



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: February 22, 2012

**APPLICATION:** **SITE DEVELOPMENT PERMIT NO. SD11-0001, CONDITIONAL USE PERMIT NO. UP11-0037, and TENTATIVE MAP AMENDMENT NO. TM11-0002, McCANDLESS MIXED USE PROJECT**

**APPLICATION SUMMARY:**

A request to review the site and architecture of four mixed use buildings (954 residential units and 87,023 square feet of commercial) and 27 multi-family buildings (200 residential units) and; the operations in anticipation of a future grocery store for a mixed use project.

**LOCATION:**

1315 – 1600 McCandless Dr. (APNs: 086-33-092, -093, -101, -94, -99, -95, and -98)

**APPLICANT:**

Integral Communities McCandless, LLC, Glenn Brown, 675 Hartz Av, Suite 202 Danville, CA 94526-3838

**OWNER:**

Milpitas Project Owner LP, 333 S Grand Ave. Flr 28<sup>TH</sup>, Los Angeles, CA 90071

**RECOMMENDATION:**

**Staff recommends that the Planning Commission: Adopt Resolution No. 12-007 recommending approval to the City Council.**

**PROJECT DATA:**

General Plan/

Zoning Designation:

Retail High Density Mixed Use (MXD2) & Multi-family High Density Residential (MFH)/Retail High Density Mixed Use (MXD2) & High Density Multi-family Residential (R3)

Overlay District:

Specific Plan:

Site and Architectural (-S) and Transit Oriented Development (-TOD) Transit Area Specific Plan (TASP)

Site Area:

23 acres

CEQA Determination:

The project is consistent with the findings of the previously adopted Mitigated Negative Declaration (and subsequent addendum) adopted by the City Council on August 3, 2010. The project is also consistent with the Transit Area Specific Plan EIR and exempted under Section 15168(d) of the CEQA Guidelines.

PLANNER: Sheldon S. Ah Sing, Senior Planner

PJ: 3222 & 2744

ATTACHMENTS:

- A. Resolution No. 12-007
- B. Tentative Map
- C. District 1 architecture
- D. District 2 architecture
- E. McCandless Drive Improvement Plans
- F. Traffic study
- G. Comment letter from October 21, 2011
- H. Adopted Mitigated Negative Declaration and Addendum
- I. Toxic Air Contaminants study
- J. Flood study

# LOCATION MAP



No scale

**BACKGROUND**

On June 3, 2008, the City Council adopted the Transit Area Specific Plan (TASP). The Plan encompasses 437 acres and promotes the development of 7,109 dwelling units, 287,075 square feet of retail space, 993,843 square feet of office and industrial space. The plan includes development standards, goals and policies guiding development within the plan area. Because of the physical characteristics of the area, including major streets, railroads and creeks, the plan also established sub-districts with specific goals and policies to accommodate those unique characteristics.

The proposed project is within the McCandless/Centre Pointe sub-district of the Transit Area Specific Plan. The sub-district is located adjacent to the Great Mall and is bisected by McCandless Drive. For the sub-district, the TASP envisioned this to be the best location for successful retail mixed use district, building off the established retail destination of the Great Mall and the visibility along Great Mall Parkway. According to the TASP, the residential development along McCandless can take advantage of the existing mature canopy trees lining the street.

On June 4, 2008, Glenn Brown of Integral Communities McCandless, LLC submitted an application to create a subdivision for the purposes of accommodating future residential development. The application is submitted pursuant to Title XI, Chapter 1, Section 4 of Municipal Code for tentative maps. The plans include infrastructure, roadway and open-space improvements. A Conditional Use Permit was submitted pursuant to the Density Bonus provisions of the Transit Area Specific Plan to consider a 25% increase in density and exceptions to setbacks.

On July 14, 2010, the Planning Commission considered the Owner's Participation Agreement (with the City's Redevelopment Agency) and the Mitigated Negative Declaration with project addendum and recommended approval to the City Council. The City Council on August 3, 2010, approved the Owner's Participation Agreement and adopted the Mitigated Negative Declaration with project addendum.

On August 25, 2010, the Planning Commission considered the a tentative subdivision map for the future construction of three mixed use buildings, six residential buildings, including improvements to the existing adjacent roads, the construction of a new local street, and the creation of an urban plaza and new public trail along Penitencia Creek. The project contemplated a maximum of 1,328 dwelling units, which include a transit oriented density bonus (25%) increase of the maximum density allowed for the site and 92,000 square feet of retail/commercial space. The only outstanding entitlement for the project was the Site Development Permit to address the architecture.

On July 15, 2011, Integral Communities submitted an application to amend the approved tentative map and to review the architecture of all buildings. A Conditional Use Permit was added to the request to address the operations in anticipation of a grocery store for the site and to consider exceptions to setbacks, parking garage entries and retail ceiling heights. The difference between the time when the project received approval of the OPA and the tentative map is that the applicant has since opted out of the OPA and as a result will no longer provide affordable dwelling units. In addition half of the project area is proposed to include smaller townhome or motor-court style buildings, thus affecting the previously approved vehicular and pedestrian circulation as well as the expected architectural massing along McCandless Drive. The request is submitted pursuant to Section 57, Applications of the Zoning Code. All entitlements are to be evaluated by the Planning Commission and the City Council.

**PROJECT DESCRIPTION*****Site and surrounding uses***

The overall site is 23 acres and includes seven parcels spanning the intersection at Great Mall Parkway and McCandless Drive at the northern end of the site to McCandless Drive and East Channel Penitencia Creek at the southern end of the site. The project has two distinctive components. Three parcels (four buildings on 13 acres) closest to Great Mall Parkway are called “District 1”, a mixed use product with commercial on the first floor with residential units above wrapped around multi-story parking garages, while the balance of the project site is called “District 2” that includes lower density townhome and motor-court products with private garages on 10 acres.

Surrounding the subject project site are developed parcels. East of the subject site includes developed industrial buildings on similarly zoned properties. To the north of the project site is the Great Mall on commercially zoned property. To the south of the project site include the East Penitencia Creek and other existing industrial buildings on residentially zoned properties and a site zoned for residential but designated as open space within the TASP. To the west of the subject site includes the Lower Penitencia Creek, a railroad and existing commercial buildings along Main Street, which is currently zoned multi-family residential. A vicinity map of the subject site location is included on page 2 for reference.

The project is located within the McCandless/Centre Pointe Sub-district of the TASP. The TASP identifies the ultimate vehicular and trail network along with specific cross sections for each roadway. The project proposes new Streets A, B and C in accordance with the TASP. Figure 1 illustrates the vision of the TASP for the area.

**Figure 1**  
**McCandless/Centre point Sub-District Map**



**Amendments**

The applicant requests amending the previously approved tentative map (Figure 2) to accommodate the District 1 and 2 conceptual plan (Figure 3). This staff report provides detailed descriptions on each District, describing density, development standards, architecture and parking.

**Figure 2**  
**Approved Tentative Map Layout**



**Figure 3**  
**Proposed Plan for District Project**



District 1

*Zoning*

District 1 is zoned Retail High Density Mixed Use (MXD2) with Site and Architectural and Transit Oriented Development Overlays focusing on design and treatment of projects near transit nodes.

*Density*

The TASP allows for a density range between 31 and 50 dwelling units per gross acre. The project previously received approval for an additional 25% Transit Density Bonus, which increases the maximum density to 62.5 dwellings per acre. Table 1 demonstrates that the density for District 1 is 71.4 per gross acre. While the density exceeds the maximum allowed, the TASP (Policy 3.8) allows for averaging of density over multiple parcels, provided that a legal instrument is recorded for individual parcels to ensure that the minimum and maximum densities established by the TASP are met.

**Table 1**  
**District 1 Residential Project Development Summary**

Parcel	Lot	Acres	Unit Mix				Total Units	Density
			ST	1BR	2BR	3BR		
-92	1	4.988	20	186	157	9	372	74.58
-93	2	2.585	15	104	89	10	218	84.33
-101	3	5.789	10	80	87	13	190	62.88
	4		10	90	66	8	174	
<b>Total</b>		<b>13.362</b>	<b>55</b>	<b>460</b>	<b>399</b>	<b>40</b>	<b>954</b>	<b>71.40</b>
			<b>6%</b>	<b>48%</b>	<b>42%</b>	<b>4%</b>		

*Retail Requirement*

The MXD2 district requires a minimum of 200 square feet of retail, restaurant, or pedestrian-oriented commercial required per unit, using the minimum density. Based on the minimum density of 414 units, the project requires 82,444 square feet of commercial space. The project proposes 87,023 square feet of commercial space. This square footage includes 20,902 square feet for a grocery store. While no specific tenant is identified at this time, according to the City’s zoning ordinance, grocery stores require the approval of a Conditional Use Permit (Table 6.02-1, Mixed Use Zone Uses). Refer to the *Conditional Use Permit* section in this report for additional discussion. The Table 2 demonstrates the proposed amount of commercial for the project. The project complies with the requirement.

The minimum floor to ceiling height is 18 feet for retail and 15 feet for office. The applicant requests an exception from this requirement for 4,530 square feet of office space. Staff supports the request since the office space will be used for on-site leasing of units. The findings for exceptions are described under the “Adopted Plans and Ordinances Consistency” section of this report.

Since the Transit Area Specific Plan does not specify types of commercial uses, the specific plan defers to the zoning ordinance. Section 6.02(A)(1), Permitted and Conditionally Permitted Uses, within the Zoning Ordinance states that all uses except those noted (in Table 6.02-1) shall be conducted within enclosed structures. It is expected that there will outdoor dining areas.

**Table 2**  
**District 1 Retail Project Development Summary**

Parcel	Neighborhood Retail Ground Floor				Total	Outdoor		Total Retail	Mezzanine
	Grocery	Retail	Common/Leasing			Retail	Pool		
	20' Plate	20' Plate	19' Plate	9' Plate					
-92	20,902	23,759	2,400	0	47,061	0	6,800	53,861	3,000
-93	0	0	1,400	1,700	3,100	0	0	3,100	0
-101	0	23,935	1,835	1,632	27,402	0	0	27,402	2,000
	0	0	1,462	1,198	2,660	0	0	2,660	0
<b>Total</b>	<b>20,902</b>	<b>47,694</b>	<b>7,097</b>	<b>4,530</b>	<b>80,223</b>	<b>0</b>	<b>6,800</b>	<b>87,023</b>	<b>5,000</b>

*Development standards*

The TASP includes development standards such as setbacks, floor area ratio, and height. The following table summarizes the project’s conformance with these development standards for District 1.

**Table 3**  
**District 1 Development Standard Summary**

	TASP Requirement	Proposed	Complies
<u>Setbacks (Minimum)*</u>			
Great Mall Parkway setback	58 feet	43 feet	No
McCandless Drive setback	45 feet	26-27 feet	No
Creek setback	45 feet	33 feet	No
Street B setback	10 feet	5 feet to back of sidewalk	Yes
<u>Floor Area Ratio (Maximum)</u>	1.88 per building	0.23 max on Bld. 1	Yes
<u>Building Height (Maximum)</u>	12 stories	74-95 feet	Yes

\* The setbacks for District 1 are not changing from what was previously approved as part of the tentative map.

*Architecture*

All four buildings exhibit an art deco architectural style following symmetry by using a combination of metal roofing, railings and canopies, stucco walls and fabric awnings. Elements characteristic of the art deco theme include towers, spires, and marquees and other ornamental features. The colors use a warm earth tone palette. Buildings 1 and 3 that have frontage along Great Mall Parkway are seven stories tall, with other two buildings being five stories. This provides adequate massing as envisioned by the TASP along Great Mall Parkway. Figures 3 and 4 illustrate the architecture in renderings.

**Figure 4**  
**Rendering of Project**



*VIEW OF McCANDLESS DR. CORNER GREAT MALL PKWY.*

**Figure 5**  
**Rendering of project**



*Parking*

District 1 provides parking for residents are included in multi-level parking structures, located in the middle of the buildings. The retail parking is located either along McCandless Drive, Street A, surface parking between Building 1 and Great Mall Parkway and on the first level of the parking structures with buildings having commercial spaces. Sheets 1-A1, 2-A1, 3-A1 and 4-A1 of the project plans summarize the parking for the project. The applicant utilizes a standard parking stall replacement provision (Section 53.13(B)(4), where a maximum of five percent (5%) of the required parking can be substituted when bicycle or motorcycle parking is provided. The “Total after reduction” row demonstrates that the project provides an amount of parking consistent with the TASP and the zoning ordinance. The tables below summarize the parking for District 1 by building.

**Table 4**  
**Building 1 Parking Summary**

	<b>Parking (Minimum required)</b>	<b>Guest Parking (Minimum Required)</b>	<b>Total Parking Required</b>	<b>Total parking provided</b>
Residential	507	76	583	569
Commercial*	193		193	182
Bicycle	39		39	110
Motorcycle				20
<b>Total Auto</b>	700	76	776	751
<b>Total after reduction**</b>			<b>737</b>	<b>751</b>

\*Assumes that 2,047 square feet will be restaurant dining space.

\*\*Thirty-nine (39) parking spaces are omitted.

**Table 5**  
**Building 2 Parking Summary**

	<b>Parking (Minimum required)</b>	<b>Guest Parking (Minimum Required)</b>	<b>Total Parking Required</b>	<b>Total parking provided</b>
Residential	296	44	340	343
Commercial	13		13	13
Bicycle	55.1	2.22	57	57
Motorcycle				0
<b>Total Auto</b>	309	44	353	356
<b>Total after reduction**</b>			<b>346</b>	<b>356</b>

\*\*Seven (7) parking spaces are omitted.

**Table 6**  
**Building 3 Parking Summary**

	<b>Parking (Minimum required)</b>	<b>Guest Parking (Minimum Required)</b>	<b>Total Parking Required</b>	<b>Total parking provided</b>
Residential	265	40	305	307
Commercial	88		88	92
Bicycle	47.5	1.99	54	55
Motorcycle				7
<b>Total Auto</b>	353	40	393	399
<b>Total after reduction**</b>			<b>373</b>	<b>399</b>

\*\*Twenty (20) parking spaces are omitted.

**Table 7**  
**Building 4 Parking Summary**

	<b>Parking (Minimum required)</b>	<b>Guest Parking (Minimum Required)</b>	<b>Total Parking Required</b>	<b>Total parking provided</b>
Residential	235	35	270	269
Commercial	15		15	13
Bicycle	43.25	1.76	45	48
Motorcycle				0
<b>Total Auto</b>	250		285	282
<b>Total after reduction**</b>			<b>279</b>	<b>282</b>

\*\*Six (6) parking spaces are omitted.

*Landscaping*

The overall project will include a new planting scheme providing a variety of turf, shrubbery, vines and trees throughout the development. The landscape palette will complement the proposed architectural style of the buildings. A final landscape plan will need to address the street trees, the recommendations of the Toxic Air Contaminants study, and the requirements of the TASP for types of vegetation.

*Other items*

According to the TASP, the width of parking garage entrances must be between 20 and 25 feet and the parking access point set back from the curb. The project meets this requirement except for the south entry into Building 1. The entry is 40 feet wide to accommodate access to the retail parking on the first level of the garage and a ramp to access the residential parking above. Staff supports an exception to the standard, since the entry accesses a private driveway and not McCandless Drive.

District 2

*Zoning*

District 2 is zoned High Density Multi-family Residential (R3) with Site and Architectural and Transit Oriented Development Overlays. The amendment to the tentative map is to allow for the development of smaller buildings in District 2. These include motor-court buildings on the west side (West Neighborhood or Village) and townhouse buildings on the east side (East Neighborhood or Village).

*Density*

The TASP allows for a density range between 21 and 40 dwelling units per gross acre. The table below demonstrates that the density for District 2 is 20.66 per gross acre. While the density is below the minimum required, the TASP (Policy 3.8) allows for averaging of density over multiple parcels, provided that a legal instrument is recorded for individual parcels to ensure that the minimum and maximum densities established by the Plan are met.

**Table 8**  
**District 2 Residential Project Development Summary**

Neighborhood	Acres	Unit Mix			Total Units	Density
		2BR	3BR	4BR		
West (Courtyard)	4.19		81		119	28.4
East (Single Family Attached)	5.486	68	22	29*	81	14.76
<b>Total</b>	<b>9.68</b>	<b>68</b>	<b>103</b>	<b>29</b>	<b>200</b>	<b>20.66</b>
		<b>34%</b>	<b>51%</b>	<b>15%</b>		

\*Includes 22 units that have an optional 4<sup>th</sup> bedroom.

*Development Standards*

The TASP includes development standards such as setbacks and height. The following table summarizes the project’s conformance with these development standards for District 2.

**Table 9**  
**District 2 Development Standard Summary**

	TASP Requirement	Proposed	Complies
<u>Setbacks (Minimum)*</u>			
McCandless Drive setback	36-38 feet	15-20 feet	No
Creek setback	45 feet	28 feet	No
Street B setback	10 feet	6 feet to back of sidewalk	No
<u>Building Height (Maximum)</u>	75 feet	35 feet	Yes

Figure 5-16 of the TASP requires a 38 foot setback on the west side of McCandless Drive and a 36 foot setback on the east side of McCandless Drive. The project proposes a 20 foot setback on the west side of McCandless Drive and a 15 foot setback on the east side of McCandless Drive. The proposal represents a reduction in the TASP street setbacks for McCandless Drive; however, the applicant seeks an exception to the setback requirement. Staff supports the exception because the project as proposed and conditioned will provide upgraded architectural elements such as window and door treatment (smooth stucco trim), and a pedestrian bridge connection from the east neighborhood over the East Channel Penetencia Creek to the future park.

*Parking*

District 2 includes buildings with private individual garages as well as utilizing open parking spaces and parking along McCandless Drive, Street B and Street C. The East Neighborhood includes 74 dwelling units with tandem parking spaces. Tandem spaces can be allowed with the approval of a Conditional Use Permit (Section 53.07(D)(1)). For developments with private garages a maximum of 50% of parking spaces may be tandem. The development provides 18% of the dwelling units with tandem spaces.

The TASP includes minimum and maximum range for parking spaces required. The table below demonstrates that the project is consistent with the TASP.

**Table 10**  
**District 2 Parking Summary**

	<b>Residential Parking (Minimum required)</b>	<b>Guest Parking (Minimum Required)</b>	<b>Total Parking Required</b>	<b>Total parking provided</b>
West (Courtyard)	130	26	156	189
East (Single Family Attached)	219	44	263	299
<b>Total</b>	349	70	419	488

*Architecture*

Finding the right architecture to complement the larger buildings proposed in District 1 was a priority for staff and the applicant. For both neighborhoods, the architecture provides vertical massing to accentuate three stories. The architecture includes a variety of narrow and wide projecting modules; a variety in height and width of the projecting bay windows plus angled side wall shape is pleasing. In addition, the architecture provides a variety of roof pitches on the projecting modules that gives a variety in silhouette when viewed from the ground level. There are also clearly defined unit entries throughout the project.

### *Landscaping*

The overall project will include a new planting scheme providing a variety of turf, shrubbery and trees throughout the development. The landscape palette will complement the proposed architectural style of the buildings. A final landscape plan will need to address the street trees, the recommendations of the Toxic Air Contaminants study, and the requirements of the TASP for types of vegetation.

### *Conditional Use Permit*

#### Grocery Store

Policy 4.71 of the TASP refers to the development of a grocery store for the sub-district. The project provides the space for a future grocery tenant. At this time, no tenant has been identified. According to the City's zoning ordinance, grocery stores require the approval of a Conditional Use Permit (Table 6.02-1, Mixed Use Zone Uses). The purpose of the CUP is to provide basic operation conditions that are common to grocers, such as deliveries and alcohol sales.

Staff proposes that alcohol sales end at midnight and that deliveries to the grocer are restricted to between 6:00AM and 10:00PM. In addition, if the grocer has any onsite cooking that the grocer would be subject to the same performance standards as restaurants regarding odors, recycling and trash (Section 6.02) within the City's zoning ordinance.

#### Exceptions to Development Standards

Exceptions to the TASP development standards may be approved through the Conditional Use Permit process. This process may not be used to deviate from density, allowable uses or open space requirements. Two additional findings will need to be made by the decision-making body:

“The deviation from the TASP standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development”; and

“The deviation from the TASP standard allows for a public benefit not otherwise obtainable through the strict application of the zoning standard.”

The applicant requests deviations from the required setbacks from McCandless Drive for District 2 (District 1 setback reductions have already been approved previously), the width of the entry to the garages for District 1 and floor to ceiling height for retail.

Staff can support the deviations because the site planning, architecture and landscaping complement each other. The office space will support the leasing of units within the development. In addition, the project will incorporate higher level of architectural detail for elements such as window trim, lighting, and other ornate features. The project will also as a public benefit provide the funding for the design, permitting and construction of a pedestrian bridge crossing over East Channel Penetencia.

## **ADOPTED PLANS AND ORDINANCES CONSISTENCY**

### *General Plan*

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 11**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a.1-25: Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.</i>	<i>Consistent.</i> The project as proposed and conditioned conforms to the street layout, street sections, density and land use.
<i>2.a.-G-2: Maintain a relatively compact urban form.</i>	<i>Consistent.</i> The project provides a high density mixed use development.

***Zoning Ordinance***

Where the TASP development standards are silent, the City’s zoning ordinance prevails. The project as proposed is consistent with the City’s zoning ordinance.

***Transit Area Specific Plan***

Overall compliance

The table below summarizes compliance with various specific plan policies. Additional discussion is provided for density, the required retail, and street sections.

**Table 12**  
**Consistency With Transit Area Specific Plan Policies**

<b>Policy</b>	<b>Compliance</b>
<b>Policy 4.69 (MC-C):</b> Create a mixed use area with retail, restaurant, and personal service uses in the area closest to Great Mall Parkway.	<b>Yes.</b>
<b>Policy 4.70 (MC-C):</b> Create a high-density residential neighborhood at the interior of the sub-district, centered along McCandless Drive.	<b>Yes.</b>
<b>Policy 4.71 (MC-C):</b> Provide a grocery store within the Residential-Retail High Density Mixed Use district that serves neighborhood residents and provides a range of fresh produce as well as meat, poultry, and fish.	<b>Yes.</b>
<b>Policy 4.73 (MC-C):</b> Create a plaza or other type of public space in the retail mixed use district, located as shown in the Plan Map.	<b>Yes.</b>
<b>Policy 4.74 (MC-C):</b> Create a trail along the Penitencia Creek East Channel.	<b>Yes.</b>

Density

On all sites throughout the Transit Area, densities can be averaged over an individual project which covers multiple parcels or over separate projects; provided that legal instruments are recorded for

individual parcels to ensure that the minimum and maximum densities established by the plan are met. As discussed earlier, the project will require the execution of legal instruments to average the densities across the 23 acre project site.

#### McCandless Drive

Through a series of discussions with the developer, a design that incorporates stormwater treatment, medians that accommodate fire department apparatus and lane configurations that incorporate the focus traffic study findings is included as Attachment E. Since the existing trees along the street will be removed, as a condition of approval, the project will require the planting of 48" box trees with 36" box trees interspersed to mitigate for the loss of the mature canopies. Other features within McCandless Drive include raised intersections to help with traffic calming.

#### Open space

The project is consistent with the previous approvals for private recreation and public open space (trails and urban plaza) totaling 1.04 acres. In addition, the project includes the touchdown area for the future pedestrian bridge across the East Penetencia Creek Channel adjacent to the west neighborhood, which will connect with DR Horton's "Harmony" residential project to the south. Another pedestrian bridge crossing the East Penetencia Creek Channel is proposed as a condition of approval adjacent to the east neighborhood, which will connect with the future park and school site to the south.

#### *District 1*

Each building in District 1 has at least one courtyard for the purpose of providing private recreation space. These courtyards include water features, outdoor cooking areas, seats, and fire elements. See Sheets L1-07 of the plans.

#### *District 2*

District 2 provides for a common area between the termination of Street E and the trail along Penetencia Creek. District 2 will also include two pedestrian bridges crossing over the East Channel Penetencia Creek.

#### Traffic Study

Although the Transit Area Specific Plan EIR already evaluated the impacts on intersections and roadway segments, the original project approval required that the project submit to the City a focused traffic study to evaluate the ingress and egress of buildings and new streets onto McCandless Drive and Great Mall Parkway. The recommendations from the traffic study are incorporated into the plan; the most significant change is that Street A is now one-way in the west direction and that the west bound left turn pocket on McCandless Drive has been elongated. No new impacts to intersections are identified that were already identified in the TASP EIR. Mitigation for those impacts are taken care of through the payment of the TASP impact fee.

### **ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and recommend the project is consistent with the findings of the previously adopted Mitigated Negative Declaration (and subsequent addendum) adopted by the City Council on August 3, 2010. The project is also consistent with the Transit Area Specific Plan EIR and exempted under Section 15168(d) of the CEQA Guidelines.

The project's scope has been reduced from what was stated in the addendum and thus any anticipated impacts are less than previously stated.

### **PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. Staff did receive a comment (Attachment G) on the environmental determination of the project on October 21, 2011, which was before the public notice was distributed for the project.

In summary, the commenter states that the project fails to comply with CEQA and the California Water Code. A Mitigated Negative Declaration was drafted, circulated (in 2008) and adopted by the City Council (in 2010). This application considers an amendment to the tentative map, the review of architecture, the operations of a future grocery store and deviations to the TASP development standards. The project is within the scope of the policies, goals and guidelines of the adopted Transit Area Specific Plan (2008).

#### Traffic Study

The commenter mentions conditions of approval from the Tentative Map regarding a traffic study. The applicant submitted and staff evaluated the focused traffic study. Components of McCandless Drive and the new Street A and the ingress/egress of Building 1 were altered as a result of the findings from the focused traffic study. Therefore, the condition of approval is satisfied.

#### Raptor and Arborist Studies

The commenter mentions conditions of approval from the Tentative Map regarding an arborist report, and raptor study. The raptor study is useful prior to eminent construction. The nesting patterns of birds may change by season and it is most appropriate to conduct that study at a time when construction is eminent not months or years before construction. The policies outlined in the TASP as well as the MND for the project provide an expected outcome of what is expected if any nests are found.

The applicant submitted an arborist report on December 20, 2007, which identifies all trees on the project site by species and health. Therefore, that condition of approval has been satisfied. Regarding, the replacement of trees, typically, 24" box trees are planted to replace trees. The project's tentative map is conditioned that 36" and 48" box trees are to be planted along McCandless Drive. These larger trees are viewed as adequate replacements when to the extent feasible those existing street trees could not be preserved.

#### Water Supply Assessment

The commenter also comments about the availability of a Water Supply Assessment and refers to a condition of approval in the Tentative Map project. The Water Supply Assessment for the Transit Area Specific Plan was adopted by the City Council in September 2006 (prior to the adoption of the Specific Plan). The assessment covers 7,186 dwelling units. The Integral Communities project on a whole includes 1,154 dwellings, well below the amount covered by the WSA. Therefore, the condition is satisfied with the already adopted WSA.

#### Toxic Air Contaminants

Pursuant to Policy 5.25 of the TASP, the applicant submitted a Toxic Air Contaminants study performed by Haley & Aldrich. The study recommends that the project include filters for certain affected dwelling units and vegetation barriers. This is consistent with the findings for the Harmony residential project to the south along McCandless Drive.

#### Flood Hazards

Conditions of approval on the Tentative Map for the project ensure compliance with FEMA prior to Final Map and prior to issuance of any building permit. Therefore, those conditions still remain valid.

#### Stormwater Control Plan

While a conceptual stormwater control plan was submitted, a final plan will be required prior to construction.

#### Project Phasing

The entire project is collectively known as The District (McCandless Mixed Use Project). This proposal includes the evaluation of the entire project. The project is less intense than what was originally approved.

### **CONCLUSION**

The proposed project represents the gateway into the Transit Area. The architecture of the project is compatible with the surrounding buildings and complements the development within the Transit Area Specific Plan. The massing and densities are consistent with the vision of the specific plan. The conditions of approval for the grocery store will ensure the basic operations of a typical grocer do not interfere with the residential and commercial operations of District 1.

### **RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing, following public testimony and adopt Resolution No. 12-007 recommending approval of Site Development Permit No. SD11-0001, Conditional Use Permit No. UP11-0037, and Tentative Map Amendment No. TM11-0002, McCandless Mixed Use Project subject to the attached Conditions of Approval.

#### *Attachments:*

- A. Resolution No. 12-007
- B. Tentative Map
- C. District 1 architecture
- D. District 2 architecture
- E. McCandless Drive Improvement Plans
- F. Traffic operations analysis
- G. Comment letter from October 21, 2011
- H. Adopted Mitigated Negative Declaration and Addendum
- I. Toxic Air Contaminants study
- J. Flood study

**IX. PUBLIC HEARING****1. SITE DEVELOPMENT PERMIT NO. SD11-0001, CONDITIONAL USE PERMIT NO. UP11-0037, AND TENTATIVE MAP AMENDMENT NO. TM11-0002, MCCANDLESS MIXED USE PROJECT**

Sheldon S. Ah Sing, Senior Planner, presented a request to review the site plan and architecture of four mixed use buildings (954 residential units and 87,023 square feet) and 27 multi-family buildings (200 residential units) and; the operations in anticipation of a future grocery store for a mixed use project. The project site is located within the Transit Area Specific Plan. Mr. Ah Sing recommended adopting Resolution No. 12-007 recommending approval to the City Council.

Commissioner Madnawat asked what the impact fees are. Mr. Ah Sing stated the fee is \$25,000 per unit. Commissioner Madnawat asked about parking. Mr. Ah Sing stated that the project proposes a reduced amount of parking because the zoning code allows for a substitution of vehicle parking spaces when motorcycle and bicycle parking is provided to a certain limit.

Chair Mandal asked about water supply pressure. Fernando Bravo, Principal Civil Engineer, stated the project is conditioned to provide a system hydraulic analysis to adequately address the fire and domestic needs to serve the project. Chair Mandal asked who pays for this analysis. Mr. Bravo stated the developer will pay for the analysis. Chair Mandal asked if this project using recycled water for the landscaping. Mr. Ah Sing stated yes.

Commissioner Mohsin asked about green material. Mr. Ah Sing stated the City does require a green building checklist.

Commissioner Sandhu asked about the setbacks on the project. Mr. Ah Sing stated the project was approved in 2010 to address setback issues.

Chair Mandal asked about the trees. Mr. Ah Sing stated more trees are being planted than what is being removed the site.

Commissioner Luk stated a grocery store would good for the area. He believes this is the right location for the project. He credits staff for working with the developer for so many years. He feels it is a very beneficial project to the City.

Commissioner Mohsin asked about parking. Mr. Ah Sing stated the commercial parking is located at the front of building 1, along McCandless Drive and the first level of the garage is for retail parking.

**Evan Knapp, Integral Communities**, stated they have two potential grocery stores in mind. **Tobin Symmank, Architect Orange**, stated sustainable is considered a green idea.

Commissioner Mohsin asked about the windows. Mr. Symmank stated the project will have double pane windows. Commissioner Mohsin asked about solar energy for the pool. Mr. Symmank stated there will be no solar energy for the pool at this time. Commissioner Mohsin asked if the minimum standards being met. Mr. Symmank stated yes.

Commissioner Madnawat stated the grocery store is a plus. He asked if there is a club house on the site. Mr. Knapp stated there are several community rooms, pool, spa, gym, home theater kitchen, and dog washing station.

Chair Mandal asked about solar energy. Mr. Knapp stated they are in the process of the construction drawings. They are looking into solar energy.

Chair Mandal opened the public hearing.

**Robyn Purchia, Adams Broadwell Joseph and Cardozo, Attorney at Law, 601 Gateway Blvd. So. San Francisco** stated she is representing the Milpitas Coalition for

Responsible Development. The Coalition is requesting the Planning Commission deny this project and order City Council to prepare an environmental review document under CEQA. She stated the Coalition submitted written comments to the City on October 21, 2011.

**John Dalrymple, Plumbers and Electrical Workers Union**, submitted signed cards from Milpitas residents who support the denial of this project. He is concerned with this project being built correctly.

**Devin, 463 Palmer St.**, stated workers should be from Milpitas.

**Ray Esparza, 1334 Glacier Dr**, is concerned with hiring low age workers.

**Don Peoples, 612 So. Main Street**, stated this project is perfectly suited for this area. He stated Milpitas needs this project.

**Motion** to close the public hearing.

M/S: Sandhu, Luk

AYES: 5

NOES: 0

ABSENT: 3 (Garry Barbadillo, Larry Ciardella, and Steve Tao)

ABSTAIN: 0

Chair Mandal wanted clarification on the CEQA documents. Mr. Ah Sing stated the TASP was adopted in 2008 along with its EIR. The mitigation measures for the EIR became policies within the TASP. It was done in accordance with state law and other CEQA guidelines.

Commissioner Madnawat asked if the setback requirements different. Bryan Otake, Assistant City Attorney, stated no. The previous EIR and Mitigated Negative Declaration are adequate. No additional analysis required. Commissioner Madnawat asked about affordable housing. Mr. Otake stated affordable housing policy in Milpitas is in compliance.

Chair Mandal asked if the developer has a policy in hiring local workers from this area. Mr. Knapp stated they welcome any number of parties to bid on this project. Chair Mandal asked if they have a preference. Mr. Knapp stated they encourage all parties to bid local or outside local.

Commissioner Madnawat asked the process in hiring. Mr. Knapp stated they hire a general contractor who hires the workers.

Commissioner Luk believes the developers will hire local trade.

Commissioner Sandhu believes this is an important project for the City of Milpitas.

Commissioner Mohsin stated she is glad this project has come to Milpitas. She would like to see more solar energy and the use of local workforce.

Chair Mandal suggested taking a short recess to look over the document that was submitted to the Commission.

Commissioner Luk and Commissioner Sandhu feel there is no need to read the document.

There was a 10 minute recess to look over the document that was submitted to the

Commission.

Commissioner Madnawat stated he would not give too much weight on the document brought forth.

Chair Mandal wanted clarification on the document. Mr. Ah Sing stated they have seen the October 21 letter referenced and the Mitigated Negative Declaration and these were included in the agenda packet given to the Commission. Staff's report responded to the comments in the October 21 letter.

Commissioner Luk stated the document presented to the Commission is a legal matter for the Assistant City Attorney to handle.

**Motion** to adopt Resolution No. 12-007 recommending approval to the City Council with the following condition:

1. The applicant or owner shall work with staff to consider the incorporation of renewable energy and energy efficient features in the project.

M/S: Sandhu, Mohsin

AYES: 5

NOES: 0

ABSENT: 3 (Garry Barbadillo, Larry Ciardella, and Steve Tao)

ABSTAIN: 0

# YES TO VIBRANT, SUSTAINABLE MILPITAS

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Name: OLGA Urista Address: 185<sup>4</sup> Forest Ct  
Email: None Milpitas, Ca. 95035

**YES TO MIDDLE CLASS JOBS! YES TO A SUSTAINABLE, VIBRANT MILPITAS!**

A.T.  

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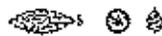
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Name: Pablo Velasco Address: 1348 columbes DR  
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Email: Pablo.Velasco@ymail.com

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A.P. 

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Name: KELLY VOWELS Address: 2271 LYNDWOOD FORMER  
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Email: KELLY @ JMW00.COM

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Name: RAISA WAIR Address: 1134 PANICROW DR  
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Email: RAISA04@SBCGLOBAL Raisa Wair

YES TO MIDDLE CLASS JOBS! YES TO A SUSTAINABLE, VIBRANT MILPITAS!

J.B. 

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Name: Melissa Espinoza Address: 1334 Garcia Dr

Email: kespinoza@melissa722@yahoo.com Milpitas, CA 95025

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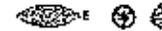
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Name: Lynn Lowell Address: 400 Fenwick

Email: llowell@musd.org

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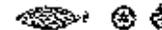
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Name: COLADYS LEON Address: 1674 ROCKY MOUNTAIN AVE MILPITAS

Email: \_\_\_\_\_

**YES TO MIDDLE CLASS JOBS! YES TO A SUSTAINABLE, VIBRANT MILPITAS!**



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Name: Henry Fischer Address: 289 S. Park Victoria Dr

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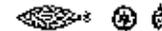
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Name: Noel Younathan Address: 1708 Strawberry Ln.

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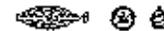
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Name: Potvos Iesha Address: 768 Strawberry Ln.

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Name Suzon Youngman Address: 1768 Strawberry Ln. Milpitas CA  
95031

Email: \_\_\_\_\_

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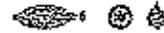
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Name: Mariam Younathan Address: 1768 Strawberry Milpitas, CA 95035

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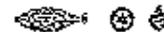
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Name: Jessica Leffler Address: 380 Live Oak Ct

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Name: CHAD LEFFLER Address: 380 Live oak ct

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Name: Dianne Leffler Address: 2395 Mattes Dr.

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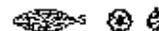
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Name: Bill Leffler Address: 2395 Mattos Dr.

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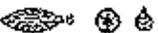
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Name: Heidi Anderson Address: 197 Greentree Way

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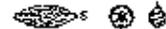
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Name: Chris Clark Address: 910 Coventry Cir

Email: \_\_\_\_\_ Milpitas CA 95035

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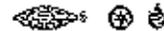
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Name: Angeah Clark Address: 910 Coventry Circle

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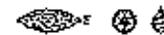
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Name: ANNA MARTINEZ Address: 456 dempsey rd #157

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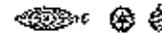
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Name: Gina Romero Address: 175 Dempsey Road #172

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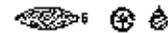
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Name: Elizabeth Vasquez Address: 1352 Acadia Ave

Email: \_\_\_\_\_ Milpitas, CA 95035

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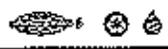
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Name: erika Alvarez Address: 484 dempsey rd # 184

Email: \_\_\_\_\_ Milpitas CA 95035

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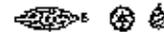
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Name: Elder Alvarez Address: 184 Dempsey rd #184

Email: \_\_\_\_\_ Milpitas, CA 95035

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Name: Don Hoang Address: 440 Dempsey Del. Unit 240

Email: dyenboj@yahoo.com Milpitas, CA 95025

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# YES TO VIBRANT, SUSTAINABLE MILPITAS

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I am excited about our City Council's vision for Milpitas, but not at any cost. We must make sure every new development brings with it the community benefits our residents need and deserve. Let's make sure the hundreds of new middle class construction jobs go to qualified residents. Let's make sure our environmental standards are not compromised to save a developer a buck. *Let's build a dynamic, vibrant Milpitas the right way!*

Name: Randolph Leung Address: 484 Dempsey Rd # 104  
Milpitas CA 95035

Email: \_\_\_\_\_

**YES TO MIDDLE CLASS JOBS! YES TO A SUSTAINABLE, VIBRANT MILPITAS!**



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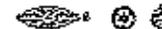
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Name: Janifer Pios Address: 240 Carnegie Dr

Email: jenrios@pacbell.net Milpitas CA 95035

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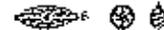
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Name: Joelenna Address: 1001 S. Main St #E204

Email: twonone@pacbell.net Milpitas CA 95035

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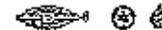
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Name: Gustavo Estrada Address: 410 Palmer st Milpitas

Email: GustavoEstrada7@gmail.com C.A. 95035

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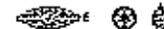
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Name: Jorge Estrada Address: 410 Palmer st milpitas

Email: JorgeEstrada8@gmail.com C.A. 95035

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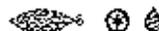
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Name: Gabriela Estrada Address: 410 Palmer st Milpitas

Email: GabrielaEstrada3@gmail.com C.A. 95035

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Name: Brian Ralph Address: 2247 MESA VERDE DR.

Email: Brian.Ralph MILPITAS, CA 95035

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Name: Nha Phai Address: 2256 MESA VERDE DR.

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Milpitas CA 95035  
Email: \_\_\_\_\_

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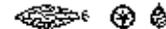
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Name: Kenneth A Bocchini Address: 2208 MESA VERDE AVE

Email: K.Bocchini@SBCGLOB.NET MILPITAS, CA 95035

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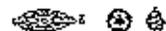
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Name: CHRISTINA WEISBACH Address: 2211 MESA VERDE DRIVE

Email: meador4po@mindspring.com MILPITAS, CA 95035

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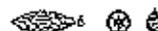
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Name: SANTOS FUENTES Address: 237 WELWICH AVE

Email: \_\_\_\_\_ MILPITAS CA 95035

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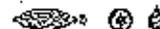
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Name: SALLY FUENTES Address: 837 NORWICH AVE

Email: \_\_\_\_\_ MILPITAS, CA 95035

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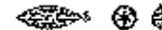
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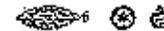
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Name: BOB BANDA Address: 359 SPENCE AVE

Email: \_\_\_\_\_ MILPITAS CA 95035

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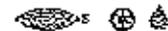
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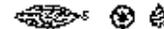
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Name: JUSTIN W. HAMILTON Address: 309 NORWICH AVE

Email: \_\_\_\_\_ MILPITAS, CA 95035

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Email: lpowell@musd.org

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Name: Donald R. Wertz Address: 1252 Belbrook Way

Email: bare.necessity@att.net Milpitas, Ca. 95035

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Email: \_\_\_\_\_ MILPITAS CA 95035

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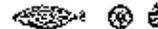
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Name: Bernadette Gomez Address: 1487 Yosemite Dr. Milpitas

Email: maridette\_1@hotmail.com 95035

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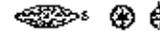
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Email: jwells@mUSD.org MILPITAS, CA 95035

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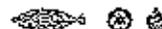
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Name: PATRICK SAENZ Address: 237 NORWICH AVE

Email: \_\_\_\_\_ MILPITAS CA. 95035

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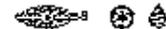
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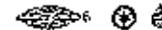
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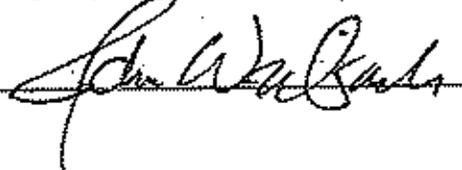


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Email:  MILPITAS, CA 95035

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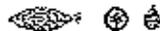
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Email: cchaplain61@msn.com

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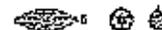
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Email: \_\_\_\_\_ Milpitas, CA 95035

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Email: \_\_\_\_\_ MILPITAS, Ca. 95035

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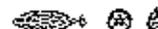
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Email: \_\_\_\_\_ MILPITAS, CA. 95035

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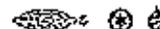
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Name: NELSON SANTILLA Address: 1607 CORTEZ ST.

Email: \_\_\_\_\_ MILPITAS, CA 95035

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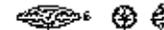
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Name: BERNARDO SALOM Address: 300 MONMOUTH DR.

Email: \_\_\_\_\_ MILPITAS, CA 95035

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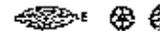
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Name: JOEY DELA CRUZ Address: 325 MONMOUTH DR.

Email: \_\_\_\_\_ MILPITAS, CA 95035

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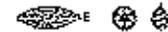
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Name: RAUL CRIBELLO Address: 329 AUTREY ST

Email: \_\_\_\_\_ MILPITAS CA 95035

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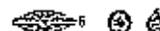
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Name: EDUARDO VELASCO Address: 580 CORINTHIA DR.

Email: \_\_\_\_\_ MILPITAS, CA. 95035

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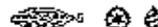
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Name: JOVITA MARARAC Address: WASHINGTON DR.

Email: \_\_\_\_\_ MILPITAS CA. 95035

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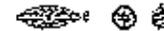
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Name: JOHN AGUADA Address: 1746 MIRABELLA CT.

Email: \_\_\_\_\_ MILPITAS, CA 95035

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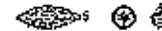
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Name: RICARDO BAUZON Address: 320 MONMOUTH DR.

Email: \_\_\_\_\_ MILPITAS, CA. 95035

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Name: Lillian Glebsow Address: 315 Yarmouth Ln.

Email: lillianglebsow@yahoo.com Milpitas, CA 95035

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A.T. 

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Name: Henry Sun Address: 275 Park Hill Dr.

Email: \_\_\_\_\_ Milpitas, CA 95035

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T.T.   

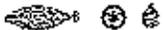
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Name: Isaac Cavalleres Address: 198. WINDLAW WAY  
Email: \_\_\_\_\_ MILPITAS

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S.M. 

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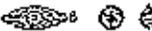
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Name: Jason Davis Address: 362 Smithwood

Email: milpitas95@yahoo.com Milpitas CA 95035

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F.G. 

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Name: Yolanda Davis Address: 362 Smithwood  
Email: yodie.davis@yahoo.com Milpitas CA 95035

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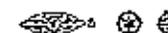
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Name: DENNIS DO Address: 447 CARNEGIE DR MILPITAS CA 95035

Email: \_\_\_\_\_



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C.N. 

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Name: Martha Fowler Address: 1074 Dempsey Rd

Email: m.fowler@musc.org Milpitas

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S.M. 

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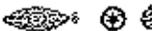
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Name: MOISES Garcia Address: 1943 Landross AVE

Email: junior9515@yahoo.com Milpitas CA 95035

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FG 

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Name: Ramon Garcia Address: 1342 Columbus Dr

Email: Garcia @ yahoo.com Milpitas CA 95035

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A.P.   

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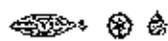
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Name: SIEGFRIED GENSL Address: 2164 PEDRO AVE MILPITAS CA

Email: \_\_\_\_\_ (408) 2639173

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S.G. 

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Name: Fernando Guerrero Address: 54 CASPER ST

Email: ferrandoguerrerojr@yahoo Milpitas CA 95035

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F.G.   

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Name: Monica Guerrero Address: 54 CASPER ST  
Email: mgg<sup>008</sup>@yahoo.com Milpitas CA 95035

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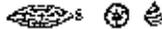
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Name: Ashley Gunn Address: 2095 Seacliff Dr. Milpitas

Email: \_\_\_\_\_

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J.B. 

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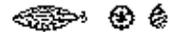
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Name: Alex Hernandez Address: 1348 COLUMBUS DR  
MILPITAS CA, 95035

Email: Alexhndz@gmail.com  
fuHool.com

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A.P.



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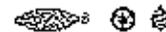
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Name: DAVIS HUYNH Address: 191 N. PARK VICTORIA DR

Email: davis h 191 @ yahoo . com MILPITAS, CA 95027

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T.T.



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Name: Elaine Fuchs Address: Milpitas 391 S. 10th St.

Email: \_\_\_\_\_

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Name: ROSA M. KIRK Address: 470 STELLMAN DR.

Email: \_\_\_\_\_ MILPITAS CA. 95035

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C.A.   

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Name: Nerissa Lacuzong Address: Milpitas, 95035

Email: nlacuzong@yahoo.com

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Name: Esther Lopez Address: 470 Stillman Dr.

Email: \_\_\_\_\_ Milpitas, CA 95035

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E. H.   

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Name: AL LUMAS Address: 3371 CHAVEZ RD  
Email: ALUMAS@Hydra.com MILPITAS, CA 95035

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Name: NGOC LUU Address: 1691 Jupiter Dr Milpitas

Email: \_\_\_\_\_ ngoc

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T.T.   

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Name: MARU ELEN MAGGI Address: 1021 BIG BEAR CT

Email: lolis3@aol.com MILPITAS, CA 95035

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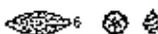
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Name: STAN MAGGI Address: 1021 BIG BEAR CT MI

Email: SMAGGI@AOL.COM MILPITAS CA 95035

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Name: María T. Nartia Address: 1027 BIG BEAR COURT

Email: montesano-maria@ MILPITAS, CA 95035  
yeheh.com

**YES TO MIDDLE CLASS JOBS! YES TO A SUSTAINABLE, VIBRANT MILPITAS!**

CA   

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Name: Stevie Mates Address: 365 Hazen St.

Email: \_\_\_\_\_ Milpitas

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S.M.  ©

# YES TO VIBRANT, SUSTAINABLE MILPITAS

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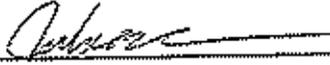
J.B.   

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C.N.   

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J.B.   

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e.N.  

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C.N.   

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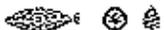
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A T. 

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AP



# YES TO VIBRANT, SUSTAINABLE MILPITAS

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A.P.   

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A.T.   

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S.M. 

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J.B.   

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TT   

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T.T.   



March 12, 2012

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Via Email (sahsing@ci.milpitas.ca.gov)

Sheldon S. Ah Sing, Senior Planner  
City of Milpitas  
Sheldon S. Ah Sing, Senior Planner  
455 East Calaveras Boulevard  
Milpitas, California 95035

**Re: McCandless Mixed Use Project – Site Development Permit No. SD11-0001,  
Conditional Use Permit No. UP11-0037, and Tentative Map Amendment No.  
TM11-0002 (APN's: 086-33-092, -093, -101, -094, -099, -095 and -098)**

Dear Mr. Ah Sing:

I am writing on behalf of Integral Communities, applicant for the McCandless Mixed Use Project (APN's: 086-33-092, -093, -101, -094, -099, -095 and -098) ("Proposed Project"), in response to letters sent by Robyn Purchia, counsel to Milpitas Coalition for Responsible Development ("Coalition") on October 21, 2011, and February 22, 2012, with respect to the Proposed Project. In the connection with the Proposed Project, Integral Communities has applied to the City of Milpitas ("City") for approval of a Conditional Use Permit, a Site Development Permit and a Tentative Map Amendment.

The purpose of this letter is to address the arguments raised by the Coalition regarding the City's compliance with the California Environmental Quality Act ("CEQA") for the Proposed Project. Contrary to the Coalition's claims, the evidence in the record fully supports the City finding that, under CEQA Guidelines section 15168, the Proposed Project will not have any new effects and the City can approve the Proposed Project as being within the scope of the project covered by the Program Environmental Impact Report ("EIR") prepared for the Milpitas Transit Area Specific Plan ("TASP"). The record further supports the City's finding that the Proposed Project is consistent with the findings of the Mitigated Negative Declaration and subsequent addendum ("MND"), adopted by the City Council on August 3, 2010. Accordingly, no further environmental analysis is required under CEQA.

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## **I. THE CITY PROPERLY RELIED ON THE TASP EIR**

The Coalition's letters urge the City to ignore the years of planning and commitment of resources to the preparation and environmental review of the TASP, claiming that the City must re-open the environmental review process for the Proposed Project. 2/22/12 Letter at 3-6; 10/21/11 Letter at 4-5. The Coalition's argument ignores the fact that the Proposed Project is but one piece of the planned program of development contemplated by the TASP, for which the environmental impacts have been thoroughly identified, analyzed and addressed in the TASP EIR.

### **A. The Purpose of the TASP EIR is to Streamline Environmental Review for Future Projects within the Transit Area**

Because the City envisioned the adoption of the TASP as merely the first step in the planning and development of the Transit Area, the City certified the Transit Area Specific Plan Environmental Impact Report ("TASP EIR") as a Program EIR pursuant to CEQA Guideline section 15168. This streamlines the environmental review for developments, such as the Proposed Project, that fall within the scope of the TASP.

#### **1. Overview of Program EIRs**

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

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

CEQA Guideline § 15168(a). Once adopted, a Program EIR is one of several mechanisms under CEQA designed to streamline future environmental review, while balancing goals of full disclosure and efficiency, particularly in situations such as the present one where a project implements a previously reviewed program. Under the CEQA Guidelines, a Program EIR may render unnecessary the preparation of subsequent environmental documents on a series of actions if the program EIR contains a thorough analysis of the relevant environmental issues and evaluates the effects of the entire program specifically and

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comprehensively. *Id.* § 15168(c)(5). Indeed, by conducting a broader, more comprehensive evaluation of significant environmental impacts, the Program EIR better identifies a project's long term cumulative effects than a series of individual, activity-level analyses. *Id.* § 15168(b)(1)-(2). A Program EIR also allows the lead agency "to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." *Id.* § 15168(b)(4). This ensures a more orderly and informed planning process.

## **2. The TASP EIR is a Programmatic Document**

Here, the TASP EIR expressly identified its purpose as a programmatic document to streamline environmental review for individual projects in certain circumstances:

As a program EIR, this document focuses on the overall effects of the proposed Transit Area Plan. When specific development proposals for the Transit Area are submitted to the City, the City will determine whether the environmental effects of the proposed projects are addressed by this EIR. If the City finds that the proposals would not result in any additional environmental impacts beyond those considered in this EIR, no new environmental analysis would be required. If the City determines that a project would create potential environmental impacts not studied in this EIR, or that environmental conditions have changed substantially since the EIR was prepared, the City could require further environmental review to determine appropriate revisions to the project, conditions of approval, or mitigation measures.

TASP EIR at E-1. Accordingly, it is appropriate to use the TASP EIR as Program EIR for projects contemplated, analyzed and described in the TASP EIR. Indeed, given the City's investment of time and resources in developing the TASP EIR as a programmatic document, it would be wasteful and contrary to the public interest not to use it as a Program EIR for projects falling within its scope.

### **B. The Proposed Project Falls Within the Scope of the TASP EIR**

Under the CEQA Guidelines, if the lead agency determines that a project is within the scope of a Program EIR and the project will have no new effects, "the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." CEQA Guidelines § 15168(b)(2).

Although a specific format is not prescribed by CEQA for using a Program EIR for future projects, the Guidelines suggest documenting a determination that a project qualifies through

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preparation of a written checklist or similar device, such as an Initial Study. CEQA Guidelines § 15168(c)(4). For the City's consideration, we respectfully provide further analysis in the enclosed Checklist for Minor Modifications to McCandless Mixed Use Project ("Checklist"), which more fully documents that the impacts associated with the Proposed Project have been properly analyzed.

As explained in the enclosed Checklist, the Proposed Project is consistent with and implements the TASP. The Proposed Project is within the geographic area of the TASP EIR, and has environmental impacts either the same or less than those analyzed in the TASP EIR. The Proposed Project currently contemplates 1,154 residential units and 87,023 square feet of commercial/retail development; this type and intensity of use is consistent with the TASP and the analysis in the TASP EIR. The Proposed Project includes a conditional use permit for the operation of a future grocery store that was contemplated in the TASP. The Proposed Project includes minor reductions in street setbacks in District 2 as compared to what is provided for in the TASP. The TASP allows for exceptions to the development standards through a Conditional Use Permit. Finally, the Proposed Project includes changes in the width of garage entries to allow for smaller townhome or motor-court style building in District 2. These changes reflect minor modifications to the Project as it was previously analyzed and approved, and will have no new significant effects on the environment. Furthermore, the Proposed Project impacts are mitigated through compliance with the TASP policies and mitigation measures identified in the TASP EIR. CEQA Guidelines § 15168(a). As a result, it is proper for the City to rely on the TASP EIR when approving the Proposed Project.

This analysis clearly demonstrates that the standards under CEQA Guideline 15168(c) allowing a program EIR to be used for a subsequent activity are present here and the City should proceed with finding that the Proposed Project is covered by the TASP EIR and the MND. Because the City has already exhaustively reviewed the environmental impacts associated with the TASP, it is at best disingenuous, and certainly misleading, for the Coalition to assert that the City is attempting to short circuit the environmental review process. The City's proposed course of action is exactly how CEQA is intended to function. Thus, the Proposed Project should be properly reviewed under the TASP EIR, in compliance with CEQA.

## **II. THE CITY ALSO PROPERLY RELIED ON THE MND**

The record also supports the finding that the Proposed Project is consistent with the findings of the MND, which was adopted as part of the City's earlier approval of the project in 2010 ("Approved Project"). The MND expressly tiered off the TASP EIR. No one challenged the MND or the Approved Project. Accordingly, those approvals are final and beyond challenge. Thus, the Coalition can contest neither the MND nor the City's reliance on its analysis.

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There have been no significant changes in the Proposed Project that would deviate from the environmental review conducted in the MND. The Approved Project contemplated a maximum of 1,328 dwelling units and 92,000 square feet of retail/commercial space. The Proposed Project proposes 1,154 units and 87,023 of retail space. These changes (along with a few other minor changes to setbacks, garages entrances and retail ceiling heights) reflect minor modifications to the project, reducing the size from what was previously proposed and analyzed in the MND. Accordingly, as demonstrated in greater detail in the enclosed Checklist, the Proposed Project will have no new significant effects on the environment. As a result, it is proper for the City to rely on the MND when analyzing and considering the Proposed Project and no further environmental review is required.

### **III. THE PRE-PROJECT STUDIES ARE NOT EVIDENCE OF ENVIRONMENTAL IMPACTS**

The Coalition claims that the mere fact that Integral Communities prepared certain studies and reports is sufficient to require that the environmental review process be re-opened. 2/22/12 at 6-7; 10/21/11 Letter at 7-13. The Coalition misinterprets both the context and content of these studies.

Specifically, the Coalition claims that the preparation of: (1) a focused traffic study; (2) the Tree Report, (3) the Toxic Air Contaminants Study, (4) the Flood Study, (5) the Stormwater Analysis, and (6) the Raptor Study, all demonstrate the Proposed Project will result in new impacts. These additional studies and reports, which were required as part of the Approved Project's mitigation measures, conditions of approval or under the TASP policies, are not evidence that the Proposed Project will cause impacts to the environment not previously analyzed. To the contrary, the purpose of these reports is to mitigate or address impacts or potential impacts that were identified in the prior environmental documentation. As a result, these studies do not require, as the Coalition claims, the Planning Commission to "prepare and circulate a CEQA document" that addresses these potential impacts; the preparation of the studies was *the result* of the preparation of environmental documents (the TASP EIR and MND) under CEQA.

Indeed, the Coalition does not point to any evidence on the record that these studies demonstrate any new significant environmental impacts. As explained in the enclosed Checklist, the reports support the conclusion that the Proposed Project's environmental impacts are either less than significant or mitigated to less than significant by the implementation of mitigation measures, with which Integral Communities plans to comply. The effectiveness of these measures was properly analyzed in the TASP EIR and MND and cannot be challenged by the Coalition at this late date. The Coalition's argument has no merit.

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#### **IV. THE CITY DOES NOT HAVE TO PREPARE A NEW WATER SUPPLY ASSESSMENT FOR THE PROPOSED PROJECT**

The Coalition claims that the City is required to prepare a Water Supply Assessment (“WSA”) for the Proposed Project. 10/21/11 Letter at 14. This is not required because a WSA was already prepared for the TASP.

The City had a WSA conducted for the TASP in 2006; it applies to the Proposed Project. The TASP EIR states as follows:

The City has produced a Water Supply Assessment for the Transit Area, following the guidelines laid out in SB 610. The increase in demand brought on by the proposed plan will cause the need for additional allotments of water supply from SCVWD. The increase of approximately 1.0 mgd in water demand will be adequately offset by the supplies available from SCVWD. In developing long-term water demand projections for the SCVWD 2005 Urban Water Management Plan, SCVWD included preliminary estimates for the increase due to development plans within Milpitas. During extended droughts, the City has the ability to run emergency wells for additional supply, and can increase the use of recycled water to offset potable water demand. Water demand will be adequately served by projected water supplies from current sources. Further, the Plan provides policies which require the use of recycled water. As such, the impact of the increase in demands is deemed less than significant with the additional water supply allocations.

TASP EIR at 3.11-22.

This approach is sanctioned by California law. The California Water Code provides that if a WSA is prepared for a larger project that has undergone environmental review under CEQA, no additional WSA is required for smaller projects that fall under the same larger project. Cal. Water Code § 10910(h). In this situation, an additional WSA is only required if there have been changes in the project that substantially increase water demand, changes in the circumstances affecting the public water system, or new information not known at the time the WSA was prepared. Water Code § 10910(h).

Under California Water Code § 10910(h), the Proposed Project can rely on the WSA that was prepared for the Specific Plan in 2006 and no additional WSA is required. The purpose of preparing a WSA is to provide government decision-makers with detailed information to

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analyze the project's water supply capacity. The WSA for the Specific Plan comprehensively addressed the area's capacity to supply water to its proposed development. It would provide no additional benefit to decision-makers to require the City to prepare another WSA. As we have documented, the Proposed Project is within the scope of the Specific Plan. Because the Proposed Project is consistent with the Specific Plan, its water demands are included in the WSA prepared for the Specific Plan. There have been no changes in the Proposed Project that would substantially increase its water demands, no changes in conditions impacting the public water system, and no new information regarding water supply since the WSA was prepared. Therefore, the City is not required to prepare an additional WSA under these circumstances.

**V. THE PROPOSED PROJECT'S CHANGES NEITHER DEVIATE FROM THE TASP NOR CAUSE A SIGNIFICANT ENVIRONMENTAL IMPACT**

The Coalition also claims the Proposed Project deviates from the TASP by proposing to change the setbacks, which, the Coalition alleges, exposes future residents to greater toxic air contaminant risks. 2/22/12 Letter at 8. This argument is fundamentally flawed.

At the outset, the proposed changes in the setback are minimal and do not cause significant deviations from the TASP. The TASP requires a 38-foot setback on the west side of McCandless Drive and a 36-foot setback on the east side of McCandless Drive. The Proposed Project would have a 20-foot setback on the west side of McCandless Drive and a 15-foot setback on the east side of McCandless Drive. The City, within in its discretion, may allow for such minor differences if it finds:

“The deviation from the TASP standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development”; and

“The deviation from the TASP standard allows for a public benefit not otherwise obtainable through the strict application of the zoning standard.”

The City properly found that the overall design of the Proposed Project meets the standards in the TASP. Accordingly, there is no merit to the Coalition's argument that such minor differences are improper under the TASP.

Moreover, the alleged impacts of such changes—exposing residents to greater toxic air contaminant risks due to the smaller setback—is unfounded. The Coalition presents no evidence of how moving the building envelope 18 feet (at most) would result in any greater risk. Moreover, CEQA is not concerned with this type of impact. CEQA requires the

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analysis of a project's impacts on the environment, *not the impacts of the environment on the project*. *Ballona Wetlands Land Trust v. City of Los Angeles*, 201 Cal. App. 4th 455 (2011). Indeed, "identifying the effects on the project and its users of locating the project in a particular environmental setting is neither consistent with CEQA's legislative purpose, nor required by the CEQA statute." *Id.* at 474; *see also City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 905 (2009) (CEQA is concerned with "the significant effects *on the environment* of a project . . . *not the impact of the environment on the project.*"); *S. Orange County Wastewater Auth. v. City of Dana Point*, 196 Cal. App. 4th 1604, 1615 (2011). Accordingly, the so-called impact alleged by the Coalition—that future residents will be affected by living 18 feet closer to McCandless Drive—is not an impact that is properly analyzed under CEQA.

Further, even if it is properly considered a CEQA impact, the Toxic Air Contaminants Analysis prepared by Haley & Aldrich in November 2011 demonstrates that any increased risk to residents is minimal and can be adequately mitigated through either the use of mechanical filtration or a vegetative barrier. No further analysis is required.

## **VI. THE PROPOSED PROJECT'S PROVISION OF AFFORDABLE HOUSING IS NOT AN APPROPRIATE CONSIDERATION FOR CEQA ANALYSIS**

The Coalition also requests that the City require Integral Communities to include an affordable housing component. 2/22/12 Letter at 9. Again, this is not a CEQA issue.

The Proposed Project's provision of affordable housing units is not within the scope of CEQA analysis because it is not connected to a physical impact. Thus, provision of affordable housing is not a valid reason for the City to disapprove the Proposed Project. The basic purpose of CEQA is to "inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities." CEQA Guidelines § 15002(a)(1). CEQA Guidelines explicitly state that a project's economic or social effects "shall not be treated as significant effects on the environment," unless the environmental documents show how the project will cause an economic or social change that results in a physical change. *Id.* 14, § 15131. The TASP EIR and the MND make no such showing for the Proposed Project. The Coalition merely asserts that the City should require affordable housing as part of the CEQA approval.

Regardless, the City's Municipal Code and the TASP make clear that affordable housing is encouraged, but not required. The City's Municipal Code states that the number of affordable housing units required in a project is determined on a case-by-case basis:

Affordable housing units *should* be provided in all new housing projects. While twenty percent (20%) is the minimum

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*goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.*

City's Municipal Code, XI-10-8.10 (emphasis added).

The TASP confirms this approach in Policy 3.2, which states that "affordable housing units *should* be provided in new housing developments," but that the requirements should be determined on a case-by-case basis. Similarly, TASP Policy 3.3 states that affordable housing *should* be integrated into all residential projects." The fact that these policies encourage the applicant to provide affordable housing does not mean that the City must mandate a specific number of affordable housing units. The Coalition cites to no legal requirement that the City must require an affordable housing element for the Proposed Project and, thus, the argument has no merit.

\* \* \* \* \*

In short, the Coalition's contention that the City's years of planning and environmental analyses should be ignored is without merit and should be rejected. The City has implemented CEQA precisely as it was designed and the Coalition's assertions to the contrary ignore relevant provisions of the statute, Guidelines and case law. CEQA's goal of informed decision-making would not be furthered by simply generating more paper and studies that fail to provide any new meaningful information on the Proposed Project.

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

Sincerely,



Christopher J. Carr

Enclosure

## CHECKLIST FOR MINOR MODIFICATIONS TO MCCANDLESS MIXED USE PROJECT

Integral Communities has applied for certain amendments and additional approvals with respect to its development of the McCandless Mixed Use Project, located within the Transit Area Specific Plan (“TASP” or “Specific Plan”). The most recent application is for a revised project that is smaller in scale than a project that was previously subject to environmental review and approved by the City. The purpose of this checklist is to confirm that prior environmental analysis adequately covers the currently proposed project, meaning that there are no substantial changes are proposed in the project that will require major revisions to the environmental documents, no substantial changes in the circumstances under which it is being undertaken that will require major revisions to the environmental documents, and no new information available since the environmental documents were certified. *See* Cal. Pub. Res. Code § 21166.

The project has a long history and has undergone considerable prior environmental review. This initial section provides an overview of prior CEQA review, previously proposed and approved versions of the project, and the currently proposed project, as modified.

### TASP Overview

On June 3, 2008, the City Council adopted the TASP, pursuant to an Environmental Impact Report (“TASP EIR”). The TASP EIR was prepared as a “Program” EIR pursuant to CEQA Guideline 15168. The TASP EIR contemplated that the City might rely on the TASP EIR for individual projects in certain circumstances:

As a program EIR, this document focuses on the overall effects of the proposed Transit Area Plan. When specific development proposals for the Transit Area are submitted to the City, the City will determine whether the environmental effects of the proposed projects are addressed by this EIR. **If the City finds that the proposals would not result in any additional environmental impacts beyond those considered in this EIR, no new environmental analysis would be required.** If the City determines that a project would create potential environmental impacts not studied in this EIR, or that environmental conditions have changed substantially since the EIR was prepared, the City could require further environmental review to determine appropriate revisions to the project, conditions of approval, or mitigation measures.

TASP EIR at E-1 (emphasis added). As projects have come along, the City has made a case-by-case determination of whether the TASP EIR covers the project or if additional environmental review is needed.

## **Project History**

Integral Communities initially submitted an application on June 4, 2008 for a project that proposed 1,573 residential units and approximately 92,000 square feet of commercial.<sup>1</sup> For the project to reach that density for the residential portion, it needed to receive: (i) a transfer in density from an adjacent park site, (ii) the transit density bonus (25%) and (iii) the affordable housing density bonus (10%). Because the initial project required these a significant density increase above what was contemplated in the TASP EIR, the City determined that additional environmental review was needed and prepared a Mitigated Negative Declaration in 2008 (“MND”). The MND also “tiered off” the TASP EIR.

Subsequently, because the Redevelopment Agency did not purchase the adjacent park, the transfer in density was no longer feasible and the scope of the project was reduced to 1,328 dwelling units and 92,000 square feet of commercial space. The City prepared an Addendum to the MND that confirmed that the revised project would have no new impacts and on September 7, 2010 the City Council approved a tentative map and a conditional use permit for this smaller project (“Approved Project”). The only outstanding entitlement at that time was approval of a site development permit for site and architectural design approval.

## **The “Proposed Project”**

On July 15, 2011, Integral Communities submitted an application to make minor modifications to the Approved Project and secure final site design approval (“Proposed Project” or “Project”). The application included: (a) an amendment to the tentative map, (b) a site development permit for architectural design approval, and (c) a conditional use permit for the operations of a future grocery store and deviations to the TASP development standards for street setbacks, garage entries and ceiling height for retail. The Proposed Project size was further reduced and now includes 1,154 new residential units (954 units in District 1 and 200 units in District 2) and 87,023 square feet of commercial development. In addition, half of the project area is proposed to include smaller townhome or motor-court style buildings, thus affecting the previously approved vehicular and pedestrian circulation as well as the expected architectural massing along McCandless Drive.

The Project proposes very limited changes to what was analyzed under the MND (which in turn, tiered off of the TASP EIR) and these changes generally reduce the size and intensity of the project. As a result, the environmental impacts of the Proposed Project are accordingly also reduced.

The TASP encompasses 437 acres, which includes the Project area. The TASP EIR analyzed the environmental impacts of building out the entire Specific Plan, assuming a “reasonable worst case scenario.” The TASP EIR assumed that buildout of the Specific Plan would include 20% affordable housing, which would entitle projects to a 10 percent density bonus. Integral Communities no longer plans to include an affordable housing component or

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<sup>1</sup> The initial submittal was for 75,000 square feet, but at the request of the City, the commercial amount was increased to 92,000 square feet. The 2008 MND analyzed 92,000 square feet of commercial space.

take advantage of the corresponding density bonus. As a result, the size, use and density of the Project is consistent with what was analyzed in the TASP EIR.

The checklist below demonstrates that the prior environmental reviews conducted pursuant to CEQA adequately addresses the impacts of the Project. In each section, the checklist addresses both the TASP EIR and the MND and assesses whether each independently covers the Proposed Project. As the analysis demonstrates, the Proposed Project is within the scope of the TASP EIR and there are no new impacts not identified and mitigated in that document. As a result, no further analysis is required under CEQA Guideline section 15168(c). While the TASP EIR alone is adequate, the analysis below also demonstrates that the MND adequately analyzes the Proposed Project and none of the events described in Public Resources Code section 21166 have occurred. Accordingly, no further environmental documentation is required. See Cal. Pub. Res. Code § 21166; CEQA Guidelines § 15162.

**ENVIRONMENTAL IMPACTS**

**I. AESTHETICS**

<b>Aesthetics</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Have a substantial adverse effect on a scenic vista?				X
2) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
3) Substantially degrade the existing visual character or quality of the site and its surroundings?				X
4) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				X

## **Discussion:**

The Proposed Project includes minor changes that relate to aesthetics, including reductions in street setbacks and changes to the widths of garage entries in District 2. The changes allow for smaller, townhome or motor-court style buildings. The Project will feature landscaping consistent with the overall Transit Area, providing a variety of turf, shrubbery, and trees that complement the proposed architectural style of buildings. The Project does not request any changes in permitted building height.

### TASP EIR

As a general matter, the TASP EIR found that the Specific Plan is aimed at improving the aesthetic value of the area. The primary potentially significant impact to scenic resources identified in the TASP EIR was the potential for 12 to 24 story buildings along Montague Expressway to block views of the foothills. The TASP EIR found, however, that the numerous design-related policies in the Specific Plan ensure that aesthetic impacts are less than significant.

One change from what was assumed in the TASP EIR is that some trees will be removed that were not identified for removal in the TASP EIR. However, any tree removal will be conducted in compliance with City's Tree Ordinance, including on-site tree replacement at a 3:1 ratio. Further, the replacement trees will be sized at 36" and 48" box trees, rather than the 24" box trees typically required. Because the Project will provide comparatively large replacement trees and result in a substantial increase in the total number of trees on-site, this is not a significant impact on aesthetic resources.

The TASP EIR discusses the potential for significant impacts resulting from the introduction of new light and glare in the area. However, it concludes that the Specific Plan Development standards relating to lighting minimize light and glare impacts. The Project is consistent with all Specific Plan Development Standards relating to light and glare and will not cause new light and glare impacts not previously analyzed.

### MND

The MND analyzed the aesthetic impacts of the Project to the views, landscaping and scenic resources, visual character, and light and glare of the existing area, which consists of low-rise office and industrial buildings. The MND stated that while the proposed buildings will be substantially taller than existing structures—up to six stories—they will be within the new height limits established by the Specific Plan.

The Project includes the removal of on-site trees, many of which are protected under the City's Tree Ordinance. The MND identified this tree removal as a potentially significant impact to the existing visual character of the site, but concluded that the impacts would be mitigated by Mitigation Measure AES-1, requiring the Project's compliance with the City's Tree Ordinance, either through replacement of trees or payment of an in-lieu fee. The Project will comply with the Tree Ordinance by replacing removed trees on-site at a 3:1 ratio, resulting in a significant increase in the number of trees on-site. Thus, consistent with the MND, the Project will comply with Mitigation Measure AES-1 and the impact to aesthetics is less than significant after mitigation.

While the addition of residential units would increase light generated, the MND concluded that the design review process was sufficient to ensure that there were no adverse impacts. Overall, the MND found that the Project would not result in significant adverse visual or aesthetic impacts with the incorporation of mitigation measures. Because the Proposed Project is less dense than the Approved Project, including fewer residential units, the light impacts would be even less than analyzed in the MND.

Conclusion

The Project deviates slightly from the original project with respect to aesthetic impacts, proposing minor adjustments to the width of garage entries in residential units. Because the Project is consistent with the type of development analyzed in the TASP EIR, is consistent with the various Specific Plan policies relating to aesthetics, and reduces the number of residential units and light impacts over what was analyzed in the MND, there are **no new impacts** on visual resources.

*The MND and TASP EIR adequately covered the aesthetic impacts of the Project.*

**II. AGRICULTURAL RESOURCES**

<b>Agricultural Resources</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
2) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
3) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				X

**Discussion:** Converting industrial land to mixed-use residential has no impact on agricultural or forest resources. The Project has **no new impact** on agricultural resources.

**Conclusion:** *The MND and TASP EIR adequately covered the agricultural impacts of the Project.*

**III. AIR QUALITY**

<b>Air Quality</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Conflict with or obstruct implementation of the applicable air quality plan?				X
2) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X
3) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard including releasing emissions which exceed quantitative thresholds for ozone precursors?				X
4) Expose sensitive receptors to substantial pollutant concentrations?				X
5) Create objectionable odors affecting a substantial number of people?				X

## **Discussion:**

### TASP EIR

The TASP EIR contains extensive analysis of the air quality impacts relating to the buildout of the Specific Plan. The TASP EIR summarizes the air quality impacts as follows:

Air quality impacts resulting from the implementation of the proposed Specific Plan fall into two categories: short-term impacts due to construction and long-term impacts due to operation. Construction activities pursuant to development under the Specific Plan would affect local particulate concentrations primarily due to fugitive dust sources and an increase in other criteria pollutant emissions from equipment exhaust.

Over the long-term, the full implementation of the proposed Specific Plan would result in an increase in criteria pollutant emissions primarily due to related motor vehicle trips. Stationary sources and area sources would result in lesser quantities of criteria pollutant emissions. These pollutant emissions would add to the regional pollution burden and conflict with the implementation of the 2005 Ozone Strategy. Stationary sources and diesel-fueled mobile sources would also generate emissions of TACs [toxic air emissions] including diesel particulate matter that could pose a health risk.

TASP EIR, at 3.6-14.

The TASP EIR analyzes whether the Specific Plan is consistent with the Bay Area Air Quality Management District's Clean Air Plan. The TASP EIR notes that while the average vehicle miles traveled by future residents of the Specific Plan area will be lower than the rate of increase of population, because the population growth expected under the Specific Plan is greater than was assumed in the Clean Air Plan, the impact is significant and unavoidable. The TASP EIR identifies numerous policies in the General Plan and Specific Plan that will reduce the impact. Because the Project is consistent with the various air quality policies identified in the TASP EIR, it will have no new impact on any applicable air quality plan.

The TASP EIR finds that the Specific Plan, as implemented through its various policies that promote transit-oriented, pedestrian-friendly development, is consistent with the Transportation Control Measures in the 2005 Bay Area Ozone strategy. The Project is consistent with the identified policies and the overall vision for high-density residential development in close proximity to existing and planned transit. As a result, the Project will have no new impact on Transportation Control Measures.

The Specific Plan addresses criteria pollutant emissions and toxic air contaminants (TACs) from construction and demolition activities by requiring implementation of control measures, as recommended by the Bay Area Air Quality Management District. The Specific Plan also includes a policy to inform residents of the potential for exposure to TACs and their related health effects. The Project will be developed consistent with these policies.

The TASP EIR analyzes the Specific Plan's long-term impact on localized air quality from increases in traffic. The analysis projected no violations of State and federal ambient carbon monoxide standards, under various scenarios. Increases in traffic volume and congestion from development pursuant to the Specific Plan would be off-set in part by lower projected background carbon monoxide levels. The Project's intensity of use is consistent with that analyzed in the TASP EIR, meaning that the emissions resulting from vehicle miles traveled and energy consumption have already been adequately analyzed.

The TASP EIR analyzes the impact of TACs on sensitive receptors, such as future residents of the Project, and finds that compliance with Policies 5.23 and 5.25 will ensure that TAC related impacts are less than significant. Policy 5.23 requires applicant to inform sensitive receptors such as residential units, hospitals, and schools of potential health impacts from dusts and TACs. Policy 5.25 requires that new residential development within 500 feet of active rail lines or heavily-used roadways prepare an analysis of TAC impacts, and implement measures as required, such as upgraded ventilation systems.

Haley & Aldrich completed an analysis of TAC impacts in November 2011 to determine the human health risk from diesel particulate matter from roadways and railways near the Project, and the effectiveness of mitigation measures. The analysis found that a very limited area of the project area would exceed the risk thresholds for air quality established in Policy 5.25. The report identified potential mitigation of filtration (MERV-13 filters) or the installation of vegetative barriers. Nonetheless, it also concluded that the mitigation measures are likely unnecessary given the limited area of exposure, the conservative nature of the analysis, and an expected decrease in diesel emissions with implementation of stricter federal regulations. Because the Proposed Project has complied with Policy 5.25 and will include mitigation, as necessary, pursuant to the TASP EIR, TAC impacts are reduced to a less than significant level.

#### MND

The MND analyzes the Project's air quality impacts in relation to U.S. Environmental Protection Agency and California Air Resources Board standards for common air pollutants, including TACs. The MND addresses the short-term air quality impacts from construction-related activities and the long-term impacts from buildout of the Project. The MND concludes that the Project would not result in significant long term regional or local air quality impacts, though development of the entire Specific plan could increase population and vehicle miles traveled greater than what was assumed in regional air quality planning.

The primary sources of construction-related air quality impacts from the Project are exhaust emissions from construction equipment and dust created by demolition, excavation, and grading operations. The MND concludes that exhaust emissions from construction equipment are less than significant because of the relatively small amount of emissions and the short duration of impacts. Dust from construction activities could be a significant impact if it is uncontrolled. The MND requires through Mitigation Measure AIR-1 the implementation of dust control measures recommended by the Bay Area Air Quality Management District could reduce construction-related air quality impacts to a less than significant level. These include covering trucks hauling soil, sand, and other loose materials, sweeping paved areas regularly, watering all active construction areas at least twice daily, installing erosion control measures such as sandbags to

prevent silt runoff, and replanting vegetation as quickly as possible. The Proposed Project will comply with the dust control measures listed in the MND. Overall, the MND concludes that the Project's air quality impacts would be less than significant with mitigation.

The MND also addresses whether the Specific Plan is consistent with the Bay Area Air Quality Management District's Clean Air Plan. Because the Project was within the scope of the TASP EIR in terms of residential units to be built and resulting vehicle trips, the MND concludes that the TASP EIR had sufficiently addressed the air quality impacts in relation to the Bay Area Air Quality Management District's Clean Air Plan.

The Proposed Project will comply with the dust control measures recommended to mitigate construction-related air quality impacts. Moreover, the Proposed Project is less dense than the previously approved Project, including fewer residential units, resulting in less construction, fewer residents, and fewer vehicle miles traveled. Therefore, the short-term and long-term air quality impacts would be even less than analyzed in the MND.

Conclusion

Because the Project is consistent with the type of development analyzed in the TASP EIR and the MND, is consistent with the various Specific Plan policies relating to air quality, and reduces the number of residential units and amount of commercial/retail development from what was analyzed in the MND, there is **no new impact** on air quality.

*The MND and TASP EIR adequately covered the air quality impacts of the Project.*

**IV. BIOLOGICAL RESOURCES**

<b>Biological Resources</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
2) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by				X

<b>Biological Resources</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
the California Department of Fish and Game or U.S. Fish and Wildlife Service?				
3) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
4) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, impede the use of native wildlife nursery sites?				X
5) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
6) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

**Discussion:**

TASP EIR

The TASP EIR finds that the Specific Plan would generally have minimal impacts on biological resources because the vast majority of the planning area, including the area of the Project, is already developed. There are no identified sensitive habitats in the planning area. With the exception of one species, special status species recorded in the area have been extirpated. Building out the planning area in a manner consistent with the Specific Plan could result in the loss of biological resources and non-listed bird habitats by removing trees. However, numerous

policies in the Specific Plan ensure that the impact on biological resources is less than significant.

The only special status species recorded on the planning area is the burrowing owl, a California Species of Special Concern, protected under State law. The TASP EIR notes that development of vacant lots could result in a loss of burrowing owls or their nests. Because the Project site is fully developed and covered by buildings and paved surfaces, it does not provide habitat for burrowing owls.

The TASP EIR addresses the impact of removing trees for buildout of the Specific Plan. Trees provide habitat for nesting birds and have biological value. The Tree and Planting Ordinance of the City of Milpitas protects significant trees, requiring a permit for their removal. The TASP EIR assumed the removal of some trees, although it did not specify an exact number. Maintenance of the current tree line that lines McCandless Drive is not feasible due to utilities and streetscape infrastructure requirements for the area and development characteristics. While the Project includes the removal of more trees than were contemplated in the TASP EIR, in conformance with the City's Tree Ordinance, the Project includes the replacement of removed trees at a 3:1 planting ratio. This significant increase in the number of trees will ensure that there are no new significant impacts on biological resources, including to nesting birds. Further, tree removal will comply with all City requirements to minimize impacts on biological resources during removal, which the TASP EIR found would reduce tree removal impacts to biological resources to a less than significant level.

### MND

The MND finds that the impact of the Project's removal of trees will be less than significant because of conformity with the City's Tree and Planting Ordinance, which requires replacement of trees or payment of an in-lieu fee to the City. Tree removal will also comply with all City requirements to minimize impacts on biological resources during removal, including conducting a raptor study prior to removal to determine the nesting period of any birds using the trees for a habitat, and an Arborist Report analyzing each tree to be removed. Because the Proposed Project will replace trees at a 3:1 ratio and otherwise comply with requirements to avoid impacts to nesting birds, the impact of the removal of trees was already analyzed in the MND and there will be no new impacts.

### Conclusion

Because the Proposed Project's impact on biological resources is consistent with the impacts analyzed in the TASP EIR and the MND, is consistent with the Specific Plan policies related to biological resources, and will comply with the previously identified mitigation measures to reduce the impact of tree removal, there is **no new impact** on biological resources.

*The MND and TASP EIR adequately covered the biological impacts of the Project.*

**V. CULTURAL RESOURCES**

<b>Cultural Resources</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Cause a substantial adverse change in the significance of an historical resource as defined in §15064.5?				X
2) Cause a substantial adverse change in the significance of an archaeological resource as defined in §15064.5?				X
3) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?				X
4) Disturb any human remains, including those interred outside of formal cemeteries?				X

**Discussion:**

TASP EIR

The TASP EIR finds the potential impact of the development of the planning area on cultural resources, including historic, archeological, and paleontological resources and human remains, was less than significant. The primary impact that could occur would be disturbance of cultural resources during grading and development of the property. Based on an evaluation conducted by the Northwest Information Center at Sonoma State University, uncovering and identifying archaeological deposits in the planning area is a reasonable possibility. The TASP EIR concluded that national, state, local laws and policies in the General Plan, Midtown Plan, and Specific Plan would reduce the potential impacts on known or undiscovered cultural resources to less than significant levels. Because the Proposed Project will comply with all identified laws and policies, it will have no new impact not identified in the TASP EIR and any impacts will be reduced to a less than significant level.

MND

The MND analyzes the historical settlement of the Milpitas area to determine the potential impacts on cultural resources. As with the TASP EIR, the MND finds that the primary impact

would be disturbance of cultural resources during grading and development and that uncovering archaeological deposits was a reasonable possibility. The MND finds no evidence of recorded historic or prehistoric archaeological resources on or adjacent to the project areas. The MND states that the Project will comply with County ordinance policies in the event of discovery of human remains during construction. With the incorporation of these policies, the MND concludes that the Project's impacts on cultural resources are less than significant.

Conclusion

There are no known historic or cultural resources associated with the Project. Further, the Project will be carried out consistent with the policies identified in the TASP EIR and the MND, which will ensure that impacts are reduced to less than significant levels in the event that construction uncovers cultural resources. Because the Project is consistent with the general type of development analyzed in the TASP EIR and MND and will be consistent with all applicable policies, there are **no new impacts** on cultural resources.

*The MND and TASP EIR adequately covered the cultural resource impacts of the Project.*

**VI. GEOLOGY AND SOILS**

<b>Geology and Soils</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving (a-d below):				X
a) Rupture of a known earthquake fault, as described on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42.)				X
b) Strong seismic ground shaking?				X

<b>Geology and Soils</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
c) Seismic-related ground failure, including liquefaction?				X
d) Landslides?				X
2) Result in substantial soil erosion or the loss of topsoil?				X
3) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
4) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
5) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X

**Discussion:**

TASP EIR

The TASP EIR finds that the primary potential geologic and soil impacts for proposed structures and infrastructure in the planning area are seismic activity, liquefaction, and fault rupture. While Santa Clara County is a highly seismically-active area, the analysis notes that “seismic-related ground shaking is an unavoidable hazard in the San Francisco Bay Area.” The planning area is not located within an Earthquake Fault Hazard Zone, its proximity to several active faults put it at risk of earthquake impacts. Because the surface topography is relatively level, slope instability hazards are minimal.

The TASP EIR finds that potential impacts from seismic activity and soil erosion are reduced by state building codes and construction standards that require structures to be built to protect against collapse and injury. The Proposed Project will comply with these requirements.

The TASP EIR also considers the increased demand that buildout as contemplated by the Specific Plan would place on emergency service providers in the event of large seismic activity. The TASP EIR concludes that General Plan and Specific Plan policies ensure that there are adequate fire, police, and emergency services in such event. Because the Project's plans are consistent with the development proposed by the Specific Plan, its potential vulnerability to seismic hazards and the need for emergency services are consistent with what was analyzed in the TASP EIR.

MND

The MND analyzes threats to geology and soils from seismic activity on the project area. The MND concurs with the TASP EIR that while the project is in a seismically active region, it is not located within a fault rupture zone or landslide hazard zone. The MND concludes that construction in conformance with state building codes and construction standards and the use of specific engineering and construction features tailored to the site will reduce the risk of adverse impacts to less than significant levels.

Conclusion

Because the Project is generally consistent with the type of development analyzed in the TASP EIR and the MND and is consistent with various General Plan and Specific Plan policies relating to building standards and emergency service needs, there is **no new impact** on geology and soil resources.

*The MND and TASP EIR adequately covered the geology and soil impacts of the Project.*

**VII. GREENHOUSE GAS EMISSIONS**

<b>Greenhouse Gas Emissions</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Does the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?				X
2) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?				X

## **Discussion:**

### TASP EIR

The TASP EIR finds that the primary sources of greenhouse gas emissions related to development of the planning area will be combustion of fossil fuels by motor vehicles and from electric power generation. Construction from buildout of the Specific Plan would also involve short-term increases in greenhouse gas emissions. However, the Specific Plan's high-density, transit-oriented land use creates development patterns that potentially reduce energy consumption, vehicle miles traveled, and therefore, greenhouse gas emissions.

The TASP EIR identifies numerous Specific Plan policies to reduce the impacts of greenhouse gas emissions associated with growth: establishing and implementing a travel demand management program to encourage alternate modes of transportation, providing pedestrian and bike routes, providing continuous bicycle circulation routes, requiring provision of bicycle and pedestrian facilities, and requiring new development to facilitate the use of alternate modes of transportation through various programs. Regarding electricity consumption, the TASP EIR finds that the increase in total demand for electrical energy as a result of the Specific Plan will be reduced to less than significant levels by requiring compliance with various energy efficiency policies. Because the Proposed Project is consistent with the proposed development in the Specific Plan and with the various plans and policies identified in the TASP EIR to minimize greenhouse gas emissions, its greenhouse gas emissions impacts are consistent with the impacts that were analyzed in the TASP EIR and there is no new impact.

### MND

The MND analyzes the Project's impacts on greenhouse gas emissions, principally from vehicle emissions. The Project replaces largely industrial uses with residential and commercial uses, resulting in more intensity of use and likely increasing vehicle trips and vehicle emissions over the current site use. However, the MND notes that the Project's residential units and commercial space are being developed with high density and near transit hubs. Their location and density will ultimately reduce vehicle trips and vehicle emissions over the long-term. Moreover, the Project utilizes existing infrastructure, rather than a greenfield site, and is located within the established urban area, further minimizing greenhouse gas emissions compared with alternatives. The MND concludes that the project will not make a considerable cumulative contribution to global climate change.

The Proposed Project includes fewer residential units and less commercial development than the Approved Project that was analyzed in the MND, meaning that it has fewer greenhouse gas emissions from those uses, including vehicle emissions. Because the Proposed Project is generally consistent with the Project analyzed in the MND, its impact on greenhouse gas emissions is less than significant.

### Conclusion

The Project conforms to the Specific Plan and promotes reductions in greenhouse gas emissions through high-density development in close proximity to transit. Additionally, while the Project intends to remove existing trees, replacing trees in accordance with the City's Tree and

Replanting Ordinance will off-set greenhouse gas emissions. Further, the Project proposes less development than was assumed in the TASP EIR, resulting in fewer vehicle miles travelled and less energy consumption. Additionally, because the Proposed Project is generally consistent with the Project analyzed in the MND, its greenhouse gas emissions are less than significant. Therefore, the Project has **no new impact** on greenhouse gas emissions and no further analysis is required.

*The MND and TASP EIR adequately covered the greenhouse gas emissions impacts of the Project.*

### VIII. HAZARDS AND HAZARDOUS MATERIALS

<b>Hazards and Hazardous Materials</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
2) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
3) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
4) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public				X

airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				
6) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
7) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?				X
8) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

**Discussion:**

TASP EIR

The TASP EIR found that past and present land uses of the Specific Plan area reported hazardous material releases and spills, and existing soil and groundwater contamination could lead to potential impacts during construction and afterward. The TASP EIR concluded that any impact from potential exposure during construction can be reduced to a less than significant level through compliance with Specific Plan policies, including coordination with government fire, environmental health, and toxic substances control departments, identifying asbestos-containing building materials prior to demolition, and developing a Risk Management Plan for sites with known contamination issues. Likewise, future use, transport, and disposal of hazardous substances from commercial, residential, and light industrial land use would be subject to state and federal hazardous materials laws.

The TASP EIR notes that the land uses proposed by the Specific Plan would likely reduce the quantities of hazardous materials in the planning area as compared to previous uses, reducing the risk to individuals. Transportation of hazardous materials would also have to comply with Department of Transportation regulations and programs and ordinances administered by the Milpitas Fire Department and Santa Clara County Department of Environmental Health. Because the Project's impacts on hazards and hazardous materials are consistent with the Specific Plan analyzed in the TASP EIR and the Project conforms to Specific Plan policies to reduce risks, the Project's impacts are less than significant and no further analysis is needed.

## MND

The MND also analyzes the Project's impacts related to hazards and hazardous materials. It finds that the primary impacts are exposure to hazardous materials, such as pesticides, petroleum products, asbestos, and chemical compounds present on or near the project site. The MND notes that the site is currently developed by eight low-rise industrial buildings and may have the potential for exposure to hazardous materials. The MND notes that the Specific Plan includes measures to protect construction workers prior to demolition. To further reduce the risk of hazardous materials impacts, the MND finds that a risk assessment should be required as a Condition of Approval if it is found that hazardous materials are located in the vicinity. Based on these considerations, the MND concludes that the Project will not result in hazardous materials impacts to construction workers and occupants of the project area. The Proposed Project is generally consistent with the Approved Project analyzed in the MND with respect to hazardous materials and would have no new impact. Therefore, the hazardous materials impacts of the Proposed Project are less than significant and no further analysis is required.

## Conclusion

Because the Project involves no changes that affect hazardous materials impacts, is consistent with the development analyzed in the TASP EIR and MND, and is consistent with the overall vision of transforming the area from industrial uses to a new, transit-oriented, mixed-use neighborhood, the Project has **no new impact** on hazards and hazardous materials and no further analysis is required.

*The MND and TASP EIR adequately covered the hazards and hazardous materials impacts of the Project.*

## **IX. HYDROLOGY AND WATER QUALITY**

<b>Hydrology and Water Quality</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Violate any water quality standards or waste discharge requirements?				X
2) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would				X

<b>Hydrology and Water Quality</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
not support existing land uses or planned uses for which permits have been granted)?				
3) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				X
4) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				X
5) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				X
6) Otherwise substantially degrade water quality?				X
7) Place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
8) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
9) Expose people or structures to a significant risk of loss, injury, or death involving flooding,				X

<b>Hydrology and Water Quality</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
including flooding as a result of the failure of a levee or dam?				
10) Be subject to inundation by seiche, tsunami, or mudflow?				X

**Discussion:**

TASP EIR

The TASP EIR found that the Specific Plan will have a minimal impact on the hydrology and water quality of the planning area. The analysis identified potential impacts related to stormwater runoff, but concluded that they will be reduced to less than significant levels through the implementation of General Plan and Specific Plan policies.

Increased erosion and sedimentation from project construction could increase turbidity and decrease water quality in adjacent water courses. There is also a potential for the release of chemicals from construction sites into surface waterways and groundwater.

The TASP EIR found that the implementation of General Plan and Specific Plan policies would reduce these water quality impacts. Specifically, construction would be subject to National Pollutant Discharge Elimination System (NPDES) requirements, implemented through Chapter 16 of the City’s Zoning Ordinance. Also, construction projects would be required to prepare a Stormwater Pollution Prevention Plan (SWPPP), which would reduce or eliminate impacts on surface water quality during construction. Projects are also required to prepare a Stormwater Control Plan, which require implementing Best Management Practices (BMPs) to control stormwater peak flows and pollutant levels.

The TASP EIR notes that while the change in land use from industrial to residential and commercial uses will result in a larger number of residents and increased traffic, replacing impervious surfaces with landscaped areas and parks will actually reduce stormwater runoff. The TASP EIR concluded that none of the existing stormwater drainage pipelines will require expansion. The project area is currently fully developed with industrial buildings and a parking lot.

The TASP EIR found that the Specific Plan is not expected to affect groundwater level, in part because the planning area is almost fully developed. Nor will the Specific Plan substantially alter the course of a stream or river to cause substantial erosion or siltation. Drainage patterns will remain essentially unchanged. Because the Project’s plans for development and water usage are consistent with the Project analyzed in the TASP EIR and the Project plans to comply with

mitigation measures to reduce impacts, the Project’s water quality impacts are less than significant and no further analysis is needed.

MND

The MND analyzed the hydrology and water quality impacts of the Project. Conformity with the City’s flood hazard management ordinance would ensure that the project would not result in significant flood risks. Because the Project would not result in significant increases in the amount of impervious surfaces, there would be no new impact from stormwater runoff. Regarding water quality, the MND stated that the Project would include stormwater quality best management practices, such as directing runoff into vegetated swales, as required by the City’s Municipal NPDES Permit.

The MND also included stormwater related mitigation measures to ensure that any impacts are reduced to a less than significant level. These mitigation measures include a requirement to submit a SWPPP and a Notice of Intent to the California Water Resource Quality Board to control discharge of storm water pollutants. The Project may also require an Erosion Control Plan. The MND concludes that the Project would not result in substantial adverse flooding or drainage impacts and that water quality impacts would be reduced to less than significant levels with the implementation of mitigation measures.

In October 2011, Schaaf & Wheeler, Consulting Civil Engineers, updated their analysis of the hydraulic conditions to account for changes in the grading and layout on the project area. The analysis concluded that the Project would result in up to a 0.1 foot increase in 100-year water surface elevations, as well as decreases from 0.1 to 0.5 feet in other locations. Because the Proposed Project’s impacts with respect to hydrology and water quality are consistent with the impacts analyzed in the MND, there are no new impacts and no further analysis is needed.

Conclusion

Because the Project conforms to Specific Plan policies regarding hydrology and water quality and is within the scope of the Project analyzed by the TASP EIR and the MND, there is **no new impact** on hydrology and water quality.

*The MND and TASP EIR adequately addressed the hydrology and water quality impacts of the Project.*

**X. LAND USE**

Land Use	Potentially Significant Impact	Less Than Significant With Mitigation	Less Than Significant Impact	No New Impact
<b>Would the Project:</b>				
1) Physically divide an				X

established community?				
2) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
3) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

**Discussion:**

TASP EIR

The TASP EIR found that the Specific Plan’s change from primarily industrial and office uses to high-density, transit-oriented residential and commercial uses will generally improve community connectivity. Rather than dividing an established community, the Specific Plan will create street and trail connections and pedestrian bridges across major thoroughfares. No habitat conservation plans or natural community conservation plans exist with which the Specific Plan or the Project might conflict.

The TASP EIR noted that the General Plan, Specific Plan, and Zoning Ordinance would need to be amended to ensure consistency. The TASP EIR also found that the proposed uses will be more compatible with the adjacent residential and commercial uses than are the existing uses. The Specific Plan includes streets, landscaped areas, parks, and linear parks that create buffers between different types of land uses, minimizing conflicts with established development. Additionally, the Specific Plan includes development standards for setbacks and building location and placement that will reduce the impact of interactions between adjacent potentially incompatible uses. Because the Proposed Project is consistent with the land uses and densities allowed under the Specific Plan and analyzed in the TASP EIR, the Proposed Project will have no new land use related impacts.

MND

The MND analyzes the land use impacts of a total of 1,573 residential units. This figure includes the 25% transit-oriented density bonus, as well as a 10% bonus for moderate affordable housing development. The MND concludes that the proposed Project’s density is consistent with the overall density allowed on the site and would not result in significant, adverse land use impacts.

The MND also calculates the Project’s conformity with the density restrictions of the land use designation, including the potential environmental impacts of the transit-oriented density bonus of 25%, which is available on the approximately 14 acres designated Residential – Retail High Density Mixed Use. Although the density for the Project’s individual parcels is not consistent with the allowable minimum and maximum densities on those parcels’ land use designations, Specific Plan Policy 3.8 allows averaging of density across multiple parcels for purposes of determining compliance, provided that a legal instrument is recorded for individual parcels to ensure that the minimum and maximum densities established by the Specific Plan are met. Pursuant to Specific Plan Policy 3.8, a legal instrument will be recorded ensuring that the Proposed Project is consistent with the minimum and maximum densities established by the Specific Plan. The land uses in the Proposed Project are the same type as those in the Approved Project and analyzed in the MND.

The Proposed Project contemplates significantly fewer residential units (1,154) than analyzed in the MND, in part because the Proposed Project no longer plans to utilize a density bonus for moderate affordable housing development. Thus, its land use impacts are within the allowable density ranges of the current project site and the MND adequately addresses the Proposed Project’s land use impacts.

Conclusion

Because Project is consistent with the existing land use designations, is consistent with the plans analyzed in the TASP EIR and the MND, and proposes residential units consistent with or less than analyzed in the TASP EIR and the MND, there is **no new impact** on land use.

**Conclusion:** *The MND and TASP EIR adequately covered the land use impacts of the Project.*

**XI. MINERAL RESOURCES**

<b>Mineral Resources</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
2) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X

**Discussion:** There are no known mineral resources or excavations sites in the planning area. Therefore, the Project has **no new impact** on mineral resources.

**Conclusion:** *The MND and TASP EIR adequately covered the mineral resource impacts of the Project.*

**XII. NOISE**

Noise	Potentially Significant Impact	Less Than Significant With Mitigation	Less Than Significant Impact	No New Impact
<b>Would the Project:</b>				
1) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
2) Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels?				X
3) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
4) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				X
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
6) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

## **Discussion:**

### TASP EIR

The TASP EIR analyzed (1) the temporary noise impacts associated with construction from buildout of the Specific Plan and (2) the long-term noise impacts from increases in roadside noise levels and the addition of land uses more sensitive to ambient noise levels. Groundborne noise and vibration could also result from the trains and future BART activity. The TASP EIR concludes that noise-related policies in the General Plan and Specific Plan ensure that these impacts are less than significant.

General Plan Policy 6-I-2 requires that projects within “conditionally acceptable” or “normally unacceptable” exterior noise exposure areas prepare an acoustical analysis and implement measures to reduce noise to acceptable levels. According to the TASP EIR, compliance with this and other noise-related policies reduces noise impacts to a less than significant level. In compliance with General Plan Policy 6-I-2, a Noise and Vibration Study was conducted in 2008 by Charles M. Salter Associates, Inc., analyzing noise from freight rail operations, light rail operations, and vehicle traffic near the project area. The Noise and Vibration Study found that by including sound rated assemblies at some exterior building facades, interior noise would be at acceptable levels. Pursuant to General Plan Policy 6-I-2, the Project will include measures identified in the Noise and Vibration Study.

According to the TASP EIR, construction activity would occur intermittently throughout the implementation period of the Specific Plan, resulting in temporary, localized adverse noise impacts. The TASP EIR concludes that construction would be less than significant through the implementation of several policies. For instance, General Plan Policy 6-1-13 restricts hours of operation for construction activities to minimize impacts. The Specific Plan includes a policy that applicants demonstrate that construction noise impacts have been mitigated to the extent feasible, pursuant to the City’s Noise Abatement Ordinance. Because the Project conforms to the Specific Plan and will implement noise related policies, construction would result in no new noise impacts beyond those analyzed in the TASP EIR.

### MND

The MND also analyzes the Project’s conformity with the Environmental Quality Element of the City’s General Plan, which identifies noise and land use compatibility standards for various land uses. It notes the Noise and Vibration Study conducted by Charles M. Salter Associates, Inc. to analyze the sound impacts of freight rail operations, light rail operations, and vehicular traffic near the project site. Based on the study’s findings, the MND required Mitigation Measure NOI-1 which requires installing sound-rated residential windows on the western side of the project site and disclosure of the presence of freight trains to future residents. With the implementation of Mitigation Measure NOI-1, the MND concluded that the Project would not result in significant noise impacts. The Proposed Project will involve fewer residential units than analyzed in the MND, which may reduce vehicle usage in the surrounding area and associated noise impacts. The Proposed Project will be constructed consistent with the policies and

mitigation measures in the MND. The Proposed Project includes fewer residential units than analyzed in the MND, resulting in less construction and therefore fewer construction-related noise impacts. Because the Proposed Project is generally consistent with the Approved Project analyzed in the MND and will implement Mitigation Measure NOI-1, the MND adequately addresses its noise impacts and no further analysis is needed.

Conclusion

Because the TASP EIR and MND fully addressed noise impacts relating to development in this area and the Proposed Project is consistent with the policies and mitigation measures in the TASP EIR and MND, the Proposed Project has **no new impact** on noise and no further analysis is required.

*The MND and TASP EIR adequately covered the noise impacts of the Project.*

**XIII. POPULATION AND HOUSING**

<b>Population and Housing</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
2) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
3) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

**Discussion:**

The Proposed Project includes 1,154 new residential units (954 units in District 1 and 200 units in District 2), consistent with or less than the Approved Project.

## TASP EIR

The TASP EIR addresses the population and growth impacts of the Specific Plan. The proposed Specific Plan assumes that approximately 7,100 units of residential development will be built in multi-family structures, housing approximately 18,000 new residents near transit. At buildout, the TASP EIR estimates a population of up to 19,094. This represents a significant increase in the population of the City, the Midtown Plan area, and the planning area. Population increase from the buildout of the Specific Plan would account for roughly 69 percent of the citywide growth that is assumed under 2030 projections by the Association of Bay Area Governments (ABAG). The TASP EIR notes that the Midtown Plan area, which includes the Specific Plan planning area, is the primary growth area within the City, and thus it is reasonable to expect that citywide population growth would be concentrated here. Apart from the direct impact of population increases, job increases from development under the Specific Plan may impact housing and retail demand in other areas. The TASP EIR recognizes, however, that long-term changes in economic and population growth are often regional in scope, influenced by state, national, and global economic conditions. Thus, it is difficult to accurately assess the growth impacts of the proposed Specific Plan.

The TASP EIR found that the population and growth impacts associated with the Specific Plan are adequately addressed by programs of the City's Housing Element, which has been certified by the State Department of Housing and Community Development. Housing Element policies can also be modified, extended, or supplemented as needed to continue to respond to meet housing needs. Because the Proposed Project includes residential units consistent with what was analyzed in the TASP EIR, the TASP EIR adequately addresses the Proposed Project's population and housing impacts.

## MND

The MND analyzes the population and housing impacts of the Project's 1,573 units, yielding a population of 3,963 for the project, based on persons per household statistics. The MND notes that the Specific Plan anticipates an additional 17,900 residents by 2030. The MND concludes that the project will not result in significant population or housing impacts. Because the Proposed Project proposes fewer residential units than envisioned in the Project analyzed in the MND, the MND adequately addresses the Proposed Project's population and housing impacts.

## Conclusion

Because the Proposed Project proposes residential units and residents consistent with or less than the amount analyzed in the TASP EIR and the MND, the Proposed Project's population and housing impacts are consistent with or less than those analyzed in the TASP EIR and the MND. Therefore, **no new impacts** are expected.

*The MND and TASP EIR adequately covered the population and housing impacts of the Project.*

**XIV. PUBLIC SERVICES**

<b>Public Services</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services (a-e below):				
a) Fire Protection?				X
b) Police Protection?				X
c) Schools?				X
d) Parks?				X
e) Other Public Facilities?				X

**Discussion:**

TASP EIR

The TASP EIR addresses the impact of the Specific Plan and the project on public service and safety resource needs in the city, including schools, fire protection, police services, and parks. The planning area contains portions of three school districts: the Milpitas Unified School District (MUSD), Berryessa Union School District, and East Side Union School District. The TASP EIR estimated the impact that the Specific Plan’s anticipated addition of 18,000 new residents will have on the expected student population of the three school districts. The TASP EIR concluded that buildout of the Specific Plan will require at least one new elementary school and expansions of existing facilities.

Numerous General Plan and Specific Plan policies will reduce the impact on schools to less than significant levels, including coordination with the three school districts to update their comprehensive facilities plans, updating school fees for developers, and considering joint use agreements for potential shared facilities. The TASP EIR also notes that the Specific Plan includes a policy that the applicants pay school impact fees pursuant to State Government Code 65995 to 65998, which is the exclusive means of offsetting development's school impacts. The TASP EIR finds that such fees fully mitigate school related impacts. Because the Proposed Project plans residential units consistent with what the TASP EIR analyzed and will pay school impact fees, its impacts on schools have been adequately addressed in the TASP EIR and no further analysis is needed.

Regarding fire protection, the TASP EIR concluded that the Milpitas Fire Department will need to expand an existing fire station or construct as many as two new facilities. The Specific Plan includes policies to analyze the impact on staffing, equipment, and facility needs through a "standards of cover" analysis, with the goal of maintaining a prompt response time for all service areas. The Project adheres to these policies and plans residential units consistent with what was analyzed in the TASP EIR, resulting in no additional demands on fire protection services over what the TASP EIR analyzed.

Similarly, the TASP EIR addressed the impact of new residents on police staffing. The Specific Plan includes Policy 6.53 to hire additional police staff and purchase equipment to maintain an adequate level of service. The Project adheres to these policies and plans residential units consistent with what was analyzed in the TASP EIR, resulting in no additional demands on police services over what was analyzed in the TASP EIR.

Regarding parks, the TASP EIR found that the Specific Plan intends to create a walkable series of neighborhoods, defined by public park space, including 16.5 acres of parks and plazas, 14.9 acres of linear parks, and 27.5 acres of landscape buffers. Parks are particularly important for the planning area because it is bounded by high volume arterial roadways, industrial land, and a railroad, and no public parks are located nearby. The TASP EIR notes that approximately seven acres designated as "Parks/Plazas/Community Facilities" may be developed as a public school, likely resulting in removing at least four acres of park land. However, the loss of park space would be addressed in a separate environmental impact analysis for the school. Overall, the TASP EIR concludes that the impact of the Specific Plan for parks would be less than significant because of various policies regarding open space requirements, park land dedication, and in-lieu fees for new development.

### MND

The MND includes a detailed analysis of the impact of the Project on public service and safety resource needs in the city, including schools, fire protection, police services, and parks.

Regarding schools, the MND concurs with the TASP EIR's conclusion that buildout of the Specific Plan will require at least one new elementary school and expansions of existing facilities. Although the MND classifies this impact as significant and unavoidable, and one that can be mitigated by action from the MUSD, because the Proposed Project will pay school impact

fees established pursuant to Government Code 65995, state law requires that this impact be considered mitigated to a less than significant level and no further mitigation is required.

The MND analyzes the City’s existing law enforcement services, response time and service metrics, and the project’s potential impact on demand. The MND finds that the Project will increase long-term demand for police services, requiring additional staff and equipment. However, the MND concludes that a new police station will not be required.

The MND analyzes the capacity of the three nearby fire stations to provide emergency response and preparedness services. The MND states that the increase in population will increase demand for such services and could impact response times. The MND recommends that the “standards of cover” analysis be conducted to determine the impact of the Project on fire department staffing, equipment, and facility capacity.

The MND analyzes the City’s parks and recreational facilities and concludes that the areas of the Project designated as Parks/Plazas and Linear Parks meet the demand for parks as a result of buildout. It concludes that the Project will have no significant impacts with respect to parks. Because the Proposed Project proposes fewer residential units than the previously proposed Project, its impacts on schools, law enforcement services, fire protection services, and parks will be less than analyzed in the MND. Therefore, the MND adequately addresses the Proposed Project’s impacts on public service and safety resources needs and no further analysis is needed.

Conclusion

Because the TASP EIR and the MND adequately addresses public service impacts and the Project’s impacts are consistent with or less than the impacts analyzed by the TASP EIR and the MND, the Project has **no new impact** on public services and no further analysis is required.

*The MND and TASP EIR adequately covered the public service impacts of the Project.*

**XV. RECREATION**

<b>Recreation</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X

2) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				X
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**Discussion:**

TASP EIR

The TASP EIR analyzes the impact of the buildout of the Specific Plan on parks and recreational facilities. The TASP EIR found that through implementation of various policies in the City’s General Plan and the TASP, implementation of the TASP and specific projects within the planning area would have a less than significant impact. In particular, either land identified in the Specific Plan must be dedicated for public park, or, if no park is identified on the site, a project must pay an in-lieu park fee. The Proposed Project complies with these policies through dedication of open and park space, including a public trail along Penetencia Creek, in a sufficient amount to meet General Plan policies. Because the Proposed Project is consistent with the various parks and recreation related policies in the Specific Plan, its impact on parks and recreation is less than significant and no further analysis is required.

MND

With respect to parks and recreational facilities, the MND analyzes the dedication of a 0.51-acre public plaza and the dedication of an additional 1.88 acres for a trail along Penetencia Creek. As with other potential developments within the planning area, the Project would be subject to a development impact fee to ensure that public infrastructure and public parks are adequately provided. The MND notes that park dedications or improvement are credited against the impact fee. The MND finds that these aspects of the Project are consistent with the Specific Plan’s open space program, which was analyzed in the TASP EIR. The MND concludes that the Project would not result in significant impacts to parks and recreational facilities. The Proposed Project reduces the population and increases the amount of park space so it has less of an impact on parks and recreational facilities.

Conclusion

The Project is consistent with the Project envisioned in the Specific Plan and analyzed in the TASP EIR and the MND. Because the TASP EIR and the MND adequately address the recreation impact, the Project has **no new impact** on recreation.

*The MND and TASP EIR adequately covered the recreation impacts of the Project.*

**XVI. TRANSPORTATION**

<b>Transportation</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio of roads, or congestion at intersections)?				X
2) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X
3) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
4) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible land uses (e.g., farm equipment)?				X
5) Result in inadequate emergency access?				X
6) Result in inadequate parking capacity?				X
7) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

**Discussion:**

TASP EIR

The TASP EIR includes an extensive evaluation of the impact of buildout of the Specific Plan on traffic. The Specific Plan fundamentally changes the land use of the planning area from primarily industrial to high-density, transit-oriented residential and commercial. This change will be accompanied by major changes in transportation patterns and use; increased vehicle trips from the new residential units may be counteracted by increased transit use. Overall, the TASP EIR concludes that most impacts to transportation were less than significant, although it identifies certain transportation related impacts that are significant and unavoidable.

The TASP EIR found that the proposed development is estimated to have a significant near-term impact on 15 key intersections, four freeway segments, and existing bicycle, pedestrian, and transit facilities. In addition, the TASP EIR found Year 2030 impacts for a majority of the roadway segments within the planning area. While some Specific Plan policies would reduce traffic impacts to less-than-significant levels, the analysis concluded that there are significant and unavoidable impacts for certain intersections, freeways and roadway segments. Because the Project proposes land use densities and intensities of use consistent with the Specific Plan, its traffic impacts are consistent with those analyzed in the TASP EIR.

At intersections where additional traffic from the buildout will exceed existing standards, the TASP EIR found that a policy to assess a transportation impact fee adequately addresses the impacts. Other project impacts were determined to be significant and unavoidable, for instance, where right-of-way constraints prevent widening lanes.

The TASP EIR finds that the Specific Plan would add traffic greater than one percent of the segment's capacity to four freeway segments and impact multiple roadway segments. The analysis noted that there are many ongoing and proposed freeway and roadway improvement projects and concluded that the impacts of buildout to the freeway and roadway systems are significant and unavoidable.

The TASP EIR finds that Specific Plan addresses the increased demand for pedestrian and bicycle networks in the planning area from the proposed more-intense land uses. The Specific Plan includes two pedestrian bridges crossing Montague Expressway and a third crossing railroad tracks near Piper Drive to the Great Mall. Policies to review development applications for adequate street right-of-way, bicycle facilities, and landscaping, and to provide continuous bicycle circulation throughout the planning area will also ensure that the increased demand is adequately addressed.

The Specific Plan will create increased demands for the planning area's light-rail stations and future BART station. However, the TASP EIR notes that the increased transit demand will likely occur over several years, allowing the responsible agencies to adjust service accordingly.

While the Specific Plan will impact parking demand, under California law, unmet parking demand created by a project need not be considered a significant environmental under CEQA unless it would cause significant secondary effects. Additionally, the construction of new

residential units close to transit and employment may reduce overall vehicle use and parking demand.

The TASP EIR's overall conclusion is that the Specific Plan's transportation impacts are less than significant or significant and unavoidable. Because the Project is consistent with the Specific Plan with respect to residential units and commercial/retail development, and therefore vehicle trips and traffic demands, the TASP EIR adequately addresses the Project's transportation impacts.

### MND

The MND also analyzes the Project's traffic impacts, finding that the addition of residential units and commercial/retail development will increase traffic demands on the project site. The MND finds that the Project's trip generations are consistent with the assumptions in the TASP EIR, and concludes that the Project will not result in significant transportation impacts.

The MND notes that the Project is conditioned on maintaining the existing land configurations on McCandless Drive at the Great Mall Parkway intersection, as required to conform to the TASP EIR. To reduce impacts, the MND finds that a traffic signal will be required at the proposed intersection of McCandless Drive and a new local street. Two new access points from the Great Mall Parkway will necessitate modifications to median islands, street curbs, and roadway marking. The MND concludes that the project will not require relocation of existing bus stops to serve the new population. Pedestrian paths will need to be constructed as part of the Project.

In February 2012, TJKM Transportation Consultants provided a detailed update to its November 2011 trip generation comparison study to account for the reduced size of the Proposed Project, as compared to the Approved Project. The analysis concluded that the Proposed Project will generate fewer trips than originally reported in the November study and that the transportation improvements that it had previously recommended would have the same effectiveness for the Proposed Project. As a result, there are no new significant impacts.

### Conclusion

Because the Proposed Project involves development consistent with or less than analyzed in the Specific Plan and the Project, the impacts to transportation will be less than analyzed in the MND and consistent with the impacts in the TASP EIR. Therefore, there are **no new impacts** to transportation.

*The MND and TASP EIR adequately covered the transportation impacts of the Project.*

**XVII. UTILITIES AND SERVICE SYSTEMS**

<b>Utilities and Service Systems</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation</b>	<b>Less Than Significant Impact</b>	<b>No New Impact</b>
<b>Would the Project:</b>				
1) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
2) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
3) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
4) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
5) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
6) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
7) Comply with federal, state, and local statutes and regulations				X

Utilities and Service Systems	Potentially Significant Impact	Less Than Significant With Mitigation	Less Than Significant Impact	No New Impact
related to solid waste?				

**Discussion:**

TASP EIR

Overall, the TASP EIR found that the impact of buildout of the Specific Plan on utilities and service systems, including water supply, wastewater treatment, stormwater drainage, and solid waste disposal will be less than significant after Specific Plan policies are enacted. Implementation of the Specific Plan will create additional demand for water and sewage treatment capacity and the need for new water and sewer flow capacity and recycled water lines. The Specific Plan addresses these impacts by requiring the installation of pipes within existing roads and easements, water efficiency measures, and the purchase of water and sewer treatment capacity, as needed.

The TASP EIR notes that because the planning area is already largely developed, the Specific Plan will require upgrading existing infrastructure, rather than adding new infrastructure. The Specific Plan will also reduce some utility and service system needs. For instance, the change from predominantly industrial to high-density residential and commercial will decrease stormwater runoff, meaning that no additional storm drain improvements will be required as part of the Specific Plan.

The Specific Plan policy to upgrade and expand the water distribution system to serve new development adequately addresses the impact that buildout of the Specific Plan would exceed the water flow capacity planned for in the City’s Water Master Plan. Increases in water supply demand will be adequately offset by supplies available from the Santa Clara Valley Water District and implementation of policies to construct recycled water infrastructure for irrigation. The adequacy of the water supply for the Specific Plan was documented in a Water Supply Assessment prepared pursuant to state Water Code. While the Specific Plan would exceed the sewer flow capacity planned for in the City’s Sewer Master Plan, upgrading existing pipelines would offset the impacts. Regarding wastewater treatment capacity, the TASP EIR found that the City has policies in place to meet demands from potential development, including the purchase of additional treatment plant capacity from San Jose and Santa Clara.

The Specific Plan also includes policies to reduce water consumption, install water saving devices, and use recycled water for irrigation. While use of recycled water for irrigation will require new water mains and pipelines, these will be constructed in existing or proposed roads, causing less than significant environmental impacts. The rezoning from primarily industrial uses to high-density residential and commercial uses will increase the amount of solid waste generated in the planning area. However, the TASP EIR concluded that policies to implement existing recycling programs, participate to the maximum extent practical in solid waste source

reduction and diversion programs, and have the City negotiate new agreements to handle long-term solid waste disposal after the closure of the existing landfill adequately address the impacts from the Specific Plan buildout.

The California Water Code provides that if a Water Supply Assessment is prepared for a larger project that has undergone environmental review under CEQA, no additional Water Supply Assessment is required for smaller projects that fall under the same larger project. Cal. Water Code § 10910(h). In this situation, an additional Water Supply Assessment is only required if there have been changes in the project that substantially increase water demand, changes in the circumstances affecting the public water system, or new information not known at the time the WSA was prepared. Water Code § 10910(h). The Water Supply Assessment for the Specific Plan comprehensively addressed the area's capacity to supply water to its proposed development. Because the Proposed Project is consistent with the Specific Plan, its water demands are included in the Water Supply Assessment prepared for the Specific Plan. There have been no changes in the Proposed Project that would substantially increase its water demands, no changes in conditions impacting the public water system, and no new information regarding water supply since the Water Supply Assessment was prepared. Therefore, the City is not required to request an additional Water Supply Assessment under these circumstances.

### MND

The MND also analyzes the Project's water supply, wastewater treatment, stormwater drainage, and solid waste disposal impacts. The MND finds that the infrastructure upgrades included in the Specific Plan will ensure that the Project does not exceed the capacity of existing utilities and service systems. These infrastructure upgrades include replacing existing sewer pipes with larger diameter sewer pipes, in order to improve storm drainage and wastewater discharge. The MND concludes that the Project will result in less than significant impact.

Because the Proposed Project plans to include these infrastructure upgrades and is generally consistent with the Project analyzed in the MND, the Proposed Project's impacts on utilities and sewer systems are adequately addressed in the MND.

As with the analysis above regarding the TASP EIR, the programmatic Water Supply Assessment for the Specific Plan accounts for the demands of the Proposed Project and no further Water Supply Assessment is required.

### Conclusion

For purposes of the Project, the TASP EIR and the MND assume an intensity of use consistent with or greater than what is currently proposed. Therefore, the Project has **no new impact** on utilities and service systems.

*The MND and TASP EIR adequately covered the utilities and service system impacts of the Project.*