or projects that will improve overall traffic flow and minimize impacts to regional facilities.

Policy 6.32 will establish a transportation impact fee (TIF) program for the proposed specific plan. This program will identify contributions to both local and regional improvements. The City of Milpitas will require payment of a TIF when individual projects within the specific plan area are approved. Policy 6.32 is hereby revised as follows:

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 west of Trade Zone Boulevard, the ~~and~~ Calaveras Boulevard (SR 237) Overpass Widening project, and Capitol Avenue improvements within the City of San Jose. ~~as well as other local and regional improvements. Individual developments within the Transit Area are required to prepare a traffic impact analysis to identify their fair share contribution toward the impacts and mitigation measures covered by the fee.~~ [note: the traffic impact fee will be a fee per unit or sq.ft. so no additional analysis should be need if a project is consistent with the specific plan.]

1-E: As stated in Response 1-D, there is no current mechanism in place to collect fair share fees nor have freeway improvement projects been identified by Caltrans. As noted in response 1-D, a transportation impact fee program will be established to identify regional improvements.

Page 3.3-87 of the DEIR states that the project sponsor will be required to implement the "Immediate Actions" list in Appendix D of VTA's Transportation Impact Analysis guidelines which contains measures (such as transit improvements, TDM programs, site design guidelines, etc.) to encourage alternative modes of transportation.

1-F: Based on the projected volumes and delay, additional lane capacity rather than signal coordination is required to mitigate the Plan's impact. However, Policy 6.36 states that the City will coordinate with Caltrans to implement this improvement. Based upon a previous City of Milpitas signal re-timing study on various expressways and local projects, a 13 percent increase in travel speed on Great Mall Parkway was

measured after the timing modifications were implemented. The proposed signal coordination is expected to result in similar benefits.

1-G: The freeway ramps were analyzed via an analysis of the ramp intersection operations, which is consistent with the City of Milpitas and VTA analysis guidelines.

A review of the intersection queues immediately upstream or downstream of freeway on and off-ramps indicate that vehicles making the following movements would queue back to the freeway ramps:

- Eastbound through movement from I-880 NB ramps/W. Calaveras Boulevard (PM peak hour)
- Eastbound through movement from I-880 NB ramps/Great Mall Parkway (PM peak hour)
- Westbound through movement at Montague Expressway/McCarthy Boulevard (AM peak hour)
- Eastbound through movement from Montague Expressway/Oakland Road-S. Main Street (PM peak hour)

It should be noted that these substantial queues are already projected under Background Conditions. Policy 6.34 calls for reconfiguring the NB off-ramp to provide additional left-turn capacity which will improve overall intersection operations and reduce vehicle queueing. Policy 6.36 calls for implementation of signal coordination at the I-880 Ramps/Tasman Drive-Great Mall Parkway intersections. Responses to comments 1-J and 1-K address the queuing issue at the other two locations. No significant westbound queues were identified on Calaveras Boulevard and on Montague Expressway that would extend back to the I-680 off-ramps.

A review of the off-ramp queues at the Calaveras Boulevard/I-880 NB Off ramp and Great Mall Parkway/I-880 NB Off-ramp intersections were also conducted to determine if the projected off-ramp intersection queues would extend back to the freeway mainline. The results indicate that sufficient storage is provided on the off-ramp to accommodate the projected queues.

1-H: Per the Draft EIR, widening of NB off-ramp would require right-of-acquisition, relocation of the soundwall and fence, and elimination of neighborhood open space. Addition of a diagonal on-ramp to northbound I-880 would require right-of-way acquisition and would substantially impact existing development. The proposed mitigation measure would impact the existing light-rail tracks in the center of Tasman Drive-Great Mall Parkway as modifications may be required to accommodate the receiving traffic from the three left-turning lanes. Based on these conditions, the identified mitigation is not considered feasible. Therefore, the Plan's impact to this location was considered significant and unavoidable.

1-I: The volumes are reduced to account for the presence of a high occupancy vehicle (HOV) lane. This calculation should have been applied to the Existing Conditions analysis. Accordingly, the Existing Conditions AM volumes will be reduced to reflect the HOV lane (see revised LOS calculation sheet). The level of service rating does not change with this revision.

1-J: The commenter mentions that the westbound movement at this location has a queue of greater than 4,000 feet. It should be noted that the report queues at the bottom of the technical calculations refers to the lane group (using TRAFFFIX version 7.7), so the total queues for a specific movement need to be divided by the number of lanes to obtain the back of queue distance. Thus, the maximum queue per lane is approximately 1,500 feet per lane (based on three through lanes) and not 4,000 feet. The westbound 1,500 feet queue would extend from McCarthy Boulevard past the southbound I-880 off-ramp. Refer to the TRAFFIX 7.7 Summary sheet on the following page. Policy 6.37 would eliminate the Montague Expressway/McCarthy Boulevard intersection and would provide acceptable operation with development of the Plan. However, for clarification, Policy 6.37 is hereby revised as follows:

Policy 6.37: ~~The new traffic impact fee program should include fair-share payments toward the following improvement: Implement~~ T~~t~~he ~~planned~~ grade separation of Montague Expressway at McCarthy Boulevard planned as part of the North San Jose Development ~~, as identified in the Montague Expressway Improvement Project Final Technical Report: Traffic Study and Improvement Alternative Analysis, March 1999.~~would eliminate this intersection and provide acceptable operations with development of the Transit Area Plan.

1-K: The commenter refers to Intersection #38 as the E. Brokaw Road/I-880 NB Ramp intersection. Intersection #38 is the Montague Expressway/Oakland Road-S/Main Street intersection. As noted in Response 1-J, the maximum queue reported is for the lane group. Therefore, the maximum queue is 1,600 feet which would extend past the northbound off-ramp. Since the northbound off-ramp intersects Montague Expressway approximately 1,100 feet from the intersection, some of the eastbound vehicles could be queued on the off-ramp. While the queue at end of the ramp could be as long as 500 feet based on the maximum queue estimate, the amount of storage on the northbound off-ramp is 2,700 feet to the mainline. Thus, queuing from the downstream intersection could be accommodated on the street and on the off-ramp.

1-L Comment noted.

Milpitas TASP

Level Of Service Computation Report
2000 HCM Operations Method (Future Volume Alternative)

Intersection #28 Montague Expwy / Pecten Ct

Cycle (sec):	180	Critical Vol./Cap. (X):	0.498
Loss Time (sec):	9 (Y+R = 4 sec)	Average Delay (sec/veh):	8.7
Optimal Cycle:	36	Level Of Service:	A

Street Name:	Pecten Ct						Montague Expwy					
Approach:	North Bound			South Bound			East Bound			West Bound		
Movement:	L - T - R			L - T - R			L - T - R			L - T - R		
Control:	Permitted			Permitted			Protected			Protected		
Rights:	Ovl			Include			Include			Include		
Min. Green:	10	10	10	10	10	10	7	10	10	7	10	10
Lanes:	1 0	0 1	0	2 0	0 1	0	1 0	3 0	1	1 0	3 0	1
Volume Module: >> Count Date: 1 Mar 2006 << 7:15-8:15am												
Base Vol:	11	0	7	13	0	15	41	637	7	22	2513	66
Growth Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Initial Bse:	11	0	7	13	0	15	41	637	7	22	2513	66
Added Vol:	0	0	0	0	0	0	0	0	0	0	0	0
PasserByVol:	0	0	0	0	0	0	0	0	0	0	0	0
Initial Fut:	11	0	7	13	0	15	41	637	7	22	2513	66
User Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.95	1.00	1.00	0.82	1.00
PHF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Volume:	11	0	7	13	0	15	41	605	7	22	2061	66
Reduct Vol:	0	0	0	0	0	0	0	0	0	0	0	0
Reduced Vol:	11	0	7	13	0	15	41	605	7	22	2061	66
PCE Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
MLF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Final Vol.:	11	0	7	13	0	15	41	605	7	22	2061	66
Saturation Flow Module:												
Sat/Lane:	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Adjustment:	0.92	1.00	0.95	0.83	1.00	0.95	0.92	0.95	0.92	0.92	0.82	0.92
Lanes:	1.00	0.00	1.00	2.00	0.00	1.00	1.00	3.00	1.00	1.00	3.00	1.00
Final Sat.:	1750	0	1800	3150	0	1800	1750	5415	1750	1750	4674	1750
Capacity Analysis Module:												
Vol/Sat:	0.01	0.00	0.00	0.00	0.00	0.01	0.02	0.11	0.00	0.01	0.44	0.04
Crit Moves:						****	****				****	
Green Time:	10.0	0.0	51.6	10.0	0.0	10.0	8.1	119	119.4	41.6	153	152.9
Volume/Cap:	0.11	0.00	0.01	0.07	0.00	0.15	0.52	0.17	0.01	0.05	0.52	0.04
Delay/Veh:	83.1	0.0	46.0	81.4	0.0	84.1	106.3	11.6	10.2	54.2	4.1	2.2
User DelAdj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	83.1	0.0	46.0	81.4	0.0	84.1	106.3	11.6	10.2	54.2	4.1	2.2
HCM2k95th:	2	0	1	1	0	2	5	9	0	2	18	1

COMMENT LETTER 2

STATE OF CALIFORNIA

Arnold Schwarzenegger, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 18, 2007

Scott Gregory
c/o Veronica Bridges
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

RE: Milpitas Transit Area Specific Plan, SCH# 2006032091

Dear Mr. Gregory:

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the City be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way. Safety factors to consider include, but are not limited to, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way (ROW). 2-A

Of specific concern is that high density housing is being planned and approved near future BART stations while the funding for the BART project is not assured; as planned, the BART system utilizes a restricted access closed-corridor design with no at-grade street or pedestrian crossings. However, full funding for the project has not been secured and is in no way guaranteed. It is quite possible that if full funding for the project is not secured, an alternative of heavy rail Caltrain-style service, or an extension of the Valley Transportation Authority's (VTA) light rail system could be instituted on the rail corridor, utilizing the existing at-grade highway-rail crossings. These at-grade highway-rail crossings will have a negative impact on safety and the level of service of local streets not analyzed in the environmental review. 2-B

Any proposed development adjacent to the Union Pacific Railroad (UP) ROW, should be separated from the ROW by continuous vandal-resistant fencing; to deter trespassing. Policy 3.39 appears to provide developers a break on required park land if they develop a trail on the land of a public utility. Policy 3.54 makes it appear that private property will be used for a trail only if rail property is not sufficient. Policy 3.51 provides for a network of trails along railroad ROW's, but does not mention if fencing will be required. There is no mention if the property owner, UP, has even been consulted on these policies. Policy 3.48 allows a railroad ROW to be adjacent to a proposed park, but again, there is no mention of fencing or other appropriate barriers to mitigate the potential safety impact of locating a park next to a rail line.

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the City.

If you have any questions in this matter, please call me at (415) 703-2795.

Very truly yours,

Kevin Boles
Environmental Specialist
Rail Crossings Engineering Section
Consumer Protection and Safety Division

cc: Terrel Anderson, Union Pacific Railroad

2. Response to Public Utilities Commission

2-A: There are four existing at-grade crossings within the Specific Plan area: (1) across Montague Expressway near Great Mall Parkway; (2) on Milpitas Boulevard near Montague Expressway; (3) on Piper Drive near Montague Expressway; and (4) on Capitol Avenue south of Montague Expressway. Numerous policies contained in the Plan address rail safety issues. Policies 4.14 and 4.22 call for elevated pedestrian connections from the Piper/Montague subdistrict and over Montague Expressway to the Great Mall. Refer to Figure 5.4 and 5.6 of the Plan. These policies are provided below. A total of three above-grade pedestrian crossings are included in the Specific Plan, and all three pedestrian crossings will be accessible to bicycles as well as pedestrians.

Policy 4.14: Create a pedestrian connection from the Piper/Montague subdistrict to the Great Mall, crossing the railroad tracks and BART line. The final location and height of the pedestrian crossing will be determined based on the BART line design, the railroad spur track location, and conditions on adjoining properties to the west of Piper Drive.

Policy 4.22: Build a pedestrian overcrossing or undercrossing across Montague Expressway to connect the BART Station to the Piper/Montague Area and the Great Mall. Ideally this connection would be integrated into the station itself, although it must allow people to directly access the Piper/Montague and BART Station subdistricts without having to pay BART fare.

The Specific Plan further contains policies that require landscape buffer areas and sound walls along rail lines.

Policy 4.13: Provide landscape buffers at least 30 feet deep along the BART track, the northern property line of the subdistrict, the railroad spur, the PG&E substation, and Milpitas Boulevard.

Policy 5.11: Construct masonry walls to buffer residential uses from BART and UPRR train tracks.

In addition, the following new policies will be added in Section 3.3 of the Specific Plan, Circulation, and in Section 3.1 of the Draft EIR, to clarify fencing requirements with regards to rail right-of-ways, and to address improvements to existing at-grade highway-rail crossings:

- <u>New policy: Any development projects, parks, or pedestrian trails built adjacent to a rail line shall build continuous fencing or solid walls to ensure that there will</u>

be no pedestrian access to the line. Fencing shall be designed to be vandal-resistant in order to deter trespassing.

- New policy: The City will maintain and enhance public safety by requiring uniform safety standards for all at-grade rail crossings.
- New policy: Safety fencing or solid walls shall be installed along all Union Pacific rail lines along Piper Drive. Consultation with UPRR and CPUC will be required prior to any project related activities within UPRR right-of ways. Improvements may be required, including but not limited to: pedestrian gates, pavement markings, and "no trespassing" signs.

Figure 5-6 of the Plan will be amended to clearly depict the pedestrian crossing from Piper Drive to the Great Mall to be an overhead crossing.

The comment letter also notes that increased traffic volumes may be related to safety at existing at-grade highway-rail crossings. As can be seen in Table 3.3-12 and Table 3.3-13, total traffic volumes are very similar under the No Project Alternative (the existing General Plan) and the Proposed Plan (General Plan plus TASP.) However to further ensure safety considerations, the following new policy will be added in Section 3.3, Circulation, of the Draft EIR, to address improvements to existing at-grade highway-rail crossings:

- New policy: Consult with the Union Pacific Railroad and the Public Utilities Commission prior to any improvements to segments of Milpitas Boulevard, Capitol Avenue, and Montague Expressway that include at-grade rail crossings, to determine if improvements to existing at-grade highway-rail crossings are warranted.

There may or may not be an additional railroad crossing on the proposed Milpitas Boulevard extension. As the Plan describes, the rail line is proposed to be eliminated south of Montague as part of BART Extension Project, and therefore, in the long-term, there will not be a rail crossing on the Milpitas Boulevard extension. The Milpitas Boulevard extension may or may not be constructed prior to the Bart Extension Project. If the Milpitas Boulevard extension is constructed before the Union Pacific rail line is terminated at Montague, there will be an at-grade rail crossing. The policy below has been added to Section 4.3 of the Plan and Section 3.1 of the Draft EIR.

- New Policy: If the Milpitas Boulevard extension is constructed prior to the termination of Union Pacific rail line at Montague, an interim at-grade crossing will need to be constructed. The crossing shall be designed with adequate controls to restrict vehicular and pedestrian access during train crossings.

With the planned pedestrian system, the provision of pedestrian/bicycle bridges, and the rail line fencing requirements, no significant pedestrian impacts are anticipated.

2-B: Comment noted. Refer to Response 2-A above related to the comments about fencing along rail lines. Regarding the comments about policies 3.39 and 3.54, these policies are not intended in any way to "provide developers a break on required park land", or to state that "private property will be used for a trail only if rail property is not sufficient." In order to clarify this issue, Policy 3.54 will be amended as follows:

Policy 3.54: All properties along the trail network will need to set aside land for the trails. ~~- if adequate land is not available within the right of ways that exist for drainage channels and rail~~. This land will count towards the required public park land dedication requirement. If trail easements already exist or are acquired within the rail line or flood control right of ways, these easements may be used in lieu of land on development sites.

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT
SINCE 1955

ALAMEDA COUNTY
Tom Bates
Scott Haggerty
Janet Lockhart
Nate Miley

CONTRA COSTA COUNTY
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(Chair)
Michael Shimansky
Gayle B. Uilkema

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Yoriko Kishimoto
Liz Kniss
Patrick Kwok

SOLANO COUNTY
John F. Silva

SONOMA COUNTY
Tim Smith
Pamela Torliatt
(Secretary)

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

December 20, 2007

Scott Gregory
Contract Planner to the City of Milpitas
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

Subject: Draft Environmental Impact Report for Milpitas Transit Area Specific Plan

Dear Mr. Gregory:

Bay Area Air Quality Management District (District) staff have reviewed the draft Milpitas Transit Area Specific Plan (Plan) and the Draft Environmental Impact Report (DEIR) for the Plan. We understand that the Plan proposes to develop 437 acres of industrial land in central Milpitas into a mixed use transit oriented area with high density housing. Implementation of the Plan will result in development of up to 7,100 new residential units supporting approximately 18,000 new residents, approximately 1 million of square feet of new office space, 285,000 square feet of retail space, and 175,000 square feet of hotel space. 3-A

The DEIR characterizes Impact 3.6-6, exposure of sensitive receptors to toxic air contaminants (TAC), as less than significant. In addition, the DEIR states that "the greatest level of exposure to TAC would be from short term construction related emissions." The DEIR, however, provides no scientific analysis or impact evaluation to support these statements. The DEIR should have identified existing sources of TAC (i.e., major roadways, existing industrial operations, train operations) within the Plan area and their proximity to existing and future sensitive populations. An analysis should have been prepared to determine if future sensitive populations will be adversely impacted (above District significance thresholds) from TAC and to identify policies that could be included in the Plan to mitigate these potentially significant impacts. The only mitigation proposed to address TAC is Policy 5.23 (DEIR, p. 3.6-27), which requires project sponsors to inform future and/or existing sensitive receptors of potential health impacts associated with TAC. This Policy does not provide any mitigation to reduce this potentially significant impact. 3-B

Spare the Air

Please contact Nadine Wilmot, Environmental Planner, at (415) 749-5074 or at nwilmot@baaqmd.gov, if you have any questions regarding these comments.

Sincerely,

Jean Roggenkamp
Deputy Air Pollution Control Officer

cc: BAAQMD Director Erin Garner
BAAQMD Director Yoriko Kishimoto
BAAQMD Director Liz Kniss

3. Response to Bay Area Air Quality Management District

3-A: This comment is a description of the project. It does not pertain to the adequacy of the Draft EIR, and as such no EIR text revisions are necessary.

3-B: According to the BAAQMD CEQA Guidelines, for local plans to have a less than significant impact with respect to potential odors and/or toxic air contaminants, buffer zones should be established around existing and proposed land uses that would emit these air pollutants. Buffer zones to avoid odors and toxics impacts should be reflected in local plan policies, land use map(s), and implementing ordinances (e.g., zoning ordinance). Table 3-B, Project Screening Trigger Levels for Potential Odor Sources, or the BAAQMD CEQA Guidelines provides BAAQMD recommended buffer zones to avoid exposure to odors and would also apply to TAC sources. The table includes wastewater treatment plans, sanitary landfill, transfer station, composting facility, petroleum refinery, asphalt batch plant, chemical manufacturing, fiberglass manufacturing, painting/coating operations, rendering plant, and coffee roaster. None of these uses exist within or adjacent to the planning area. However there could be toxic air contaminants from major roadways, train operations, and/or existing industrial operations, which could affect future residential development and other sensitive receptors.

Table 3-B: BAAQMD Recommended Buffer Zone Distances for Potential Odor Sources

Type of Operation	*Buffer Zone*
Wastewater Treatment Plant	1 mile
Sanitary Landfill	1 mile
Transfer Station	1 mile
Composting Facility	1 mile
Petroleum Refinery	2 miles
Asphalt Batch Plant	1 mile
Chemical Manufacturing	1 mile
Fiberglass Manufacturing	1 mile
Painting/Coating Operations (e.g., auto body shops)	1 mile
Rendering Plant	1 mile
Coffee Roaster	1 mile

Source: BAAQMD CEQA Guidelines 1999.

The Specific Plan already includes policies to buffer new sensitive receptors and new residential development from existing industrial uses. This will be added to Section 3.6, page 3.6-27, of the Draft EIR.

Policy 5.18: Day care facilities, schools, nursing homes, and other similar 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 in and when an adjacent site is redeveloped as a non-industrial use.

To further address potential impacts related to toxic air contaminants, page 3.6-26 of the Draft EIR text is hereby revised as follows and the following mitigation measures have been added to the Plan and the Draft EIR which would serve to reduce exposure of sensitive receptors to TAC emissions to less than significant levels:

Impact

3.6-6 Implementation of the proposed Plan would expose sensitive receptors to toxic air contaminants. (Less than Significant)

In addition to criteria pollutant emissions, a variety of pollutant or toxic air emissions (TACs), such as diesel exhaust, industrial operations, train operations, and those from dry cleaning facilities, could also be released from various construction and operations associated with the proposed Plan. TACs are considered under a different regulatory process (California Health and Safety Code section 39650 et seq.) than pollutants subject to State Ambient Air Quality Standards as discussed above. Health effects associated with TACs may occur at extremely low levels. It is often difficult to identify safe levels of exposure, which produce no adverse health effects. The California Air Resources Board has declared that diesel particulate matter from diesel engine exhaust is a TAC, and the California Office of Environmental Health Hazard Assessment has determined that chronic exposure to particulate matter can cause carcinogenic and non-carcinogenic health effects. These health risks from TACs result from concentration and duration of exposure. While short-term construction related emissions which would affect a given area for a period of days or weeks, as discussed in Impact 3.6-3 above, vehicle diesel exhaust, rail operation, and facility operations would persist in the Planning Area~~,~~. ~~the greatest level of exposure would be~~

In addition, all new development under the proposed Plan would be subject to further CEQA review to evaluate project-level impacts of odors and toxics specific to their site, time and project description and to avoid potential conflicts in land uses. Analysis of potential impacts conducted would include both the following situations: 1) sources of odorous/toxic emissions locating near existing sensitive receptors, and 2) receptors locating near existing odor/toxics sources.

In traffic-related studies, additional health risk attributable to proximity to major roadways was seen within 1,000 feet and was strongest within 300 feet. California freeway studies show about 70 percent drop off in particulate pollution levels at 500 feet. A new policy will be added in Section 5.4 of the Plan, and cited in the section describing Impact 3.6-6 in the Draft EIR, which requires future project level TAC analysis and possible upgraded ventilation systems. With full compliance with BAAQMD's construction BMPs, the new policy which requires future project level TAC analysis and possible upgraded ventilation systems, and Policy 5.23, which requires new residential developers to inform future residents of TAC related health effects and the potential for exposure, this impact would be less than significant.

- New Policy: 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.

  The above standard shall also apply to other sensitive uses such as schools, daycare facilities, and medical facilities with inpatient services.

COMMENT LETTER 4

County of Santa Clara

Roads and Airports Department

101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2400

December 5, 2007

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (DEIR) for the Milpitas Transit Area Specific Plan

Attn: Dennis Carrington, Senior Planner

Dear Dennis:

This is in response to your Draft Environmental Impact Report (DEIR) issued to us on November 8, 2007 regarding the Milpitas Transit Area Specific Plan.

The review is complete and we have the following comments:

1. include Montague/Mission College, Montague/De la Cruz and Center /De La Cruz for traffic impact study. 4-A
2. For improvement projects on Montague Expressway, consult with County Expressway Planning study. 4-B

If you have any questions concerning the above, please contact me at (408) 573-2463.

Sincerely,

William K. Y. Yeung

William Yeung
Associate Civil Engineer
Land Development and Permits

4. Response to County of Santa Clara

4-A: The key major intersections in the vicinity of the project site were selected for analysis in consultation with the Cities of San Jose and Milpitas. The three locations requested for study are located approximately three miles from the Plan Area and would not see the same concentration of the Plan's traffic compared to other study locations.

4-B: Comments noted.

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

December 21, 2007

Mr. Scott Gregory, Contract Planner
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

SUBJECT: COMMENTS ON MILPITAS TRANSIT AREA SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT (FILE NO. OA07-017)

Dear Mr. Gregory:

On Nov. 5, 2007, the City of San Jose received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Milpitas for the Milpitas Transit Area Specific Plan (TASP EIR) project located near the proposed Milpitas BART Station and VTA Light Rail System, near the intersection of Montague Expwy. & Capitol Avenue in the City of Milpitas. The Specific Plan proposes the redevelopment of approximately 437 acres with approximately 7,100 new dwelling units supporting approximately 18,000 new residents, approximately 1 million sq. ft. of new office space, 175,000 sq. ft. of hotels and 285,000 square feet of retail space. 5-A

The City of San Jose is supportive of the Milpitas Transit Area Specific Plan as a land use plan that supports the planned BART extension to the South Bay. The City of San Jose appreciates the opportunity to review and provide comments on the Draft EIR for the project and offers the following comments:

San Jose/Santa Clara Water Pollution Control Plant (WPCP) Treatment Capacity

The Milpitas Draft EIR includes a cumulative discussion of planned and foreseeable growth in Milpitas, and concludes the combined Milpitas growth will require acquisition of an additional 1.0 mgd in treatment capacity, either through acquisition of allocation from another agency served by the WPCP, potentially the City of San Jose or expansion of the WPCP. The Draft EIR notes San Jose may use the Draft EIR as a Responsible Agency to inform San Jose's decision whether to sell/lease WPCP treatment allocation to Milpitas. Therefore, to fully inform San Jose's decision makers, the cumulative discussion should address the planned and foreseeable growth in wastewater treatment demand in San Jose. 5-B

The City of San Jose is currently in the process of a major update to its General Plan and has prepared a Draft EIR for the Coyote Valley Specific Plan (CVSP) project. The City has yet to begin drafting the EIR for the General Plan Update.

As discussed in the CVSP Draft EIR, the estimated increase in wastewater discharge to the WPCP from the existing General Plan build-out scenario in San José is 33 mgd average dry weather flow (ADW) (including 8.6 mgd from CVSP; 12.4 from projects approved to date but not on line; and 12 mgd for the remaining General Plan buildout, and not including substantial new growth anticipated in the forthcoming General Plan Update). In 2006, San Jose's ADW flow was 84 mgd. Together, the estimated increase in wastewater discharge (33 mgd) to the WPCP and the 2006 discharge rate (84 mgd) would result in a total of approximately 117 mgd. It should also be noted that the re-occupancy of currently vacant buildings could result in increased discharge levels from 2006 notwithstanding any new development. Accordingly, the TASP Draft EIR should reflect that the 117 mgd anticipated flow from San Jose would exceed San Jose's 2007 allocation of 109.6 mgd, and together with the current ADW flow from Santa Clara (16.064 mgd) would exceed the 130.6 mgd in WPCP capacity that it jointly owns with Santa Clara, but that even this increase, together with the increase in flows from Milpitas, might not result in flows that exceed the WPCP rated capacity of 167 mgd, if Santa Clara and other tributary area flows stay stable. 5-C

As discussed in the CVSP Draft EIR, in order for the WPCP to handle the increased wastewater flow, the City of San Jose would need to: 1) increase its flow capacity allotment beyond its current 107 mgd allocation; 2) the WPCP would need to increase its overall capacity; and/or 3) future conservation measures would need to be implemented to reduce the overall flow of wastewater to the WPCP. While exceeding San Jose's wastewater flow allotment will likely not occur in the near term, the cumulative effects of all of San Jose's planned developments is predicted to force the Plant to modify its existing operations significantly.

As noted in the TASP Draft EIR, Plant expansion would be a major capital improvement that would require its own CEQA review and would also require additional regulatory permits. As discussed in the CVSP Draft EIR, the Plant is already considering the need to expand the treatment capacity. Currently, the Plant, under the leadership of the City of San José's Environmental Services Department, is developing a Plant Master Plan to address Plant facilities, operations, and land use. The Plant Master Plan will address the long-term needs of the Plant with a 30 to 50 year horizon. One of the significant elements of the Plant Master Plan is the examination of the Plant's treatment capacity. The Plant Master Plan will factor in the development patterns for the City of San José and the Tributary agencies, and it will make a recommendation on whether an increase in treatment capacity is required to accommodate future development. 5-D

Increasing the treatment capacity of the Plant potentially may result in the following environmental impacts: 1) indirect inducement of growth in the region; 2) increase in neighborhood traffic levels; 3) encroachment or takings of sensitive habitat (burrowing owls); 4) additional odor or other air quality issues from an expanded bio-solids treatment area; and 5) the need for more external energy supplies resulting in increased particulate matter and greenhouse-gas emissions.

With respect to proposed acquisition of capacity from San Jose and Santa Clara, the cumulative impact section of the TASP Draft EIR (pg. 3.11-27) should be revised to reflect that under the WPCP Master Agreements, any agency (not just San Jose and Santa Clara) can declare flow as "excess pooled capacity." Once that declaration is made, San Jose and Santa Clara have the right of first refusal as to such excess pooled capacity and only after that do other agencies have the right to purchase the excess pooled capacity. 5-E

The draft EIR should also be revised to delete the reference to an additional flow of 1.0 mgd being offset by a corresponding decrease in flow from San Jose/Santa Clara (pg.3.11-28), as increases in flow, not decreases, are anticipated, as indicated above. 5-F

The Draft EIR (pg. 3.11-28) should also be revised to delete the reference to a declaration of excess pooled capacity as constituting an acknowledgement that the agencies making the declaration are not "relying on this 1.0 mgd of capacity for planned growth and development within their own jurisdictions, or otherwise hastening upgrades or improvements to the current WPCP." 5-G

As the Draft EIR correctly notes, plans for expansion of the WPCP need to begin once the WPCP reaches 85% capacity. A more correct statement would be that a declaration of excess pooled capacity by San Jose and Santa Clara as co-owners of the Plant could be based on a determination by those agencies that plans for expansion of the WPCP would be triggered before the 1.0 mgd is actually needed. 5-H

Since a declaration of excess pooled capacity by San Jose and Santa Clara has not yet been made, nor a lease of capacity finalized, Policy 6.10 should be revised to state that if Milpitas cannot acquire additional capacity, it will participate in expansion of the WPCP to acquire such additional capacity when the WPCP reaches the 85% expansion trigger. 5-I

Flow Discharge to the Bay

The TASP Draft EIR (pg. 3.11-5) incorrectly states that National Pollution Discharge Elimination System (NPDES) permitting program limits the amount of treated wastewater that can be discharged from the WPCP to the San Francisco Bay to 120 mgd average dry weather (ADW) effluent (wastewater) flow (average of the 3 lowest months between May–October). The current Permit limit for the WPCP is 167 mgd ADW flow, although WPCP flow has in the past, and may in the future, be subject to a reduction in this limit if flows are found to impact endangered species. The 120 mgd ADW is used as a "trigger" rather than a limit in the permit, for requiring the WPCP to undertake actions to both reduce flow and investigate the impacts of flow on endangered species habitat. 5-J

The TASP Draft EIR (P.3.11-31) acknowledges the amount of recycled water demand within the Transit Area is not sufficient to fully offset the increased sewer flows and subsequent discharge to the Bay. The EIR should include discussion acknowledging the larger flows from anticipated cumulative growth in San Jose and Milpitas and other Tributary Agencies will lead to larger discharges to the Bay that may exceed the 120 mgd effluent trigger. Any development in the City of San José or the Tributary agencies that exceeds the 120 mgd effluent flow trigger to the Bay will need to be offset with recycled water uses that will not return to the Plant (e.g. landscape irrigation and groundwater recharge). The cost for this mitigation and potential increases needed in SBWR's system will need to be borne by new development. Mitigating for this impact will require a more robust recycled water system that may cause the following 5-K

environmental impacts: 1) loss of sensitive habitat; increase in energy demand; and 2) construction impacts throughout the Plant service area to increase the recycled water system's handling capacity.

With respect to the cumulative impacts of flows to the WPCP on endangered species habitat (Impact 3.11-5), we recommend that Policy 6.20 be revised to demonstrate a stronger commitment to the requirement of dual plumbing in commercial and industrial building with the TASP. Recycled water lines to serve the area should be sized to accommodate both irrigation and indoor use for commercial and industrial buildings; and if recycled water is available, it should be deemed "reasonable" and "feasible" to use, with the burden on the developer to demonstrate why use in a particular building is unreasonable or infeasible. We note that including recycled water as a source for suitable indoor uses would also mitigate the impacts of the project on potable water demand. 5-L

Traffic

Per the settlement requirements the project needs to assure the construction of the Montague/Great Mall interchange. A traffic impact fee program that assures and fully funds the implementation of the interchange needs to be in place prior to approval of the Project. 5-M

The project refers to a future yet to be determined regional traffic impact fee to pay for impacts. The impact fee should be determined, established, and disclosed prior to approval of the Project. The fee should be on par with other jurisdictions contributions. 5-N

The EIR also assumes regional funds will become available for mitigation therefore a development phasing plan should be developed that assures construction and timelines of the proposed improvements. 5-O

The project needs to meet CMP requirements or complete a deficiency plan with funding for alternative improvements. Also although the project uses significant transit capacity it is not proposing any transit or pedestrian improvements outside the boundaries of the project area. 5-P

Per the settlement requirements, the project needs to contribute towards $200,000 for Capitol Avenue corridor improvements. 5-Q

Overall the traffic impact fee requirements and appropriate phasing plan need to be in place prior to approval of the Project. 5-R

Solid Waste:

In 2005, approximately 62,501 tons of waste from Milpitas was disposed at Newby Island Landfill. It is anticipated that the additional 700 tons/year (~3700 lbs/day) anticipated for the Milpitas project will not by itself create a problem for the City; however, this type of proposed high-density residential and commercial activity doesn't always yield 50% recycling under 5-S

current conditions. More likely, an estimated 30% would be more accurate. There should be stronger language about emphasizing recycling programs and sufficient space for recycling in the constructed facilities as required by AB 2176 and other state and local code (i.e. space is a CA requirement in building code).

On page 3.11-35, mid-page there is a notation of 3,700 pounds "per year." This should be edited to read "per day." 5-T

On page 3.11-36, there is discussion of the amount of solid waste that would be generated. The quotation of the SRRE is a bit misleading since the Durham Road Landfill in Fremont that it mentions closed recently. It will be the City of Milpitas' responsibility to secure the needed landfill capacity for their city in the future. Some of the documents quoted in the Draft EIR are outdated, although that may not affect the impact. 5-U

Thank you again for the opportunity to comment on the Draft EIR for this project. We look forward to reviewing the Final EIR when it becomes available for review. Please provide Janis Moore of my staff with a hard copy and a CD version of the complete Final EIR, including all technical reports/volumes of the document. You may send the document directly to her attention, since she has been coordinating with other City departments in the review of the Draft EIR. If you need to discuss these comments, you may contact Janis Moore of my staff at (408) 535-7815.

Sincerely,

Joseph Horwedel, Director
Planning, Building & Code Enforcement

c: Mollie Dent, CAO
Matt Krupp, ESD
Kerrie Romanow, ESD
Heidi Melander, ESD
Manuel Pineda, DOT
Janis Moore, PBCE

5. Response to City of San Jose

5-A: Comment noted; the City of Milpitas appreciates San Jose's support of this important planning effort.

5-B: Comment noted. Additional discussion has been added to the EIR to more fully address planned and foreseeable growth in San Jose. Please see responses below.

5-C: Comment noted. The Draft TASP EIR, page 3.11-26 at the paragraph at the end of the section titled *Cumulative Impacts*: is hereby revised as follows:

Cumulative Impacts

"…..The City is reviewing the projections in the 2004 Sewer Master Plan, and the need and timing for the purchase of an additional 1.0 mgd capacity at the WPCP. Current flows are 8 to 9 mgd, far below the City's current capacity of 13.5 mgd. The City may or may not need to purchase additional capacity during the 20-year timeframe of the proposed Plan, depending on the pace of growth, and whether full buildout allowed under the General Plan occurs."

The City of San Jose's 2006 discharge flow was 84 mgd. The combined San Jose cumulative flow from existing and projected development is estimated by the City of San Jose to be a total of 117 mgd. San Jose and Santa Clara share a treatment capacity of 130.6 mgd, which is prorated between the two co-owners based upon property valuation. The allocated capacity amount therefore fluctuates annually. San Jose 2007 allocation of treatment capacity at the WPCP is 109.6 mgd. Comparing San Jose's projected cumulative flows to their current treatment plant allocation shows a capacity shortfall of approximately 7.4 mgd.

Even though the estimated Milpitas cumulative flows could exceed the City's allocated capacity of 13.5 mgd, and the estimated San Jose cumulative flows could exceed its allocated capacity of 109.6 mgd, these combined cumulative flows might not result in flows that exceed the WPCP rated capacity of 167 mgd, if Santa Clara and other tributary flows stay stable, as indicated in the following table.

	2006 Peak Week Flows (mgd) [1]	*2007 Peak Week (mgd)*[2]	*Projected Cumulative Flows (mgd)*	*Allocated Capacity (mgd)*	*Surplus/ (Deficit) Flows (mgd)*
San Jose[3]	83.7	73.4	117.0	109.6	(7.4)
Santa Clara	16.1	14.1	16.1	21.1	5.0
West Valley SD	10.3	10.3	10.3	12.1	1.8
Cupertino SD	4.7	4.7	4.7	8.6	3.9
Milpitas[3]	8.2	10.2	14.5	13.5	(1.0)

County SD 2-3	1.5	1.5	1.5	1.5	0.0
Burbank SD	0.3	0.3	0.3	0.4	0.1
Sunol SD	.1	0.1	0.1	0.3	0.2
	125.1	114.7	164.6	167.0	2.6
Notes: 1. 2006 peak week was latest data available when CVSP was written 2. 2007 peak week data was latest data available in December 2007 and when TASP was written 3. Growth applied to San Jose and Milpitas only					

The City of Milpitas continues to review and update sewer flow projections in parallel with the preparation of this document. As of April 2008, the best available data indicate that the build-out sewer flow capacity should be reduced from 14.5 mgd to 14.2 mgd. However, due to the frequent referencing of this value, the 14.5 mgd flow capacity that was originally published in this document is not being modified at this time.

Other Additional Cumulative Wastewater Flows: The projections of wastewater flow presented in the table above do not account for any other cumulative wastewater flows, which could occur from any or all of the following cumulative sources:

- increases from re-occupancy of currently vacant buildings,
- substantial new growth which is anticipated in the forthcoming City of San Jose General Plan Update, or
- any increases in wastewater flows due to growth within any of the other tributary agencies.

To the extent that growth does occur within other tributary agencies, substantial new growth occurs pursuant to San Jose's General Plan Update, and/or currently vacant buildings within the tributary area become reoccupied, then wastewater flows from these sources, plus all other cumulative wastewater flows would cause the capacity of the WPCP to ultimately be exceeded. Although exceeding the total wastewater flow capacity of the treatment plant is not likely to occur in the near term, the cumulative effects of all development within each of the tributary agencies is ultimately predicted to exceed the plant capacity and force the plant to modify its operations significantly.

Mitigation options include increasing WPCP capacity and implementing water conservation. Currently, the San Jose Environmental Services Department is developing a Plant Master Plan that will include a review of these options for increasing treatment capacity.

5-D: Comment noted. The Draft EIR, page 3.11-29 is hereby revised to incorporate additional information as follows:

"Participate in WPCP Expansion

….Alternatively, the City of Milpitas has the right to participate in future WPCP expansions for the purpose of increasing its capacity rights. In accordance with US Environmental Protection Agency guidelines, the need to plan for plant expansion is triggered when total WPCP influent reaches 142 mgd, which is 85 percent of its total capacity of 167 mgd. Plant expansion would be a major capital improvement to be undertaken in response to a regional need and would require its own CEQA review and would also require additional regulatory permits."

The San Jose Environmental Services Department is developing a long-range Master Plan for the WPCP to address plant facilities, operations, and land use. The WPCP Master Plan will address the long term needs of the plant over a 30 to 50 year horizon. One of the significant elements of the Master Plan will be an examination of the plant's treatment capacity. The Master Plan is anticipated to factor in the land use development factors of all tributary agencies, and make recommendations on whether an increase in treatment capacity is needed to accommodate future development.

Increasing the treatment capacity of the plant may result in the following environmental impacts: a) indirect inducement of growth in the region; b) increase in neighborhood traffic levels; c) encroachment or takings of sensitive habitat for burrowing owls; d) additional odors or other air quality issues from an expanded bio-solids treatment area; and e) the need for more external energy supplies resulting in increased particulate matter and greenhouse gas emissions.

5-E: Comment noted. The Draft EIR, page 3.11-27 is hereby revised to incorporate additional information as follows:

"Plan to Provide Cumulative Wastewater Treatment Plant Capacity for the Milpitas Transit Area Specific Plan

The terms and conditions by which the City of Milpitas can acquire additional wastewater treatment capacity rights are contained in the "Master Agreement for Wastewater Treatment between the City of San Jose, the City of Santa Clara and the City of Milpitas" (the Master Agreement). The Master Agreement generally sets forth rights and obligations of the respective jurisdictions with respect to discharge of wastewater into the San Jose/Santa Clara WPCP, outlines capacity rights for each member agency, payment and cost-sharing obligations, and plant administration. Once that declaration has been made, the cities of San Jose and Santa Clara have the right of first refusal to such excess capacity, and after that, other any agency has the right to purchase excess capacity as recommended by the Treatment Plant Advisory Committee. ~~The cities of San Jose and Santa Clara must first designate that they have excess pooled capacity available for disposal.~~ The City of Milpitas can then offer to acquire the excess capacity at a price set by the terms of the Master Agreement."

5-F: Comment noted. The Draft EIR is hereby revised as follows: amend the following text on page 3.11-27 second bullet under the heading Plan to Provide Cumulative Wastewater Treatment Capacity to read as follows:

"Operation of the WPCP itself would be unaffected by an acquisition of excess pooled ~~additional~~ treatment plant capacity by Milpitas. The WPCP is rated for a treatment capacity of 167 million gallons per day (mgd) and currently receives an average annual influent of 125 mgd. An additional 1.0 mgd of ~~flow from~~ treatment capacity allocated to Milpitas would be offset by a corresponding decrease in ~~flow from~~ treatment capacity allocated to San Jose and Santa Clara. ~~, so it would not exceed t~~The capacity of the WPCP would not be exceeded, nor would operations at the WPCP be fundamentally changed such that its operations would result in ~~such that~~ any direct or indirect secondary environmental impacts. ~~would occur"~~

5-G: Comment noted. The Draft EIR is hereby revised as follows: amend the following text on page 3.11-28 fifth bullet under the heading Plan to Provide Cumulative Wastewater Treatment Capacity to read as follows:

"Should the cities of San Jose and Santa Clara ultimately determine that they do have excess pooled treatment plant capacity available for acquisition, transfer of this capacity to Milpitas is not expected to have any direct or indirect environmental impacts within these other respective jurisdictions. ~~By designating this capacity as "excess", these jurisdictions would be acknowledging that they are not relying on this 1.0 mgd of treatment plant capacity for planned growth and development within their own jurisdictions, or otherwise hastening upgrades or improvements to the current WPCP. "~~

5-H: Comment noted. The Draft EIR is hereby revised as follows: amend the following text on page 3.11-28 fifth bullet under the heading Plan to Provide Cumulative Wastewater Treatment Capacity to read as follows:

"The San Jose Environmental Services Department is already anticipating the need for a long-range Master Plan for the WPCP to address increased population growth, new regulatory initiatives, evolving technology, replacement of aging equipment and financing. The need for this Master Plan is independent of any potential decision to designate up to 1.0 mgd of capacity rights as "excess". It is anticipated that the cities of San Jose and/or Santa Clara, acting as Responsible Agencies to this EIR, would rely on this EIR for their own discretionary actions to consider designation of up to 1.0 mgd of treatment plant capacity as excess, and sell or otherwise convey this excess capacity to Milpitas." <u>A declaration of excess pooled capacity by San Jose and Santa Clara could be based on a determination by those agencies that plan for expansion of the WPCP would be triggered before the 1.0 mgd is actually needed.</u>

5-I: As indicated in the Draft EIR, pages 3.11-27 through 3.11-30, the City of Milpitas has several options available to meet their wastewater treatment requirements for the Transit Area Specific Plan and other cumulative growth and development within the

City. These options include a) acquisition of additional treatment capacity from the cities of San Jose and Santa Clara; b) acquisition of additional treatment capacity from the Cupertino Sanitary District, c) incremental expansion of the WPCP; and/or d) participation in future WPCP expansion plans. The City is exploring each of these options to mitigate sewer treatment capacity issues, and is also re-evaluating allocations reserved for large water users. The City also recognizes that proposed developments may be delayed or reduced in scope until such time as these cumulative issues are resolved. The City believes that Policy 6.10 as written provides assurance that adequate capacity will be procured, either through acquisition of excess capacity or through plant expansion, and that no changes to this policy are required.

5-J: Comment noted. Page 3.11-5 of the Draft EIR is hereby revised as follows:

"*Wastewater Disposal*

The WPCP discharges treated water to Artesian Slough, a tributary to Coyote Creek and the South San Francisco Bay. The WPCP must meet stringent regulatory disposal requirements, including heavy metal limits and maximum dry weather disposal levels intended to protect sensitive salt marshes. The current permit limit for the WPCP is 167 mgd ADWF, although the WPCP has in the past, and may in the future, be subject to a reduction in this limit if flows are found to impact endangered species. ~~In the dry weather period of May through October,~~. T~~t~~he WPCP ~~is required by the~~ San Francisco Regional Water Quality Control Board, which regulates the permit for the WPCP, has used a flow of 120 mdg ADWF as a "trigger" for requiring the WPCP to undertake actions to both reduce flow and investigate the impacts of flow on endangered species habitat. ~~to limit discharge flows from the WPCP to 120 mgd ADWF (average dry weather flows), or to flows that would not further impact rare and endangered species habitat.~~ The WPCP has had programs in place since 1991 to reduce and maintain flows below 120 mgd, and has maintained compliance with this requirement. The average dry weather effluent flow in the last year for which records are available is approximately 100 mgd. Long term plans to remain in compliance with the 120-mgd requirement include on-going water conservation and water recycling."

5-K: Comment noted. Page 3.11-31 of the Draft EIR is hereby revised as follows:

"***Cumulative Impact***

The WPCP currently receives an average annual influent of 125 mgd, with a lower amount of influent during the summer dry months and a higher amount during the wet-weather winter months. The average dry weather effluent disposal in the last year for which records are available is approximately 100 mgd. The WPCP diverts a portion of the treated water for further treatment and reuse as a recycled water stream. The difference between the influent and effluent flow rates results primarily from recycled water use. In order to remain in compliance with the RWQCB requirements, on-going and increased water conservation and water recycling is

required to off-set cumulative increases in influent flows, including those attributable to the Transit Area. The amount of recycled water demand within the Transit Area is not sufficient to fully offset the increased sewer flows and subsequent discharge to the Bay." The increased flow from cumulative growth in Milpitas, along with increased flow from other regional growth, may cause the WPCP to exceed the 120 mgd flow "trigger", requiring actions to both reduce flow and investigate the impacts of flow on endangered species habitat. Any cumulative impacts that result in exceeding the wastewater disposal trigger will likely need to be offset by recycled water use that does not return to the WPCP. A more robust use of recycled water could potentially result in the loss of sensitive habitat and construction-related impacts resulting from capacity increases in the recycled water system throughout the service area.

5-L: Comment noted. Page 3.11-32 of the Draft EIR is hereby revised as follows:

"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." If the cumulative flow trigger of 120 mgd of disposal at the WPCP is reached, the City of Milpitas will work with other jurisdictions to implement appropriate mitigations as described in the South Bay Action Plan. In addition, the City will work with other jurisdictions to establish consistent requirements to be applied in all jurisdictions regarding dual-plumbing, recycled water irrigation use, or other measures that reduce flow to the Bay.

The City feels that the proposed new policy revisions described in Response to Comment 5-K adequately addresses the commitment to increase recycled water use.

5-M: This comment makes reference to a separate agreement between the City of San Jose and the City of Milpitas and mischaracterizes the reference to the Montague Expressway/Great Mall Parkway intersection. The following policies are revised as follows:

Policy 3.12: Preserve adequate right-of-way along Capitol Avenue, Great Mall Parkway, and Montague Expressway to accommodate ~~funded~~ future regional roadway improvements~~ including an urban interchange at Montague Expressway/Great Mall Parkway and the future widening of Montague Expressway to eight lanes as required with development of the Transit Area Plan~~.

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 west of Trade Zone Boulevard, the ~~and~~ Calaveras Boulevard (SR 237)

Overpass Widening project, and Capitol Avenue improvements within the City of San Jose. ~~as well as other local and regional improvements. Individual developments within the Transit Area are required to prepare a traffic impact analysis to identify their fair share contribution toward the impacts and mitigation measures covered by the fee.~~ [note: the traffic impact fee will be a fee per unit or sq.ft. so no additional analysis should be need if a project is consistent with the specific plan.]

Policy 6.33: The City shall establish and assess a transportation impact fee program~~,~~ ~~known as the Transit Area Plan Traffic Fee,~~ 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 6.37: ~~The new traffic impact fee program should include fair-share payments towards the following improvement: Implement~~ T~~t~~he planned grade separation of Montague Expressway at McCarthy Boulevard planned as part of the North San Jose Development ~~as identified in the Montague Expressway Improvement Project Final Technical Report: Traffic Study and Improvement Alternative Analysis, March 1999.~~ would eliminate this intersection and provide acceptable operations with development of the Transit Area Plan

Policy 6.39: ~~The new traffic impact fee program should include fair-share payments towards the following improvement:~~ Widen~~ing~~ Zanker Road at its intersection with Montague Expressway to provide second northbound and southbound left-turn lanes is planned as part of the North San Jose Development.

5-N: As stated in Specific Plan Policies 6.32 and 6.33 (amended above) the City will establish a traffic impact fee program for the specific plan. This program will establish fair-share funding towards the regional and local traffic improvements identified in the plan. The City will establish this fee prior to the issuance of building permits for individual projects within the specific plan area.

5-O: The transportation impact fee program described in Response 5-M will include a list of improvements and a preliminary timeline of implementation.

5-P: The plan meets all Congestion (CMP) Management Plan Requirements and none of the traffic impacts require the preparation of a deficiency plan. The plan is proposing many pedestrian improvements, as demonstrated in Policies 3.21 through 3,34, to maximize the use of the existing and planned transit facilities.

5-Q: This comment correctly characterized a separate agreement between San Jose and Milpitas and Policy 6.32 has been amended (accordingly see response to 5-M).

5-R: See Response to Comment 5-M.

5-S: Comment noted. We agree that this type of proposed development does not always yield 50% recycling. Page 3.11-35 of the Draft EIR will be revised as follows:

"The additional waste generated in the Transit Area due to the change in land use will be approximately 7,400 pounds per day over the existing build-out land use designations. ~~Given that AB 939 calls for at least 50 percent of waste to be recycled or composted, the additional waste sent to landfill may be no more than 3,700 pounds per year.~~ The City expects that approximately one-third to one-half of this waste stream will be diverted from landfill disposal because the City's has incorporated many successful recycling programs and services into its citywide franchise solid waste and recycling contract to meet the needs of the City's Source Reduction and Recycling Plan. While it is anticipated that the Newby landfill will close in 2023 and the destination of project generated solid waste after that date is unclear at this time, assurances were provided by BFI that this additional amount will not cause an appreciable change to the filling rate of the Landfill…"

The City's Source Reduction and Recycling (SRR) Plan and its recycling policies and practices, as described in the Midtown Specific Plan, are designed to help the City meet and exceed the 50% diversion goal of AB 939. Midtown Specific Plan Policy 6.17 and 6.18, and Specific Plan Policy 6.23 on page 3.11-36 define these solid waste reduction and recycling requirements.

The City does comply with AB 2176 (Public Resources Code Section 42911) which prohibits all local agencies from issuing building permits for projects lacking sufficient area for recycling. At the preliminary project review phase, the City's practice is to have the franchise solid waste hauler review project plans and work with the City staff to estimate solid waste and recycling generation. This allows staff to verify that sufficient area for recycling are provided during project design, incorporated into building plans, and constructed to plan.

In the Draft EIR page 3.11-36 following the 1st Paragraph the following will be added from the City's General Plan to emphasize the importance of recycling:

"Goals adopted as part of the City's Source Reduction and Recycling Element include:

- Meet or exceed state-mandated solid waste disposition rates by maximizing source reduction, recycling and composting opportunities for Milpitas residents and businesses;
- Motivate the residential and business sectors to reduce and recycle solid waste;
- Ensure that all land development projects provide adequate space and design for waste reduction and management activities and equipment;
- Encourage the development and expansion of local and regional markets for diverted materials;

- Provide solid waste management services that minimize environmental impacts, ensure public health and safety and facilitate waste reduction efforts; and

- Increase residents' awareness of proper disposal and reduction methods for wastes."

5-T: Removing the second sentence of the second paragraph on page 3.11-35 as described above also removes the error of "3,700 *per year.*"

5-U: Comment noted; the Draft EIR page 3.11-36 will be revised as follows "…from Milpitas will be disposed of at ~~either~~ the Kirby Canyon Landfill in San Jose ~~or the Durham Road Landfill in Fremont~~."

Also on this same page, the EIR includes this note: "[Specific Plan] 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."

COMMENT LETTER 6

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December 21, 2007

CITY OF MILPITAS
INFORMATION DESK

DEC 2 1 2007

RECEIVED

By U.S. Mail and Email: vbejines@ci.milpitas.ca.gov

Scott Gregory
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: Draft Environmental Impact Report for Milpitas Transit Area Specific Plan, Sch # 2006032091

Dear Mr. Gregory:

This letter provides comments on behalf of Berryessa Union School District ("School District" or "District") on the Draft Environmental Impact Report ("DEIR") prepared for the Milpitas Transit Area Specific Plan, Sch # 2006032091 ("Project").

According to the "Notice of Availability of the Draft Environmental Impact Report (DEIR) for Milpitas Transit Area Specific Plan, Sch # 2006032091" ("NOA"), the Project is located on a 437-acre area centered on a roughly half-mile radius around the proposed Milpitas BART station, near the intersection of Montague Expressway and Capital Avenue in the City of Milpitas.

The Project is to approve the Milpitas Transit Area Specific Plan, a planning document intended to guide the redevelopment of older industrial lands to create a high intensity transit-oriented district. The Project is expected to result in construction of approximately 7,100 new residential units supporting approximately 18,000 new residents, approximately 1,000,000 square feet of new office space, 285,000 square feet of retail space, and 175,000 square feet of hotels. The DEIR estimates that upon completion, the Project will contain approximately 20% of the City of Milpitas' total population. (DEIR 3.1-3.)

The DEIR fails to adequately consider the considerable impact of the Project on the District, as further discussed below. In order to better enable the drafters of environmental documents (such as this DEIR) to adequately analyze the impacts of development on the District, the District requests that in the future we be consulted and involved in discussions as is required by law prior to the 6-A

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drafting of documents or presenting them for approval to either the Planning Commission or City Council.

General Failure to Address Impacts on Schools

Although the DEIR provides in-depth analysis of certain impacts of the Project, including a 92-page evaluation of transportation impacts, a 27-page analysis of impacts on air quality and a 28-page assessment of noise impacts, it devotes only about 1 page to analyzing the impact of this significant development on the Berryessa Union School District. This page neglects to analyze many different impacts on the District (and on the other school districts affected by the Project), and concludes, incorrectly, that no measures are needed to mitigate the impact of the Project on the District.

Although the DEIR provides in-depth analysis of certain impacts of the Project, including a 92-page evaluation of transportation impacts, a 27-page analysis of impacts on air quality and a 28-page assessment of noise impacts, it devotes only about 1 page to analyzing the impact of this significant development on the Berryessa Union School District. This page neglects to analyze many different impacts on the District (and on the other school districts affected by the Project), and concludes, incorrectly, that no measures are needed to mitigate the impact of the Project on the District. 6-A

It is the District's position that the DEIR is inadequate regarding schools and actual impacts on schools. The preparer of an EIR must make a genuine effort to obtain and disseminate information necessary to the understanding of impacts of project implementation. (See CEQA Guidelines § 15151; Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215, 1236.) Additionally, an EIR must set forth a reasonable, detailed and accurate description of existing environmental settings, including both natural and man-made conditions, such as public facilities. (See CEQA Guideline §§ 15125(c) & 15360.) It appears that preparers of the DEIR did not contact the District to obtain information vital to understanding the Project's impact on the District. Further, the information that was used in the DEIR to analyze the Project impacts, provided by "Enrolling Projection Consultants," is of questionable value and accuracy.

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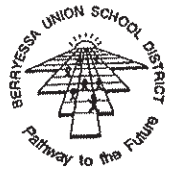

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The DEIR does not meet its informational purpose. The DEIR does not provide an analysis of impacts including but not limited to traffic, noise, social, and fiscal impacts resulting from the physical changes that the Project will cause (e.g. the School District's ability to obtain developer fees, whether these fees will result in a surplus or deficit of funding for the School District, and what the effects will be on staffing and curriculum). For instance, the DEIR provides no information regarding the School District's fiscal condition, funding sources available to the School District to maintain existing and to build new facilities, school overcrowding or future population projections. The DEIR concludes that the District has "adequate capacity" for students generated by the Project, and therefore provides no proposed mitigation measures whatsoever. (DEIR 3.9-10.) This is not an accurate conclusion, and it results in the DEIR providing no analysis of appropriate measures to mitigate the significant impact that the Project will have on the District. 6-B

Without knowing the extent and nature of the impact on school, readers of the DEIR and agencies, including the School District, are unable adequately to assess the actual impact. Similarly, without knowing more about the specific impacts, it is impossible to formulate meaningful mitigation measures.

Specific Failure of DEIR to Examine All Potential Impacts Related to School Facilities

The DEIR failed to provide a thorough examination of all potential impacts related to school facilities, as set forth below.

1. DEIR Does Not Provide an Adequate Description of Existing Facilities or of Student Generation Rates

The DEIR does not provide an adequate description of the existing conditions within the School District, on a school-by-school basis, including size, location and capacity. The DEIR provides the District's 2006-2007 enrollment data, but provides no information whatsoever regarding the capacity of the District's schools. (DEIR 3.9-3) Instead, it refers to the "EIR for the Midtown Milpitas Specific Plan, which was adopted in 2002," stating that the Midtown EIR and the Project EIR overlap the same property, that the Midtown EIR "concluded that the Berryessa Union District had adequate capacity to absorb the 6-C

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additional students" generated by the Midtown project, and that the Project would generate only 47 students more than the Midtown project. (DEIR 3.9-10) Therefore, according to the DEIR, the District has the capacity to accommodate all students generated by the Project. This is a false assumption for several reasons. First, even if the DEIR were correct in assuming that the Midtown EIR demonstrated that the District could accommodate 330 additional students (the District disputes this assertion), this only provides information regarding the District's capacity in 2002, almost six years ago. It says nothing about the District's current capacity. The three schools that the Project children "would likely attend," according to the DEIR, Brooktree Elementary, Northwood Elementary, and Morrill Middle School, are currently either at, or nearly at, capacity. (Id. at 3.9-3.) Brooktree Elementary is nearly full. Northwood Elementary is at capacity, and has no room to expand by adding new facilities. Morrill Middle School is close to capacity. These schools cannot accommodate the estimated 330 new children (the District also disputes this estimate, as further discussed below) generated by the Project. 6-D

The DEIR also states that the District could accommodate the 330 students generated by the Project by distributing the students across the District's 10 elementary schools and 3 middle schools, "through minor shifts in enrollment boundaries." (DEIR 3.9-10) This is not only false in that the entire District is currently nearly at capacity, but such a modification would alter traffic patterns, requiring a traffic study of these impacts of the Project.

The DEIR states that the District "owns an unused school building in San Jose" close to the Project that would be "the probable site for new school facilities." (DEIR 3.9-10.) The District presumes that the DEIR is referencing the Birchwood site. Birchwood is currently subject to a lease that terminates in 2013, so it is not available for at least the next six years. Further, it is a source of significant income to the District, and re-opening it as a school site would cause considerable social and fiscal impacts to the District. Finally, Birchwood is nearly two miles further from the Project site than Northwood, and Project students would have to cross a freeway in order to reach the site. The DIER fails to consider traffic, safety and other effects of shifting students to Birchwood. 6-E

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The DEIR uses student generation ratios ("SRGs") of 0.046 (grades K-5) and 0.016 (grades 6-8) for "market rate housing," and 0.300 (grades K-5) and 0.159 (grades 6-8) for "below market-rate" housing. (DEIR 3.9-7.) These SRGs were calculated by "Enrolling Projection Consultants" based on data from 1997 through early 2003. (Id. at 3.9-6.) The information used to calculate the SRGs is outdated, and the District doubts its accuracy. The District's 2006 Fee Justification Study shows an SRG of 0.27 per single family residence, which presumably corresponds to the SRG for "market rate" housing (80% of the total units in the Project). Furthermore, the District is unaware of any data differentiating the generation rate of market and below-market rate homes. Using the current 0.27 SRG, we estimate that the Project will generate approximately 630 students. This is a sufficient number to require building a new school to accommodate the Project. 6-F

The DEIR must analyze the location, size, capacity and structure of existing School District facilities as well as providing reasoned data and analysis regarding student generation rates before reaching an educated conclusion regarding the existence and significance of any impacts on the School District from the Project. It does not do so. 6-G

2. DEIR Does Not Adequately Describe Enrollment Trends

The DEIR does not describe the School District's past and present enrollment trends at all. As a result, the DEIR cannot adequately evaluate the projected future impact the students from the Project will have on the schools over time. As noted above, the affected schools are already either at or near capacity. 6-H

3. DEIR Fails to Identify the Cost of Providing Capital Facilities to Accommodated Students on a Per-Pupil Basis

The DEIR does not identify the cost of providing capital facilities to accommodate students on a per-student basis. Specifically, it does not address the situation of whether the additional students from the Project are going to require additional classrooms which would not otherwise be required absent the Project, resulting in a higher "per-pupil cost." For instance, if a school had three third grade classes, all at capacity, and the Project generated four third graders, the school could have to open an entirely new class to 6-I

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accommodate four students. The cost associated with the capital facilities to accommodate those four students should be assessed on a per-pupil basis because, without the Project, there would be no need for the additional facilities.

4. DEIR Does Not Assess the School District's Present and Projected Capital Facility, Operation and Personnel Costs.

The DEIR does not assess the School District's present and projected capital facility, operations and personnel costs. Without this information, the City cannot make an adequate assessment of whether or not the school services will actually be impacted or can be provided.

5. DEIR Does Not Identify Any Specific Expected Fiscal Impacts on the School District 6-J

The DEIR does not identify any specific expected fiscal impacts on the School District, including an assessment of projected cost of land acquisition, school construction, and other facilities needs. For instance, the potential cost to the School District of acquiring property for the construction of new school facilities within the Project area may be prohibitive. In fact, the School District expects that developer fees will be inadequate to offset the potential fiscal impacts of the Project.

6. DEIR Does Not Assess Cumulative Impacts

The DEIR does not assess the cumulative impacts on schools resulting from additional development already approved or pending. The City must analyze the cumulative impacts of a proposed project. Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (Guidelines § 15355.) The individual effects may be changes resulting from a single project or a number of separate projects. (Id. at 15355(a).) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probably future projects. (Id. at 15355(b).) 6-K

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In this case, the DEIR does not address the cumulative impact of this Project on the School District.

Specific Failure of DEIR to Analyze Impacts to Schools Other than Facilities

In addition to the impacts on school facilities, CEQA requires an evaluation of Project impacts on all school related services. The DEIR focuses only on the facilities requirements. Specifically, the DEIR should address the following issues related to public school services.

1. DEIR Does Not Provide a Description of Projected Staffing Requirements

The DEIR does not provide a description of projected teacher/staffing requirements based on anticipated population growth and existing State and School District policies. This information is critical for the City to assess whether the Project impacts staffing requirements by necessitating additional teachers. Like the capital facilities assessment described in the preceding section, this assessment must be completed on a per-pupil basis.

6-L

2. DEIR Does Not Analyze Whether the Project Has Any Impact on Curriculum

The DEIR fails to analyze whether there is any impact on curriculum as a result of anticipated population growth. Specifically, the DEIR should have addressed whether additional programs would now be required (including but not limited to special education and specific general education courses) as a result of the influx of students from the Project.

3. DEIR Does Not Assess Foreseeable Impacts on Traffic

To the extent that students in the project would have to be transported to other areas for school, it is foreseeable that traffic and pedestrian safety impacts would arise, especially as the District does not currently provide transportation for its students. The DEIR fails to take into account this foreseeable impact.

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Marc B. Liebman, Ph.D.
Superintendent

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DEIR's Inadequacy Regarding Mitigation Measures

Based on the deficiencies of the DEIR described above, along with the fact that the DEIR does not identify the expected shortfall or excess between estimated development fees to be generated by the Project and the cost for provision of capital school facilities, it is the School District's position that the DEIR has failed to identify the impact on schools as an environmental impact of the Project is inadequate. Under the Government Code, the City has a duty to coordinate with the School District to provide effective school site planning. (Gov. Code §§ 65352 & 65352.2.) The City should consider alternative mitigation measures, such as those proposed below, to fulfill that duty. 6-M

State Law Requires Mitigation

The Project cannot be approved unless the City either imposes mitigation measures adequate to mitigate identified impacts to a level of less-than-significant or the City adopts an applicable statement of overriding consideration. (Public Resources Code § 21002; CEQA Guidelines §§ 15021 (a) (2), 15091 (a) & 15096 (g); see Sierra Club v. Gilroy City Council (1990) 222 Cal.App. 3d 30.)

The Legislature Intended Coordinated Planning for School Sites

Government Code sections 65352 and 65352.2 (all subsequent code sections refer to the Government Code unless otherwise specified) require local cities and counties to coordinate planning of school facilities with school districts. The Legislature confirmed that the parties are meant to coordinate "[o]ptions for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations." 6-N

The Legislature recognized that new planned development should take into consideration and even "reserve" where schools would be located to serve the development because schools are as integral a part of planning for new development as is any other public service, such as fire, police, water and sewer. As it relates to this case, the intent behind sections 65350, et seq.,

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supports the District's position that the City must analyze whether the current size of District schools is adequate to accommodate both its existing population and the new development (which it is not), particularly in light of the cumulative factors addressed in this letter. The City can help the District provide adequate facilities resulting from the impact of the Project, which are not addressed by developer fees, by requiring alternative mitigation measures to assure that there is an adequate site to accommodate school facilities. 6-N

Alternative Mitigation Measures

Land Dedication

One possible mitigation measure would be for the City to consider adopting findings requiring any developer building residential units on the Project site to dedicate land and/or funding pursuant to Government Code sections 65970 et seq., which permit the City to require a developer to dedicate land to a School District. Section 65974 specifically states that "for the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, . . . a city, county, or city and county may, by ordinance, require the dedication of land, or the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development."

A land dedication requirement would be good public planning benefiting all residents of the community, including future residents of the Project. As development occurs, land suitable for new school sites grows scarcer. Under Government Code sections 65352 and 65352.2, the City has a duty to help plan for adequate services to their residents by ensuring that future sites are set aside for schools. Failure to do so leads to inadequate services, future controversies, and the potential need for a school district to exercise its rights under eminent domain to displace existing residents. 6-O

Finally, land dedication is a permissible mitigation measure under Government Code sections 65995, et seq., which are cited by the DEIR. Section 65995, subdivision (a), specifically states that "[e]xcept for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge,

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dedication or other requirement for the construction or reconstruction of school facilities may not be levied . . . ." Section 65995 expressly excludes Chapter 4.7, inclusive of section 65974, from this limitation, thus permitting a city to address conditions of overcrowding in school facilities or inadequately sized school sites by requiring, for example, the dedication of land. 6-O

Further, the City is authorized by section 66478 of the Subdivision Map Act to require dedication of elementary school sites when needed to address development. Nothing in Government Code sections 65995, et seq., precludes such a requirement.

Phasing

Another method by which the City can work cooperatively with the School District within all legal constraints to ensure adequate school facilities with regard to new development is by requiring development to be phased and not permitted prior to availability of school facilities. Timing development so as to balance the availability of school facilities with new development can significantly aid the School District in its attempt to provide for the additional students generated by new development. 6-P

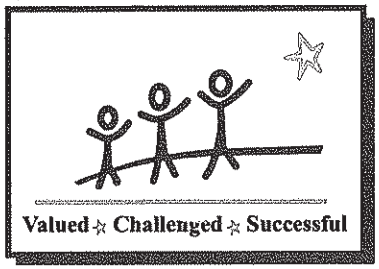
Conclusion

It is the District's position that the DEIR does not adequately analyze the Project's potential impacts to schools. The DEIR must address with greater specificity the impacts on school facilities and services. The District encourages the City to work cooperatively with the District and consider alternative measures, such as phasing or land dedication, which can adequately mitigate the impacts on the District's schools.

Sincerely,

Marc B. Liebman, Ph.D.
Superintendent

BOARD OF TRUSTEES
Linda Chen David Cohen Francine Davis Rudy Nasol



Milpitas Unified School District

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Karl N. Black, Ed.D.
Superintendent
Tel: (408) 945-2310 Fax: (408) 945-2421
E-mail: kblack@musd.org

December 20, 2007

Steve Gregory
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

RE: Response to Draft EIR for Milpitas Transit Area Specific Plan

Dear Mr. Gregory,

The Milpitas Unified School District ("District") has reviewed the City of Milpitas's ("City") Draft Environmental Impact Report ("DEIR") for the Milpitas Transit Area Specific Plan ("Plan") and has the following comments.

Key points:

1. The District lacks resources to fully mitigate the impact of the Plan on school facilities. In order to mitigate the impacts of the City's Plan, as proposed, on District schools, the District will be required to construct a new Transit Plan Area elementary school, make major facility improvements to the District's existing middle and high schools, and result in the loss of over $500,000 annual lease revenues. Although the City has concluded that the District will mitigate the impacts on school facilities caused by the Plan, the District does not have the financial resources to fully cover the cost of this mitigation. 7-A

2. The District is not responsible for mitigating the impact of the Plan on City-required parklands. The Plan discusses an alternative consisting of locating a new school on a site indicated in the Plan which is also designated as parkland to fulfill the City's minimum parkland requirement. The DEIR states that if a school is built in this area, the loss of parkland must be addressed in the school project EIR, the District will mitigate the impacts on parklands as part of its project to build the new school. It is the City's responsibility, rather than the District's, to provide the Plan's minimum required acreage of open space and parks. Should the school be built on this site, provision of any necessary additional parkland should be a mitigation measure of the City's current DEIR, so that the public can be assured that adequate parkland will be provided. 7-B

General Response:

The stated vision of the Transit Area Specific Plan is to "Create attractive high density urban neighborhoods....". Indeed, the Plan proposes converting a primarily non-residential area into a high density residential neighborhood. The District concurs with the need for a new elementary school in this new residential neighborhood. The District's policy is to locate schools, in particular elementary schools, within the residential neighborhoods that they will serve. Because this area was formerly not residential, the District does not have a school in this neighborhood. Nor does the District own surplus property in the vicinity that would be suitable for a school site.

The Plan also makes an interesting suggestion for development of a shared use facility on a certain parcel which the Plan identifies as parkland and potential school site. The District concurs that this site may be appropriate for a school. The District is also amenable to consideration of shared District/City fields, parking, and some spaces of the school facility, such as the multi-purpose room. Further study and discussion is needed to determine the reasonable extent of shared use of facilities and the financial participation of both parties in development of the facilities. 7-C

The enrollment growth generated by the housing allowed under the proposed Plan will also impact the District's middle and high school facilities. The District has conducted a facilities feasibility study to determine how it might best meet the projected student enrollment increase, given the District's existing facilities and considering the available capacity of these facilities. The preferred strategy consists of the District taking following actions:

- Build a new elementary school in the Transit Plan Area;
- Expand nearby Zanker and Spangler elementary schools;
- Convert and expand a middle school site to serve as a south area high school;
- Convert and expand a District-owned leased out site to serve as a middle school and
- Absorb loss of $500,000 annual operating revenues from facility leases.

The projected cost of undertaking these tasks, based upon an estimated schedule, is approximately $146 million, <u>not</u> including the cost of land for the new school or the increased operating costs for serving additional students.

District Resources - Potential Funding for Mitigation of the Plan's Impact

The DEIR states that the impact on schools is significant and unavoidable. However, the DEIR goes on to say that the impact can be mitigated by the school district. The Plan fails to recognize or even consider whether the District has the resources to fully mitigate the impact of the Plan. In short, the District does not 7-D

have such resources and will require assistance from the City and future developers of the newly proposed residential areas.

It should also be noted that constructing a school facility in the Transit Plan neighborhood will be more costly than a typical school facility. Key extraordinary costs include:

- High cost/value of land due to rezone to higher use; 7-D
- High potential for need for toxics clean-up;
- Multiple story structure required for small site;
- More costly structural system due to seismic zone, and potential for soil expansion and liquefaction;
- Special configuration and construction due to flood zone and
- Possible parking structure required for small site

Given the tremendous cost of mitigating the impact of the Plan on District schools, as set forth above, the District must reflect on its potential sources for funding for capital outlay projects which include developer fees, general obligation bonds and State funding.

1. Developer Fees.

Although developer fees are intended to pay some portion of the cost for facility improvements needed to accommodate new students generated by the new developments, these fees are rarely, if ever, adequate to fund even half the cost of the needed improvements. Due to stringent statutory requirements, the District is currently only eligible to collect Level 1 Developer fees at a rate of residential $2.63/s.f. and commercial $0.42/s.f. State law allows collection of Level 2 Developer Fees which are calculated to fund a larger portion of the cost of new facilities (closer to 50%) if the District can meet two or four established criteria. However, the District is currently ineligible to collect Level 2 Fees. Even if the District were eligible to collect Level 2 Fees, the Fees would still not cover even half the cost of the new facilities needed to accommodate increased student enrollment. 7-E

2. State School Facility Bond Funds.

As enrollment exceeds District capacity, the District will generate eligibility for State funding for new construction. This funding covers only a portion of the cost of the new construction (currently averaging approximately 40%), and requires the District to provide matching funds which actually equal closer to 60% or more of the total cost of construction. Moreover, as the State generates these funds by Bond Measures, depending upon election results, the State may or may not have the necessary funding to distribute at the time of any future application. 7-F

3. District General Obligation Bond.

While the District could seek to issue a local GO Bond, this requires a public vote district-wide, so facility improvements at other school campuses would likely need to be added to generate enough public support to pass a bond. It is extremely uncertain whether the District could obtain approval from the voters for bond funds which would be sufficient to fund projects necessitated by Plan-generated new growth. Moreover, a parcel tax measure in 2005 was defeated. As such, it is even more uncertain whether voters would support any GO Bond measure in any amount. In the event that anticipated new growth requires the District to pursue a GO Bond, full support from the City would be needed. 7-F

In sum, the District cannot rely on any of the above funding sources to cover the cost of mitigating the impacts of the proposed Plan. Accordingly, the District requests that the City further analyze the impacts of the Plan on school facilities and identify further mitigation measures to address these impacts.

Summary and Request for Additional Mitigation Measures

Mitigation of the Transit Area Specific Plan's impact will require a new Transit Area elementary school, major facility improvements at the District's existing middle and high schools, and loss of $500,000 annual lease revenues. The District does not have the resources to fully cover the cost of this mitigation.

Based on the foregoing discussion, the District requests that the City undertake the following additional mitigation measures:

- Identify the 7 acre park site as a school site and assume that a minimum of four acres of the site would be needed for school buildings and the remainder of the site could be developed as shared use fields and parking (which would still count towards the Plan's open space requirement); 7-G
- Add an alternative City mitigation measure that addresses the scenario of the school actually being built on the park site pursuant to which the City would be required to mitigate any loss of required park land.
- Acquire and convey a school site to the District;
- Make acquisition of the school site the highest priority for parkland acquisition (due to long lead time to gain State school site approval, design and to build the school), to ensure that adequate school services are available for residents when needed;
- Provide abutting public street, curb, gutter, sidewalk, and utility distribution infrastructure, which would be needed to develop the park in any case;
- Given that there may be a limit to potable water and sewer allocation, it is important that any necessary allocation will be available to service the schools. Therefore, at the same time that the first new housing unit generating students is approved, the City should award and/or reserve potable water and sewer allocation for the new Transit Area school, the

increased enrollment at the new middle school site, and the increased enrollment at the new high school site;

- Enter into a joint use agreement for the City park adjacent to the District's Murphy site (needed for middle school use of this site);
- Include in the Plan and provide a bike path along Houret Drive and a bike/pedestrian bridge across Penetencia Creek to the proposed school site and park;
- Participate financially to the construction and use of any shared use facilities and
- Provide financial assistance to the District to make up any shortfall once the District has pursued other available funding sources available.

7-G

It should be noted that Milpitas Unified schools enjoy a reputation for providing an excellent education. This will be an attractive attribute for prospective homebuyers of the new housing units. The District believes it is in the best interests of all parties, including the District, the City, housing developers and most importantly school-aged children, to ensure that the basic facility needs of the school system are met in order to ensure continued provision of the highest level of education, as well as successful development of a new high density residential neighborhood. District staff looks forward to working with the City going forward.

Sincerely,

Karl N. Black Ed.D.
Superintendent

6. Response to Berryessa Union School District and Milpitas Unified School District

6-A though 6-M: Response to BUSD and MUSD:

Many of the comments from both the Berryessa and Milpitas Unified School Districts relate to school finances. The purpose of a CEQA document is to disclose impacts to the physical environment. However, these comments do address a matter of state-wide concern; i.e., the impact of new development on local School District facilities. While the City shares many of the concerns raised by both School Districts in this regard, we disagree with the conclusions and point out various inaccuracies contained in the comments. Comment 6-A misquotes the DEIR by claiming that "no measures are needed to mitigate the impact of the Project or the District." This misstates the DEIR which instead concludes that "No additional mitigation measures are feasible." The difference is fundamental to clear understanding of the CEQA process. It relates to the question of what the City can or cannot do under State law. What State law does not allow the City to do is "per se" unfeasible. In response to this misunderstanding the following changes will be made to the DEIR and Specific Plan. Page 3.9-7 of the Draft EIR is hereby revised as follows:

Schools

"The number of new students generated by buildout of the proposed Plan will require at least one new elementary school and expansions of existing facilities. California Government Code Sections 65995-65998, sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property." [§65996(a)]. The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. [§65996(b)]. School districts are responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would offset project-related increases in student enrollment. ~~Since the provision of public school facilities is outside the control of the City, this is a significant and unavoidable impact, although one that can be mitigated by action from the Milpitas Unified School District."~~

Page 3.9-8 of the Draft EIR is hereby revised as follows:

"Impact 3.9-1: New development under the proposed Milpitas Transit Area Specific Plan will increase the demand for school facilities. (*Less than Significant ~~and Unavoidable~~*)"

A new policy will also be added to the Specific Plan and the Draft EIR. Page 3.9-12 of the Draft EIR is hereby revised as follows:

New Specific Plan Policy: The City will ensure that all school impacts fees are paid from individual projects prior to the issuance of any building permits.

"Mitigation Measures

~~No additional mitigation measures are feasible.~~ Government Code Section 65995 states that the payment of school impacts is sufficient to offset a project's effect on school facilities."

By enacting Government Code Section 65995 the State Legislature has limited the amount of school impact fees a developer can be charged to those amounts authorized under the statute.

Comment 6-D raises issues regarding potential traffic impacts resulting from shifts in enrollment boundaries. The significance of this impact is very speculative and can not be analyzed at this time. It should be d that each School District would be responsible for analyzing the environmental impacts of any operational adjustments and construction of new facilities that would be subject to CEQA.

Comment 6-F incorrectly states that a student generation rate of 0.27 per single family residence should be used. The project plans for the creation of multifamily units which generate substantially less students per household than single family residences. The student generation rates calculated by Enrolling Projection Consultants is an accurate estimate based on the type of housing envisioned by the plan. In the event the estimates are not completely accurate the mitigation measure, payment of all school impact fees, would remain the same.

Comment 6-O states that Section 65970, et.seq., provides an exception to this limitation and suggests that the City create a land dedication requirement to provide for future school sites. What this comment ignores is that fees or dedications imposed under Section 65970, et.seq., are predicated upon the School District Board making findings based on clear and convincing evidence that school over-crowding exits and no feasible means of mitigating that condition exist and then notifying the City of such facts and findings. To the City's knowledge, no such Notice has been sent by either school district. Consequently, Section 65970 et.seq. is not applicable and it is only in the realm of speculation in which the City might consider it in the DEIR. As the School District, not the City, controls the 65970 process, it is "infeasible" for the City to consider an exception to the 65995 school impact fee limitations. And, so it is with all other attempts to circumvent that statute.

This leads to another incorrect statement included in Comment 6-N: "The City can help the District provide adequate facilities resulting from the impact of the Project,

which are not addressed by developer fees, by requiring alternative mitigation measures to assure that there is an adequate site to accommodate school facilities."

This is exactly what the City is not empowered to do. Only school districts, through the mechanisms of Section 65970 et.seq discussed above, or by the mechanisms of ceq.66001 with regard to attainment of Level I impact fees or 65995.5 regarding attainment of Level II impact fees or through 65995.7 attainment of Level III impact fees, can additional mitigation be imposed. These matters are almost entirely within the hands of the Districts. As to the City, they remain in the realm of "infeasible".

Having said that, the City does acknowledge its duty to meet and communicate with the School Districts in school siting and other issues and to that end has met with or attempted to meet with affected School Districts regarding the TASP DEIR. In fact, the DEIR references Specific Plan policies which call for further coordination between the City and the School Districts to define actions that the City can take to assist or support the Districts in their efforts to accommodate new students. Specific Plan Policies 6.43 and 6.45 further support cooperation with the Milpitas Unified School District to identify and evaluate potential sites for a new elementary school within or close proximity to the Transit Area. In the event a school is located within one of the parks Policy 6.44 supports the joint use of the school facilities allowing public use of the playfields and buildings. As stated in Comment 7-B, it is the City's responsibility to plan for the minimum required public open space within the project which has been done. However, the construction of a new school is very speculative and identifying an impact to the amount of parkland not knowing exactly where a new school would be built would not be appropriate.

COMMENT LETTER 8

Santa Clara Valley Water District

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AN EQUAL OPPORTUNITY EMPLOYER

File: 26436
Various

December 21, 2007

Mr. Scott Gregory
c/o Veronica Bejines
Milpitas Planning Division
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (DEIR) for Milpitas Transit Area Specific Plan, SCH# 2006032091

Dear Mr. Gregory:

The Santa Clara Valley Water District (District) has reviewed the subject document, received on November 7, 2007.

The District has a number of concerns regarding the projects reliance on the City of Milpitas Storm Drain Master Plan, July 2001. For further details, please see the District's letter dated October 19, 2007 (enclosed). We continue to have concerns with the use and reliance on this Storm Drain Master Plan that does not appear to have been adopted by the City, nor been subject to review for impacts under CEQA. 8-A

In accordance with District Ordinance 06-1, any plans for construction over the District's fee or easement land rights should be sent to us for review and issuance of a permit.

Proposed projects within the study area should be consistent with the recommendations developed by the Water Resources Protection Collaborative in the "Guidelines and Standards for Land Use Near Streams (G&S)."

The District's Milpitas Pipeline, a 42-inch diameter treated water line, is located within District fee and/or easement at the north end of the study area and adjacent and parallel to the Western Pacific Railroad continuing south onto Capital Avenue at the southern end of the study area. This pipeline alignment should be shown in future plans.

Comments on the Biological Resources Section 3.8 are as follows:

1.) Page 3.8-1: Physical Setting: this section discusses the ruderal/disturbed plant communities, but it should also discuss the areas with landscaping trees along McCandless Drive as described on page 3.8-8 as well as the areas of riparian habitat adjacent to the creeks as described on page 3.8-10. 8-B

2.) Page 3.8-2: Creeks/Drainages: Sentence #4 should be re-worded to say "Both creeks have been altered from their historical state with many segments being directed underground and/or re-routed for flood control purposes." This section should also mention that wetland vegetation is present within these channels and provides habitat for fish and wildlife. 8-C

3.) Page 3.8-4: Local Policies: This section should list that a permit is necessary from the District if this project will impact and/or require access through any District property or easement. In addition, any revegetation adjacent to the streams should be consistent with the G&S. 8-D

4.) Page 3.8-7: Specific Plan Policies that Reduce the Impact (burrowing owls): Since burrowing owls have been found nearby and suitable habitat is present within the project area, California Department of Fish and Game survey protocols should be followed. This protocol can be found at the following website: http://www.dfg.ca.gov/wildlife/species/docs/burowlmit.pdf
The District recommends avoidance (e.g.- establishing buffers around active burrows) rather than relocation of burrowing owls. If relocation of owls is deemed necessary, this would appear to be a significant impact, therefore, mitigation measures would be warranted (e.g.- artificial burrow establishment nearby, monitoring of burrow use and maintenance as needed of the new burrows). 8-E

5.) Page 3.8-9: Impact 3.8-4: If the intent is that waterways will not be impacted by this project, then this section should state that filling of wetlands and other waters including the creeks and other drainages will not occur and therefore impacts will be less than significant. However, if this project does intend to impact adjacent waterways in some manner, then specific mitigating measures should be called out here. For example, if there is going to be an increase in the number of storm drains and run-off to the creeks, this impact should be noted here along with mitigating measures for flood control concerns and non-point source contamination. If impacts to the creeks are anticipated, the City of Milpitas(City) should coordinate with the District to discuss these impacts and obtain the proper authorization (i.e.- permit from the District) to proceed with the project. 8-F

6.) Page 3.8-10: Impact 3.8-5: If impacts will affect riparian areas that occur on District property, the City should discuss these impacts with the District and obtain the proper authorization (i.e.- permit from the District) to proceed with the project. 8-G

In addition, there should be no overbank drainage from the developed portions of the site into the creek. For developed portions of the site, storm water runoff should be collected and distributed to the city's storm drain system. If an outfall into the creek is needed, the outfall should be designed in accordance with District guide sheets. 8-H

A Hydromodification Management Plan (HMP) should be implemented in compliance with the Santa Clara Valley Urban Runoff Pollution Prevention Program's (SCVURPPP) National Pollutant Discharge Elimination System (NPDES) permit, including the October 2001 RWQCB Order 01-119 amending the Program's C.3 permit provisions regarding new development and redevelopment requirements. In particular, per C.3 provisions the project should be required to treat its stormwater and shall not increase stormwater runoff rates or durations when such increases will result in an increased potential for erosion or other adverse impacts to beneficial uses. 8-I

Post-construction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in 8-J

the "Start at the Source-Design Guidance Manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater Management Agencies Association. 8-J

For sites greater than one acre, the developer must file a Notice of Intent to comply with the State's NPDES General Permit for Storm Water Discharges Associated with Construction Activity with the State Water Resources Control Board. The developer must also prepare, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) and provide measures to minimize or eliminate pollutant discharges from construction activities. 8-K

To prevent pollutants from construction activity, including sediments, from reaching Berryessa Creek, Lower Penitencia Creek, and Penitencia East Channel, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction." 8-L

In addition, the proposed development within the existing floodplain should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. The site grading must be designed to allow for the passage and storage of flood water within the site. A flood plain analysis will need to be prepared to delineate the post development floodplain depth and lateral extent. 8-M

In accordance with the District Ordinance 90-1, the owner should show any existing well(s) on the plans. If a well is located on the site during construction activities, it must be protected or properly destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells. 8-N

Please reference File No. 26436 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494 or email me at THipol@valleywater.org.

Sincerely,

Theodore Hipol

Theodore Hipol
Assistant Engineer
Community Projects Review Unit

Enclosure: District Letter Dated October 19, 2007

cc: S. Tippets, S. Yung, T. Hipol, H. Barrientos, L. Porcella, M. Klemencic, G. Fowler, J. Castillo, S. Katric, D. Duran, File (2)

26436_50088th12-21

anta Clara Valley
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File: 31672
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October 19, 2007

Mr. Greg Armendariz
City Engineer
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

Dear Mr. Armendariz:

Subject: City of Milpitas Storm Drain Master Plan

During our review of environmental documents and projects in Milpitas, we have noted several references to the city's storm drain master plan. It appears that this reference is to a Storm Drain Master Plan (SDMP), dated July 2001. Santa Clara Valley Water District staff discussed the SDMP with you and city staff during our October coordination meeting. We understand that the City intends to update the plan and present it to the City Council for adoption next fiscal year. At this point, we would like to share our comments on the SDMP so that they can be considered in the update effort.

Consistency of Storm Drain Master Plan with Flood Protection

The singular most important concept that should be incorporated into the master plan update is the consistency between the storm drainage system and the flood protection system. Our recent experience with the Federal Emergency Management Agency's (FEMA) levee recertification process has identified the importance of a coordinated design of these two systems. The requirement of an internal drainage system analysis confirms the need for the coordination of all aspects of a regional drainage system.

Locally in Santa Clara County, municipalities have traditionally been responsible for the storm drain system and the Santa Clara Valley Water District has constructed capital projects providing regional flood protection measures on the creeks and streams. Since the local system and the regional system together complete the drainage system, the design parameters of each need to be coordinated. A storm drain master plan is an ideal mechanism to document the design assumptions and parameters of both these systems.

Specific Comments on 2001 Storm Drain Master Plan

The Storm Drain Master Plan identifies improvements to be made over time to bring storm drain facilities into compliance with city standards. The city standard allows for the10 year design discharge to be contained within the pipe system with a 100 year design discharge that does not exceed the top of curb or street right of way elevation. The master plan identifies improvements that will eliminate 100 year flooding that flows beyond the street right of way. Improvements identified consist of the construction of

ENCLOSURE

additional pipes to convey runoff from identified problem areas thereby eliminating the flooding condition. The SDMP does not discuss impacts to the stream conveyance system resulting from the implementation of the proposed improvements.

The relationship between the 100 year design discharge for the storm drainage system and the 100 year design discharge for the receiving stream should be clarified. If the storm drain system is designed to convey the 100 year discharge through a combination of pipe and street flow, theoretically the 100 year flood plain would be reduced to flow within the city streets. While this is a desirable goal, the District has concerns about the timing of storm drain improvement construction and the construction of any modifications that may be needed to the flood protection infrastructure.

Similarly, we note that several pump stations are designed to convey discharges in excess on the 100 year flow rate. Even though the City has some operating controls in place to avoid creating additional flood problems when the water surface is high in the creeks, the pump station design discharge rate and timing of discharge raises a concern. We recommend that the SDMP include additional details on the pump station operation particularly during high flows and imminent flood events.

The hydraulic calculations in the SDMP assumed a 10 year water surface elevation in the receiving stream at the outfalls without any backwater effects. In practice the stream level may be higher than the outfall during storm events wherein the calculated pipe discharge capacity will not be realized.

The SDMP identifies published flow rates for the major drainage facilities (streams) in Milpitas. These discharge rates were published in the 1980 and 1998 FEMA flood studies and represent watershed conditions that existed as of the late 1970s and reflect reductions in flow rates due to spills. These flow rates are not design discharge rates nor do they reflect current or future conditions. The text does not indicate how the published flow rates were used in the preparation of the SDMP.

As you proceed, District staff is available to discuss technical aspects of the storm drain master plan update. I look forward to hearing from you or your staff. I can be reached by phone at (408) 265-2607, extension 2253 or by email at stippets@valleywater.org.

Sincerely,

Sue A Tippets

Sue A. Tippets, P.E.
Engineering Unit Manager
Community Projects Review Unit

cc: M. Klemencic, S. Yung, S. Tippets, J. Wang, G. Fowler, File (2)

31672_49995st10-19

ENCLOSURE

8. Response to Santa Clara Valley Water District

8-A: Comments noted. As noted in the District's letter dated October 19, 2007 the City is in the process of updating the 2001 Storm Drain Master Plan. Once the updated Plan is complete, it will be adopted by the City Council upon completion of the required CEQA process. It should be noted, though, that these comments do not relate to the adequacy of the Draft EIR, and thus no amendments to the Draft EIR are included. However, to clarify requirements, the following policy will be added to the Specific Plan in Section 5.4, Other Construction Standards:

New Policy. 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 Capital 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."

8-B: Page 3.8-2 of the Draft EIR is hereby revised as follows:

"Developed areas support non-biological resources, and are characterized by buildings and pavement. Associated ornamental landscaping can provide limited wildlife habitat for disturbance-tolerant bird species by providing cover, foraging, and nesting opportunities. The Planning Area is approximately 90 percent developed with landscaping along the streets, buildings, and parking lots. There are numerous large ornamental trees around the city blocks south of East Capitol Avenue and Great Mall Parkway, and large rows of trees line McCandless Drive as well.

Creeks/Drainages. A system of drainage channels throughout the project site follow two creeks in the Coyote Watershed and may be considered jurisdictional by the U.S. Army Corps of Engineers (the Corps). Both creeks have been altered from their historical state with many segments being directed underground and/or re-routed for flood control purposes. The channel that runs along the eastern border of the Planning Area, south of Great Mall Parkway, and the split-off channel between Great Mall Parkway and Trade Zone Boulevard, are part of Lower Penitencia Creek. The drainage channel to the west is the lower portion of Berryessa Creek. Both creeks have been altered from their historical state with many segments being directed underground and/or re-routed for flood control purposes. ~~to accommodate~~

~~development~~. Patches of riparian habitat associated with creeks, particularly along stretches of Penitencia and Berryessa Creeks, occur in the Planning Area. This wetland and riparian vegetation provides habitat for fish and wildlife. ~~As a result, the drainages lack high-quality riparian habitat and have minimal native vegetation.~~ A great blue heron and egret were observed during the reconnaissance visit in the upper portion of Lower Penitencia Creek within the Planning Area boundaries indicating that the drainages do provide resources utilized by wildlife."

8-C: See the Creeks/Drainages discussion provided in response 8-B above.

8-D: Page 3.8-4 of the Draft EIR is hereby revised as follows:

"**Local Regulations and Policies**

Guidelines and Standards for Land Use near Streams and Santa Clara Valley Water District

The Guidelines and Standards (G&S) are designed to address land use activities near streams and to protect surface and groundwater quality and quantity in Santa Clara County. They are based on a recent compilation of existing practices the Santa Clara Valley Water District uses when reviewing permits for land uses near streams under its current requirements based on Ordinance 83-2. Each Guideline and Standard is tied to a specific land use activity (i.e. structures build near channels, encroachments, grading and drainage, erosion repair, etc.). The G&S's are designed to complement existing regulations, such as the City/County/SCVWD NPDES provisions. Activities such as any revegetation efforts adjacent to the streams should be consistent with the Guidelines and Standards.

The City will be required to obtain a permit from the District if any project impacts and/or requires access through any District property or easement.

Tree Protection Ordinance

The City of Milpitas adopted a tree protection ordinance to protect significant and heritage trees (Ord. 201.1, Sections X-2-2.10 and X-2-7.01, 3/1/88)."

8-E: Page 3.8-6 of the Draft EIR is hereby revised as follows:

"Loss of burrowing owl individuals or nests would result in a significant impact to biological resources. Compliance with CDFG survey protocols and the i~~I~~mplementation of existing General Plan policies, 4.b-I-4 and 4.b-I-5, and the below proposed Plan policy would help to reduce potential project impacts to burrowing owl less than significant levels."

8-F: The following text is intended to provide additional clarity regarding potential impacts to wetlands, creeks and drainages within the Transit Area as discussed on

page 3.8-9 of the Draft EIR. This information does not describe new or previously unanticipated effects, but merely clarified and elaborates on previously identified potential effects. Page 3.8-9 of the Draft EIR is hereby revised as follows:

"Potential impacts, including the possibility of ~~in the form of temporary or~~ permanent loss due to filling of wetlands or other waters could result from new development within or in the vicinity of these wetlands or other waters. Such impacts could occur as a result of new creek crossings or the fill of small and isolated wetlands in the vicinity of streams. Temporary impacts to such resources could also occur during construction operations. Wetlands and other sensitive resources can also be indirectly affected by development as a result of water quality degradation, lighting, introduction and spread of invasive exotic species, and increased activity of humans and pets.

Direct impacts on the creeks in the Planning Area would be minimized and avoided in most cases by the required ~~likely would not occur as~~ setbacks from the creeks, which are required to be 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 (as shown in Table 5-1 and Table 5-2 of the Plan and Figure 5-23). The Plan policies below provide appropriate programmatic mitigation measures; additional site-specific measures may be identified during CEQA review of specific development proposals made to the City. Prior to new development in areas adjacent to or near creeks, applicants will be required to comply with the City's adopted standards and guidelines, or with those of the SCVWD for those properties potentially within that agencies jurisdiction. Coordination with SCVWD will include evaluation of existing creek habitat and procurement of any necessary permits from the SCVWD for development on or adjacent to their property or easements. Prior to new development in areas with potential federally or State protected wetlands or waters, applicants will be required to coordinate with the Corps, CDFG, SCVWD, and RWQCB depending on the jurisdiction potentially affected. Coordination will include evaluation of existing wetlands and waters and development of avoidance, minimization, and/or compensatory measures sufficient to procure the necessary permits from the applicable agencies. The combination of proposed policies and existing laws protecting these resources ensures that the impacts would be less than significant.

General Plan Policies that Reduce the Impact

Policies that would mitigate this impact are listed under Impact 3.8-1." Additionally, the following policy would serve to further reduce these potential effects:

New Policy: Consistent with current City practice, all new development located on or adjacent to Penetentia 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.

8-G: Comment noted. Page 3.8-10 of the Draft EIR is hereby revised as follows:

"The General Plan policies provide appropriate programmatic mitigation measures; additional site-specific measures may be identified during review of specific development proposals made to the City. Further, prior to new development in areas with potential riparian habitat, applicants may be required to coordinate with the CDFG and the SCVWD, as required by law. Such coordination would include evaluation of existing riparian habitat and development of avoidance, minimization, and/or compensatory measures, if required, sufficient to procure a Streambed Alteration Agreement with the CDFG and authorization from the SCVWD."

8-H: The City's practice is to require on-site storm water runoff, not otherwise infiltrated into the soil through post-construction stormwater treatment features, to be collected and distributed to the City's storm drain system. Any new outfalls within the District's fee or easement land rights will be sent to the District for review and permit issuance.

8-I: As a co-permittee and member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), the City requires developments to implement all NPDES stormwater permit requirements in effect at the time of project application and that are applicable to the parcels under development.

8-J: As a co-permittee and member of SCVURPPP, the City requires developments to implement all NPDES permit requirements in effect at the time of project application and that are applicable to the parcels under development.

8-K: The City's practice is to notify Applicants of the requirement to file Notice of Intent for sites greater than one acre and verify that they have submitted the appropriate documents to the State. The City will continue this practice in accordance with the conditions of the State's General Stormwater Construction Permit in effect at the time of project application and that are applicable to the parcels under development.

8-L: As a co-permittee and member of SCVURPPP, the City provides outreach materials to developers in accordance with the City's Municipal Stormwater Permit and work plan.

8-M: Comment noted. The City will require development to comply with floodplain regulations.

8-N: The City's practice is to require construction plans to show any wells and include notes regarding any wells located during construction in accordance with SCVWD ordinance 90-1.

SANTA CLARA
Valley Transportation Authority

December 21, 2007

City of Milpitas
Planning Division
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Attention: Scott Gregory

Subject: Milpitas Transit Area Specific Plan

Dear Mr. Gregory:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR for the specific plan to guide development around the BART Station and two LRT stations in Milpitas. We have the following comments.

BART Extension

Section 2.3, Proposed Plan (figure 2.3-1) – The Transit Area Specific Plan Land Use map only designates the area bordered by Capitol Avenue, Montague Expressway, and the proposed BART alignment as "Transit Facilities." Currently, VTA's position is to construct the Milpitas BART Station's bus transit center east of the BART alignment on land listed in figure 2.3-1 as "Boulevard Very High Density Mixed Use." VTA continues to support TOD high-density mixed-use development near the future Milpitas BART station, and this position is held to allow for improved bus and shuttle operations, reduce significant conflicts with automobile circulation at the future Milpitas Boulevard/Capitol Avenue intersection, and allow for future transit center expansion. 9-A

Section 3.1, Land Use (Page 3.1-4, first paragraph) – The proposed BART station in Milpitas is now named "Milpitas Station" (not the Montague Station), per the current SVRT EIS. This designation should be changed throughout the document. 9-B

Section 3.1, Land Use (Page 3.1-8, Table 3.1-2) – Clarify what facilities are included in the BART Station acreage. 9-C

Section 3.2, Visual Resources (Page 3.2-6, Policy 4.6) – It should be noted that the proposed BART parking structure is planned to be located fronting Montague Expressway. 9-D

Section 3.3, Transportation (Page 3.3-41, last paragraph) – It should be noted that this Draft EIR assumes that the proposed BART Extension will not be completed and operational by the 20-year build-out of the Plan. However, as mentioned in our comments on the Plan's Notice of Preparation, we project BART to be operating in 2016. 9-E

Section 3.3, Transportation (Page 3.3-72, first paragraph) – All proposed pedestrian/bike trails included on Figure 3.3-15 should be mentioned in the Pedestrian and Bicycle Facilities Section, not only the trail planned for Penitencia Creek. 9-F

Transportation System Planning and Design

Countywide Deficiency Plan

The adoption of a Countywide Deficiency Plan has no foreseeable timeline and therefore cannot be considered to provide mitigation to freeway impacts. In addition, there are recent county-level precedents with the preparation of local Deficiency Plans by the City of San Jose for its North San Jose Development Policy and the City of Sunnyvale's Citywide Deficiency Plan.

However, due to the scope and nature of the proposed project, VTA strongly urges the City of Milpitas to prepare a local area deficiency plan in accordance with VTA Guidelines for Deficiency Plans. This step is necessary to fully understand the impacts to CMP facilities in the area and to identify practical mitigation strategies to address those possible impacts that may include items from the Deferred Action list in addition to those identified from the Immediate Implementation Action list. 9-G

We will be happy to work collaboratively with city staff on this process.

Trip Distribution

According to the VTA TIA guidelines, a freeway segment shall be included in the analysis if the proposed project is expected to add at least one percent of the freeway segment's capacity or more. Based on these guidelines, additional freeway segments should be included south of Hostetter Road on I-680, north of SR 237 on I-880, south of Brokaw Road on I-880 and west of Zanker Road on SR 237. 9-H

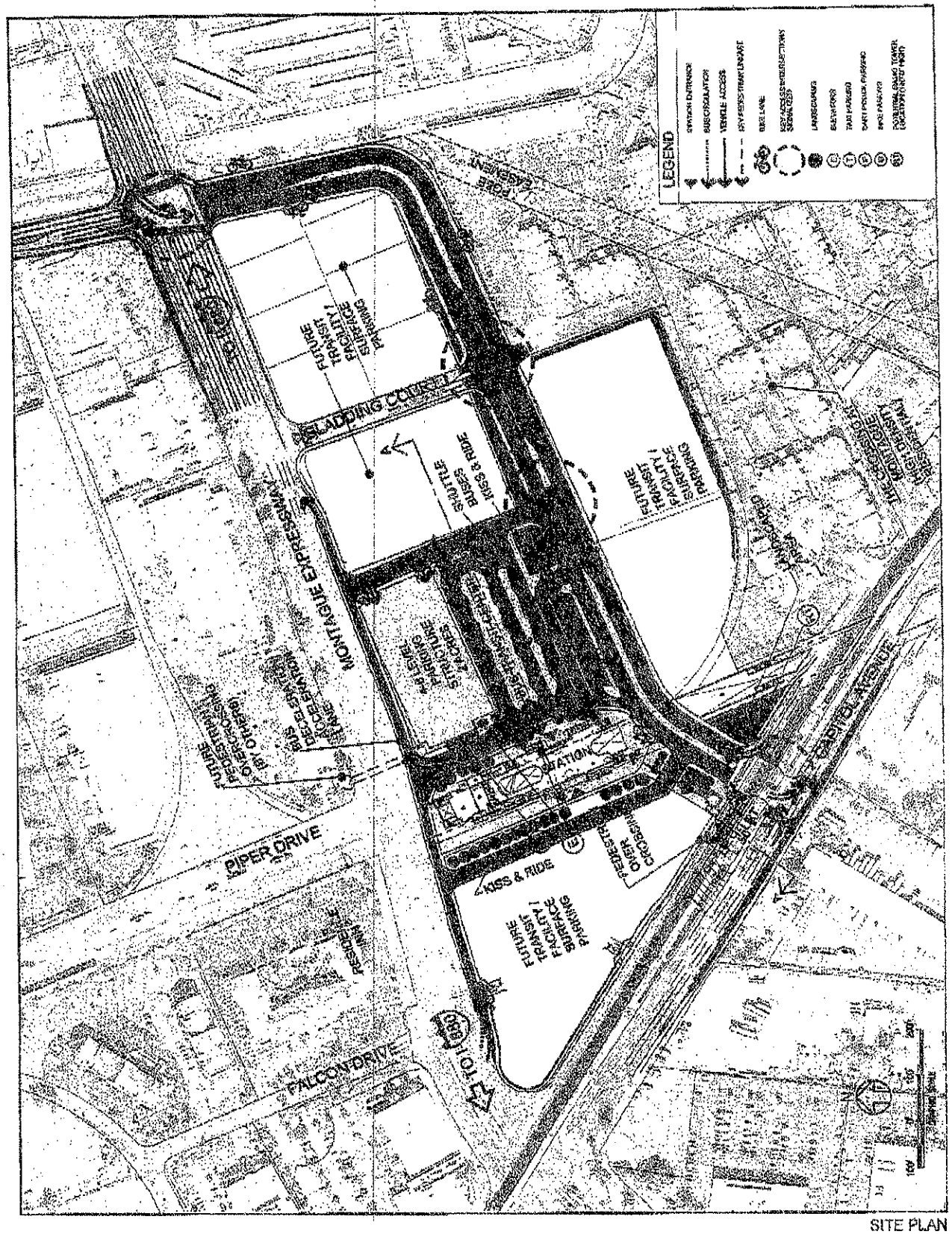
Thank you for the opportunity to review this project. If you have any questions, please call Roy Molseed at (408) 321-5784.

Sincerely,

John Ristow
Chief CMA Officer

JR:RM:kh

cc: Carolyn Gonot, VTA



SITE PLAN

EAST BUS TRANSIT CENTER OPTION

Figure B-

SVRTC SILICON VALLEY RAPID TRANSIT CORRIDOR

MILPITAS STATION
22AUG07

EARTH TECH

9. Response to Santa Clara Valley Transportation Authority

9-A: Comment Noted. This comment does not pertain to the adequacy of the Draft EIR, and as such no EIR text revisions are necessary.

9-B: Comment noted. The station will hereby be referred to as the Milpitas Station throughout the Draft EIR and Plan. Page 3.1-4 of the Draft EIR is hereby revised as follows:

The VTA Board also adopted a recommended option for a parking structure in addition to a surface parking lot at the Milpitas Montague Station.1 These options are generally consistent with the Transit Area Specific Plan.

9-C: Refer to Figure 4.7 and 4.8 of the Plan. The proposed facilities are depicted in blue, and more specifically are composed of the parking structures, bus transit center, drop-off areas; taxi and shuttle areas; and the station. Figure 4-7 of the Plan will be re-labeled, Figure 4-7, City Preferred Option for Layout of BART Station Area. Figure 4-8 of the Plan will be re-labeled to delete the words, "New Design as Proposed by the City of Milpitas."

9-D: Comment noted. This comment does not pertain to the adequacy of the Draft EIR, and as such no EIR text revisions are necessary.

9-E: Comments noted.

9-F: The discussion of all proposed bicycle and pedestrian trails are provided in the Specific Plan document on pages 3-24 through 3-29. They are also shown in the street sections in Figures 5-2 through 5-18.

9-G: See response to comment 5-P.

9-H: The impacts of the Plan Area were evaluated for freeway segments several interchanges beyond the vicinity of the site where the concentration of Plan Area traffic is the highest. As noted in Response 1-D, a TIF program will be developed that includes some capacity enhancements, as well as TDM measures to reduce delays and minimize vehicle trips generated by the project. Implementation of these measures will partially mitigate impacts to State-maintained and other regional facilities. However, the addition of additional freeway mainline lanes is considered infeasible, and the project's impact to the freeway system will remain significant and unavoidable as previously stated in the DEIR.

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[1] VTA, *Board of Directors Meeting Minutes*, June 7, 2007.

COMMENT LETTER 10

BERG & BERG ENTERPRISES, INC.
10050 Bandley Drive
Cupertino, CA 95014-2188
(408) 725-0700 - fax (408) 725-1626

12/21/07

Scott Gregory
c/o Veronica Bejines
City of Milpitas
Planning Department Liaison
455 E. Calaveras Blvd.
Milpitas, CA 95035
Ph 408-586-3279 dir 586-3271 Fax 408-586-3293 Page 1 of tranmittal
vbejines@ci.milpitas.ca.gov

Reference: Milpitas Midtown Transit Sub-Area Visioning Project EIR

Subject: Eir Comments

Scott,

1) **Impact 3.2-1 Policy 4-4 -& 4.49 – Take and set backs on Montague, Great Mall and Trade Zone– With usable land being a premium in the area we suggest that the set back is too large and too restrictive. The curb to building setback should be 28 feet versus 45 that will allow more open space to be within the development versus on the Montague Expressway. Also parking should be allowed within the setback. The exhibit for trade zone does not show the current setback. Please note that part of the widening of Montague and trade zone includes a 6' bike lane that further separates the buildings from the streets.**
2) **Impact 3.2-1 Impact Policy 4.65 – The policy of restricting curb cuts on McCandless is overly restrictive. Some flexibility should be allowed on curb cuts so that potentially superior site designs are not precluded.**
3) **Impact 3.2-1 Policy 6.4.1 – Why would any land need to be dedicated to the SCVWD for trails along the drainage canal.**
4) **Impact 3.3-1 thru 3.3-13 Policy 6.32 thru 6.39 Is there an estimate of costs for all of the improvements.**
5) **Impact 3.8-2 Policy 5.27 – It should be noted that the trees on McCandless in general will remain, a strict prohibition of tree removal potentially may preclude better site designs so flexibility on curb cuts and tree removal should be allowed.**
6) **Impact 3.8-5 Policy 5.29 Requires coordination with CDFG - This should be removed as an unnecessary evaluation that delays development. Previously developed properties to be redeveloped abutting the Penentencia Creeks should not be required to perform evaluations. The water district lands and industrial lands are existing established uses and should not have to be**

reevaluated. The water district will likely want to retain their existing access roads and top banks for dredging and maintenance. .

7) **Impact 3.9-1 Policy 2.c-1-1 – Schools proposes – Fees for the project should be established under existing State rules and regulations stating payment of school impact fees are deemed to provide full and complete school facilities mitigation under CEQA. Each developer should be obligated for his share of fees as provided by law.**
8) **Impact 3.9-1 Policy 4.74 – This policy stipulates that if a school is located in the transit district it should be in the McCandless/Center Point subdistrict. If this does occur for the public benefit all cost related to the reserved site; land purchase and school development, used by a number of developer projects should come from the school impact fees paid by all developers in the area that use and benefit from the school. Every individual development application should pay a fair share of common school and park needs and provide for its own parkland requirements.**
9) **Impact 3.9-2 Policy 4.9 Create street grids of 2 to 3 acres. These lot sizes and street grids are unduly restrictive on site designs and consume land that could more effectively be used within each development for landscaping and driveways. Streets that should be eliminated are shown on the attached pdf.**
10) **Impact 3.9-2 Policy 5.3 all street shall be consistent with section 5. We have objections to the street sections on Montague, Great Mall and Trade Zone the 45 foot setbacks should be 28 feet not 45 feet.**
11) **Impact 3.9-4 Policy 3.37 & 3.38 This states that in lieu fees are not allowed for land dedication required for parkland. If a school is located on a planned park site for the public benefit, the total reserved site including the school building area should be paid on a prorata basis by all individuals who benefit.**
12) **Impact 3.9-4 Policy 3.54 – Requires 25 ft dedication . The 25' trail area should be located in parks adjacent to the creeks if there are parks. The trail should only be required on one side of the creek. The 25 foot trail setback from top of bank should not be required on previously developed property even though it will be redeveloped. Where required the trail should be allowed to be within the project landscape area with no additional setbacks.**
13) **Impact 3.11-5 Policy 6.20 Requires dual interior plumbing. So far it appears that South Bay Recycling is only able to provide recycle water for landscaping and has barely scratched the surface in that area. It would seem it is premature and unnecessarily expensive to install dual interior plumbing when the landscaping demand for recycle has barely been tapped unless there is a mandate that will be implemented.**
14) **Impact 3.12-1 Policy 3.16 Requires a TDM program. While some businesses may be large enough to run a TDM program trying to administer a program for residential would largely be impracticable. Transit districts need to develop programs and services that meet the demands of the public and serve those who can and will utilize the service. TDMs should not be required for residential projects nor smaller nonresidential. Ride share and other programs are available and public agencies should advertise these services in a prudent economical manner. If public transit doesn't go where people need to go and in a timely manner it simply won't work for commuters.**

15) **Impact 3.12-2 Policy 5.17 Requires 50% of all residential to pre plumb and prewire for photovoltaic and solar water heating. This should only be required if the costs are reasonable and justified as these systems are still not economical at this time without subsidies and have questionable economics even with subsidies.**

Thank you

Myron Crawford
Cc: file

10. Response to Berg & Berg Enterprises, Inc.

10-A: Comments noted. The commentator has suggested revising the Plan and rewording or drafting new Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

Wagstaff and Associates

Urban and Environmental Planning
2512 Ninth Street, Suite 5
Berkeley, CA 94710
(510) 540-0303 FAX (510) 540-4788

December 20, 2007

Mr. Scott Gregory
c/o Veronica Bejines
Milpitas Planning Division
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

RE: COMMENTS ON MILPITAS TRANSIT AREA SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT

Dear Scott:

On behalf of DART Transportation Services (DART), owner of the 4.5-acre property at 620 Montague Expressway and 2369 East Capitol Avenue in the *Milpitas Transit Area Specific Plan* area, we are writing to the City of Milpitas (City) to offer DART's comments regarding the Draft Environmental Impact Report (DEIR) for the Specific Plan (State Clearinghouse #2006032091).

Given the significant transit-oriented development opportunity presented by the DART property, DART appreciates the City's foresight in initiating the Transit Area Specific Plan and EIR effort. DART also appreciates the excellent work to date by City staff and its consultants towards preparation of the Draft Specific Plan and EIR. The Draft Specific Plan and DEIR appear to have been thoroughly and well prepared by highly experienced professionals. DART offers the following comments on the DEIR in the overall interest of cooperation and ensuring that the Final EIR provides an optimum basis for facilitating implementation of the Plan with minimal subsequent CEQA difficulties.

The comments herein are limited in scope to the content and adequacy of the DEIR. DART also has substantial concerns regarding proposed development standards, park designation characteristics and other provisions in the Draft Specific Plan which DART believes may have substantial adverse effects on the feasibility of achieving the overall high density transit oriented development objectives that DART shares with the City. DART anticipates that the City will provide DART with ample opportunity to communicate those concerns separate from this letter during the Specific Plan finalization process, subsequent to the close of the DEIR public review period.

Statements in the DEIR establish an integral relationship between the DEIR findings and Draft Specific Plan policies formulated to mitigate environmental impacts. The DEIR describes the Specific Plan as self-mitigating by including policies "developed to reduce impacts to less-than-significant levels" (DEIR p. 3.3-75). The comments herein are

therefore directed to both to the DEIR content and the Draft Specific Plan mitigating policies to which the DEIR refers.

Impact 3.1-2 (DEIR page 3.1-10)

This land use compatibility impact discussion includes reference to Specific Plan mitigating Policy 5.14, which calls for individual project applicants for properties within 300 feet of active UPRR and BART alignments to conduct individual vibration impact analyses to demonstrate that interior vibration levels within new residential development and lodging facilities would be at acceptable levels, and to identify any needed mitigation measures to reduce vibration to acceptable levels.

Rather than advocating a piece-meal, individual development approach to this potential impact, does the Specific Plan program present an opportunity to advocate fair share completion of one consolidated groundborne vibration impact and mitigation analysis for these two corridors that, to the extent warranted, would establish a set of vibration abatement standards that would apply to all residential development along these two corridors, with mutual benefits to both individual land owners along these two corridors (study cost efficiencies) and the City (future development review efficiencies)? Could such an approach be recommended as an option in the Implementation chapter of the Specific Plan, and referenced in the Final EIR? 11-A

Impact 3.2-1 (DEIR pages 3.2-4 through 3.2-7)

This discussion of potential Specific Plan buildout impacts on the existing visual character of the planning area refers to a number of draft Plan policies that specify specific setback distances (Policy 4.4: 40 feet; Policy 4.13: 30 feet; Policy 4.34: 30 feet; Policy 4.35: 20 feet; Policy 4.51: 30 feet, etc.). Because these particular Plan policies remain in draft form and are the focus of concern by a number of property owners with respect to effects on development feasibility, DART requests that this impact discussion include an added statement, perhaps in parentheses at the end of the second paragraph on DEIR page 3.2-5, to the effect that one or more of the cited setback dimensions in the referenced Plan policy language below may change as the Specific Plan is finalized, and such changes would not alter the conclusion above that this impact is *less-than-significant*. 11-B

Impact 3.3-1 (DEIR page 3.3-79)

As mitigation for Specific Plan related PM peak traffic impacts on study intersection #1, the W. Calaveras Boulevard/I-880 NB Ramp intersection, a local (City) facility, the impact discussion on this page refers to Draft Specific Plan Policies 6.32 and 6.33, which call for establishment of two new traffic impact fees for development within the Transit Area Specific Plan boundary:

(1) a Regional fee for funding mitigation of impacts on County (CMA) and San Jose intersections and roadway segments (Specific Plan Policy 6.32); and 11-C

(2) a Transit Area Plan fee for funding mitigation of impacts on City intersections and roadway segments (Specific Plan Policy 6.33).

The DEIR also notes that the City already collects the following traffic impact fees from developments in the area: (a) Montague Expressway Improvement Project traffic impact

fee, collected on a peak hour trip basis via the Milpitas Business Park Traffic Mitigation Fee Ordinance; and (b) "fair share contributions from projects east of I-880." The DEIR explains that the expenditure of funds from these existing mitigation fees is coordinated between the City and County to implement mitigations along the Montague Expressway and also notes that these fees "can be combined with other regional funding sources to implement large-scale projects."

Please verify whether or not new developments that will add trips to the Montague Expressway and other "regional" intersections, including developments within the Transit Area Plan boundary, are currently required to pay these fair share fees based on generated peak period trips. And will the new Regional and Transit Area Plan traffic impact mitigation fees called for under Policies 6.32 and 6.33 replace, or be in addition to, the above existing traffic mitigation fees?

Also, the cited mitigation Policy 6.32, in addition to calling for City establishment of a Regional Traffic Fee, states "Individual developments within the Transit [Plan] Area are required to prepare a traffic impact analysis to identify their fair share contribution towards the impacts and mitigation measures covered by the fee," apparently focused on the development's contribution to regional roadway facility impacts and mitigation needs, and apparently in addition to payment of the Regional Traffic Impact Fee. It is unclear to us how these two mitigation requirements under Policy 6.32--the City establishment of the Regional Traffic Fee and individual developer establishment of fair share contribution towards impact and mitigation measures--relate to one another. They appear to be redundant. 11-C

DART assumes that the Plan-recommended, City established, traffic impact fees would follow conventional practice and ultimately be assessed on a per residential unit and per non-residential floor area (square footage) basis. If this is not the case, please clarify.

Under the regional impact fee approach, will not each individual development's residential unit total and/or non-residential floor area total figures be sufficient to establish the development's relative peak period trip contribution and associated fair share mitigation responsibility without also having to do an individual, project-specific traffic study? It is DART's understanding that a principal objective of, and opportunity presented by, such a Specific Plan program is the establishment of fair share impact mitigation fees, usually based on the anticipated cumulative residential unit and non-residential floor area totals permitted by the Plan, in order to avoid the types of piece-meal, project-by-project, impact and mitigation analyses suggested by the last sentence of Policy 3.32, and thereby providing a strong incentive for individual development project consistency with overall Specific Plan development guidelines.

DART therefore respectively requests City consideration of the following revision to mitigation approach for Impact 3.3-1:

(1) Stipulate establishment of the Specific Plan-recommended regional and city traffic impact fee amounts as soon as possible so that these important fair-share/fair-treatment mitigation mechanisms are in place soon after Specific Plan adoption, avoiding the need for piece-meal traffic impact mitigation; and

(2) Revise Specific Plan Policy 6.32 to eliminate the last sentence calling for, in addition to payment of the Regional Traffic Fee, individual development responsibility for preparation of a traffic impact and mitigation study.

Impact 3.3-5 (DEIR page 3.3-81)

This traffic impact discussion incorporates by reference the same Specific Plan mitigation Policies 6.32 and 6.33 that are incorporated under the DEIR discussion of Impact 3.3-1. DART's comments above on Impact 3.3-1 therefore apply to this impact discussion as well: please revise Specific Plan Policy 6.32 to eliminate the last sentence calling for, in addition to payment of the traffic impact fee, individual development responsibility for preparation of an individual traffic impact and mitigation study.

Impact 3.3-8 (DEIR page 3.3-82)

This traffic impact discussion incorporates by reference the same Specific Plan mitigation Policy 6.32 that is incorporated under the DEIR discussion of Impact 3.3-1. DART's comments above on Impact 3.3-1 therefore apply to this impact discussion as well: please revise Specific Plan Policies 6.32 to eliminate the last sentence calling for, in addition to payment of the traffic impact fee, individual development responsibility for preparation of an individual traffic impact and mitigation study.

Impact 3.3-9 (DEIR page 3.3-83)

Same. 11-D

Impact 3.3-10 (DEIR page 3.3-84)

Same.

Impact 3.3-13 (DEIR page 3.3-86)

Same.

Impact 3.3-14 (DEIR page 3.3-86)

Same.

Impact 3.3-15 (DEIR page 3.3-87)

Same.

Impact 3.3-17 (DEIR page 3.3-88)

Same.

Impact 3.3-18 (DEIR page 3.3-90)

Same.

Impact 3.3-19 (DEIR page 3.3-90)

Same.

Impact 3.3-20 (DEIR page 3.3-91) 11-D

Same.

Impact 3.4-1 (DEIR pages 3.4-11 through 3.4-13)

This discussion of potential soil and groundwater contamination impacts associated with Specific Plan implementation incorporates Plan mitigation Policies 5.20 and 5.22 calling for jurisdictional agency-required remediation steps and Risk Management Plan preparation. DART requests that both of these Specific Plan policies be revised to include a statement explaining that individual landowner submittal of a soil and groundwater remediation closure letter from the appropriate jurisdictional agency (e.g., the State Department of Toxic Substances Control) would satisfy these two policy requirements. 11-E

Impact 3.9-4 (DEIR pages 3.9-15 through 3.9-16)

This discussion of potential park needs associated with Specific Plan implementation refers on page 3.9-16 to specific acreages (first paragraph). Because the Specific Plan remains in draft form and some of these acreage figures may change, DART requests that the word "approximately" be inserted before all acreage figures in this paragraph.

Similarly, because the location of public parks is generally designated in the Draft Specific Plan, and these designations may be revised to some degree in the final version of the Specific Plan, DART requests that the word "generally" be inserted before the word "designated" in the phrase "All of the Public Parks designated on the Plan Map…" in paragraph three on DEIR page 3.9-16, and similarly, before the word "designated" in the phrase "locating parks within the Planning Area as designated…" in the fourth (last) paragraph on DEIR page 3.9-16. 11-F

Statement of Overriding Considerations

The DEIR identifies a number of significant unavoidable environmental impacts, including project (Specific Plan 20-year buildout) peak hour impacts on 15 study intersections and on I-680, I-880 and SR 237 freeway segments; cumulative (long-term, 2030) peak hour impacts on numerous local and regional roadway segments; project and cumulative impacts on regional air emissions; and project plus cumulative impacts on Milpitas Unified School District facilities.

As a result, as has been explained by City staff and its consultants, in order to approve the Specific Plan, the City will be required to prepare a Statement of Overriding Considerations, pursuant to CEQA Guidelines section 15093, that states in writing the specific overriding reasons that support plan adoption--i.e., the specific economic, legal, social and other benefits of the Specific Plan-facilitated buildout scenario that balance or override the EIR-identified unavoidable adverse environmental risks associated with the buildout scenario. 11-G

An understood key objective of the Specific Plan and DEIR is to streamline the CEQA process for future development projects within the Plan area. As indicated on DEIR page E-1, (last paragraph) and p. I-3, the program EIR has been designed for use as "the basic, general environmental assessment for an overall program of projects developed over a 20 year planning horizon" and to "provide a basic reference document

to avoid unnecessary repetition of facts or analysis of subsequent project-specific assessments." Following conventional program EIR practice under CEQA, the DEIR also states on page I-3, "If the City finds that the proposals would not result in any additional environmental impacts beyond those considered in this EIR, no new environmental analysis would be required. If the City determines that a project would create potential environmental impacts not studied in this EIR, or that environmental conditions have changed substantially since the EIR was prepared, the City could require further environmental review to determine appropriate revisions to the project, conditions of approval, or mitigation measures." This DEIR language is essentially referring to the CEQA-mandated "tiering" process (CEQA Guidelines section 15152), which pertains to using a broader EIR in combination with subsequent CEQA documents (negative declarations, mitigated negative declarations, etc.) on narrower site-specific individual development projects so the subsequent document can be concentrated solely on remaining issues specific to the subsequent project. 11-G

Given this Specific Plan EIR purpose--i.e., to provide the basis for future environmental documentation tiering--DART requests that the Statement of Overriding Considerations include a clear explanation that the statement applies to the overriding benefits of the Specific Plan itself, as well as to the overriding benefits of future individual development projects within the Plan area that are consistent with the Plan (and will be contributing to the unavoidable impacts). The Statement of Overriding Considerations should be clear that it is intended to permit and apply to the tiering of future environmental documentation, including negative declarations and mitigated declarations for future individual developments that are consistent with the Plan.

DART appreciates the opportunity to submit these comments and looks forward to continued opportunities for input into the post-EIR-certification Specific Plan finalization process.

Sincerely, on behalf of DART Transportation Services,

WAGSTAFF AND ASSOCIATES

John Wagstaff

JW:sr\652

cc: James C. Moore, Director of Property Management, DART Transportation Services
Bill McNair

11. Response to DART Transportation Services

11-A: Comments noted. The commentator has suggested revising the Plan and rewording or drafting new Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

11-B: Comments noted. The commentator has suggested revising the Plan and rewording or drafting new Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan. It is not appropriate to amend the Draft EIR in anticipation of Specific Plan revisions that are not yet determined.

11-C: The comments included in this section pose many questions and suggestions to the impact fees that will be required for development projects. The details of the impact fee programs will be developed at a future date, and are not required for adoption of the Specific Plan or certification of the Draft EIR. Thus no further amendments to the Draft EIR are required to address these questions and suggestions. The City has prepared a study assessing the costs and mechanisms for funding public improvements, which will be considered by the City Council along with the Specific Plan and the Draft and Final EIR. Because the details of the fee programs are not yet known, the text of the Specific Plan Policy 6.32 and the text of page 3.3-79 of the Draft EIR will be revised as follows:

"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. ~~Individual developments within the Transit Area are required to prepare a traffic impact analysis to identify their fair share contribution toward the impacts and mitigation measures covered by the fee.~~"

11-D: Refer to response 11-C above. Comments noted. The commentator has suggested revising the Plan and rewording or drafting new Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

11-E: Comments noted. The commentator has suggested revising the Plan and rewording or drafting new Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

11-F: Comments noted. It is not appropriate to amend the Draft EIR in anticipation of Specific Plan revisions that are not yet determined.

11-G: Comments noted. The Statement of Overriding Considerations is not part of the Draft EIR, and thus no revisions to the Draft EIR are warranted.

December 19, 2007

City of Milpitas Planning Dept
455 East Calaveras Blvd.
Milpitas, CA 95035

Attn: Scott Gregory, James Lindsay

RE: Draft EIR Milpitas Transit Area Specific Plan – October 2007
No. 2006032091

Dear Scott,

Milpitas Station, LLC is the owner of the Milpitas Business Park between Piper Drive and Milpitas Boulevard in the Milpitas Transit Area Plan area. We are proposing residential development on that site and are anxious to see a Specific Plan for the area Approved. We have reviewed the EIR and Specific Plan documents that have been made available for public comments and have the following comments and concerns that we would like addressed. These comments directly affect the potential development possibilities for our property.

By Policy these are:
Policy 3.14 Minimize Cul-de-Sacs
Comment – The Specific Plan circulation exhibit (Figure 3-2) which developers shall comply with, has 6 Cul-de-Sacs shown for the Piper/Montague Subdistrict. The Circulation Exhibit does not meet the intent of Policy 3.14.

Policy 3.17 New Streets shall be per Figure 3-2.
Comment – The language of this policy should be modified to allow some flexibility in Public Street arrangements within the Specific Plan. The Policy does not allow for Private Streets, Pedestrian EVA routes, and Drives that accomplish the intent of the policy without the strict design guidelines of the Public Streets. In addition, Block size and driveway cut restrictions make compliance extremely and defeat the purpose of the Policy. Can some Local streets be optional as long as pedestrian and Emergency vehicle linkages are provided? 12-A

Policy 3.27 Safe Access to Bart/Light Rail Stations
Comment - Does not address the phased nature of the Specific Plan implementation and the requirements of development prior to the Bart/Light Rail stations being built.

Policy 3.37 Parks per Figure 3-6
Comment - Strict adherence to Figure 3-6 requires two park site locations within the Piper/Montague Subdistrict. The language of this Policy should allow flexibility for creative

ways to meet the Park requirements, especially where multiple developers cooperate in preparing alternative ways to meet the Park requirements.

Policy 3.38 Park Land Dedication
Comment - Dedication refers to Figure 3-6. The Quimby Act refers only to land. Text is not clear about application of In-Lieu fees and Park Improvement credit.

Policy 3.40 Park Improvements by Developers
Comment - What is the nexus for improvement of parks by developers? This should be clear for implementation.

Policy 3.42 No Private Shared Facilities
Comment - No common shared private facilities between projects would prohibit the use of Master Association type facilities like Pools and Recreation/Common Use buildings. This is an arbitrary and unreasonable restriction.

Policy 4.9 Create 2-3 acre blocks.
Comment - This Policy places an unreasonable and needless burden on developers with many site and boundary constraints. This text should be changed to allow more flexible design, like stating that small blocks are preferred. 12-A

Policy 4.13 Setbacks from Rail Lines and Boundaries
Comment - This creates an unreasonable and arbitrary restriction on development that reduces the density possible. This Policy actually works against most other Policies and does not actually achieve any Specific Plan Objective. Change to10 or 20 feet with allowance for specific instance reduction if supported by studies. Many uses should be allowed in the setback areas that are not screening the project from adjacent roadways. The measurement is from the track and not from the property line. This Policy implies a requirement for Developers to landscape on Railroad property

Policy 4.16 Parks
Comment – Same as Policy 3.37

Policy 4.19 Streets along park.
Comment – Parks get the benefit of the access and parking without the credit for these going towards the Park Dedication. Parks should be calculated at Gross acre the same as the other developments within the Transit Area.

Policy 5.3 Streets
Comment – This requires all private streets to comply with street sections in Chapter 5. Private drives and other unique conditions cannot and should not have to comply with the Public Standards. Private Drives that are not the widths or configuration of local streets should be recognized.

Policy 5.16
Comment - Requires implementation during planning process of construction practices. This should be reworded to require implementation with Permits. 12-A

Table 5-1
Block Size and Dimensions for R3, R4, needs to allow flexibility
Street Setbacks on Other Street Facing Yards for R4/R5 conflicts with sections for East West and New Local Streets (Figures 5-7 & 5-9)
Side and rear yard setback so very large for new development and limit creative residential product types without the possibility of using a PUD. Limits creative design that could be constructed per the building codes. Can this be changed to setbacks from existing?
Building Separations has the same arbitrary limitations on window to window separations.
Parking Access and curb cuts limited to one per lot is Arbitrary and unreasonable for site with boundary and site constraints.

EIR Table 3.1-3 should allow 12 stories by right in the Very High Density Transit Oriented Residential to be consistent with the text. 12-B

EIR Table 3.1-4 has setback requirements stated again without consideration for existing vs. proposed development and without the PUD process. Also the unreasonable window separation is shown here.

Section 5.2 Zoning Regulations should allow for both the CUP and the Planned Unit Development processes. Make it clear that these are available options for all projects and zones. Otherwise all projects have to file for variances.

In the EIR Impact 3.3-21 calls for a reduction of 20% from the City parking standard. Is this a goal of the City even prior to the construction of the Bart extension?

Figure 4-1 has a Montague Corridor Subdistrict that is not consistent with the other sections of the Specific Plan. The Piper/Montague Subdistrict has been described as from Montague north. This shows an entirely new Subdistrict that is not included in the analysis of other section like the Park section. 12-C

I would appreciate a response to these comments prior to the next hearing on the EIR.

Sincerely

Patrick Brown
Milpitas Station L.L.C.

4060 Campus Drive, Suite 100, Newport Beach, CA. 92660 (949) 553-0627

12. Response to Milpitas Station, LLC

12-A: Comment noted. The commentator has suggested rewording Specific Plan policies. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

12-B: Comment noted. However, these are Specific Plan comments and do not pertain to the adequacy of the Draft EIR; as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

12-C: This comment pertains to Figure 4-1 in the Specific Plan. Figure 4-1 of the Specific Plan correctly depicts the study area analyzed in the Draft EIR.

COMMENT LETTER 13

PCI
PROFESSIONAL CONSTRUCTORS INC.
Lic.#653556

CITY OF MILPITAS
INFORMATION DESK
DEC 2 1 2007
RECEIVED

December 20, 2007

Scott Gregory, c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Boulevard
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (EIR) for the Milpitas Transit Area Specific Plan

Dear Mr. Gregory,

Thank you for the opportunity to respond to the subject Draft EIR. We are pleased to participate in a project that has tremendous potential for revitalizing the midtown area of Milpitas and promoting smart growth. Please consider the following comments on the EIR outlined below.

Project Description

Figure 2.3-1: Transit Area Specific Plan Land Uses, on page 2-10 of the Draft EIR, identifies Gladding Court as a public street that extends south from Montague Expressway through the existing Crossings at Montague apartment complex, turning southwest within the Crossings at Montague site and emptying out on Capitol Avenue. Gladding Court is a public street from Montague Expressway to the property boundary of the Crossings at Montague apartment complex; however, there is no public street through the Crossings at Montague apartment complex. Please change Figure 2.3-1 to reflect this. 13-A

The EIR (and Specific Plan) incorrectly identify Gladding Court as a public street through the Crossings at Montague site... how does this affect the Specific Plan's and the EIR's assumptions, impacts, and mitigation regarding access and circulation, as well as various improvements (landscaping, design standards, etc.) and funding of improvements?

Section 3.1 Land Use

On page 3.1-11 of Section 3.1 (Land Use), the Draft EIR identifies Policy 5.17 of the Specific Plan as reducing impact 3.1-2, which states "The proposed Plan makes substantial changes to the types of land uses in an area, which could result in conflicts with neighboring areas, or with the established pattern of development." Policy 5.17 states, "In all rental and sale agreements, provide disclosures to future residents about all surrounding industrial uses and permanent rights of industrial uses to remain. This notification must be made prior to the sale or rental of building space, and provide information about the extent of industrial uses throughout the Transit Area and specific information about each industrial use that is immediately adjacent to the property." It is not clear if all uses in the Transit area (existing and 13-B

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new) would be subject to this policy; please clarify. Also, please clarify who would be responsible for monitoring such activities to ensure they are conducted and clarify how the monitoring would be conducted.

Section 3.2 Visual Resources

Section 3.2 (Visual Resources) of the Draft EIR identifies that new development under the proposed Plan could affect scenic views of the eastern foothills and existing visual character of the Planning Area (Impact 3.2-1, page 3.2-4). Policy 4.34 is identified as reducing this impact on page 3.2-6 of the Draft EIR. Policy 4.34 states, "Provide 30 foot landscape setbacks with a double row of trees between the BART track and residential buildings." The Draft EIR further states, "The landscaping will be alongside the residential structure(s) on the east side of the BART access road and will be maintained by that property." Please clarify who is responsible for installing the landscaped setback (i.e., would it be the property owner or the City? If its the property owner, would it be for existing or new development?). Also, please clarify if existing or new uses or both would be required to maintain the landscaped setback.

Section 3.3 Traffic

Pages 3.3-79 through 3.3-91 of the Draft EIR identify potential traffic impacts associated with implementation of the Milpitas Transit Area Specific Plan. A number of policies from the Specific Plan are identified as capable of reducing the severity of potential traffic impacts identified on pages 3.3-79 through 3.3-91 of the Draft EIR. Specifically policy 6.32 is identified as reducing several traffic impacts. Policy 6.32 requires that the City 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 the City of San Jose. Moreover, this policy states that the 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 and that individual developments within the Transit Area are required to prepare a traffic impact analysis to identify their fair share contribution toward the impacts and mitigation measures covered by the fee. It is not clear if new or existing developments within the plan area or both are required to prepare a traffic impact analysis to identify their fair share contribution toward the impacts and mitigation measures covered by the fee. Please clarify. 13-C

Also, Policy 6.33 of the Specific Plan is identified as reducing several traffic impacts (pages 3.3-79 through 3.3-91 of the Draft EIR). This policy states "The City shall establish and assess a transportation impact fee program, known as the Transit Area Plan Traffic Fee, 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." Please clarify if new or existing projects within the plan area or both are required to pay this fee.

Furthermore, policies 6.34, 6.35, 6.36, 6.37, and 6.38 of the Specific Plan are identified as measures that would reduce the significance of a variety of traffic impacts (pages 3.3-79 through 3.3-91 of the Draft EIR). Specifically, these policies stipulate that the traffic impact fee program should include fair-share payments toward a variety of identified improvements. Please clarify if new or existing

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developments within the plan area or both are required to pay this fee for the improvements identified by Specific Plan policies 6.34, 6.35, 6.36, 6.37, and 6.38.

Section 3.5 Geology, Soils, and Seismic Hazards

Page 3.5-14 of Section 3.5 of the Draft EIR identifies Specific Plan policy 6.50 as a means of reducing Impact 3.5-3 (During a large earthquake on the Hayward, San Andreas, or other active Bay Area faults, implementation of the Milpitas Transit Area Specific Plan would further increase the demands on emergency service providers in the City of Milpitas). Policy 6.50 requires that additional fire department staff be hired, equipment purchased, and facilities built to provide an adequate level of service (as determined by the City Council) for the residents, workers, and visitors of the Transit Area. In addition, according to the policy "New equipment and facilities shall be funded by the Community Facilities District fee and new staff paid from the City's General Fund." Please provide clarification on who participates in the Community Facilities District fee (would it be new development or existing uses or both?).

Section 3.6 Air Quality

The Draft EIR identifies Specific Plan policy 3.16 as capable of reducing the severity of air quality impact 3.6-1 (page 3.6-19) and air quality impact 3.6-5 (page 3.6-26). Policy 3.16 states, "Establish and implement a travel demand management (TDM) program. 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." Please clarify if existing development within the Plan area would be required to participate in funding the costs of a TDM program. 13-C

Page 3.6-27 identifies Specific Plan policy 5.23 a way to lessen air quality impact 3.6-6. Policy 5.23 states, "Require project sponsors to inform future and/or existing sensitive receptors (such as hospitals, schools, residential uses, and 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." Please clarify who would be responsible for monitoring such activities to ensure they are conducted and clarify how the monitoring would be conducted.

Section 3.9 Public Services

On page 3.9-12, the Draft EIR identifies public services impact 3.9-2: New development in the Transit Area will require fire protection services that exceed current staffing and facilities. Policy 6.50 of the Specific Plan is identified as a method of minimizing this impact on page 3.9-13 of the Draft EIR. As stated above under the Geology, Soils, and Seismic Hazards comment, this policy requires participation in a Community Facilities District Fee. Please provide clarification on who participates in the Community Facilities District fee (would it be new development or existing uses or both?).

Page 3.9-15 of the Draft EIR identifies Specific Plan policy 6.53 as a way to reduce Impact 3.9-3 (New development in the Transit Area will require additional police

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services that exceed current staffing). Policy 6.53 states, " Additional police staff will be hired and equipment purchased to provide an adequate level of service-as determined by City Council-for the residents, workers, and visitors of the Transit Area. New equipment shall be funded by the Community Facilities District fee and new staff paid from the City's General Fund." Provide clarification on who participates in the Community Facilities District fee (would it be new development or existing uses or both?).

Section 3.10 Hydrology and Water Quality

Specific 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) is identified as a way of minimizing hydrology and water quality impact 3.10-2 (Draft EIR, page 3.10-12). On page 3.10-13 of the Draft EIR, actions from Table 7-1, Implementation Plan, of the proposed Plan are also identified as reducing the impact. One of the actions requires establishing a funding mechanism to recoup the cost of preparation of the Storm Drainage and Flooding Master Plans for each subarea. Please clarify that costs associated with the preparation of Storm Drainage and Flooding Master Plans for each sub-area would be borne by new and not existing development. 13-C

Section 3.12 Greenhouse Gases and Climate Change

On page 3.12-7, the Draft EIR identifies impact 3.12-1: Development under the proposed Transit Area Specific Plan will result in a substantial increase in total vehicle miles traveled (VMT), leading to an increase in greenhouse gas emissions. On page 3.12-9, the Draft EIR identifies Policy 3.16 as a way to reduce this impact. Policy 3.16 states, " 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." Please clarify if existing development within the Plan area would be required to participate in funding the costs of a TDM program.

Regards,

David Wilson

David Wilson
Managing General Partner
Crossings at Montague

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13. Response to Professional Constructors Inc.

13-A: Comment noted. Figure 2.3-1 is hereby revised to reflect that the roadway extending through the Crossings at Montague apartment complex is a private roadway.

13-B: Comment noted. Policy 5.17 pertains to new development. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

13-C: All of the policies noted in the comments apply to new development. Detailed language clarifying exactly how the plan requirements will apply to building additions and new construction will be contained in new zoning regulations, which will be adopted for the land use districts proposed in the Specific Plan. Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

COMMENT LETTER 14

YRC Worldwide
Enterprise Services, Inc.
1077 Gorge Boulevard
Akron, OH 44310

yrcw.com

YRC Worldwide
Enterprise Services

December 20, 2007

via Ordinary Mail and e-mail

Mr. James Lindsay
Planning and Neighborhood Services Director
City of Milpitas
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: Real Estate owned by Roadway Express, Inc. located at 750 E. Capitol Avenue, Milpitas, CA

Dear Mr. Lindsay:

This letter is intended to serve as a follow-up to yesterday's conference call. I appreciate the fact that you took the time to speak to me and Roadway Express, Inc.'s ("Roadway") landlord concerning the status of the Transit Area Specific Plan. Please allow this letter to serve as Roadway's comment to the latest Transit Area Specific Plan and Draft Environmental Impact Report.

As you may be aware, Roadway owns a 5.1 acre parcel at 750 E. Capitol Avenue, Milpitas, CA (APN: 086-37-023) which it utilizes for its trucking operations. Roadway also leases the facility at 730 E. Capitol Avenue, Milpitas, CA which it also utilizes for its trucking operations. As we discussed yesterday, Roadway intends to utilize both facilities for its trucking operations for the foreseeable future.

Since the Transit Area Specific Plan converts the area into high density residential, Roadway's concern is that the Draft Environmental Impact Report does not adequately take into account Roadway's current trucking operations. Roadway is also concerned that the City of Milpitas will deem Roadway's current trucking operations to be in conflict with neighboring uses. Roadway wants to make sure that the City of Milpitas is making no efforts to restrict Roadway's present usage of both facilities. In other words, Roadway will continue to have the ability to utilize the facilities for its trucking operations following the adoption of the Transit Area Specific Plan.

Please direct any notices of public hearings or questions to my attention at 1077 Gorge Boulevard, Dept A28, Akron, OH 44310, (330) 384-2317.

Very truly yours,

YRC Worldwide Enterprise Services, Inc.
on behalf of Roadway Express, Inc.

By: James P. Bauer
Its: Sr. Project Manager – Real Estate

14. Response to YRC Worldwide Enterprise Services, Inc.

14-A: Comment noted. YRC Worldwide will maintain the right to continue trucking operations. Page 3-14 of the Specific Plan states as follows:

Existing land uses are permitted to remain in place and continue operations. Existing buildings or land uses which become nonconforming as a result of the new zoning and land use classifications are governed by Section 56 of the Zoning Code: Nonconforming Buildings and Uses. Certain limits are established for repairs, additions, restoration, expansion, and occupancy after an extended vacancy.

Such comments do not pertain to the adequacy of the Draft EIR, and as such, no EIR text revisions are necessary. Comments on the Specific Plan will be addressed during the public hearings for the Specific Plan.

COMMENT LETTER 15

STEEFEL, LEVITT & WEISS
A Professional Corporation

December 21, 2007

05274

VIA U.S. MAIL AND E-MAIL VBEJINES@CI.MILPITAS.CA.GOV

Scott Gregory
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: Union Pacific Railroad Company's Comments on the Draft Environmental Impact Report for Milpitas Transit Area Specific Plan, SCH #2006032091

Dear Mr. Gregory:

We represent Union Pacific Railroad Company ("UP"). By this letter, UP presents its comments on the Draft Environmental Impact Report ("Draft EIR") for the Milpitas Transit Area Specific Plan project (the "Project" or "Plan").

The Project proposes transit-oriented residential and commercial redevelopment on industrial land around existing light rail stations and the future BART station that is to be located near the intersection of Montague Expressway and Capital Avenue in the City of Milpitas (the "City"). The Project area comprises 437 acres within a roughly half-mile radius of the proposed Milpitas BART station. Buildout of the Project is anticipated to result in the construction of 7,100 new residential units, approximately 1 million square feet of new office space, 285,000 square feet of retail space, and 175,000 square feet of hotels.

Located on the western border of the Project site is UP's Warm Springs Subdivision main line (the "Main Line"). UP will retain its rights with respect to the Main Line. UP also holds operating rights on its Milpitas Subdivision (the "MS"), track now owned by the Santa Clara Valley Transportation Authority (the "VTA"), which bisects the Project area and runs along Piper Drive. The MS track is used by UP to serve its rail customers in the Milpitas Industrial Park to the south of Capitol Avenue. The MS track also includes a "wye" turnaround critical to the operation of UP's Milpitas Rail Yard to the north of the Project area that is utilized to turn UP locomotives. The wye turnaround also includes a spur track that extends beyond Milpitas Blvd. As a result of this close proximity, the development or improvements proposed by the Project are likely to impact UP in several material respects.

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By this letter, UP brings to the City's attention its concerns regarding the proposed removal or relocation of the wye turnaround and associated spur ("the Railroad Spur"), and the Project impacts on safety, trespassing, vibration, and mechanical odor. Based on our comments below, UP respectfully requests that the City analyze these issues associated with the Project's location near UP's tracks and operations, and require appropriate mitigation measures to reduce those impacts.

1. Background on UP

Many people know about UP's distinguished history. UP played a prominent role in the development of the first transcontinental railroad in the late 1860's. What many people do not know is that today, UP remains a significant owner of railroad property and a major freight transporter in the western two-thirds of the United States. In fact, UP is the largest railroad company in North America. 15-A

Of particular relevance to the Project, UP owns a railroad track and right-of-way along the western border of the site (the aforementioned Warm Springs Subdivision Main Line), holds operating rights on the VTA track that bisects the site, and owns a railroad spur and wye turnaround to the north of Montague Expressway. UP actively operates freight trains on these tracks.

Given UP's significant presence in and around Milpitas, UP takes great interest in the City's growth and improvement. It is with this perspective that UP respectfully submits the comments in this letter.

2. UP's Railroad Spur and Wye Turnaround

One of UP's major concerns about the Project is the City's proposal to remove or relocate UP's Railroad Spur and wye turnaround. *See, e.g.*, Draft EIR at p. 2-15 ("Removal or relocation of railroad spur tracks (long-term, if feasible)" and "Relocation of railroad 'Y' turnaround (long-term, if feasible)"), Figure 2.3-1 (stating that the railroad spur "May be relocated or abandoned in the future" and its "Location may need to be elevated or moved north or south depending on final BART and rail line layout").

The wye turnaround is critical to the operation of UP's Milpitas Rail Yard to the north of the Project. The wye turnaround is the only facility in the area by which UP is able to reverse the direction of its locomotives. While UP is willing to entertain discussion about the potential relocation of the wye turnaround slightly to the north of its present location, the wye turnaround cannot be eliminated. 15-B

Further, UP's use of the MS track and the Railroad Spur located adjacent to the wye turnaround is required by UP to serve active rail customers. UP understands that the City will be working with VTA and others either to relocate the active freight rail shippers or to provide

alternative freight service by the development of a team track facility in the Milpitas Rail Yard area. UP's operations, however, must not be disturbed.

3. Pedestrian and Bicycle Safety; Trespassing

Many of UP's other concerns specific to the Project, including, but not limited to, a concern about safety and trespassing, arise from the associated increase in population within the close proximity of the Main Line, Railroad Spur and wye turnaround. According to the Draft EIR, the City had a population in 2006 of approximately 65,276 and is projected to grow to 90,400 by 2030. *See* Draft EIR at p. 3.1-3. The Project area currently contains approximately 468 residential units and 1,180 people, less than two percent of the City's current population. *Id.* When the Project is fully developed, however, it is anticipated that approximately 17,900 additional residents will reside within the Project area by 2030, almost 20 percent of the City's total population. *Id.*

Existing land uses adjacent to or near the railroad tracks are primarily retail commercial or light industrial, although there are some high density residential housing as mentioned above located near UP's Railroad Spur. *See id.* at p. 3.1-2 (Figure 3.1-1). The Project proposes to develop approximately 7,100 units of residential housing, all of which are contemplated to be multi-family structures, parks and trails immediately adjacent to or near the railroad tracks. *See id.* at p. 2-10 (Figure 2.3-1). Consequently, residents living on the site, visiting the park and using the trails can be expected regularly to come within close proximity of the track.

15-C

The anticipated increase in population and pedestrian/bicycle traffic brings the increased risk to safety and trespassing onto UP's right-of-way. The development of housing, parks and trails for public use near the right-of-way can result in more individuals, particularly children, walking onto the track or engaging in mischief that could pose serious safety concerns and interfere with rail service. Some residents could decide to trespass onto the right-of-way, either to access other land uses across the tracks or for the purpose of extending their walks or jogs.

In particular, the Project proposes parks and trails immediately adjacent to the entire Main Line and portions of the Railroad Spur. UP generally disfavors the location of pedestrian trails and uses adjacent to its tracks and therefore any trails or pedestrian uses adjacent to or in close proximity of UP's tracks that are currently under consideration should be highly discouraged.

Similarly, UP strongly objects to any new at-grade pedestrian crossings that may be contemplated by the Project because they have obvious safety implications and could negatively impact train operations. A pedestrian crossing that is also accessible to bicyclists is proposed at the north end of Piper Drive over the UP Railroad Spur to provide a link to the Great Mall. *See id.* at pp. 3.3-73, 3.3-90. Although UP understands that this is to be an aerial crossing (*see id.* at p. E-25), the pedestrian and bicycle bridge should be constructed within UP guidelines so as not to interfere with train operations.

The City should therefore closely analyze pedestrian and bicycle safety, and the likelihood of trespassing onto the UP right-of-way in order to set forth appropriate mitigation measures. Specifically, the City should consider requiring the developer to install grade-separated pedestrian and bicyclist crossings. Other possible mitigation measures that the City should consider include, but are not limited to, solid barriers along the full lengths of the right-of-way (for example, walls, as opposed to fencing, to manage pedestrians and vehicles), relocating such land uses far away from the tracks where possible, setbacks and buffers, the installation of sound walls or other barrier fencing along the full lengths of the right-of-way, pedestrian gates, pavement markings, "no trespassing" signs, railroad safety education programs, and planning for safe transportation routes to schools, entertainment, shopping, and recreational facilities.

4. Noise

As the Draft EIR recognizes, the site is subjected to noise from a number of major roadways (including Interstates 880 and 680, State Route 237 and the Montague Expressway), the railroad, and the proposed BART line. *See, e.g., id.* at p. 3.7-5. It is well-known that UP's rail operations generate the noise one would expect from an active railway. Given that the Project consists of residential development adjacent to the active railway tracks and near busy vehicular roadways, the Project is likely to expose new residents to these existing noise conditions.

UP appreciates the Plan's proposed policies, as well as the City's General Plan policies, so as to reduce the noise impacts to less than significant levels. For instance, Proposed Plan Policy 5.11 states that masonry walls are to be constructed to buffer residential uses from BART and UP train tracks; Policy 6-1-2 requires an "acoustical analysis for projects located within a 'conditionally acceptable' or 'normally unacceptable' exterior noise exposure area" and "mitigation measures to reduce noise to acceptable levels"; Policy 6-1-3 prohibits "new construction where the exterior noise exposure is considered 'clearly unacceptable' for the use proposed"; Policy 6-1-5 requires all new residential development and lodging facilities to have mechanical ventilation "where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels"; Policy 6-1-15 promoting the "installation of noise barriers along highways and the railroad corridor where substantial land uses of high sensitivity are impacted by unacceptable noise levels"; and other policies, such as Policy 6-1-4, that generally require noise mitigation measures. *See id.* at E-28, E29. UP encourages the City to retain and enforce these policies discussed in the Draft EIR. 15-D

UP requests, however, that Policy 5.17 be supplemented. Policy 5.17 states that all rental and sale agreements are to include "disclosures to future residents about all surrounding industrial uses and the permanent rights of existing industrial uses to remain." *See id.* at p. E-29. Although it appears that UP's operations are included within the phrase "industrial uses," UP requests that this Policy expressly include its operations as among those industrial uses referred

to by this policy. To this end, UP requests that Policy 5.17 be supplemented with the following underlined language: "In all rental and sale agreements, provide disclosures to future residents about all surrounding industrial uses, including, without limitation, UPRR train tracks and operations, and the permanent right of such industrial uses to remain…." Further, UP requests that the disclosures contemplated by Policy 5.17 be required as a condition of approval for the developer and include information to the general public of the daytime and nighttime noise levels naturally associated with the railroad's long-standing rail uses within the Project area.

UP also suggests that the mitigation measures required include, for example, sound proofing materials and other techniques. Any such costs associated with the noise mitigation measures should be borne by the developers.

5. Vibration

As the Draft EIR recognizes, the Project site is located adjacent to or near the existing railroad tracks, which generate groundborne vibration. *See* Draft EIR, p. 3.7-24. It is well-known, however, that UP's rail operations also generate airborne vibration associated with an active railway, and the City should analyze this possible impact as well.

UP appreciates the Plan's proposed Policy 5.14, which requires "Project applicants to conduct a vibration 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" and to implement, "if needed," "mitigation measures to reduce vibration to acceptable levels." *See id.* at p. E-29, E30. 15-E

Possible mitigation measures include a condition of approval that requires the developer to disclose to the general public this pre-existing and predictably-occurring vibration, as well as construction and design techniques (*e.g.*, trenching and/or floating floors) that absorb and/or minimize interior vibration.

6. Mechanical Odor

Finally, it is also well-known that locomotives not only generate noise and vibration, but also may emit mechanical odors. Other land uses in and around the site include industry, light rail transit and the proposed BART line, and such land uses typically generate odors associated with their specific uses, thereby potentially resulting in cumulative impacts that some people in the area may notice. The various development and improvements proposed for the Project will attract more people to the area surrounding the UP Mainline, MS track, Railroad Spur and wye turnaround, and therefore expose them to existing mechanical odor. The City should therefore consider and analyze the potential impact of mechanical odors associated with locomotives in the Draft EIR and implement any necessary mitigation measures. 15-F

STEEFEL, LEVITT & WEISS

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UP appreciates this opportunity to comment on the Draft EIR for the Project and hopes that the City, as lead agency, gives due consideration to the above concerns. On UP's behalf, we would welcome the opportunity to further discuss this Project with the City as it progresses or any other project that may relate to UP's property or operations within the area. Continued discussion would afford UP and the City the opportunity to work in collaboration to ensure that the Project and all future development near UP lines are compatible with the rail services that will continue to serve the area for years to come.

Please give notice to UP of all future developments with respect to this Project and any other proposed transportation improvements in the vicinity as follows:

Mr. Jerry Wilmoth
General Manager Network Infrastructure
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, California 95747-7101

With a copy to:

Andrew Bassak, Esq.
Shirley Jackson, Esq.
Steefel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, California 94111.

Please do not hesitate to contact our office if you would like to schedule an additional meeting with UP or have any questions. UP will monitor this project with interest.

Sincerely,

Shirley E. Jackson

Shirley E. Jackson

cc: Mr. Jerry Wilmoth
Andrew Bassak, Esq.

5274:6629683.4

15. Response to Union Pacific Railroad Company

15-A: Comment noted. This is background information about Union Pacific.

15-B: Page 2-15 of the Draft EIR states the following:

"Areawide Infrastructure

A series of area-wide infrastructure improvements will take place to accommodate residential and mixed use development; make it more accessible to and comfortable for pedestrians; improve vehicle navigability; provide open space amenities; and reduce obstructions to development such as the railroad spur. Streetscape improvements and a system of signature pedestrian bridges are particularly important to give identity to the area and make it amenable to walking and bicycles. Recommended improvements include the following specific projects:

...Removal or relocation of railroad spur tracks (long-term, if feasible); and Relocation of railroad "Y" turnaround (long-term, if feasible)…"

There are no policies contained in the Plan that request or mandate the removal or relocation of the spur or the turnaround. Thus the impacts of the removal have not been analyzed in the Draft EIR, and no amendments to the Draft EIR are warranted to address this comment.

The language clearly states that the removal or relocation would only occur if feasible in the long-term. It is understood that negotiations, compensation for loss of service, and coordination with Union Pacific Rail Road would be required.

15-C: Refer to Response 2-A and Response 2-B. There are no trails or pedestrian uses adjacent to or in close proximity to UP's tracks that are currently under construction.

15-D: The Draft EIR text and plan policies reduce noise impacts to a less than significant level, as demonstrated by all the noise reduction policies cited in the comment letter. However for clarification purposes, Policy 5.17 will be revised to edit the first sentence and add a second sentence, as follows:

"Policy 5.17: In all rental and sale agreements, provide disclosures to future residents about all surrounding industrial uses, <u>including UPRR train tracks and operations,</u> and the permanent rights of <u>such</u> ~~existing~~ industrial uses to remain. <u>Describe potential impacts including but not limited to: noise, groundborne and airborne vibration, odors, and use of hazardous materials.</u>~~This notification must be made prior to the sale or rental of building space, and provide information about the extent of industrial uses throughout the Transit Area and specific information about each industrial use that is immediately adjacent to the property.~~"

15-E: The Plan contains the following policies pertaining to ground-vibration:

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.

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 5.12: The City shall offer to pay for sound walls, sound absorptive material, and additional sound insulation for residential uses located along Great Mall Parkway, between South Main and Abel streets, if interior noise levels rise above permitted levels by the year 2030.

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 measures to reduce vibration to acceptable levels.

The Draft EIR text and plan policies reduce vibration impacts to a less than significant level, as demonstrated by all the policies above and the policy cited in the comment letter. However for clarification purposes, Policy 5.17 is hereby revised as stated in Response 15-D above.

15-F: Refer to Response 3-B. Also refer to response 15-E, and specifically the revisions to Policy 5.17, which address notification to future residents about the potential impacts of industrial uses, including odors.

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