Draft Environmental Impact Report

Waterstone Residential Project

City of Milpitas

June 2013

PREFACE

The document has been prepared by the City of Milpitas as the Lead Agency, in conformance with the California Environmental Quality Act (CEQA). The purpose of this Environmental Impact Report (EIR) is to inform decision makers and the general public of the environmental effects of the proposed project.

This document provides environmental review appropriate for the approval of the proposed WaterStone Residential Project in accordance with CEQA Guidelines Sections 15121, 15145, and 15151.

Purpose of the EIR

In accordance with CEQA, this EIR provides objective information regarding the environmental consequences of the proposed project to the decision makers who will be considering and reviewing the proposed project. The CEQA Guidelines contain the following general information on the role of an EIR and its contents:

> **§15121(a). Informational Document**. An EIR is an informational document, which will inform public agency decision makers, and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR, along with other information that may be presented to the agency.
>
> **§15145. Speculation.** If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.
>
> **§15151. Standards for Adequacy of an EIR**. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that intelligently considers environmental consequences. An evaluation of the environmental effects of the proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good-faith effort at full disclosure.

Focusing The EIR

The City of Milpitas prepared an Initial Study (provided in Appendix A of this EIR) that determined that preparation of an EIR was needed for the proposed project. The Initial Study concluded that the EIR should focus on Land Use, Transportation, Air Quality, Greenhouse Gas

Emissions, and Biology. Analysis of the following resources areas in the Initial Study determined that the project's impacts would be less than significant: Aesthetics, Agricultural and Forestry Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, and Utilities and Service Systems. These resource areas are not addressed further in the EIR. In addition to Land Use, Transportation, Air Quality, Greenhouse Gas Emissions, and Biological Resources, the EIR also analyzes energy impacts, which is not a required element of an Initial Study but is a required element of an EIR.

In accordance with Section 15082 of the CEQA Guidelines, a Notice of Preparation (NOP) was circulated to the public and responsible agencies for input regarding the analysis in this EIR. This EIR addresses those issues which were raised by the public and responsible agencies in response to the NOP where relevant. Specific responses to the comment letters are provided in Section 11.0.

The NOP and copies of the comments letters received are provided in Appendix K of this EIR.

This EIR and all documents referenced in it are available for public review in the Planning Department at Milpitas City Hall, 455 E. Calaveras Boulevard, during normal business hours.

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The project proposes to demolish two large industrial buildings and construct 84 single-family houses. The project also proposes General Plan Amendments of eight parcels.

The following is a summary of the significant impacts and mitigation measures addressed within this EIR, including the Initial Study in Appendix A. The project description and discussion of impacts and mitigation measures can be found in *Section 2.0 Description of the Proposed Project, Section 4.0 Environmental Setting, Impacts, & Mitigation, and Section 5.0 Cumulative Impacts* of this EIR and Appendix A.

Significant Impacts	Mitigation Measures
Biological Resources – Section 4.2 of the EIR	
Construction activities could result in nest abandonment and/or loss of reproductive effort cause by disturbance which is considered a "take" by the CDFW.	If possible, construction and tree removal should be scheduled between September 1 and January 31 (inclusive) to avoid the bird nesting season. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to identify active bird nests that may be disturbed during project implementation. Between February and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for bird nests. If an active raptor nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the CDFW, designate a construction-free buffer zone (typically 250 feet) around the nest. A report indicating the results of the survey and any designated buffer zones will be prepared and submitted to the Director of Planning and Neighborhood Services prior to the initiation of tree removal or grading. **Less Than Significant With Mitigation**

Significant Impacts	Mitigation Measures
Air Quality – Section 4.3 of the EIR	
Placement of residential land uses on the proposed project site would expose residents to odors from the existing daily operations of the nearby landfill.	There is no feasible mitigation that would reduce the identified odor impact in that the landfill is not under the control of the applicant of the City of Milpitas. **Significant and Unavoidable Impact**

Significant Impacts	Mitigation Measures
Noise – Section 2.12 of the Initial Study (Appendix A)	
Exterior noise levels will exceed City of Milpitas noise standards for single-family residential development.	The residential project on Lot 1 shall construct six- to eight-foot tall noise barriers along the side yards nearest to, and with direct line-of-site to California Circle. The noise barrier heights shall be measured relative to the roadway elevation or yard elevation, whichever is higher. The barriers shall solid. The final noise barrier design will be included in the Acoustical Analysis that will be prepared for the site as described in MM NOI-2.1 below. Installation of solid noise barriers will reduce noise at the identified residential properties to 65 dBA L_{dn} or less. Future residential development on Lot 2 under the proposed General Plan Amendment must complete a site-specifc accoustical analysis. If public and/or private open space areas are indentified that will exceed the City's normally acceptable noise limits, site-specific mitiation measures will be identified that would reduce the impact to a less than signficiant level. If the impact cannot be mitigated to less than significant, the site plan will need to be revised to ensure accepatble exterior noise levels for all open space areas. **Less Than Significant Impact With Mitigaiton**
Implementation of the proposed project would expose future residents on Lots 1 and 2 to interior noise levels in excess of acceptable City and State standards.	A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction on Lots 1 and 2 to calculate expected interior noise levels as required by City policies and State noise regulations. Project-specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 *Mitigation continued on next page*

Significant Impacts	Mitigation Measures
Noise – Section 2.12 of the Initial Study (Appendix A)	
	dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project. All houses will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the residents to reduce exposure from outside noise sources.

Cumulative Impacts

Implementation of the proposed project would not result in any cumulative impacts. Please see Section 5.0 of this EIR for a full discussion of the project's cumulative effects.

Alternatives to the Proposed Project

No Project Alternative:
Since the project site is developed, one alternative would be to maintain the entire site as is. If the project site were to remain as is with industrial buildings on the eastern half of the site and commercial businesses of the western portion of the site, there would be no new impacts. This alternative would avoid the significant unavoidable odor impacts and significant noise impacts identified in this EIR but would not meet the objectives of the project. Please see Section 6.1 of this EIR for a full discussion of the No Project Alternative.

Location Alternative:
In an effort to avoid the significant odor and noise impacts that would result from the proposed project but still provide new housing within the City of Milpitas, an alternative location could be considered. Substantive due diligence would be required to find a specific development site that reduced the projects identified impacts to a less than significant level and did not result in new significant impacts. If a location alternative were to be found, the proposed General Plan Amendments on Lots 2 and 3 would not proceed as they are directly

related to the redevelopment of Lot 1 with housing. Please see Section 6.2 of this EIR for a full discussion of the Reduced Density Alternative.

Areas of Known Controversy

Residents on the east side of Penitencia Creek have stated that the do not want the pedestrian bridge and do not think it is a necessary component of the project.

SECTION 1.0 INTRODUCTION AND PURPOSE

1.1 OVERVIEW

The project is comprised of eight parcels that are currently designated *Industrial Park* and are developed with a mix of small commercial shops, a hotel, two office buildings, and three large industrial buildings. The existing land uses have been constructed over the last 30 years and two of the three industrial buildings have been vacant for the last seven years.

There are three components to the proposed project: 1) redevelopment of two existing industrial parcels with housing, 2) General Plan Amendments on eight parcels (including the two parcels slated for redevelopment), and 3) installation of a pedestrian bridge over Penitencia Creek. For the purposes of this analysis, the two parcels proposed to be redeveloped with housing will be collectively referred to as Lot 1. A third parcel proposed to be residentially designated will be referred to as Lot 2. The remaining parcels, which are proposed to be commercially designated, will be collectively referred to as Lot 3. All eight parcels combined will be referred to as the "project site".

This EIR has been prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) and the City of Milpitas. The purpose of this EIR is to provide objective information regarding the environmental consequences of the proposed residential project and General Plan Amendments to the decision makers who will be reviewing and considering the proposed project. The City of Milpitas is the Lead Agency for this project. The Santa Clara Valley Water District is a Responsible Agency.

1.2 PROJECT LOCATION

Redevelopment Project

The approximately 10.7-acre project site is comprised of two parcels located on east side of California Circle Drive, just east of Highway 880 in the City of Milpitas, (refer to Figures 1 and 2).

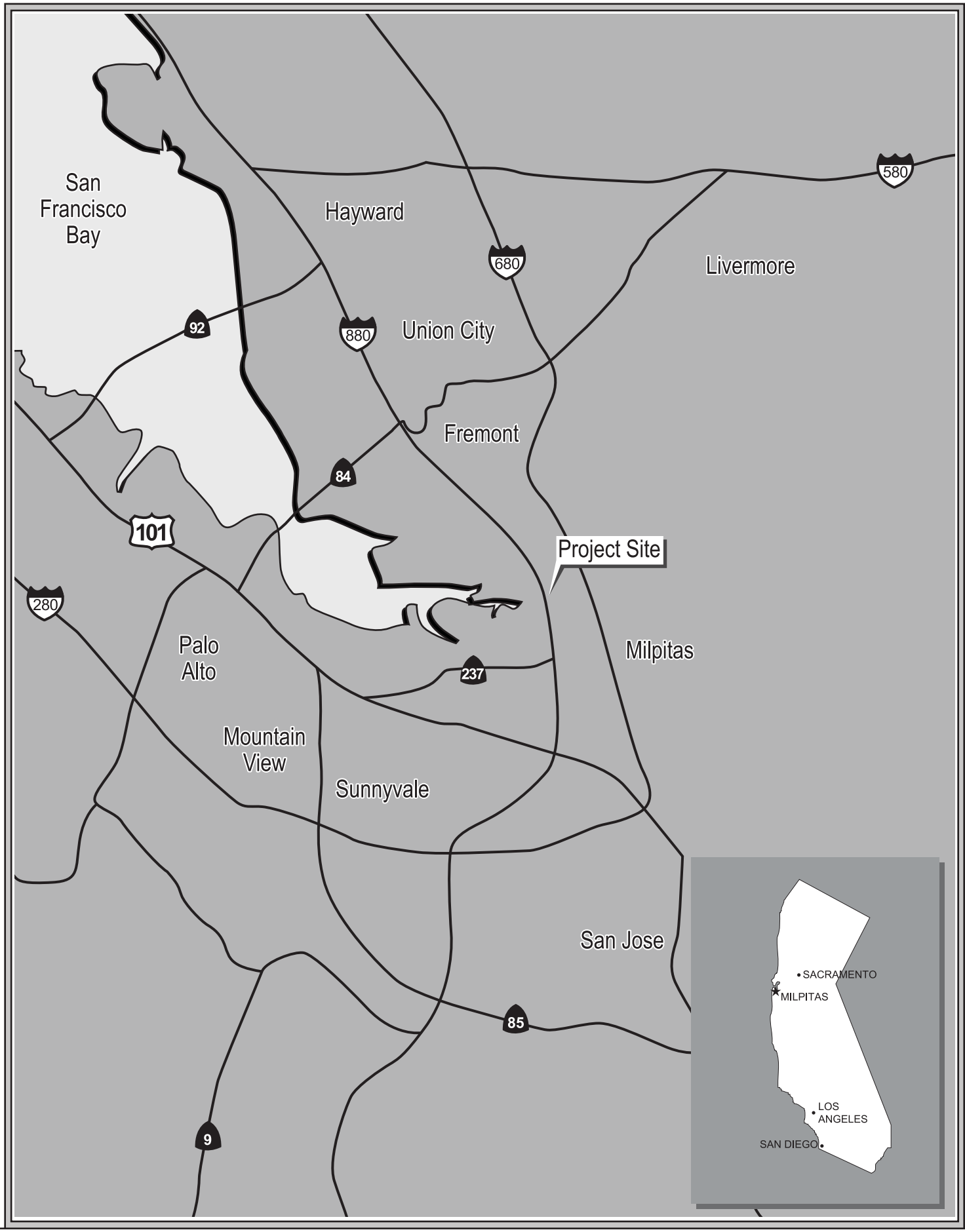
General Plan Amendments

The six commercial/industrial parcels proposed for General Plan Amendments are located south and west of the redevelopment site. These parcels include one parcel located south of the project site and five parcels located west of the project site.

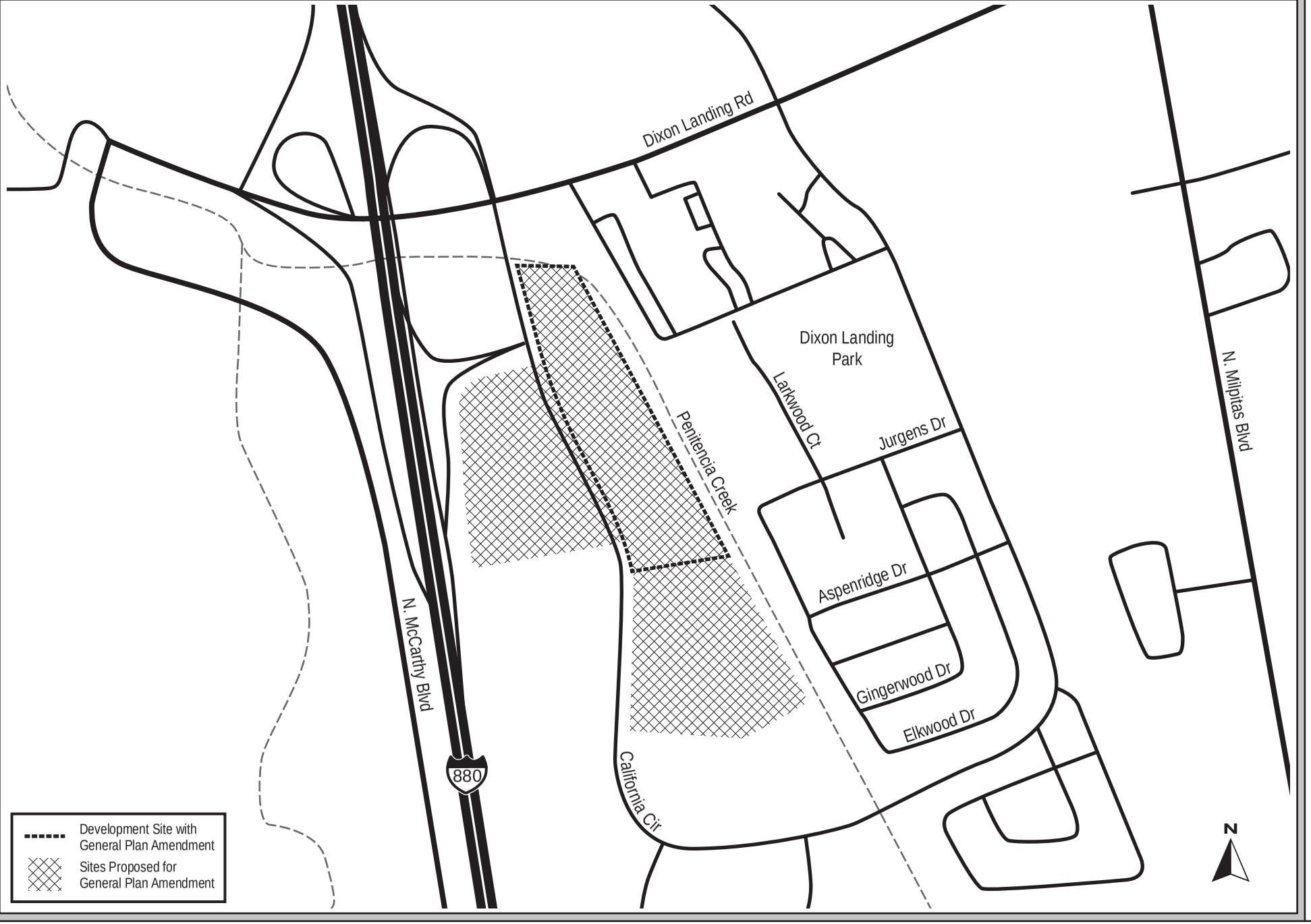
1.3 PROJECT OBJECTIVES

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the proposed project.

The stated objectives of the project proponent are to:



REGIONAL MAP FIGURE 1



VICINITY MAP

FIGURE 2

1. Convert three existing office-use properties from industrial-use to residential General Plan and Zoning land-use categories in order to; (1) improve the diversity of for-sale housing opportunities in Milpitas.

2. Convert two existing office-use properties and construct a high-quality, medium-low density, market-rate, for-sale residential subdivision of approximately 84 single-family homes adjacent to existing residential neighborhoods, trails and a community park.

3. Provide medium-low density housing which supports convenient living that is close to shopping, services, and transportation yet transitions sensitively with adjacent industrial and commercial uses.

4. Improve and encourage pedestrian and bicycle usage along Penitencia Creek.

The stated objectives of the City are to:

1. Promote and encourage high quality residential development, trails/bike path connectivity, parks and recreation development, and other quality-of-life assets that will set the tone for potential planning and transition of the surrounding area along California Circle as a vibrant mix of residential and commercial type use, well-connected and identifiable neighborhood.

2. Develop, plan, and encourage a mix of new commercial retail, service, and office as well as maintaining existing industrial developments to increase the sales tax base and employment opportunity in the City of Milpitas.

3. Encourage potential for additional commercial uses and future commercial or mixed use development along the east side of the Interstate 880 corridor.

4. Maintain remaining viable commercial property for commercial and industrial uses for sustainable economic development.

5. Provide a direct pedestrian and bicycle connection between the proposed residential and adjacent properties as well as the existing multi-family residential community across the Penitencia Creek.

6. Provide an appropriate residential design, density, circulation, and public benefit that can be integrated in future area planning and land use along California Circle.

1.4 USES OF THE EIR

This EIR is intended to provide the City of Milpitas, other public agencies, and the general public with the relevant environmental information needed in considering the proposed project.

The City of Milpitas anticipates that discretionary approvals by the City, including but not limited to the following, will be required to implement the project addressed in this EIR:

- Approval of proposed General Plan Amendments
- Approval of proposed zoning changes
- Approval of a Major Vesting Tentative Map
- Site and Architectural Review (including tree removal permits)
- Issuance of demolition, grading, building, and occupancy permits
- Issuance of permits by the Santa Clara Valley Water District to install a pedestrian bridge over Penitencia Creek and make trail improvements along the section of Penitencia Creek adjacent to the project site.
- Any additional necessary approvals for implementation of development of the project

2.1 INTRODUCTION

There are two components to the proposed project: 1) redevelopment of two existing industrial sites with housing and 2) General Plan Amendments on eight parcels. Table 1 below outlines the specific proposals for each parcel.

TABLE 1
Land Use Changes Proposed By the Project

APN No.	Existing GP Designation	Proposed GP Designation	Existing Zoning	Proposed Zoning	Development Proposed
022-37-011	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	84 dwelling units
022-37-012	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	
022-37-019	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	None
022-37-040	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-045	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-046	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-047	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-049	Industrial Park	General Commercial	Industrial Park	General Commercial	None

For the purposes of this analysis, the parcels proposed to be redeveloped (APNs 022-37-011 and -012) will be collectively referred to as Lot 1. The other parcel proposed to be residentially designated (APN 022-37-019) will be referred to as Lot 2. The parcels proposed to be commercially designated will be collectively referred to as Lot 3 (APNs 022-37-040, -045, -046, -047, and -049). All eight parcels combined will be referred to as the "project site". The Lots are shown on the adjacent figure.

2.2 PROJECT LOCATION

The approximately 29.2-acre project site is located just south of Dixon Landing Road, on either side of California Circle. Lot 1 is a 10.7-acre site on the east of California Circle between the roadway and Penitencia Creek. Lot 2 is a 10.2-

acre parcel immediately south of Lot 1. Lot 3 is an 8.3-acre site to the west of Lot 1, on the west side of California Circle between the roadway and I-880.

2.3 PROPOSED DEVELOPMENT PROJECT

Lot 1 is currently developed with two vacant one-story industrial buildings totally 106,657 square feet. Surface parking lots surround both buildings. The site will be re-designated *Single-Family Moderate Density* and rezoned to the *R1-2.5 Single Family Residential* zoning district, allowing six to 15 DU/AC. As proposed, the project would demolish the existing buildings and hardscape and construct 84 three-story single-family detached houses. The houses would range in size from approximately 2,280 to 2,340 square feet and would have a maximum height of 39 feet. (See Figure 3)

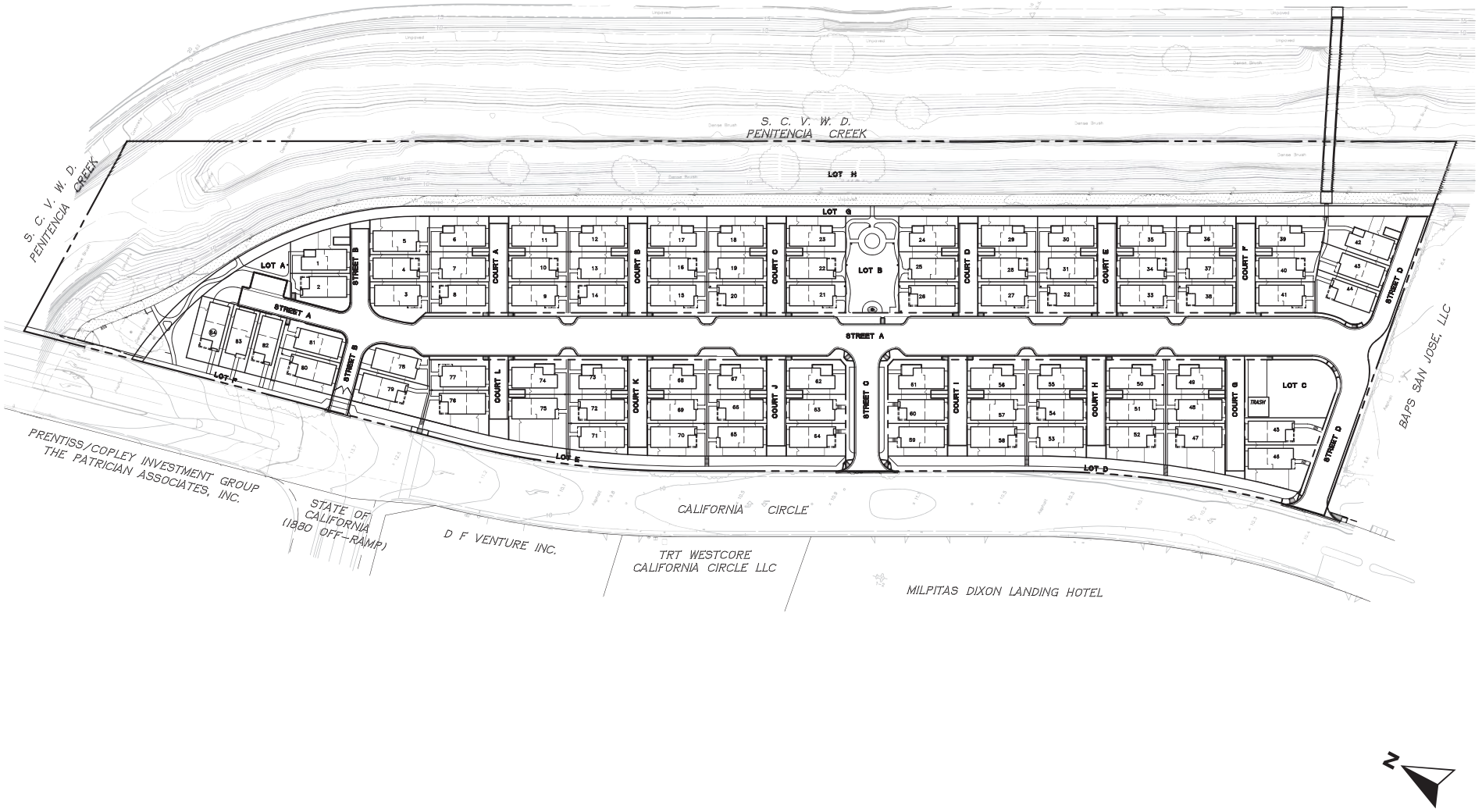
The project would include private yards for each residence as well as three small parks within the site. Park A would be approximately 0.05-acres (2,365 square feet) and would be located at the northern end of the site. Park A is intended as passive open space. Park B would be approximately 0.13-acres (6,817 square feet) and would be located in the middle of the site, adjacent to the levee. Park B would include a barbeque area and lawn. Park C would be approximately 0.13-acres (5,754 square feet) and would be located at the southern end of the site, in direct line of site with the proposed pedestrian bridge (discussed below). Park C would consist primarily of a tot lot. The total public open space on Lot 1, including parks and landscaped areas, would be 0.9 acres and would be open to the general public.

Lot 1 will be accessed by three driveways along California Circle. The northernmost driveway is for emergency vehicle access only and will not be accessible to residents and guest. The central and southern driveways will be the primary access points for Lot 1. Parking for residents will be provided within two-car garages attached to each unit for a total of 168 resident parking spaces. A total of 72 guest parking spaces will also be provided. The main drive aisle will provide 44 parallel parking spaces for guests and each court will have one to two guest spaces (24 spaces). An additional four guest spaces will be provided in a small parking area adjacent to Park A. There is currently no street parking allowed on California Circle. This will not change as a result of the proposed residential development.

The elevation of Lot 1 would be raised one to six feet above the current grade to remove the site from the flood zone and bring the site level with the adjacent levee.

2.3.1 Pedestrian Bridge

The project proposes to install a 10-foot wide clear span bridge over Penitencia Creek. As proposed, the bridge will be constructed off-site and the fully constructed bridge will be installed with a crane. The bridge will be located south of Lot 1, in alignment with Aspenridge Drive on the east side of the creek. The pedestrian bridge will require a joint use agreement between the City of Milpitas and the Santa Clara Valley Water District. The City will be responsible for perpetual maintenance of the bridge.



SITE PLAN

FIGURE 3

The bridge will be anchored flush on the levee trails and will have only shallow footings into the top of the levee. The bridge will not have any footings, cantilevers, or other supports within the creek or between the banks. Trail improvements are also proposed between the area north of 1600 California Circle and the bridge. Final design of the bridge will be determined in conjunction with the Santa Clara Valley Water District (SCVWD) and will be based, in part, on the SCVWD levee improvements scheduled for 2014. Based on the planned trail and levee improvements, it is anticipated that the bridge would be installed in 2015.

2.3.2 Green Building Measures

In addition to exceeding Title 24 requirements by 15 percent, the project will include the following green building measures to reduce on-site energy usage:

- Diversion of 50 percent of all construction and demolition waste.
- Landscaping will be comprised of 75 percent native species, will be drought tolerant, will not include invasive species listed by Cal-ICP, and will not require shearing.
- Irrigation systems will be high-efficiency (low-flow drip, bubblers, or sprinklers, and weather-based controllers).
- Plumbing will include high efficiency showerheads, bathroom faucets, kitchen and utility faucets, and toilets.
- HVAC system will be in compliance with the CALGreen code.
- Advanced mechanical ventilation.

With the inclusion of these measures, the project will exceed the requirements of the City's Green Building Ordinance.

2.4 PROPOSED CHANGES TO LAND USE DESIGNATIONS

As noted above, the project also proposes to change the General Plan and Zoning land use designations on an additional six parcels. Lot 2 is a 10.15 acre site currently designated *Industrial Park* and developed with one 222,156 square foot industrial building.[1] The project proposed to amend the General Plan designation to *Single-Family Moderate Density* and the zoning to *R1-2.5 Single Family Residential.* The new land use designations would allow development of six to 15 dwelling units per acre (DU/AC). Based on the City's development assumptions for this site, the analysis assumes a maximum build out of 152 dwelling units. There is no current proposal to redevelop Lot 2.

Lot 3 is comprised of five lots totaling 8.32 acres. All five parcels are currently designated *Industrial Park* and zoned *Industrial Park* and developed with a gas station, a hotel, a Starbucks, and two office buildings. The existing development on Lot 3 is commercial and the proposed General Plan and Zoning changes will make the land use designations consistent with the existing businesses on-site.

The project proposes to amend the General Plan and Zoning designations to *General Commercial.* The new land use designation would allow development up to a floor area ratio (FAR) of 0.50.

[1] The size of the existing building on Lot 2 was estimated based on the allowable floor area ratio on the site

Based on the City's development assumptions for this site, the analysis assumes a maximum build out of 181,210 square feet which is equivalent to the existing development on the site. There is no current proposal to redevelop Lot 3, and the proposed land use changes and rezoning are proposed to reflect current site conditions and land uses.

SECTION 3.0 CONSISTENCY WITH ADOPTED PLANS & POLICIES

In conformance with Section 15125(d) of the CEQA Guidelines, the following section discusses the consistency of the proposed project with relevant adopted plans and policies.

3.1 Bay Area 2010 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD), in cooperation with the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), prepared the Bay Area 2005 Ozone Strategy (Ozone Strategy). The Ozone Strategy served as a roadmap showing how the San Francisco Bay Area will achieve compliance with the State one-hour air quality standard for ozone as expeditiously as practicable and how the region will reduce transport of ozone and ozone precursors to neighboring air basins. In 2010, BAAQMD adopted a new Clean Air Plan with the intent of updating the 2005 Ozone Strategy to comply with State air quality planning requirements as codified in the California Health and Safety Code.

The Bay Area 2010 Clean Air Plan (CAP) provides a comprehensive plan to improve Bay Area air quality and protect public health. The CAP defines a control strategy that the Air District and its partners will implement to: (1) reduce emissions and decrease ambient concentrations of harmful pollutants; (2) safeguard public health by reducing exposure to air pollutants that pose the greatest health risk, with an emphasis on protecting the communities most heavily impacted by air pollution; and (3) reduce greenhouse gas (GHG) emissions to protect the climate.

Consistency: The project would result in new residential development on a site (Lot 1) currently designated for industrial land uses. The project would also change the land use designation on six sites (Lots 2 and 3) from *Industrial Park* to residential and commercial. The development would increase housing within the City. The project would place housing in Milpitas near existing transit and jobs, but would cause a small change to local population projections. The project, as proposed, would reduce overall traffic trips from the project site relative to the development assumptions in the City of Milpitas General Plan and includes pedestrian improvements. As a result, the proposed project would be consistent with the control measures in the CAP.

3.2 Santa Clara County Congestion Management Program

The Santa Clara Valley Transportation Authority (VTA) oversees the *Santa Clara County Congestion Management Program* (CMP). The relevant State legislation requires that all urbanized counties in California prepare a CMP in order to obtain each county's share of the increased gas tax revenues. The CMP legislation requires that each CMP contain the following five mandatory elements: 1) a system definition and traffic level of service standard element; 2) a transit service and standards element; 3) a trip reduction and transportation demand management element; 4) a land use impact analysis program element; and 5) a capital improvement element. The Santa Clara County CMP includes the five mandated elements and three additional elements, including: a county-wide transportation model and data base element, an annual monitoring and conformance element, and a deficiency plan element.

Consistency: The proposed project would not have a significant impact on any CMP intersections (see Section 4.3, *Transportation*). The project is, therefore, consistent with the CMP.

3.3 San Francisco Bay Region Water Quality Control Plan

The State of California's Porter-Cologne Water Control Act provides the basis for water quality regulation within California and the Act assigns primary responsibility for the protection and enhancement of water quality to the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards. These agencies are authorized to adopt regional water quality control plans, prescribe waste discharge requirements, and perform other functions concerning water quality control within their respective regions.

The Regional Water Quality Control Board (RWQCB) has developed and adopted a Water Quality Control Plan (the Plan) for the San Francisco Bay region. The Plan is a master policy document that contains descriptions of the legal, technical, and programmatic bases of water quality regulations in the San Francisco Bay region. The Plan provides a program of actions designed to preserve and enhance water quality, and to protect beneficial uses based upon the requirements of the Porter-Cologne Act. It meets the requirements of the U.S. Environmental Protection Agency (USEPA) and establishes conditions related to discharges that must be met at all times.

Consistency: As discussed in Appendix A, Section 4.9 of the Initial Study, *Hydrology and Water Quality*, the proposed residential development on Lot 1 and future development on Lots 2 and 3 will be required to be implemented in conformance with the Municipal Regional Stormwater NPDES permit and the Construction General NPDES Permit requirements to ensure that there is no increase in erosion or sedimentation that could impact local waterways and that stormwater runoff from the site's impervious surfaces is treated prior to discharge to the stormwater system. Therefore the project is consistent with the San Francisco Bay Regional Water Quality Control Plan.

3.4 City of Milpitas General Plan

The City of Milpitas's General Plan is an adopted statement of goals and polices for the future character and quality of development in the community as a whole. The following is a summary of relevant sections of the General Plan that would apply to the proposed project.

3.4.1 Land Use Element

Development Intensity

Policy 2.a-I-2: Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80 % buildout in the Midtown and Transit Area Specific Plans.

Consistency: The application was submitted prior to the effective date of the General Plan policy for land conversion. Therefore, the proposed land use conversion of Lots 1 and 2 from *Industrial Park* to *Single Family Moderate* would not be prohibited by this policy.

Growth and Expansion

Policy 2.a-I-1: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

Consistency: The proposed residential project on Lot 1 and future development of Lot 2 under the proposed General Plan Amendment would result in the redevelopment of currently vacant and/or limited use industrial properties within the City limits that are already served by existing infrastructure.

Economic Development

Policy 2.a.I-9: Prohibit encroachment of incompatible uses into industrial lands, which prohibit non-industrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial uses due to land use compatibility issues.

Consistency: The project site is located in an existing industrial area that is adjacent to and in close proximity to residential and hotel land uses. As a result, these uses have already been deemed compatible with the industrial land uses in the area. Conversion of industrial lands to residential in this area would not result in incompatible land uses or operational restrictions on existing or new industrial businesses to any greater extent than the existing housing to the south and quasi-public uses within the business park. The project could, however, make the remaining industrial buildings and the Dixon Landing Business Park less desirable for new or existing businesses by placing housing on California Circle, which is now currently a non-residential street.

3.4.2 Circulation Element

Policy 3.a-I-1: Strive to maintain CMP LOS standards and goals for the CMP Roadway System in Milpitas.

Consistency: Implementation of the proposed residential project on Lot 1 will not cause the level of service of any CMP intersection to degrade to an unacceptable level. Future development on Lots 2 and 3 under the proposed General Plan Amendments would result in an overall decrease in traffic trips from the project site and would not cause the level of service of any CMP intersection to degrade to an unacceptable level.

Policy 3.b-I-1: Require new development to pay its share of street and other traffic improvements based on its impacts.

Consistency: The proposed residential project on Lot 1 would not result in any significant traffic impacts and would not be required to pay fair share fees for traffic improvements. Future development on Lots 2 and 3 under the proposed General Plan Amendments would result in an overall decrease in traffic trips from the project site in 2030 relative to the development assumptions in the City of Milpitas General Plan and would not result in any significant traffic impacts.

Policy 3.b-I-2: Require all projects that generate more than 100 peak-hour (A.M. or P.M.) trips to submit a transportation impact analysis that follows guidelines established by CMP.

Consistency: A transportation impact analysis was prepared consistent with the CMP guidelines for this project and is included in this EIR as Appendix D.

Policy 3.d-I-9: Require developers to make new projects as bicycle and pedestrian "friendly" as feasible, especially through facilitating pedestrian and bicycle movements within sites and between surrounding activity centers.

Consistency: The project proposes a pedestrian bridge over Penitencia Creek to provide connectivity between the proposed residential development and the existing residential neighborhood on the east side of the creek.

Policy 3.d-I-10: Encourage developer contributions toward pedestrian and bicycle capital improvement projects and end-of-trip support facilities.

Consistency: The project proposes a pedestrian bridge over Penitencia Creek to provide connectivity between the proposed residential development and the existing residential neighborhood on the east side of the creek. No specific capital improvement projects have been identified.

Policy 3.d-I-27: Where appropriate, require new development to provide public access points to the trail system and/or contribute to staging areas.

Consistency: The proposed residential project on Lot 1 will provide public access through the site to the proposed pedestrian bridge which will connect to the existing levee trails.

3.4.3 Open Space and Environmental Conservation Element

Policy 4.b-I-4: Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.

Consistency: A biological assessment was prepared for the proposed residential project on Lot 1 and is provided in this EIR as Appendix C.

Policy 4.d-P-7: Applicable projects shall minimize directly connected impervious area by limiting the overall coverage of paving and roofs, directing runoff from impervious areas to adjacent pervious areas, and selecting permeable pavements and surface treatments.

Consistency: The proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments will be designed and constructed to comply with the requirements of the Municipal Regional Stormwater Permit.

Policy 4.d-P-8: Applicable projects shall incorporate facilities (BMPs) to treat stormwater before discharge from the site. The facilities shall be sized to meet regulatory requirements.

Consistency: The proposed residential project on Lot 1 and all future development on Lots 2 and 3 under the proposed General Plan Amendments will meet all applicable stormwater control regulations.

Policy 4.d-P-9: Applicable projects shall control peak flows and duration of runoff where required to prevent accelerated erosion of downstream watercourses.

Consistency: The project site is not subject to NPDES hydromodification requirements due to its location.

3.4.4 Seismic and Safety Element

Policy 5.a-I-1: Require all projects within the Alquist-Priolo Special Studies Zone to have geologic investigations performed to determine the locations of active fault traces before structures for human occupancy are built.

Consistency: The project site is not located within an Alquist-Priolo Special Studies zone.

Policy 5.a-I-3: Require projects to comply with the guidelines prescribed in the City's *Geotechnical Hazards Evaluation* manual.

Consistency: The proposed residential project on Lot 1 and any future development on Lots 2 and 3 under the proposed General Plan Amendments will be constructed consistent with the requirements of site specific geotechnical reports, the City's *Geotechnical Hazards Evaluation Manual*, and the California Building Code.

Policy 5.b-I-1: Ensure that new construction or substantial improvements to any existing structure result in adequate protection from flood hazards. This includes ensuring that:

- New residential development within the 100-year flood zone locate the lowest floor, including basement, above the base flood elevation
- New non-residential development locate the lowest floor, including basement, above the base flood elevation or incorporated flood-proofing and structural requirements as spelled out in the Municipal Code.

Consistency: The project proposed to raise the ground surface of Lot 1 to be level with the top of the levee, elevating the site out of the flood plain. Any future development on Lots 2 or 3 under the proposed General Plan Amendments would be required to be built consistent with City's flood hazard policy.

Policy 5.c-I-1: Maintain a response time of four minutes of less for all urban service areas.

Consistency: Implementation of the proposed project at an existing in-fill location will not preclude the City from maintaining four minute response times within the urban service area.

3.4.5 Noise Element

Policy 6-I-2: Require an acoustical analysis for projects located within a "conditionally acceptable" or "normally unacceptable" exterior noise exposure area. Require mitigation measures to reduce noise to acceptable levels.

Consistency: A project specific acoustical analysis was prepared for the proposed residential project on Lot 1 and mitigation measures have been included for identified impacts. A project level analysis will also be completed for Lot 2 when a specific residential project is proposed.

Policy 6-I-3: Prohibit new construction where the exterior noise exposure is considered "clearly unacceptable" for the use proposed.

Consistency: A portion of Lot 1 will be exposes to ambient noise levels within the "clearly unacceptable" range. Mitigation measures have been identified to reduce the noise levels at these locations to the acceptable range.

Policy 6-I-4: Where actual or projected rear yard and exterior common open space noise exposure exceeds the "normally acceptable" levels of new single-family and multifamily residential projects, use mitigation measures to reduce sound levels in those areas to acceptable levels.

Consistency: A portion of Lot 1, including outdoor use areas, will be exposes to ambient noise levels within the "clearly unacceptable" range. Mitigation measures have been identified to reduce the noise levels at these locations to the acceptable range.

Policy 6-I-5: All new residential development and lodging facilities must have interior noise levels of 45 dB DNL or less. Mechanical ventilation will be required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels.

Consistency: The proposed residential project on Lot 1 includes mitigation measures to ensure compliance with the 45 dB interior noise standard. Any future residential development on Lot 2 under the proposed General Plan Amendment will be required to implement mitigation measures to ensure compliance with the 45 dB interior noise standard.

4.1 LAND USE

4.1.1 Existing Setting

The following discussion identifies the existing conditions on and adjacent to the proposed project site.

4.1.1.1 Existing Land Use

The 29.2-acre project site is comprised of eight non-contiguous parcels (APNs 22-037-011, -012, -019, -040, -045, -046, -047, -049) located on the east and west sides of California Circle, just south of Dixon Landing Road in the City of Milpitas. The project site is relatively flat and is located in a mixed use area of industrial, commercial, and residential land uses. The existing development on the individual sites is described below.

Lot 1

Lot 1 is comprised of two parcels totaling 10.7 acres, of which 3.2 acres are located within Penitencia Creek. The site is currently developed with two vacant one-story industrial buildings totally 106,657 square feet. Both buildings are surrounded by surface parking lots.

Lot 2

Lot 2 is comprised of a single parcel totaling 10.2 acres. The site is currently developed with a one-story, 222,156 square feet industrial building that is occupied by a church. The building is surrounded by a surface parking lot.

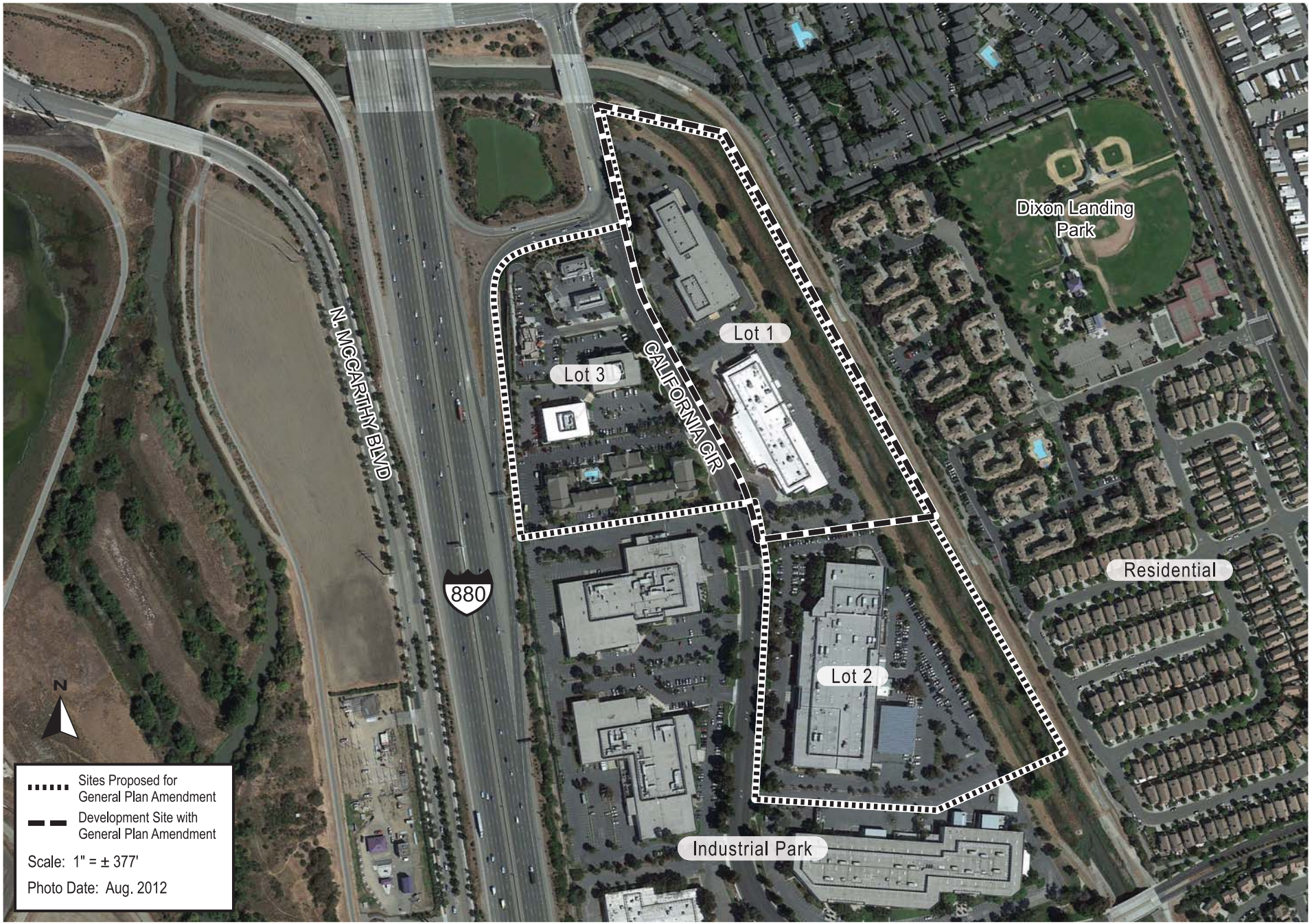
Lot 3

Lot 3 is comprised of five parcels totaling 8.3 acres. The site is currently development with multiple commercial businesses including a gas station, a Starbucks, two two-story office buildings, and a three-story hotel.

Figure 4 shows an aerial of the project site and surrounding land uses.

4.1.1.2 Surrounding Land Uses

Development in the project area is a mix of commercial, industrial, residential, and recreational land uses. The building heights vary by land use from one to three stories. The project site is bound by Dixon Landing Road off-ramp from Interstate 880 (I-880) and a percolation pond to the north, Penitencia Creek to the north and east, one-story industrial buildings to the south, and I-880 to the west. Newby Island Landfill and the San José/Santa Clara Water Pollution Control Plant (WPCP)



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 4

are located on the west side of I-880, approximately 1,965 and 2,635 feet from the westernmost boundary of the project site, respectively.

Penitencia Creek is a wide creek channel with levees on both sides and riparian and wetland vegetation throughout. The eastern levee has a trail that is accessible from the adjacent neighborhood. The neighborhood is comprised of multi-family residences (apartments and townhouses) and single-family residences. Dixon Landing Park is located within the neighborhood.

The industrial buildings to the south of the project site are one-story buildings surrounded by surface parking lots similar to the buildings on the project site.

I-880 is a 10-lane roadway in the vicinity of the project site, with a designated exit lane that provides access to the project site via California Circle. The exit lane also provides access to Dixon Landing Road.

4.1.1.3 Existing Land Use Designation and Zoning

The project site is currently designated *Industrial Park* in the General Plan and zoned *Industrial Park.*

The *Industrial Park (INP)* designation is intended for research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances.

The *MP – Industrial Park* (Section 7.0 of the Zoning Code) is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet. The current zoning has a maximum floor area ratio (FAR) of 0.50.

4.1.2 Land Use Impacts

4.1.2.1 Thresholds of Significance

For the purposes of this EIR, a land use impact is considered significant if the project would:

- Physically divide an established community;
- 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;
- Conflict with an applicable habitat conservation plan or natural community conservation plan.

4.1.2.2 Land Use Conflicts

Land use conflicts can arise from two basic causes: 1) a new development or land use may cause impacts to persons or the physical environment in the vicinity of the project site or elsewhere; or 2)

conditions on or near the project site may have impacts on the persons or development introduced onto the site by the new project. Both of these circumstances are aspects of land use compatibility. Potential incompatibility may arise from placing a particular development or land use at an inappropriate location, or from some aspect of the project's design or scope. Depending on the nature of the impact and its severity, land use compatibility conflicts can range from minor irritations and nuisance to potentially significant effects on human health and safety. The discussion below distinguishes between potential impacts *from* the proposed project *upon* persons and the physical environment, and potential impacts *from* the existing surroundings *upon* the project itself.

Consistency with the General Plan Land Use Designation and Zoning

As stated above, the project site is currently designated *Industrial Park*. The *Industrial Park* General Plan designation allows for research, professional, packaging and distribution facilities in a park-like setting. The project proposes multiple General Plan Amendments as outlined in Table 2. For Lots 1 and 2, the *Single-Family Moderate Density* designation allows for single-family houses at six to 15 DU/AC. For Lot 3, the *General Commercial* designation allows for commercial/retail development up to a floor area ratio (FAR) of 0.50.

TABLE 2
Land Use Changes Proposed By the Project

APN No.	Existing GP Designation	Proposed GP Designation	Existing Zoning	Proposed Zoning	Development Proposed
022-37-011	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	84 dwelling units
022-37-012	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	
022-37-019	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	None
022-37-040	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-045	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-046	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-047	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-049	Industrial Park	General Commercial	Industrial Park	General Commercial	None

The proposed residential development on Lot 1 includes 84 single-family houses and multiple public open space areas. The residential project on Lot 1, as proposed, is inconsistent with the current land use designation and zoning. With the proposed General Plan amendment and rezoning the residential project will be consistent with all applicable City land use regulations. If the General Plan amendment and rezoning are not approved, the project cannot be approved as proposed. **(Less Than Significant Impact)**

Future redevelopment of Lots 2 and 3 with residential and commercial land uses would only be allowed if the proposed General Plan Amendments and rezoning are approved. If the General Plan

amendments and rezoning are not approved, Lot 3 would remain consistent with the current land use designations but Lot 2 would continue to have non-conforming land uses. Since the church use on Lot 2 was deemed acceptable by the City, this discrepancy between the existing land uses and land use designations is not an impact under CEQA. **(Less Than Significant Impact)**

Land Use Impacts

The proposed residential project on Lot 1 would demolish the existing industrial buildings and construct single-family housing on the site. Redevelopment of Lot 2 under the proposed General Plan Amendment would also result in the development of new housing on an industrial site. The project area is a mix of small commercial businesses, offices, hotels, residences, recreational areas, and other industrial buildings which are located in proximity to existing residential development. These businesses have been found to be generally compatible with the existing residential land uses. Therefore, the placement of new residences in the vicinity of the existing businesses in the area would not result in a land use conflict.

The addition of new residential dwellings in the project area would be consistent with the mix of land uses in the project area and would not result in a significant land use compatibility impact. **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would be consistent with the existing land uses on Lot 3 and would be compatible with all existing and proposed land uses in the immediate area. **(No Impact)**

The proposed residential project and future development under the proposed General Plan Amendments would not physically divide an established community. In addition, the project site is in a developed urban area and is not subject to any adopted Habitat Conservation Plan (HCP) or Natural Community Conservation Plan (NCCP). **(Less Than Significant Impact)**

4.1.3 Mitigation and Avoidance Measures for Land Use Impacts

No mitigation is required or proposed.

4.1.4 Conclusion

The proposed project would be compatible with all adjacent and nearby land uses and would not divide an established community. With approval of the proposed General Plan Amendments and rezoning, the proposed residential development project would comply with relevant land use policies and regulations. **(Less Than Significant Impact)**

4.2 BIOLOGICAL RESOURCES

The following discussion is based in part on tree survey prepared by *Hort Science* in December 2012 and a biological investigation prepared by Live Oak Associates, Inc. in July 2012. Copies of these reports are provided in Appendices B and C of this document.

4.2.1 Existing Setting

Biological resources include plants and animals and the habitats that support them. Individual plant and animal species that are listed as rare, threatened or endangered under the State and/or Federal Endangered Species Act (and the natural habitat communities that support them) are of particular concern. Sensitive natural communities (e.g., wetlands, riparian woodlands, and oak woodland) that are critical to wildlife or ecosystem function are also important biological resources.

4.2.1.1 Regulatory Framework

Special-Status Plants and Animals

Threatened and Endangered Species

State and Federal "endangered species" legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations.

Permits may be required from both the CDFW and USFWS if activities associated with a proposed project would result in the take of a species listed as threatened or endangered. To "take" a listed species, as defined by the State of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" said species (California Fish and Game Code, Section 86). "Take" is more broadly defined by the Federal Endangered Species Act to include "harm" of a listed species (16 USC, Section 1532(19), 50 CFR, Section 17.3).

Migratory Birds

State and Federal laws also protect most bird species. The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

Birds of Prey

Birds of prey, such as owls and hawks, are protected in California under provisions of the State Fish and Game Code, Section 3503.5, (1992), which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such birds except as otherwise provided by this Code or any regulation adopted pursuant thereto." Construction disturbance during the breeding season could result in the incidental

loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered a "taking" by the CDFW.

Bats

Section 2000 and 4150 of the California Fish and Game Code states that it is unlawful to take or possess bats, without a license or permit as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states that it is unlawful to harass[2], herd, or drive bats.

Wetlands and Other Jurisdictional Waters

Natural drainage channels and adjacent wetlands may be considered "Waters of the United States" (referred to as 'jurisdictional waters") subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE). Jurisdictional waters generally include:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce;
- All impoundments of waters otherwise defined as waters of the United States under the definition; and
- Tributaries of waters identified above.

The USACE regulates the filling or grading of jurisdictional waters under the authority of Section 404 of the Clean Water Act.

Milpitas Tree Ordinance

The City of Milpitas Tree Protection and Heritage Program (Title X, Chapter 2, Section 7 of the Milpitas Municipal Code) provides protection to all trees meeting the following criteria:

- All trees which have a 56-inch or greater circumference of any truck measured 4.5 feet from the ground and located on developed residential property.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the ground located on developed commercial or industrial property.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the ground, when removal relates to any transaction for which zoning approval or subdivision approval is required.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the

[2] Harass is defined as "an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering."

ground and located on a vacant, undeveloped or underdeveloped property.
- All trees or groves of trees that have been identified by the City as heritage trees.

4.2.1.2 Conservation Plans

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (SCVHP) has recently been adopted by six local entities in Santa Clara County although it will not be in effect until both State and Federal Permits are issued and an implementing agency, the Santa Clara Valley Habitat Agency, is in place. Although not yet implemented, it is likely that the SCVHP will be in effect in late 2013 or early 2014.

The SCVHP was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, the Santa Clara Valley Water District, and the Valley Transportation Authority (collectively termed the 'Local Partners'), the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. The SCVHP is a conservation program to promote the recovery of endangered species in more than one-half of Santa Clara County[3] while accommodating planned development, infrastructure and maintenance activities. The species of concern identified in the SCVHP include, but are not limited to, the California tiger salamander, California red-legged frog, western burrowing owl, Bay Checkerspot butterfly, and a number of species endemic to serpentine grassland and scrub.

The area covered by the SCVHP lies within Santa Clara County with the northern edge generally defined by the boundary of Alameda and Santa Clara Counties, *excluding* the Milpitas City Limits. Santa Clara County has a land area of 835,449 acres; the SCVHP primary study area encompasses 519,506 acres, or approximately 62 percent of the county. About 100,000 acres of this area (19 percent) supports urban development. Within the City of San José, the northern boundary is the northern edge of the "bufferlands" of the Water Pollution Control Plant facility on Zanker Road, west of the project site. The study area of the SCVHP is defined as the area in which all covered activities would occur, impacts would be evaluated, and conservation activities would be implemented. Projects and activities of the other jurisdictions (such as the City of Milpitas), which are not Permittees, are not covered.

In addition to the SCVHP area defined above, an expanded study area for burrowing owl conservation was identified to the north and west in portions of the cities of San José, Santa Clara, Mountain View, Milpitas, and Sunnyvale; in Fremont in Alameda County; and a small portion of San Mateo County. The expanded study area for burrowing owl conservation that falls outside of the primary SCVHP study area is 48,464 acres in size and includes the project area within the City of Milpitas. The allowable activities covered by the SCVHP in this expanded study area are limited only to conservation actions for western burrowing owl.

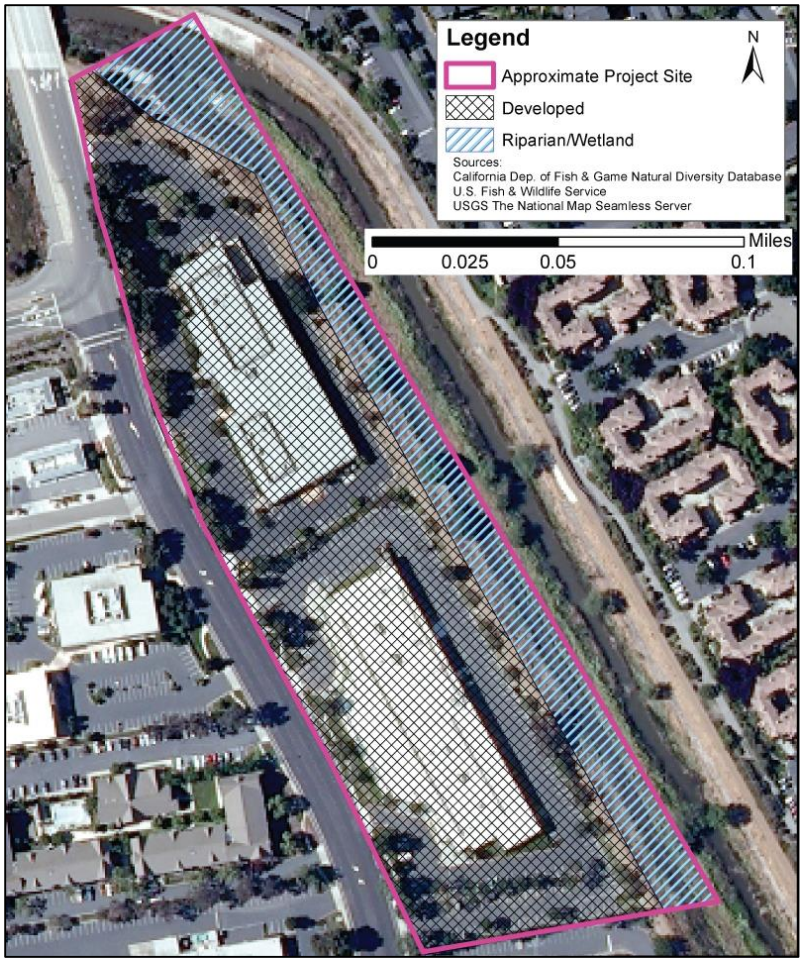
[3] Santa Clara County has a land area of 835,449 acres; the study area of the Santa Clara HCP/NCCP encompasses 519,506 acres, or approximately 62 percent of the county.

Expanded HCP/NCCP Area for Burrowing Owl Conservation

The project site is currently fully developed and does not provide suitable habitat for western burrowing owl that could be used for burrowing owl conservation.

4.2.1.3 Existing Conditions

Vegetation



The project site is located in developed urban habitat in the City of Milpitas and is surrounded by industrial, commercial, and residential development. A portion of Lot 1, approximately 3.2 acres, is located within Penitencia Creek and Lot 2 is located directly adjacent to the creek. This area of Lot 1 is separated by from the developed portion of the site by the levee. For the purposes of this analysis, analysis of vegetation on Lot 1 will refer to only the developed portion of the site. Impacts to vegetation within Penitencia Creek will be addressed separately.

Vegetation on the project site is comprised primarily of landscape vegetation with grass, shrubs, and trees. There are no sensitive habitats or special status plants on-site, due to a lack of habitat to support them. There are no serpentine soils on the project site.

Adjacent to the developed portion of Lot 1 and all of Lot 2 is a levee with a gravel walking trail and maintenance road on top. The top of the levee is approximately six feet above the grade of the project site. On the east side of the levee is the creek which supports both riparian and wetland habitats.

The section of Penitencia Creek adjacent to the site is within an approximately 200 foot wide engineered channel. Vegetation along the creek banks is primarily non-native annual grasses. Native vegetation is limited to a few species of trees and shrubs including Fremont's cottonwood, arroyo willow, sagebrush, and common bedstraw. Dense wetland vegetation is found within the

creek channel. The wetland vegetation is comprised of tule, cattails, broad-leaved pepper-weed, fringed willow-herb, horsetails, mugwort, curly dock, poison hemlock, and California blackberry.

There are no waterways, wetlands, or other sensitive habitats located on or adjacent to Lot 3.

Wildlife

The developed nature of the project site provides limited habitat for locally occurring wildlife species. The project area, aside from the creek, is of poor value for foraging or nesting habitat. Several bird species were observed in the project area including American white pelican, great egret, turkey vulture, red-shouldered hawk, Nuttall's woodpecker, western scrub jay, American crow, American robin, northern mockingbird, European starling, California towhee, house finch, and house sparrow. The only mammal observed was the eastern fox squirrel. No amphibians were observed.

Within Penitencia Creek, several avian and mammal species were observed. Most of the bird species were the same ones observed from the project site. Additional avian species seen within the creek include snowy egret, Anna's hummingbird, black phoebe, red-winged blackbird, and Brewer's blackbird. Additional mammals seen within the creek include Virginia opossum, Botta's pocket gopher, raccoon, striped skunk, and domestic dogs and cats.

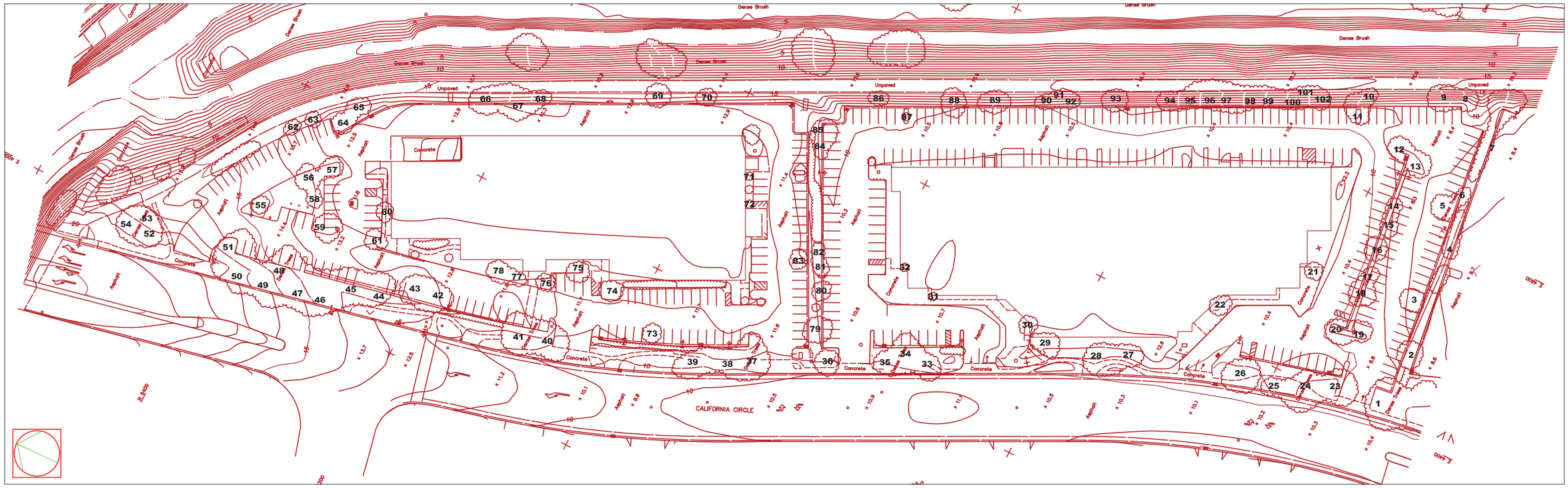
4.2.1.4 Trees

Mature trees (both native and non-native) are valuable to the human environment for the benefits they supply for resisting global climate change (i.e., carbon dioxide absorption), protection from weather, because they provide nesting and foraging habitat for raptors and other migratory birds, and because they are a visual enhancement. Therefore, a tree survey on Lot 1 was completed to document and evaluate the mature trees on-site.

On developed commercial property, such as the project site, the City of Milpitas Tree Ordinance defines an ordinance-sized tree as any tree having a trunk that measures 37 inches or greater in circumference (approximately 12 inches in diameter) at a height of four and one-half feet above the ground. A multi-stem tree is considered a single tree and ordinance-size if any one of its trunks measures 37 inches or greater in circumference. A tree removal permit is required from the City for the removal of ordinance-sized trees.

Trees located on the residential development site (Lot 1) are a mixture of native and non-native species, in varying sizes and levels of health. Within the boundaries of the construction area of Lot 1, there are a total of 102 trees. Of the 102 trees there are 27 acacias, 20 ashes, nine California peppers, nine myoporums, eight silver dollar gums, five flowering cherries, five Nichol's gums, four flax leaf peperbarks, four callery pears, three alders, two Brisbane boxes, two Italian stone pines, two Chinese pistaches, one black pine, and one African fern pine. Tree surveys were not completed for Lots 2 and 3 because no specific development is currently proposed.

The following table lists all trees identified on Lot 1 during the tree survey. The location of the trees is shown on Figure 5.



TREE MAP

FIGURE 5

TABLE 3
Tree Survey

Tree No.	Common Name	Diameter[4] In Inches	Protected	Health	Preservation Suitability
1	Blackwood acacia	31	Yes	3	Moderate
2	Raywood ash	15	Yes	4	Moderate
3	Raywood ash	9	No	4	Moderate
4	Raywood ash	8	No	3	Moderate
5	Raywood ash	9	No	4	Moderate
6	Raywood ash	7	No	3	Moderate
7	Silver dollar gum	14	Yes	3	Moderate
8	Myoporum	Multi	No	2	Poor
9	Myoporum	Multi	No	2	Poor
10	Myoporum	Multi	No	2	Poor
11	Raywood ash	12	Yes	3	Moderate
12	Raywood ash	12	Yes	3	Moderate
13	Raywood ash	16	Yes	4	Moderate
14	Raywood ash	13	Yes	3	Moderate
15	Raywood ash	13	Yes	3	Moderate
16	Raywood ash	13	Yes	3	Moderate
17	Raywood ash	15	Yes	3	Moderate
18	Raywood ash	15	Yes	3	Moderate
19	Raywood ash	14	Yes	3	Moderate
20	Raywood ash	15	Yes	4	Moderate
21	Flax leaf paperback	13	Yes	4	Good
22	Raywood ash	12	Yes	4	Moderate
23	Blackwood acacia	21	Yes	3	Poor
24	Blackwood acacia	30	Yes	3	Moderate
25	Blackwood acacia	14	Yes	4	Moderate
26	Blackwood acacia	27	Yes	3	Moderate
27	Blackwood acacia	20	Yes	1	Poor
28	Blackwood acacia	25	Yes	2	Poor
29	Blackwood acacia	23	Yes	4	Moderate
30	Flax leaf paperback	11	No	4	Moderate
31	Flax leaf paperback	10	No	4	Moderate
32	Flax leaf paperback	10	No	3	Moderate
33	Blackwood acacia	24	Yes	4	Moderate
34	Blackwood acacia	24	Yes	5	Good
35	Blackwood acacia	16	Yes	4	Moderate
36	Blackwood acacia	16	Yes	4	Good
37	Blackwood acacia	25	Yes	4	Moderate
38	Blackwood acacia	22	Yes	4	Good
39	Blackwood acacia	19	Yes	3	Moderate
40	Blackwood acacia	24	Yes	3	Poor
41	Blackwood acacia	21	Yes	3	Moderate
42	Blackwood acacia	15	Yes	3	Poor

[4] Measured at 48 inches above grade.

TABLE 3 *Continued* Tree Survey					
Tree No.	**Common Name**	**Diameter In Inches**	**Protected**	**Health**	**Preservation Suitability**
43	Blackwood acacia	20	Yes	2	Poor
44	Blackwood acacia	22	Yes	3	Moderate
45	Blackwood acacia	23	Yes	3	Moderate
46	Blackwood acacia	26	Yes	3	Poor
47	Blackwood acacia	22	Yes	4	Good
48	Blackwood acacia	15	Yes	3	Poor
49	Blackwood acacia	23	Yes	3	Poor
50	Blackwood acacia	15	Yes	3	Poor
51	Blackwood acacia	29	Yes	2	Poor
52	Nichol's gum	25	Yes	4	Good
53	Nichol's gum	22	Yes	2	Poor
54	Nichol's gum	25	Yes	3	Moderate
55	European alder	10	No	4	Good
56	European alder	11	No	2	Poor
57	Callery pear	10	No	4	Good
58	European alder	8	No	3	Poor
59	Callery pear	12	Yes	4	Good
60	African fern pine	9	No	4	Moderate
61	Callery pear	12	Yes	4	Good
62	California pepper	10	No	4	Good
63	California pepper	7	No	4	Good
64	Callery pear	10	No	4	Good
65	California pepper	13	Yes	4	Good
66	Italian stone pine	19	Yes	4	Good
67	Italian stone pine	20	Yes	4	Good
68	Black pine	10	No	3	Moderate
69	Nichol's gum	15	Yes	4	Moderate
70	Nichol's gum	9	No	3	Poor
71	Brisbane box	5	No	3	Poor
72	Brisbane box	7	No	4	Moderate
73	Chinese pistache	7	No	5	Good
74	Flowering cherry	14	Yes	4	Moderate
75	Flowering cherry	13	Yes	4	Good
76	Flowering cherry	11	No	4	Moderate
77	Flowering cherry	11	No	4	Moderate
78	Flowering cherry	11	No	4	Moderate
79	Raywood ash	16	Yes	4	Moderate
80	Raywood ash	9	No	4	Moderate
81	Raywood ash	7	No	4	Moderate
82	Raywood ash	7	No	4	Moderate
83	Chinese pistache	6	No	5	Good
84	Silver dollar gum	13	Yes	2	Poor
85	Silver dollar gum	18	Yes	4	Moderate
86	Myoporum	Multi	No	2	Poor

TABLE 3 *Continued* Tree Survey					
Tree No.	**Common Name**	**Diameter In Inches**	**Protected**	**Health**	**Preservation Suitability**
87	Silver dollar gum	18	Yes	1	Poor
88	Silver dollar gum	14	Yes	5	Good
89	Myoporum	Multi	No	2	Poor
90	California pepper	9	No	4	Good
91	California pepper	10	No	4	Good
92	California pepper	10	No	4	Good
93	Myoporum	Multi	No	2	Poor
94	Myoporum	Multi	No	3	Poor
95	Silver dollar gum	18	Yes	2	Poor
96	Silver dollar gum	16	Yes	4	Good
97	Silver dollar gum	18	Yes	3	Moderate
98	Myoporum	Multi	No	3	Moderate
99	Myoporum	Multi	No	3	Moderate
100	California pepper	10	No	3	Moderate
101	California pepper	10	No	4	Good
102	California pepper	14	Yes	5	Good

4.2.2 Thresholds of Significance

A biological resources impact is considered significant if the project would:

- 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;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service;
- 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;
- Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law (conversion/loss of oak woodlands) – Public Resource Code 21083.4;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan; or
- Conflict with any local policies or ordinances protecting biological resources.

4.2.3 Biological Resources Impacts

4.2.3.1 Special-Status Plants and Animals

Since the entire project site is developed and there are no wetlands or other sensitive habitats on the site (excluding the 3.2 acres of Lot 1 located within Penitencia Creek), the presence of any special-status plants on the developed portion of the site is highly unlikely. For this reason, development within the boundaries of the project site would not result in significant impacts to special-status plant species or sensitive habitats. **(Less Than Significant Impact)**

The project proposes to install a 10-foot wide clear span bridge over Penitencia Creek. As proposed, the bridge will be constructed off-site and the fully constructed bridge will be installed with a crane. The bridge will be anchored on top of the levees and will not have any footings, cantilevers, or other supports within the creek or between the banks. Because the bridge will not disturb any habitat within the creek or require construction within the stream, the consulting biologist concluded that the bridge would have a less than significant impact on riparian and wetland habitat, native wildlife within the riparian corridor, and regulated waters. **(Less Than Significant Impact)**

Nesting Raptors and Migratory Birds

Based on the highly urbanized and developed nature of the site (excluding the 3.2 acres of Lot 1 located within Penitencia Creek), natural communities or habitats for special-status plant and wildlife species are not present on the site. Although no nests were observed, trees within the riparian corridor could provide suitable nesting habitat for tree-nesting raptors and migratory birds. Special-status birds such as white-tailed kite, saltmarsh common yellowthroat, and tricolored blackbird, as well as non-special status species may nest within the adjacent riparian habitat. Nesting birds, including urban adapted raptors, are protected under the provisions of the FMBTA and the CDFW Code 3503.5. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or could otherwise lead to nest abandonment. Nest abandonment and/or loss of reproductive effort caused by disturbance are considered a "take" by the CDFW, and therefore would constitute a significant impact. **(Significant Impact)**

4.2.3.2 Effects on Project Implementation of the Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

As previously discussed, the City of Milpitas is not one of the Local Partners in Santa Clara County that has adopted, or has activities covered by, the SCVHP.

Expanded HCP/NCCP Area for Burrowing Owls

As previously noted, the project site is currently fully developed (excluding the 3.2 acres of Lot 1 located within Penitencia Creek) and does not provide suitable habitat for Western Burrowing Owls that could be used for burrowing owl conservation. Redevelopment of Lot 1 and future redevelopment of Lots 2 and 3 would not reduce the area of habitat in northern Santa Clara County available for possible burrowing owl conservation activities with the goal of increasing local burrowing owl populations. (**No Impact)**

4.2.3.3 Trees

For the purposes of this analysis, it is assumed that all 102 trees on Lot 1 will be removed during construction of the proposed development project. Of the 102 trees to be removed, 70 are ordinance sized trees. New landscaping trees will be required; nevertheless, the loss of 70 ordinance sized trees, which are protected under the Milpitas Municipal Code, would be a significant impact if not off-set by replacement plantings.

No specific development is currently proposed on Lots 2 and 3. This analysis assumes that any future development on Lots 2 or 3 under the proposed General Plan Amendments would result in the loss of all existing trees on those sites.

The total loss of trees would also be significant because mature trees provide protection from the weather by shading buildings and buffering them from rain and wind and help to filter carbon dioxide out of the air. Trees also enhance the visual character of the local community.

In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas. **(Less Than Significant Impact)**

4.2.4 Mitigation and Avoidance Measures for Biological Resources

4.2.4.1 General Plan Policies

The policies in the City of Milpitas General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Development under the proposed General Plan amendment would be subject to existing General Plan policies, including those listed below.

Policy 4.b-I-4: Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.

4.2.4.2 Project Specific Mitigation Measures

The project proposes to implement the following measures to reduce impacts to nesting birds to a less than significant level:

- If possible, construction and tree removal should be scheduled between September 1 and January 31 (inclusive) to avoid the bird nesting season. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to identify active bird nests that may be disturbed during project implementation. Between February and April (inclusive) pre-

construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for bird nests.

- If an active raptor nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the CDFW, designate a construction-free buffer zone (typically 250 feet) around the nest. A report indicating the results of the survey and any designated buffer zones will be prepared and submitted to the Director of Planning and Neighborhood Services prior to the initiation of tree removal or grading.

4.2.5 Conclusion

With implementation of measures to protect nesting birds, the project would not result in significant impacts to wildlife in the project area. **(Less Than Significant Impact with Mitigation)**

The proposed project will have a less than significant impact on trees, vegetation, and non-avian wildlife species. **(Less Than Significant Impact)**

4.3 TRANSPORTATION

The following discussion is based on a transportation impact analysis and a supplemental traffic analysis prepared by *Hexagon Transportation Consultants* in February 2012 and January 2013, respectively. A copy of these reports is located in Appendix D of this document.

4.3.1 Setting

The original transportation impact analysis (TIA) prepared in February 2012 only analyzed residential development on Lot 1. The TIA analyzed the demolition of the existing industrial buildings on Lot 1 and the construction of 46 single-family houses and 62 townhouses. Since completion of the original TIA, the proposed residential project was revised to a smaller project of 84 units and the additional General Plan Amendments on Lots 2 and 3 were proposed. The supplemental traffic analysis addresses the changes to the proposed residential development on Lot 1 and the General Plan Amendments on Lots 2 and 3. Per City of Milpitas methodology for analyzing traffic impacts associated with General Plan Amendments, impacts to the roadway network related to Lots 2 and 3 are discussed in Section 5.0, *Cumulative Impacts,* of this EIR. The following analysis primarily addresses the proposed residential development on Lot 1.

The supplemental traffic analysis concluded that while the current proposed 84 unit residential project would generate slightly more trips than the proposal for 108 units originally analyzed, the additional project trips[5] would be too few to materially change the level of service results in the original TIA, which are presented below.

4.3.1.1 Existing Roadway Network

Regional Access

Regional access to the project site is provided via Interstate 680 (I-680) and Interstate 880 (I-880) as described below.

I-680 is a north-south freeway located at the eastern edge of the City that runs parallel to I-880. The freeway has three lanes in each direction plus a southbound high occupancy vehicle (HOV) lane north of State Route 237 (SR 237) and four lanes in each direction south of SR 237.

I-880 is a north-south freeway located just west of the project site that extends through Milpitas and provides access to the project site via an interchange with Dixon Landing Road. The freeway has four lanes in each direction north of SR 237 and three lanes in each direction south of SR 237.

Local Access

Roadways within the project area include California Circle, Dixon Landing Road, Milmont Drive, Milpitas Boulevard, and McCarthy Boulevard which are described below.

[5] Single-family residences generate more traffic trips than multi-family residences. As a result, while the current project has fewer units than the original project, the units are all single-family, resulting in slightly more trips.

California Circle is a four-lane, north-south roadway that runs through the project site. California Circle extends from Dixon Landing Road to Fairview Way and provides direct access to the site. California Circle becomes Milmont Drive south of Fairview Way.

Dixon Landing Road is an east-west, four-lane roadway that extends east from McCarthy Boulevard to Milpitas Boulevard. Dixon Landing Road provides access to the project site via California Circle.

Milmont Drive is generally a two-lane, north-south roadway that becomes California Circle immediately south of Lot 2.

Milpitas Boulevard is a four-lane, north-south arterial that extends from Montague Expressway in the south to Dixon Landing Road where it continues north as Warm Springs Boulevard.

McCarthy Boulevard is a four-lane, north-south arterial that connects Montague Expressway to Dixon Landing Road. McCarthy Boulevard primarily provides access to SR 237, Montague Expressway, and I-880. In the future, McCarthy Boulevard is planned to extend north of Dixon Landing Road and connect to Fremont Boulevard.

4.3.1.2 Existing Pedestrian and Bicycle Facilities

Pedestrian Facilities

Pedestrian facilities in the project area consist of sidewalks along both sides of California Circle and Dixon Landing Road. All signalized intersections within the immediate project area have pedestrian crosswalks with ADA compliant curb ramps.

Bicycle Facilities

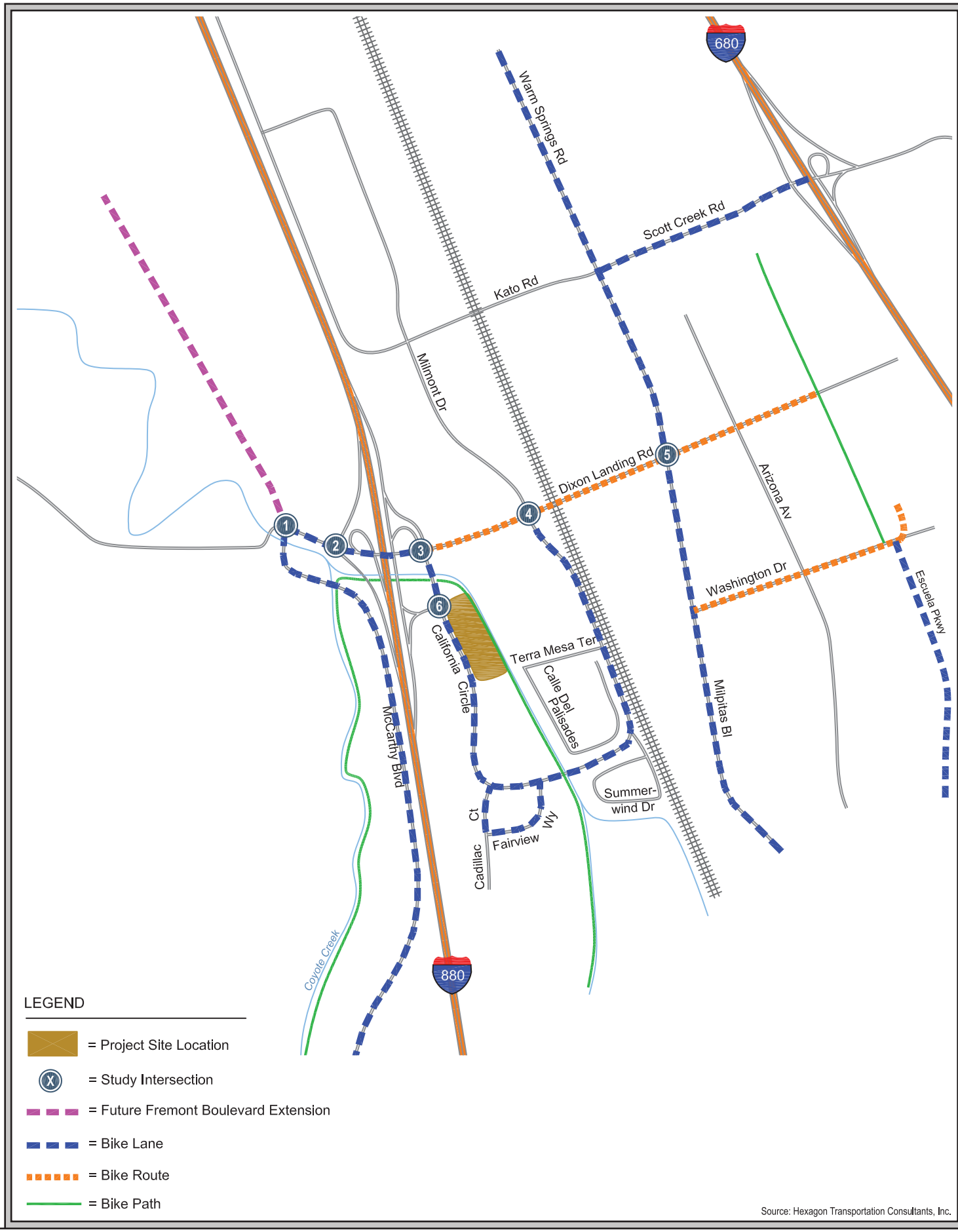
Bicycle facilities are comprised of paths (Class I), lanes (Class II), and routes (Class III). Bicycle paths are paved trails that are separate from roadways. Bicycle lanes are lanes on roadways designed for bicycle use by striping, pavement legends, and signs. Bicycle routes are roadways designated for bicycle use by signs only.

Class I facilities in the project area include the Penitencia Creek Trail along the east side of the project site and Coyote Creek Trail on the west side of I-880. Class II facilities exist on California Circle and Dixon Landing Road. Existing bicycle facilities are shown on Figure 6.

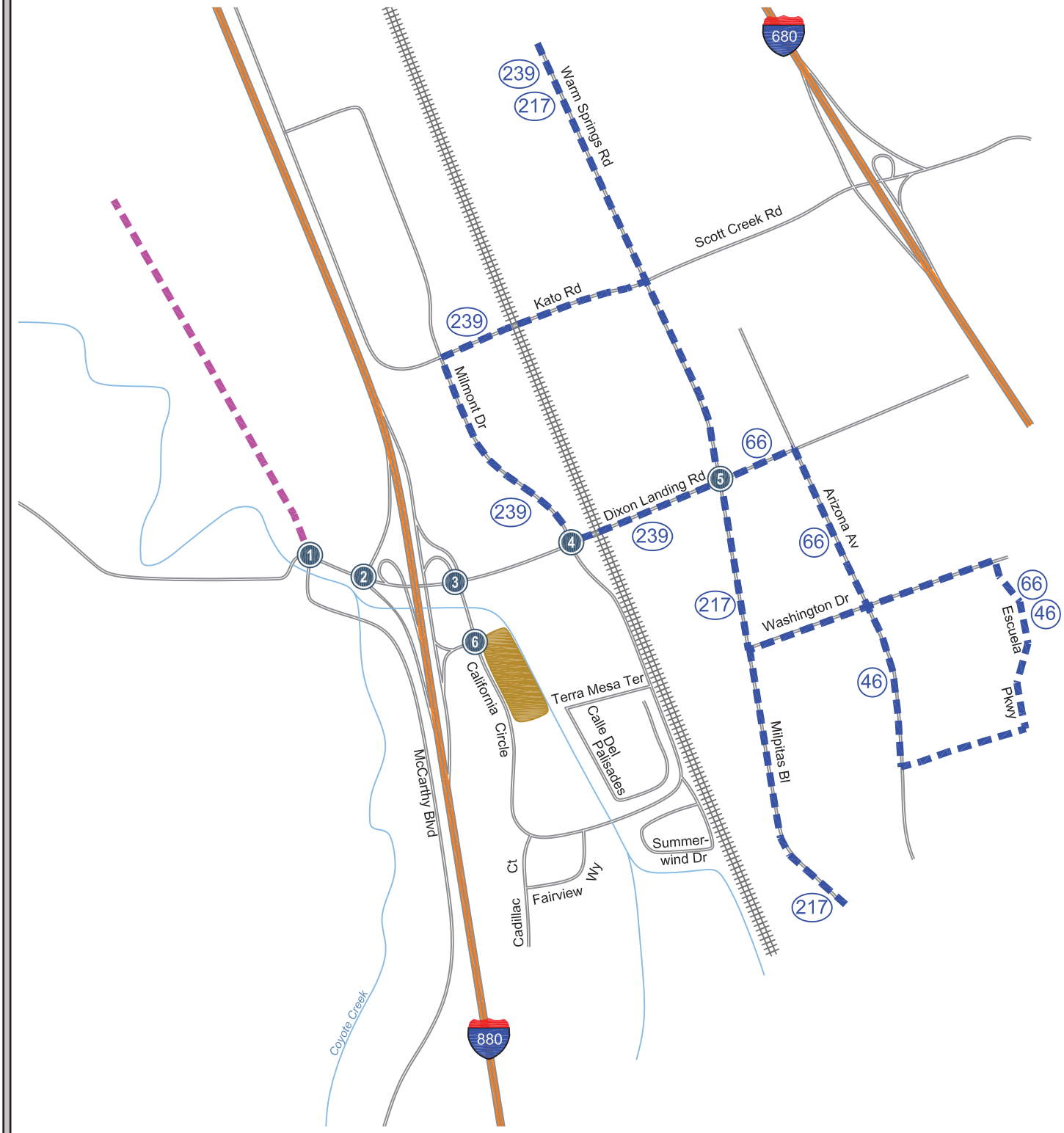
4.3.1.3 Existing Transit Service

Existing transit service in the project area is comprised of Santa Clara Valley Transportation Authority (VTA) and the Alameda-Contra Costa Transit District (AC Transit) bus service. Bus stops are located on Dixon Landing Road and Milpitas Boulevard. These stops are approximately 3,500 feet east of the project site. Table 4 below outlines the existing transit service in the project area.

All transit services are shown on Figure 7.



BICYCLE FACILITIES FIGURE 6



TRANSIT SERVICES FIGURE 7

TABLE 4 Existing Transit Service			
Route	**Route Description**	**Weekday Operating Hours**	**Headways***
46	VTA – Great Mall/Main Transit Center to Washington	6:30 AM to 7:10 PM	25 to 30
66	VTA – Kaiser San Jose to Milpitas/Dixon Landing Road	5:30 AM to 12:00 PM	10 to 20
217	AC Transit – Great Mall to Fremont BART via Milpitas Boulevard	5:30 AM to 10:00 PM	30
239	AC Transit – Milpitas/Dixon Landing Road to Fremont BART via Milmont Drive	6:30 AM to 7:30 PM	45
*Approximate headways during commute periods, in minutes			

4.3.1.4 Existing Intersection Operations

Methodology

The impacts of the proposed residential development on Lot 1 were evaluated following the methodologies established by the City of Milpitas and the Santa Clara County Congestion Management Program (CMP). Intersections were selected for study if project traffic would add at least 10 trips per lane per hour during one or more peak hours, consistent with adopted CMP methodology.

Traffic conditions were evaluated for existing conditions, background conditions[6], existing plus project conditions, and background plus project conditions to determine if the level of service (LOS) of the local intersections in the project area would be adversely affected by the proposed project generated traffic. LOS is a qualitative description of operating conditions ranging from LOS A, or free-flowing conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. The correlation between average delay and LOS is shown in Table 5.

TABLE 5 Intersection Level of Service Definitions Based on Delay		
Level of Service	**Description**	**Average Control Delay per Vehicle[7]**
A	Operations with very low delay occurring with favorable progression and/or short cycle lengths.	10.0 or less
B	Operations with low delay occurring with good progression and/or short cycle lengths.	10.1 to 20.0
C	Operations with average delays resulting from fair progression and/or longer cycle lengths. Individual cycle failures begin to appear.	20.1 to 35.0

[6] Background conditions are existing conditions plus approved but not yet constructed development.
[7] Measured in seconds.

TABLE 5 *Continued* Intersection Level of Service Definitions Based on Delay		
Level of Service	**Description**	**Average Control Delay per Vehicle**
D	Operations with longer delays due to a combination of unfavorable progression, long cycle lengths, or high volume to capacity ratios. Many vehicles stop and individual cycle failures are noticeable.	35.1 to 55.0
E	Operations with high delay values indicating poor progression, long cycle lengths, and high V/C ratios. Individual cycle failures are frequent occurrences. This is considered to be the limit of acceptable delay.	55.0 to 80.0
F	Operation with delays unacceptable to most drivers occurring due to over saturation, poor progression, or very long cycle lengths.	Greater than 80.0

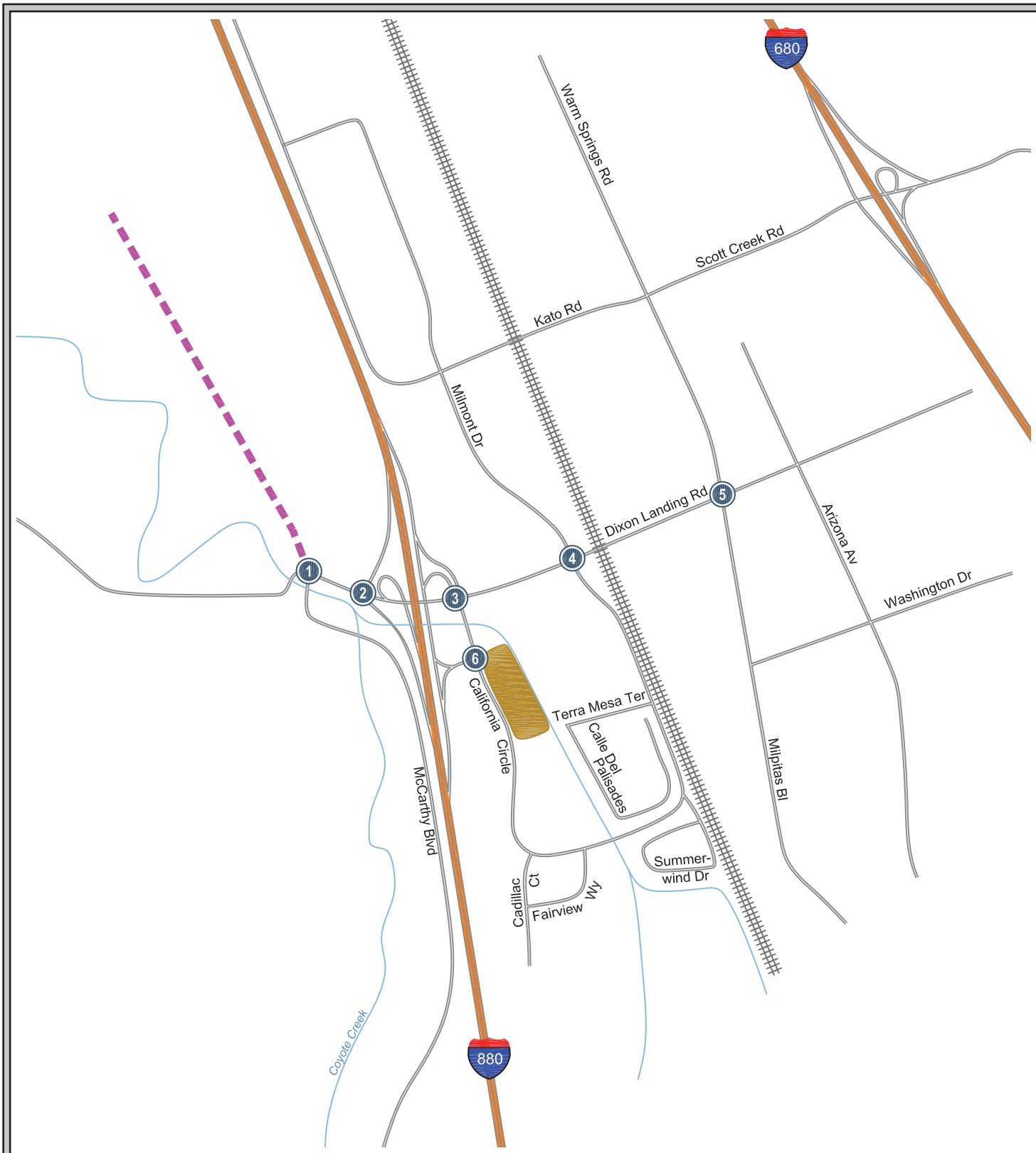
The traffic study analyzed AM and PM Peak Hour traffic conditions for six signalized intersections in the vicinity of the project site. The study intersections are listed in Table 6 below and the locations of the study intersections are shown on Figure 8.

Based on the City of Milpitas's policies, an acceptable operating level of service is defined as LOS D or better at all City controlled intersections. For County of Santa Clara and CMP intersections, an acceptable level of service is LOS E.

Existing LOS of Study Intersections

Analysis of the existing intersection operations concluded that all six study intersections currently operate at an acceptable LOS. The results of the existing conditions analysis are summarized in Table 6.

TABLE 6 Study Intersections Level of Service – Existing Conditions				
No.	**Intersection**	**Peak Hour**	**Delay**	**LOS**
1	McCarthy Boulevard and Dixon Landing Road	AM PM	9.7 8.9	A A
2	I-880 SB Ramps and Dixon Landing Road	AM PM	11.1 12.4	B B
3	I-880 NB Ramps and Dixon Landing Road	AM PM	15.3 18.4	B B
4	Milmont Drive and Dixon Landing Road	AM PM	40.4 24.7	D C
5	Milpitas Boulevard and Dixon Landing Road	AM PM	43.7 38.7	D D
6	California Circle and I-880 NB Ramps	AM PM	12.3 13.8	B B



LEGEND

= Project Site Location

= Study Intersection

= Future Fremont Boulevard Extension

Source: Hexagon Transportation Consultants, Inc.

STUDY INTERSECTIONS FIGURE 8

4.3.1.5 Background Intersection Operations

Background traffic conditions represent conditions anticipated to exist after completion of the environmental review process but prior to operation of the proposed development. It takes into account planned transportation system improvements that will occur prior to implementation of the proposed project and background traffic volumes. Background peak-hour traffic volumes are calculated by adding estimated traffic from approved but not yet constructed development to the existing conditions (see Appendix D for a list of Background projects). This traffic scenario represents a more congested traffic condition than the existing conditions scenario since it includes traffic from approved projects. The background conditions analysis is consistent with City of Milpitas policy for transportation analyses though it is not required under CEQA, as it is neither a project scenario nor cumulative analysis but represents conditions anticipated to exist at the time the project is built and operational.

There are no approved or fully funded roadway improvement projects in the project area. Therefore, the roadway network under background conditions would be the same as the existing roadway network.

Background Intersection Level of Service

Analysis of the background intersection operations found that all six intersections will operate at an acceptable LOS under background conditions. The results of the analysis under background conditions are summarized in Table 7 below.

TABLE 7
Study Intersections Level of Service – Background Conditions

No.	Intersection	Peak Hour	Existing		Background	
			Delay	LOS	Delay	LOS
1	McCarthy Boulevard and Dixon Landing Road	AM	9.7	A	9.7	A
		PM	8.9	A	9.1	A
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B
		PM	12.4	B	12.4	B
3	I-880 NB Ramps and Dixon Landing Road	AM	15.3	B	15.4	B
		PM	18.4	B	18.5	B
4	Milmont Drive and Dixon Landing Road	AM	40.4	D	40.6	D
		PM	24.7	C	24.7	C
5	Milpitas Boulevard and Dixon Landing Road	AM	43.7	D	43.8	D
		PM	38.7	D	38.7	D
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.3	B
		PM	13.8	B	13.8	B

4.3.2 Environmental Checklist and Discussion

For the purpose of this EIR, a traffic impact is considered significant if the project would:

- Cause the level of service at any local intersection to degrade from an acceptable LOS D or better under existing or background conditions to an unacceptable LOS E or F under existing plus project or background plus project conditions; or
- At any local intersection that is already an unacceptable LOS E or F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more; or
- Cause the level of service at a CMP or County intersection to degrade from an acceptable LOS E or better under existing or background conditions to an unacceptable LOS F under existing plus project or background plus project conditions; or
- At any CMP or County intersection that is already an unacceptable LOS F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more; or
- Cause the level of service on any freeway segment to degrade from an acceptable LOS E or better under existing or background conditions to an unacceptable LOS F under project conditions; or
- Add more than one percent of the existing freeway capacity to any freeway segment operating at LOS F under existing conditions; or
- Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities; or
- Result in inadequate emergency access.

4.3.2.1 Impact Criteria

City of Milpitas – Local Signalized Intersections

Based on City of Milpitas criteria, a project would cause a significant impact at a signalized intersection if the additional project traffic caused one of the following:

- Cause the level of service at any local intersection to degrade from an acceptable LOS D or better under existing or background conditions to an unacceptable LOS E or F under existing plus project or background plus project conditions; or
- At any local intersection that is already an unacceptable LOS E or F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more.

4.3.2.2 Trip Generation Estimates

Lot 1 is currently vacant and does not generate any traffic. Traffic trips generated by the proposed residential project on Lot 1 were estimated for 84 single-family residences using the Institute of Transportation Engineers (ITE) *Trip Generation, 8th Edition.* A summary of the project trip generation estimates is shown in Table 8 below.

TABLE 8 Project Trip Generation Estimates – Lot 1							
Land Use	**Daily Trips**	**AM Peak Hour**			**PM Peak Hour**		
		In	**Out**	**Total**	**In**	**Out**	**Total**
Proposed Housing	803	16	47	63	53	32	85

4.3.2.3 Existing Plus Project Intersection Operations

The LOS of the study intersections was calculated under project conditions by adding the new project trips from the proposed residential development on Lot 1 to the existing conditions. Analysis of the existing plus project intersection operations concluded that all of the study intersections would continue to operate at an acceptable LOS in both Peak Hours with implementation of the proposed residential project on Lot 1. The results of the existing plus project conditions analysis are summarized in Table 9 below.

TABLE 9 Study Intersections Level of Service – Existing Plus Project Conditions on Lot 1						
No.	**Intersection**	**Peak Hour**	**Existing**		**Existing Plus Project**	
			Delay	LOS	Delay	LOS
1	McCarthy Blvd and Dixon Landing Road	AM	9.7	A	9.7	A
		PM	8.9	A	8.9	A
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B
		PM	12.4	B	12.8	B
3	I-880 NB Ramps and Dixon Landing Road	AM	15.3	B	15.6	B
		PM	18.4	B	18.6	B
4	Milmont Drive and Dixon Landing Road	AM	40.4	D	40.5	D
		PM	24.7	C	24.8	C
5	Milpitas Blvd and Dixon Landing Road	AM	43.7	D	43.8	D
		PM	38.7	D	38.7	D
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.6	B
		PM	13.8	B	14.0	B

Implementation of the proposed residential project on Lot 1would have a less than significant impact on the aforementioned intersections during both of the peak hours under existing plus project conditions. **(Less Than Significant Impact)**

4.3.2.4 Background Plus Project Intersection Operations

The LOS of the study intersections was calculated under background plus project conditions by adding the new project trips from the proposed residential development on Lot 1 to the background conditions. Analysis of the background plus project intersection operations concluded that all of the study intersections would continue to operate at an acceptable LOS in both Peak Hours with implementation of the proposed residential project on Lot 1. The results of the background plus project conditions analysis are summarized in Table 10 below.

TABLE 10 Study Intersections Level of Service – Background Plus Project Conditions on Lot 1								
No.	**Intersection**	**Peak Hour**	**Background**		**Background Plus Project**			
			Delay	LOS	Delay	LOS	Δ in Critical V/C	Δ in Critical Delay
1	McCarthy Blvd and Dixon Landing Road	AM	9.7	A	9.7	A	0.0	0.001
		PM	9.1	A	9.1	A	0.0	0.001
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B	0.0	0.001
		PM	12.4	B	12.7	B	0.6	0.001
3	I-880 NB Ramps and Dixon Landing Road	AM	15.4	B	15.7	B	0.4	0.007
		PM	18.5	B	18.7	B	0.2	0.003
4	Milmont Drive and Dixon Landing Road	AM	40.6	D	40.6	D	0.0	0.001
		PM	24.7	C	24.8	C	0.2	0.005
5	Milpitas Blvd and Dixon Landing Road	AM	43.8	D	43.8	D	0.0	0.001
		PM	38.7	D	38.7	D	0.1	0.004
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.6	B	0.6	0.011
		PM	13.8	B	14.0	B	0.3	0.005

Implementation of the proposed residential project on Lot 1would have a less than significant impact on the aforementioned intersections during both of the peak hours under background plus project conditions. **(Less Than Significant Impact)**

4.3.2.5 Pedestrian/Bicycle Facilities and Transit Operations

Pedestrian and Bicycle Facilities

The proposed project will generate new demand for pedestrian and bicycle facilities in the immediate project area. There are sidewalks and signalized crosswalks throughout the project area that provide access to nearby schools, retail centers, recreational facilities, and transit. The existing pedestrian facilities in the project area are sufficient to support the proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments. In addition, the proposed bridge over Penitencia Creek would improve pedestrian and bicycle access in the area. The proposed project would not result in any significant impacts to pedestrian facilities. **(Less Than Significant Impact)**

Bicycle lanes are provided on California Circle and Dixon Landing Road in the project vicinity. The proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments will not alter existing bicycle facilities and will not conflict with existing or planned bicycle facilities. Therefore, the proposed project will not result in unsafe conditions for bicyclists. **(Less Than Significant Impact)**

Transit Operations

The project site is currently served by fixed route bus services provided by the VTA. Currently VTA bus routes that serve the project area are operating below capacity. As a result, existing bus services can accommodate an increase in ridership demand resulting from the proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments. The proposed project will not alter existing transit facilities or conflict with the operation of existing or planned facilities. Therefore, the proposed project will have a less than significant impact on transit operations. **(Less Than Significant Impact)**

4.3.3 Mitigation and Avoidance Measures for Transportation Impacts

No mitigation is required or proposed.

4.3.4 Conclusion

Implementation of the proposed residential project on Lot 1 will have a less than significant impact on local transportation facilities. **(Less Than Significant Impacts)**

Future development ton Lots 2 and 3 will have a less than significant impact on pedestrian, bicycle, and transit facilities. **(Less Than Significant Impact)**

4.4 AIR QUALITY

The following discussion is based in part on a Community Risk Analysis prepared by *Haley & Aldrich* in January 2013. This analysis is attached to this EIR as Appendix E.

4.4.1 Setting

Air quality is determined by the concentration of various pollutants in the atmosphere. Units of concentration are expressed in parts per million (ppm) or micrograms per kilograms (μg/kg).

The amount of a given pollutant in the atmosphere is determined by the amount of pollutants released within an area, transport of pollutants to and from surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin. The major determinants of transport and dilution are wind, atmospheric stability, terrain and, for photochemical pollutants, sun light.

Milpitas is located in the southern portion of the San Francisco Bay Area Air Basin. The proximity of this location to both the Pacific Ocean and San Francisco Bay has a moderating influence on the climate. Northwest and northerly winds are most common in the project area, reflecting the orientation of the Bay and the San Francisco Peninsula. Winds from these directions carry pollutants released by autos and factories from upwind areas of the Peninsula toward Santa Clara, particularly during the summer months. Winds are lightest on average in fall and winter. Every year in fall and winter there are periods of several days when winds are very light and local pollutants can build up.

Air quality standards for ozone are typically exceeded when relatively stagnant conditions occur for periods of several days during the warmer months of the year. Weak wind flow patterns combined with strong inversions substantially reduce normal atmospheric mixing. Key components of ground-level ozone formation are sunlight and heat. Significant ozone formation, therefore, only occurs during the months from late spring through early fall. Prevailing winds during the summer and fall can transport and trap ozone precursors from the more urbanized portions of the Bay Area. Meteorological factors make air pollution potential in the Santa Clara Valley quite high.

Pollutants can be diluted by mixing in the atmosphere both vertically and horizontally. Vertical mixing and dilution of pollutants are often suppressed by inversion conditions, when a warm layer of air traps cooler air close to the surface. During the summer, inversions are generally elevated above ground level, but are present over 90 percent of the time in both the morning and afternoon. In winter, surface-based inversions dominate in the morning hours, but frequently dissipate by afternoon.

Topography can restrict horizontal dilution and mixing of pollutants by creating a barrier to air movement. The South Bay has significant terrain features that affect air quality. The Santa Cruz Mountains and Diablo Range on either side of the South Bay restrict horizontal dilution, and this alignment of the terrain also channels winds from the north to south, carrying pollution from the northern Peninsula toward Milpitas.

The combined effects of moderate ventilation, frequent inversions that restrict vertical dilution and terrain that restrict horizontal dilution give Santa Clara a relatively high atmospheric potential for pollution compared to other parts of the San Francisco Bay Air Basin and provide a high potential for transport of pollutants to the east and south.

4.4.1.1 Overall Regulatory Setting

The significance of a pollutant concentration is determined by comparing the pollutant levels to an appropriate ambient air quality standard. The standards set the level of pollutant concentrations allowable while protecting general public health and welfare.

The Federal Clean Air Act (Federal CAA) establishes pollutant thresholds for air quality in the United States. In addition to being subject to Federal requirements, California has its own more stringent regulations under the California Clean Air Act (California CAA). At the Federal level, the U.S. Environmental Protection Agency (EPA) administers the CAA. The California CAA is administered by the California Air Resources Board (CARB) at the State level and by the Air Quality Management District's at the regional and local levels. The Bay Area Air Quality Management District (BAAQMD) regulates air quality in the nine-county Bay Area.

The U.S. EPA is responsible for establishing the National Ambient Air Quality Standards (NAAQS) which are required under the Federal CAA. The U.S. EPA regulates emission sources that are under the exclusive authority of the Federal government, such as aircraft, ships, and certain types of locomotives. The agency also established various emission standards for vehicles sold in states other than California. Automobiles sold in California must meet the stricter emission standards established by CARB.

California Air Resources Board

As stated above, CARB (which is part of the California EPA) is responsible for meeting the State requirements of the Federal CAA, administering the California CAA, and establishing the California Ambient Air Quality Standards (CAAQS). The California CAA requires all air districts in the State to achieve and maintain CAAQS. CARB regulates mobile air pollution sources such as motor vehicles. The agency is responsible for setting emission standards for vehicles sold in California and for other emission sources, such as consumer products and certain off-road equipment. CARB has established passenger vehicle fuel specifications and oversees the functions of local air pollution control districts and air quality management districts, which in turn administer air quality activities at the regional and county level. CARB also conducts or supports research into the effects of air pollution on the public and develops approaches to reduce air pollutant emissions.

Bay Area Air Quality Management District

BAAQMD is primarily responsible for ensuring that the national and State ambient air quality standards are attained and maintained in the Bay Area. These ambient air quality standards are levels of contaminants which represent safe levels that avoid specific adverse health effects associated with each pollutant. The ambient air quality standards cover what are called "criteria" pollutants because

the health and other effects of each pollutant are described in criteria documents. Table 11 identifies the major criteria pollutants, characteristics, health effects, and typical sources for the Bay Area.

TABLE 11
Major Criteria Pollutants

Pollutant	Characteristics	Health Effects	Major Sources
Ozone	A highly reactive photochemical pollutant created by the action of sun light on ozone precursors. Often called photochemical smog.	- Eye Irritation - Respiratory function impairment	The major sources of ozone precursors are combustion sources such as factories and automobiles, and evaporation of solvents and fuels.
Carbon Monoxide	Carbon monoxide is an odorless, colorless gas that is highly toxic. It is formed by the incomplete combustion of fuels.	- Impairment of oxygen transport in the bloodstream - Aggravation of cardiovascular disease - Fatigue, headache, confusion, dizziness - Can be fatal in the case of very high concentrations	Automobile exhaust, combustion of fuels, combustion of wood in wood stoves and fireplaces.
Nitrogen Dioxide	Reddish-brown gas that discolors the air, formed during combustion.	- Increased risk of acute and chronic respiratory disease	Automobile and diesel truck exhaust, industrial processes, and fossil-fueled power plants.
Sulfur Dioxide	Sulfur dioxide is a colorless gas with a pungent, irritating odor.	- Aggravation of chronic obstruction lung disease - Increased risk of acute and chronic respiratory disease	Diesel vehicle exhaust, oil-powered power plants, and industrial processes.
Particulate Matter	Solid and liquid particles of dust, soot, aerosols and other matter that are small enough to remain suspended in the air for a long period of time.	- Aggravation of chronic disease and heart/lung disease symptoms	Combustion, automobiles, field burning, factories and unpaved roads. Also a result of photochemical processes.

BAAQMD is also responsible for adopting and enforcing rules and regulations concerning air pollutant sources, issuing permits for stationary sources of air pollutants, inspecting stationary sources of air pollutants, investigating and responding to citizen complaints, monitoring ambient air quality and meteorological conditions, awarding grants to reduce motor vehicle emissions, conducting public education campaigns, and many other associated activities. BAAQMD has jurisdiction over much of the nine-county Bay Area, including Milpitas.

National and State Ambient Air Quality Standards

The ambient air quality in a given area depends on the quantities of pollutants emitted within the area, transport of pollutants to and from the surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin. Air quality is described by the concentration of various pollutants in the atmosphere. The significance of the pollutant concentration is determined by comparing the concentration to an appropriate ambient air quality standard. The standards represent the allowable pollutant concentrations designed to ensure that the public health and welfare are protected, while including a reasonable margin of safety to protect the more sensitive individuals in the population.

As required by the Federal CAA, the NAAQS have been established for six major air pollutants; carbon monoxide (CO), nitrogen oxides (NO_x), ozone (O_3), respirable particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$), sulfur oxides (SO_x), and lead (Pb). Pursuant to the California CAA, the State of California has also established ambient air quality standards. The CAAQS are generally more stringent than the corresponding Federal standards and incorporate additional standards for pollutants such as sulfates, hydrogen sulfide, vinyl chloride and visibility reducing particles. Both State and Federal standards are summarized in Table 12. The "primary" standards have been established to protect the public health. The "secondary" standards are intended to protect the nation's welfare and account for adverse air pollutant effects on soil, water, visibility, materials, vegetation and other aspects of the general welfare. Because CAAQS are more stringent than NAAQS, CAAQS are used as the applicable standard in this analysis.

TABLE 12
Ambient Air Quality Standards

Pollutant	Averaging Time	California Standards	National Standards	
			Primary	Secondary
Ozone	1-hour	0.09 ppm	---	Same as primary
	8-hour	0.070 ppm	0.075 ppm	---
Carbon monoxide	1-hour	20 ppm	35 ppm	---
	8-hour	9.0 ppm	9.0 ppm	---
Nitrogen dioxide	1-hour	0.18 ppm	0.10 ppm	---
	Annual	0.030 ppm	0.053 ppm	Same as primary
Sulfur dioxide	1-hour	0.25 ppm	0.075 ppm	---
	3-hour	---	---	0.5 ppm
	24-hour	0.04 ppm	---	---
PM_{10}	24-hour	50 $\mu g/m^3$	150 $\mu g/m^3$	Same as primary
	Annual	20 $\mu g/m^3$	---	---
$PM_{2.5}$	24-hour	---	35 $\mu g/m^3$	Same as primary
	Annual	12 $\mu g/m^3$	12 $\mu g/m^3$	Same as primary
Lead	Calendar Quarter	---	1.5 $\mu g/m^3$	Same as primary
	30-day average	1.5 $\mu g/m^3$	---	---

Source: California Air Resources Board, June 2012.[8]

[8] California Air Resources Board Website. http://www.arb.ca.gov/homepage.htm

Regional Clean Air Plans

The BAAQMD and other agencies prepare clean air plans in response to the State and Federal CAA. The City of Milpitas also has General Plan policies that encourage development that reduces air quality impacts. In addition, BAAQMD has developed CEQA Guidelines to assist local agencies in evaluating and mitigating air quality impacts in CEQA documents. The regional clean air plan is the 2010 Bay Area Clean Air Plan (CAP). A description of this plan and the City of Milpitas's relevant General Plan policies is provided in Section 3.0, *Consistency with Plans and Policies.*

City of San Jose Local Enforcement Agency

The City of San Jose Local Enforcement Agency (LEA) is a certified local agency that monitors and regulates the Federal, State, and local solid waste regulations at local sanitary landfill sites and recycling facilities. In particular, the LEA is charged with permitting, inspecting, and enforcing regulations for compost facilities at Newby Island.

California Department of Resources Recycling and Recovery

The California Department of Resources Recycling and Recovery (CalRecycle) is the State agency charged with overseeing the various LEA's as well as sharing in the permitting and environmental review of landfills, recycling, and compost facilities.

4.4.1.2 Existing Air Quality Conditions

Air quality studies generally focus on five criteria pollutants that are most commonly measured and regulated: CO, ground level ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and suspended particulate matter (PM_{10} and $PM_{2.5}$). In Santa Clara County, ozone and particulate matter are the pollutants of greatest concern since measured air pollutant levels exceed the State and Federal air quality standards concentrations at times.

Carbon Monoxide

Carbon monoxide, a colorless and odorless gas, interferes with the transfer of oxygen to the brain. It can cause dizziness and fatigue, and can impair central nervous system functions. Highest CO concentrations measured in the South Bay Area have been well below the national and State ambient standards. Since the primary sources of CO are cars and trucks, highest concentrations would be found near congested roadways that carry large volumes of traffic. Carbon monoxide emitted from a vehicle is highest near the origin of a trip and considerably lower once the automobile is warmed up (usually five to ten minutes into a trip). This is different, however, for vehicles of different ages, where older cars require a longer warm up period.

Ozone

While O_3 serves a beneficial purpose in the upper atmosphere (stratosphere) by reducing ultraviolet radiation, when it reaches elevated concentrations in the lower atmosphere it can be harmful to the human respiratory system and to sensitive species of plants. Ozone concentrations build to peak

levels during periods of light winds, bright sunshine, and high temperatures. Short-term O_3 exposure can reduce lung function in children, make persons susceptible to respiratory infection, and produce symptoms that cause people to seek medical treatment for respiratory distress. Long-term exposure can impair lung defense mechanisms and lead to emphysema and chronic bronchitis. Sensitivity to O_3 varies among individuals, but about 20 percent of the population is sensitive to O_3, with exercising children being particularly vulnerable. Ozone is formed in the atmosphere by a complex series of photochemical reactions that involve "ozone precursors" that are two families of pollutants: oxides of nitrogen (NOx) and reactive organic gases (ROG). Nitrogen oxides and ROG are emitted from a variety of stationary and mobile sources. While NO_2, an oxide of nitrogen, is another criteria pollutant itself, ROGs are not in that category, but are included in this discussion as O_3 precursors. The U.S. EPA recently established a new more stringent standard for O_3 of 0.75 ppm for 8-hour exposures, based on a review of the latest new scientific evidence.

Nitrogen Dioxide

Nitrogen dioxide, a reddish-brown gas, irritates the lungs. Exposure to NO_2 can cause breathing difficulties at high concentrations. Clinical studies suggest that NO_2 exposure to levels near the current standard may worsen the effect of allergens in allergic asthmatics, especially in children. Similar to O_3, NO_2 is not directly emitted, but is formed through a reaction between nitric oxide (NO) and atmospheric oxygen. Nitric oxide and NO_2 are collectively referred to as NO_x and are major contributors to O_3 formation. Nitrogen oxides are emitted from combustion of fuels, with higher rates at higher combustion temperatures. Nitrogen dioxide also contributes to the formation of PM_{10} (see discussion of PM_{10} below). Monitored levels in the Bay Area are well below ambient air quality standards.

Sulfur Oxides

Sulfur oxides, primarily SO_2, are a product of high-sulfur fuel combustion. The main sources of SO_2 are coal and oil used in power stations, in industries, and for domestic heating. Sulfur oxides are an irritant gas that attacks the throat and lungs. It can cause acute respiratory symptoms and diminished breathing functions in children. Concentrations of SO_2 in the Bay Area are at levels well below the State and national standards, but further reductions in emissions are needed to attain compliance with standards for PM_{10}, to which SO_2 is a contributor.

PM_{10} and $PM_{2.5}$

Respirable particulate matter (PM_{10}), and fine particulate matter ($PM_{2.5}$) consist of particulate matter that is ten microns or less in diameter and 2.5 microns or less in diameter, respectively, and represent fractions of particulate matter that can be inhaled and cause adverse health effects. Both PM_{10} and $PM_{2.5}$ are health concerns, particularly at levels above the Federal and State ambient air quality standards. Scientific studies have suggested links between fine particulate matter and numerous health problems including asthma, bronchitis, and acute and chronic respiratory symptoms such as shortness of breath and labored breathing. Children are more susceptible to the health risks of $PM_{2.5}$ because their immune and respiratory systems are still developing.

Both PM_{10} and $PM_{2.5}$ pose a greater health risk than larger particles because these tiny particles can penetrate the human respiratory system's natural defenses and damage the respiratory tract, increasing the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections. Whereas larger particles tend to collect in the upper portion of the respiratory system, $PM_{2.5}$ is miniscule and can penetrate deeper into the lungs and damage lung tissues. Suspended particulates also damage and discolor surfaces on which they settle, as well as produce haze and reduce regional visibility. Most stations in the Bay Area reported exceedances of the State standard on the same fall/winter days as reported in the South Bay. This indicates a regional air quality problem.

The primary sources of these pollutants are wood smoke and local traffic. Meteorological conditions that are common during this time of the year produce calm winds and strong surface-based inversions that trap pollutants near the surface. The high levels of PM_{l0} result in not only health effects, but also reduced visibility.

Air Monitoring Data

Air quality in the region is controlled by the rate of pollutant emissions and meteorological conditions. Meteorological conditions, such as wind speed, atmospheric stability, and mixing height may all affect the atmosphere's ability to mix and disperse pollutants. Long-term variations in air quality typically result from changes in air pollutant emissions, while frequent, short-term variations result from changes in atmospheric conditions. The San Francisco Bay Area is considered to be one of the cleanest metropolitan areas in the country with respect to air quality. BAAQMD monitors air quality conditions at over 30 locations throughout the Bay Area.

As shown in Table 13 (next page), violations of State and Federal standards at the downtown San José monitoring station (the nearest monitoring station to the project site) during the 2009-2011 period (the most recent years for which data is available) include high levels of ozone, PM_{10}, and $PM_{2.5}$.[9] Violations of the CO standard have not been recorded since 1992.

[9] PM refers to Particulate Matter. Particulate matter is referred to by size (i.e., 10 or 2.5) because the size of particles is directly linked to their potential for causing health problems.

TABLE 13 Number of Ambient Air Quality Standards Violations and Highest Concentrations (2009-2011)				
Pollutant	**Standard**	**Days Exceeding Standard**		
		2009	**2010**	**2011**
SAN JOSÉ STATION				
Ozone	State 1-hour	0	5	1
	Federal 8-hour	0	3	0
Carbon Monoxide	Federal 8-hour	0	0	0
	State 8-hour	0	0	0
Nitrogen Dioxide	State 1-hour	0	0	0
PM_{10}	Federal 24-hour	0	0	0
	State 24-hour	0	0	0
$PM_{2.5}$	Federal 24-hour	0	3	3

Source: Bay Area Management District, Bay Area Air Pollution Summary

Attainment Status

The Federal CAA and the California CAA of 1988 require that CARB, based on air quality monitoring data, designate portions of the state where Federal or State ambient air quality standards are not met as "nonattainment areas". Because of the differences between the Federal and State standards, the designation of "nonattainment area" is different under the Federal and State legislation. Under the California CAA, Santa Clara County is a nonattainment area for O_3 and PM_{10}. The County is either in attainment or unclassified for other pollutants. Under the Federal CAA, the entire Bay Area region is classified as nonattainment for the 24-hour $PM_{2.5}$ standard. The U.S. EPA grades the region as in attainment or unclassified for all other air pollutants, included PM_{10}.

4.4.1.3 Toxic Air Contaminants

The Federal Clean Air Act defines Hazardous Air Pollutants (HAPs) as air contaminants identified by U.S. EPA as known or suspected to cause cancer, serious illness, birth defects, or death. In California, Toxic Air Contaminants (TACs) include all HAPs, plus other contaminants identified by CARB as known to cause morbidity or mortality (cancer risk). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., benzene near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, State, and Federal level.

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about two-thirds of the cancer risk from TACs (based on the Statewide average). Diesel particulate matter (DPM) is of particular concern since it can be distributed over large regions, thus leading to widespread public exposure. CARB has adopted and implemented a number of regulations for stationary and mobile sources to reduce emissions of DPM. Several of these regulatory programs affect medium and heavy duty diesel trucks that represent the bulk of DPM emissions from California highways. These

regulations include the solid waste collection vehicle (SWCV) rule, in-use public and utility fleets, and the heavy-duty diesel truck and bus regulations.

4.4.1.4 Odors

Common sources of odors include wastewater treatment plants, transfer stations, coffee roasters, painting/coating operations, etc. The project site is located approximately 1,965 feet east of Newby Island Landfill and 2,635 feet east of the WPCP. Other odor sources in and around the City of Milpitas include the Los Esteros substation (located approximately 1.6 miles southwest of the project site), the Zanker Road Landfill (located approximately 2.25 miles southwest of the project site), the former Cargill Salt Pond (located approximately 2.25 miles southwest of the project site), and the City's Main Sewer Pump Station (located approximately 2.8 miles south of the project site).

4.4.1.5 Sensitive Receptors

There are groups of people more affected by air pollution than others. CARB has identified children under 14, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases as people most likely to be affected by air pollution. These groups are classified as sensitive receptors. Locations that may contain a high concentration of sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. There is a residential neighborhood approximately 250 feet east of the project site.

4.4.2 Thresholds of Significance

For the purposes of this EIR, an air quality impact is considered significant if the project would:

- Conflict with or obstruct implementation of the applicable air quality plan,
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation,
- 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 that exceed quantitative thresholds for ozone precursors),
- Expose sensitive receptors to substantial pollutant concentrations, or
- Create objectionable odors affecting a substantial number of people.

4.4.2.1 CEQA Thresholds Used in the Analysis

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. The City of Milpitas, and other jurisdictions in the San Francisco Bay Area Air Basin, often utilize the thresholds and methodology for assessing air emissions and/or health effects developed by the BAAQMD based upon the scientific and other factual data prepared by BAAQMD in developing those thresholds.

In December 2010, the California Building Industry Association (BIA) filed a lawsuit in Alameda County Superior Court challenging TACs and $PM_{2.5}$ thresholds adopted by BAAQMD in its 2010 CEQA Air Quality Guidelines (California Building Industry Association v. Bay Area Air Quality Management District, Alameda County Superior Court Case No. RG10548693). One of the identified concerns is inhibiting infill and smart growth in the urbanized Bay Area. On March 5, 2012, the Superior Court found that the adoption of thresholds by the BAAQMD in its CEQA Air Quality Guidelines is a CEQA project and BAAQMD is not to disseminate officially sanctioned air quality thresholds of significance until BAAQMD fully complies with CEQA. No further findings or rulings on the thresholds in the BAAQMD CEQA Air Quality Guidelines were made. The decision is currently being appealed to the California Court of Appeals, 1st District (case A136212).

The City understands the effect of the lawsuit to be that BAAQMD may eventually prepare an environmental review document before BAAQMD adopts the same or revised thresholds. However, the ruling in the case does not equate to a finding that the quantitative metrics in the BAAQMD thresholds are incorrect or unreliable for meeting goals in the Bay Area 2010 Clean Air Plan. Moreover, as noted above, the determination of whether a project may have a significant effect on the environment is subject to the discretion of each Lead Agency, based upon substantial evidence. Notwithstanding the BIA lawsuit, which has no binding or preclusive effect on the City of Milpitas's discretion to decide on the appropriate thresholds to use for determining the significance of air quality impacts, the City has carefully considered the thresholds previously prepared by BAAQMD and regards the thresholds listed below to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. Evidence supporting these thresholds has been presented in the following documents:

- BAAQMD. *Thresholds Options and Justification Report*. 2009.
- BAAQMD. *CEQA Air Quality Guidelines.* May 2011. (Appendix D).
- California Air Pollution Control Officers Association (CAPCOA). *Health Risk Assessments for Proposed Land Use Projects*. 2009.
- California Environmental Protection Agency, California Air Resources Board (CARB). *Air Quality and Land Use Handbook: A Community Health Perspective*. 2005.

The analysis in this EIR is based upon the general methodologies in the most recent BAAQMD CEQA Air Quality Guidelines (dated May 2012) and numeric thresholds for the San Francisco Bay Basin, including the thresholds listed in Table 14.

TABLE 14 Thresholds of Significance Used in Air Quality Analyses			
Pollutant	**Construction**	**Operation-Related**	
	Average Daily Emissions (pounds/day)	**Average Daily Emissions (pounds/day)**	**Maximum Annual Emissions (tons/year)**
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
Fugitive Dust (PM_{10}/$PM_{2.5}$)	BMPs	None	None
Risk and Hazards for New Sources and Receptors (Project)	Same as Operational Threshold	• Increased cancer risk of >10.0 in one million • Increased non-cancer risk of > 1.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.3 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Risk and Hazards for New Sources and Receptors (Cumulative)	Same as Operational Threshold	• Increased cancer risk of >100 in one million • Increased non-cancer risk of > 10.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.8 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Sources: *BAAQMD Thresholds Options and Justification Report (2009)* and *BAAQMD CEQA Air Quality Guidelines* (dated May 2011).			

4.4.2.2 Bay Area 2010 Clean Air Plan

The most recent clean air plan is the *Bay Area 2010 Clean Air Plan* that was adopted by BAAQMD in September 2010. This plan addresses air quality impacts with respect to obtaining ambient air quality standards for non-attainment pollutants (i.e., O_3, PM_{10} and $PM_{2.5}$), reducing exposure of sensitive receptors to toxic air contaminants (TACs), and reducing greenhouse gas (GHG) emissions such that the region can meet AB 32 goals of reducing emissions to 1990 levels by 2020. The consistency of the proposed project with this regional plan is primarily a question of the consistency with the population/employment assumptions utilized in developing the 2010 CAP, which were based on ABAG Projections. The proposed project includes General Plan Amendments and rezoning and, as a result, the growth assumptions made under the CAP for the City of Milpitas will be altered. Therefore, the project could substantially affect population or traffic forecasts and may not be consistent with the CAP.

The 2010 CAP includes emission control measures that are intended to reduce air pollutant emissions in the Bay Area either directly or indirectly. The control measures are divided into five categories that include:

- Measures to reduce stationary and area sources;
- Mobile source measures;
- Transportation control measures;

- Land use and local impact measures; and
- Energy and climate measures

The consistency of the proposed project was evaluated with respect to the relevant control measures. It was determined that area source emissions are controlled through BAAQMD permits and will not be significantly increased as a result of the project. For mobile source emissions, CARB has new regulations requiring the replacement or retrofit of on-road trucks, construction equipment, and other specific equipment that is diesel powered. Because construction equipment will be required to meet CARB standards, construction of the proposed project will not significantly increase emissions. Lastly, the analysis found that because the project by re-designating 29.2 acres from *Industrial Park* to residential and commercial will significantly reduce overall traffic trips relative to the development assumptions in the City of Milpitas General Plan, it is consistent with the CAP. **(Less Than Significant Impact)**

4.4.2.3 Impacts to Regional and Local Air Quality

Operational Emissions of Criteria Pollutants

The proposed residential project on Lot 1 and future residential development on Lot 2 combined would construct up to 236 residential units. BAAQMD has developed screening criteria to provide a conservative indication of whether a project could result in potentially significant air quality impacts. For operational impacts from criteria pollutants, the screening size is 325 dwelling units. Projects that are smaller than the screening size are considered to have a less than significant operational air quality impact.

The project is well below the screening size for the proposed land use. Therefore, proposed and future residential projects on Lots 1 and 2 will have a less than significant operational air quality impact. **(Less Than Significant Impact)**

Based on the City's development assumptions for future development under the proposed commercial General Plan Amendments, redevelopment of Lot 3 would fall below the operational screening size for the various commercial land uses. Therefore, future development on Lot 3 will have a less than significant operational air quality impact. **(Less Than Significant Impact)**

Carbon Monoxide Emissions

Carbon monoxide emissions from traffic generated by the project would be the pollutant of greatest concern at the local level. Congested intersections with a large volume of traffic have the greatest potential to cause high-localized concentrations of CO. BAAQMD screening thresholds indicate that a project would have a less than significant impact to CO levels if project traffic would not increase traffic levels at any affected intersection to more than 44,000 vehicles per hour. The project would result in a net decrease of approximately 4,970 daily traffic trips compared to future forecast trips based on current General Plan designations. The proposed residential development on Lot 1 will increase daily trips from the site by 803, but the increase would not be sufficient to cause any

intersections to exceed 44,000 vehicles per hour. Therefore, the project would not result in CO impacts. **(Less Than Significant Impact)**

Community Risk Impacts

BAAQMD recommended thresholds of significance for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor. Local community risk and hazard impacts are associated with TACs and $PM_{2.5}$ because emissions of these pollutants can have significant health impacts at the local level. The proposed residential project on Lot 1 and future residential development on Lot 2 under the proposed General Plan Amendment would include sensitive receptors that could be exposed to TACs due to the sites proximity to major roadways, including I-880 and Dixon Landing Road, as well as nearby stationary sources and a heavy rail line. Therefore, a community risk assessment for future site occupants was completed.

To determine the risk associated with the rail line (located approximately 1,320 feet east of the project site), the DPM emissions were calculated and the average concentration at each receptor location was estimated using air dispersion modeling.

The lifetime cancer risk and $PM_{2.5}$ concentrations from nearby roadways is calculated based on the annual average daily traffic (ADT). Per the BAAQMD screening analysis table, no analysis is required for roadways carrying less than 10,000 ADT. Roadways within 1,000 feet of the project site which carry more than 10,000 ADT are I-880 and Dixon Landing Road.

Permitted stationary sources of toxic air contaminants were identified within 1,000 feet of the proposed residential land uses on the project site. The following six sources were identified:

- International Disposal Corp of California
- City of Milpitas Pump Station (above ground storage tank)
- City of Milpitas Pump Station (other sources)
- Chevron Gas Station (on the project site)
- Ford Cleaners
- LTX Credence (above ground storage tank)

The threshold for total cancer health risk from TAC exposure is 10 cancer cases in one million exposed residents over a 70 year exposure period. The threshold for non-cancer health risk from $PM_{2.5}$ exposure is an annual average $PM_{2.5}$ concentration greater than 0.3 micrograms per cubic meter ($\mu g/m^3$).

The maximum total cancer health risk for Lot 1 residents was computed at 5.1 per one million, which is below the 10 in one million threshold. The maximum average annual concentration was just below the 0.30 $\mu g/m^3$ threshold. Therefore, operation of the proposed residential project on Lot 1 will not impact the health of future residents as a result of automobile/truck or rail line emissions. **(Less Than Significant Impact)**

Future residences on Lot 2 would be further removed from emissions on Dixon Landing Road than Lot 1 residences, but would be generally the same distance from I-880 and the rail line. Therefore, it is reasonable to assume that TAC and $PM_{2.5}$ emissions on Lot 2 would be equal to or slightly less than Lot 1. Nevertheless, a site specific health risk analysis will be required at the time a specific development project is proposed due to the fact that ADT on local roadways or operation of the rail line could change over time. If significant TAC impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level. **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would not be exposed to health risks from TAC emissions due to the limited duration of time employees and customers (who are not considered sensitive receptors) would spend on the site. **(No Impact)**

The maximum total cancer health risk for all stationary sources combined was computed at 8.6 per one million, which is just below the 10 in one million threshold. The maximum annual average $PM_{2.5}$ concentration for all stationary sources combined was 0.018 $\mu g/m^3$. This concentration is also below the BAAQMD threshold. Therefore, operation of the proposed residential project on Lot 1 will not impact the health of future residents as a result of stationary source emissions. **(Less Than Significant Impact)**

Future residences on Lot 2 would be generally the same distance from stationary sources as Lot 1 residences. Therefore, it is reasonable to assume that TAC and $PM_{2.5}$ emissions on Lot 2 would be equal to Lot 1. Nevertheless, a site specific health risk analysis will be required at the time a specific development project is proposed due to the fact that the number or location of stationary sources could change over time. If significant TAC impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level, **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would not be exposed to health risks from stationary sources due to the limited duration of time employees and customers would spend on the site. **(No Impact)**

4.4.2.4 Construction Air Quality Impacts

Criteria Pollutants

As with operational emissions, BAAQMD has developed screening criteria to provide a conservative indication of whether construction activities associated with a project could result in potentially significant air quality impacts. For construction impacts from criteria pollutants, the screening size for single-family residential development is 114 dwelling units. Projects that are smaller than the screening size are considered to have a less than significant operational air quality impact.

The proposed residential project on Lot 1 is well below the screening size for the proposed land use, and would be constructed independent of future development on Lot 2. Therefore, the Lot 1

development will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Future development on the Lot 2 site could result in up to 152 single-family houses being constructed on-site. Because any future development on Lot 2 has the potential to exceed the screening criteria, a construction air quality analysis will be required at the time a specific development project is proposed. If significant construction impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level, including the following exhaust control measures recommended by BAAQMD:

- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.
- The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options that become available.
- All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emissions reductions of NOx.
- All contractors shall use equipment that meets ARB's most recent certification standard for off-road heavy duty diesel engines.

Therefore, future development of Lot 2 will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Based on the City's development assumptions for future development under the proposed commercial General Plan Amendments, redevelopment of Lot 3 would fall below the construction screening size for the various commercial land uses and would be constructed independently of Lots 1 and 2. Therefore, future development on Lot 3 will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Dust Generation

Construction activities on all three lots would include demolition of the existing structures and hardscape, excavation, and grading of the sites which will generate dust and other particulate matter. The generation of dust and other particulate matter could temporarily impact nearby sensitive receptors.
As a condition of approval, the project will be required to implement the following standard dust control measures recommended by BAAQMD:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet powered vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contract at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

With the inclusion of the BAAQMD dust control measures, project construction activities would have a less than significant dust impact. **(Less Than Significant Impact)**

Toxic Air Contaminants and Community Risk

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. Construction activity is anticipated to include demolition of existing buildings, grading, building construction, paving, and application of architectural coatings.

Sensitive offsite receptors in the vicinity of the project site include adult and child residents in the residential neighborhoods to the east of the project site. A health risk assessment was completed that evaluated potential health effects to sensitive receptors from construction emissions of DPM during project construction.

According to BAAQMD screening tables, a project that constructs 50 to 100 residential units could potentially impact sensitive receptors located 410 to 575 feet from the construction site. On-site diesel exhaust emissions from construction were computed using the US Environmental Protection Agency Industrial Source Complex Short Term Model (ISCST3) air dispersion model.

Results of the community risk modeling indicated that construction of the project would result in a cancer risk of 1.2 cancer cases per million, which is below the threshold of 10 in one million excess cancer cases. Associated non-cancer hazards also would be well below threshold hazard index of 1 for DPM. **(Less Than Significant Impact)**

Results of the health risk modeling indicated that the project would result in maximum $PM_{2.5}$ concentrations of 0.175 ug/m^3, during construction which is below the significance threshold concentration of 0.3 µg/m^3. **(Less Than Significant Impact)**

4.4.2.5 Odor Impacts

The project would generate localized emissions of diesel exhaust during equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors. Odors would, however, be localized and are not likely to affect people off-site. **(Less Than Significant Impact)**

The project would place new residences near existing odor sources including the WPCP and Newby Island Landfill. As discussed in the BAAQMD CEQA Guidelines, offensive odors rarely cause physical harm but can be unpleasant and lead to considerable distress among the public. Any project with the potential to frequently expose members of the public to objectionable odors would be deemed to have a significant impact.

BAAQMD establishes project screening trigger levels for potential odor impacts. These are minimum distances that need to be provided between new sensitive receptors and various odor sources to avoid a potential adverse odor impact. When these minimum distances are not met, the potential for odor impacts exist. The minimum distance for wastewater treatment plants and sanitary landfills and/or composting facilities from residential users is one mile. The parcels proposed for residential development on the project site are approximately 1,965 from Newby Island Landfill and 2,635 feet from the WPCP. Other odor sources in and around the City of Milpitas include the Los Esteros substation (located approximately 1.6 miles southwest of the project site), the Zanker Road Landfill (located approximately 2.25 miles southwest of the project site), the former Cargill Salt Pond (located approximately 2.25 miles southwest of the project site), and the City's Main Sewer Pump Station (located approximately 2.8 miles south of the project site). These sources are located well outside the one mile radius established by BAAQMD and were not considered potential odor sources for the project site.

For a project located near an existing source of odor, a project would have a significant impact if it is proposed for a site that is closer to an existing odor source than any location where there has been:

- More than one confirmed complaint per year averaged over a three year period, or
- Three unconfirmed complaints per year averaged over a three year period.

Based on data provided by BAAQMD, 15 unconfirmed and no confirmed complaints were reported between January 2010 and January 2013 for Newby Island Landfill. These complaints average to five per year, which would qualify as a significant impact.

BAAQMD also reports seven unconfirmed and no confirmed complaints in the same time frame for the WPCP. These complaints average less than three per year and do not qualify as a significant impact.

The City of Milpitas also has a reporting system for odor complaints. Citywide, a total of 196 odor complaints were filed in 2012. Based on data provided by the City, three complaints were generated from the immediate project area between June and December 2011, 41 in all of 2012, and two in January 2013. Based on the description of the odors, five of these complaints resulted from

operations of the WPCP. The remainder resulted from operation of Newby Island. Consistent with the BAAQMD findings, the unconfirmed complaints result in a significant impact from Newby Island Landfill and a less than significant impact from the WPCP.

Placement of residential land uses on the proposed project site would expose residents to odors from the existing daily operations of the nearby landfill. **(Significant Impact)**

4.4.3 Mitigation and Avoidance Measures for Air Quality Impacts

4.4.3.1 General Plan Policies

The policies in the City of Milpitas General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Development under the proposed General Plan amendment would be subject to existing General Plan policies, including those listed below.

The City of Milpitas has no General Plan policies that address odor impacts.

4.4.3.2 Project Specific Mitigation Measures

There is no feasible mitigation that would reduce the identified odor impact in that the landfill is not under the control of the applicant or the City of Milpitas.

4.4.4 Conclusion

Construction of the proposed project would have a less than significant air quality impact. **(Less Than Significant Impact)**

Operation of the proposed project would have a less than significant long-term impact on local and regional air quality and will not expose sensitive receptors to significant health risks from TAC emissions. **(Less Than Significant Impact)**

The proposed project would not conflict with or obstruct implementation of the 2010 CAP. **(Less Than Significant Impact)**

The proposed residential development on the project site would be exposed to significant odors from Newby Island Landfill. The only way to reduce the impact would be to change the operations of the landfill which is not under the control of the project applicant or the City of Milpitas. This impact is significant and unavoidable. **(Significant Unavoidable Impact)**

4.5 GREENHOUSE GAS EMISSIONS

The following discussion is based, in part, on a greenhouse gas emissions analysis prepared by *Illingworth & Rodkin* in January 2013. The report can be found in Appendix F of this EIR.

4.5.1 Overview

Unlike emissions of criteria and toxic air pollutants, which have local or regional impacts, emissions of GHGs have a broader, global impact. Global warming associated with the "greenhouse effect" is a process whereby GHGs accumulating in the atmosphere contribute to an increase in the temperature of the earth's atmosphere. The principal GHGs contributing to global warming and associated climate change are carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and fluorinated compounds. Emissions of GHGs contributing to global climate change are attributable in large part to human activities associated with the transportation, industrial, utility, residential, commercial, and agricultural sectors.

Impacts to California from climate change include shifting precipitation patterns, increasing temperatures, increasing severity and duration of wildfires, earlier melting of snow pack and effects on habitats and biodiversity. Sea levels along the California coast have risen up to seven inches over the last century, and average annual temperatures have been increasing. These and other effects would likely intensify in the coming decades and significantly impact the State's public health, natural and manmade infrastructure, and ecosystems.[10]

4.5.1.1 State of California

AB 32 and CEQA

The 2006 Global Warming Solutions Act (Assembly Bill (AB) 32) was created to address the Global Warming situation in California. The Act requires that the GHG emissions in California be reduced to 1990 levels by 2020. In addition, the Governor of California signed Executive Order S-3-05 in 2005 which identified the California Environmental Protection Agency (CalEPA) as the lead coordinating State agency for establishing climate change emission reduction targets in California. Under Executive Order S-3-05, the State plans to reduce GHG emissions to 80 percent below 1990 levels by 2050. Additional State law related to the reduction of GHG emissions includes SB 375, the Sustainable Communities and Climate Protection Act (see discussion below).

The California Natural Resources Agency, as required under State law (Public Resources Code Section 21083.05) amended the State CEQA Guidelines to address the analysis and mitigation of GHG emissions. Under the CEQA Guidelines, Lead Agencies, such as the City of Santa Clara, retain discretion to determine the significance of impacts from GHG emissions based upon individual circumstances. Neither CEQA nor the CEQA Guidelines provide a specific methodology for analysis of GHG and under the amendments to the CEQA Guidelines, a Lead Agency may describe,

[10] State of California Energy Commission. *2009 California Climate Adaptation Strategy Discussion Draft. Frequently Asked Questions.* August 3, 2009. <www.climatechange.ca.gov/adaptation/documents/2009-07-31_Discussion_Draft-Adaptation_FAQs.pdf>

calculate or estimate GHG emissions resulting from a project and use a model and/or qualitative analysis or performance based standards to assess impacts.

Senate Bill 375- Redesigning Communities to Reduce Greenhouse Gas Emissions/Plan Bay Area

Senate Bill 375 (SB 375), the Sustainable Communities and Climate Protection Act of 2008, requires regional transportation plans to include a Sustainable Communities Strategy (SCS) that links transportation and land use planning together into a more comprehensive, integrated process. The SCS is a mechanism for more effectively linking a land use pattern and a transportation system together to make travel more efficient and communities more livable. The result is reduced GHG emissions from passenger vehicles along with other benefits.

The target for the Bay Area is a seven percent per capita reduction in GHG emissions attributable to automobiles and light trucks by 2020 and a 15 percent per capita reduction by 2035. The base year for comparison of emission reductions is 2005. The 2013 Regional Transportation Plan, *Plan Bay Area*, will be the Bay Area's first plan that is subject to SB 375.[11]

4.5.1.2 Regional and Local Plans

Bay Area 2010 Clean Air Plan

The Bay Area 2010 Clean Air Plan (CAP) is a multi-pollutant plan prepared by the Bay Area Air Quality Management District (BAAQMD) that addresses GHG emissions along with other air emissions in the San Francisco Bay Area Air Basin. One of the key objectives in the CAP is climate protection. The 2010 CAP includes emission control measures in five categories: Stationary Source Measures, Mobile Source Measures, Transportation Control Measures, Land Use and Local Impact Measures, and Energy and Climate Measures. Consistency of a project with current control measures is one measure of its consistency with the CAP. The current CAP also includes performance objectives, consistent with the State's climate protection goals under AB 32 and SB 375, designed to reduce emissions of GHGs to 1990 levels by 2020 and 40 percent below 1990 levels by 2035.

4.5.1.3 City of Milpitas Climate Action Plan

The City of Milpitas is currently preparing a Climate Action Plan and Qualified Greenhouse Gas Emissions Strategy (CAP). The CAP is a strategic planning document that identifies how the City can achieve the GHG reduction targets contained in AB 32. Specifically, the CAP identifies ways in which the community and City can reduce GHG emissions and provide guidance for adapting to the anticipated effects of climate change. The City's Draft CAP (March 2013) looks at five key sectors – energy use, vehicle miles, waste production, water usage, and off-road activities and identifies best

[11]One Bay Area. "One Bay Area Fact Sheet". Accessed March 5, 2012. Available at: http://www.onebayarea.org/pdf/SB375_OneBayArea-Fact_Sheet2.pdf

practices based on public input to produce a blueprint for achieving GHG emission reductions in Milpitas and ultimately to comply with AB 32 and SB 375.[12]

The City will implement the CAP though a variety of programs and with public involvement. The Milpitas community will collectively play a role in achieving the goals of the CAP and, in turn, a sustainable future. Throughout the public engagement process of the CAP, the City will identify and promote the most effective ways to reduce GHG emissions within the community. Through the CAP, the City will establish predictability regarding mitigation strategies to address climate change. Adoption of the CAP is anticipated to be considered by the Milpitas City Council in May 2013.

4.5.1.4 Existing Conditions

The project site is a mix of occupied and vacant industrial and commercial buildings. The existing land uses generate approximately 8,870 daily traffic trips (based on Lot 1 buildings being vacant) and operation of these businesses uses electricity and water which results in the emission of GHGs from the site.

4.5.2 Thresholds of Significance

For the purposes of this EIR, a greenhouse gas emissions impact is considered significant if the project would:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or
- Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data.

The first threshold will be assessed using quantitative thresholds for GHG emissions identified by BAAQMD in 2009. Using a methodology that models how new land use development in the San Francisco Bay area can meet Statewide AB 32 GHG reduction goals, BAAQMD identified a significance threshold of 1,100 metric tons of CO_2e per year. In addition to this bright-line threshold, an "efficiency" threshold was identified for urban high density, transit-oriented development projects that are intended to reduce vehicle trips but that may still result in overall emissions greater than 1,100 metric tons per year. This efficiency threshold is 4.6 metric tons of CO_2e per service population (e.g., residents and employees) per year.

[12] City of Milpitas Website. http//www.ci.miilpitas.ca.gov/government/planning/climate.asp Accessed March 27, 2013.

The City has carefully considered the thresholds prepared by BAAQMD[13] and regards the quantitative thresholds to be based on the best information available for residential and commercial development in the San Francisco Bay Area Air Basin. Evidence supporting these thresholds has been presented in the following documents:

- Bay Area Air Quality Management District (BAAQMD). 2009. *CEQA Thresholds Options and Justification Report.*
- BAAQMD. 2010. *California Environmental Quality Act Air Quality Guidelines*. (Appendix D).
- California Air Resources Board. 2008. *Climate Change Scoping Plan.* (Statewide GHG Emission Targets)

The second threshold listed above will be assessed based upon a review of the project's conformance with applicable plans and policies.

4.5.3 Greenhouse Gas Emissions Impacts

Given the overwhelming scope of global climate change, it is not anticipated that a single development project would have an individually discernible effect on global climate change. It is more appropriate to conclude that the GHG emissions generated by the proposed project would combine with emissions across the State, nation, and globe to cumulatively contribute to global climate change.

GHG emissions from the proposed project would include emissions from construction and operation of the project. The GHG emissions from the project include:

- Construction emissions;
- Emissions from the manufacture and transport of building materials;
- Mobile emissions (e.g., emissions from combustion of fossil fuels for vehicle trips to and from the site)
- Emissions from the generation of electricity to operate lighting, appliances, and HVAC on the site, and to convey water to the site.

4.5.3.1 Methodology

The CalEEMod model is used to estimate direct CO_2 emissions from the project and indirect mobile source emissions for both construction and operation of the project.

[13] In December 2010, the California Building Industry Association (BIA) filed a lawsuit in Alameda County Superior Court challenging adoption of thresholds developed by BAAQMD for its CEQA Air Quality Guidelines (California Building Industry Association v. Bay Area Air Quality Management District, Alameda County Superior Court Case No. RG10548693). On March 5, 2012, the Superior Court found that adoption of thresholds by the BAAQMD in its 2010 CEQA Air Quality Guidelines is a CEQA project and BAAQMD is not to disseminate officially sanctioned air quality thresholds of significance until BAAQMD fully complies with CEQA. No findings or rulings were made on the merit of the thresholds or the substantial evidence supporting the thresholds.

4.5.3.2 Operational Greenhouse Gas Emissions (Long Term Emissions)

The proposed residential project on Lot 1 is anticipated to be in full operation by the year 2016. There is no specific date for Lot 2 or 3 to redevelop, so no quantitative analysis is possible now.

Future redevelopment of Lot 2 under the proposed General Plan Amendment would result in a maximum of 152 residential units that would generate GHG emissions from traffic trips, energy, solid waste, and water, similar to the proposed development on Lot 1. The total GHG emissions that would result from redevelopment of Lot 2 is unknown. It would be speculative to estimate operational GHG emissions for Lot 2 because energy and traffic emissions are assumed to change by year based on planned increases in renewable energy usage and increases in fuel efficiency goals. At the time that a specific development project is proposed for Lot 2, a project specific GHG emissions assessment will be required. Nevertheless, with reductions in energy and traffic emissions between now and the year 2020 milestone (Lot 2 redevelopment may occur after 2020) and implementation of the City's Climate Action Plan, future development on Lot 2 would have a less than significant operational GHG emissions impact. **(Less Than Significant Impact)**

Future redevelopment of Lot 3 under the proposed General Plan Amendment would be comparable to the existing development on the site. As a result, GHG emissions would be equal to existing emissions or less as new structures would be more energy efficient than the existing structures. With no net increase in GHG emissions, future development on Lot 3 would have a less than significant operational GHG emissions impact. **(Less Than Significant Impact)**

Lot 1 Project Emissions

Default energy consumption rates were assumed in the model, and green buildings measures proposed by the project were factored in. The proposed residential project on Lot 1 has committed to the following specific green building measures:

- Diversion of 50 percent of all construction and demolition waste.
- Exceed Title 24 California Energy Code standards by 15 percent
- Landscaping will be comprised of 75 percent native species, will be drought tolerant.
- Plumbing will include high efficiency showerheads, bathroom faucets, kitchen and utility faucets, and toilets.
- HVAC system will be in compliance with the CALGreen code.
- Advanced mechanical ventilation.

Table 15 shows a breakdown of the annual operational GHG emissions of the proposed residential project on Lot 1. Because the existing buildings on Lot 1 are vacant, the analysis assumes existing emissions to be zero.

Based on the available project data, the residential project on Lot 1 would emit approximately 1,186 MT CO_2e/year in the first full operational year 2016. This would exceed the bright line 1,100 MT CO_2e/year significance threshold established by BAAQMD.

TABLE 15
Annual Project GHG Emissions in Metric Tons for Lot 1

Source Category	2016 Emissions	2020 Emissions
Area	80	80
Energy	264	245
Mobile	776	675
Solid Waste	54	54
Water	12	10
Total Emissions	***1,186***	***1,064***
Per Capital Emissions	***4.2***	***3.8***

The Guidelines include an "efficiency" threshold to be used for projects that result in overall emissions greater than 1,100 metric tons per year but emit GHGs at efficient levels that still allow achievement of AB 32. This efficiency threshold is 4.6 metric tons of CO_2e per service population (e.g., residents and employees) per year. Based on an assumed residential population on Lot 1 of 280 persons[14], the per capita emissions in 2016 would be 4.2 MT of CO_2e. The proposed residential project on Lot 1 would generate emissions below the efficiency threshold in 2016.

The State of California requires compliance with emissions reduction limits/standards established in Executive Order S-3-05 and AB 32 by the year 2020. In 2020, the project would emit 1,064 MT CO_2e/year which is below the bright line 1,100 MT CO_2e/year significance threshold established by BAAQMD. Therefore, from the year 2020 through the useful life of the Lot 1 development, the residences on Lot 1 would have a less than significant impact on GHG emissions and would not preclude the State from achieving its GHG reduction goals.

GHG emission rates associated with electricity consumption were adjusted to account for Pacific Gas & Electric utility's (PG&E) projected 2016 and 2020 CO_2 intensity rate. There rates are based, in part, on the requirement of a renewable energy portfolio standard of 33 percent by the year 2020. As shown in Table 15, the GHG emissions of the Lot 1 development associated with energy use would decrease over time. This decrease would occur as more renewable sources of energy are incorporated in PG&E's energy mix and would be independent of the Lot 1 development.

State regulations currently in place would also reduce GHG emissions from mobile sources (vehicles) over time. These regulations include the Pavley Rule that increases fleet efficiency (reducing fuel consumption) and the low carbon fuel standard.

Although energy use and vehicle trips associated with the Lot 1 development could initially contribute to GHG emissions above the bright-line threshold in the near term (2016), the emissions associated with the Lot 1 development would drop below the threshold prior to the 2020 milestone.

On May 7, 2013, the City of Milpitas adopted a Climate Action Plan to address GHG emissions and ensure the City's compliance with State GHG reduction goals. The Lot 1 development will be

[14] Based on an average 3.34 persons per household. State of California Department of Finances. *Census 2010.* 2010.

required, as a Condition of Approval, to comply with the Climate Action Plan, including any trip reduction measures, green building measures, or other measures not already proposed by the project that the City deems necessary. Therefore, the proposed project will have a less than significant GHG impact. **(Less Than Significant Impact)**

4.5.3.3 Construction Greenhouse Gas Emissions (Short Term Emissions)

GHG emissions would occur during demolition of the existing buildings and hardscape, excavation and grading of the site, and construction of the project. Construction of the project would involve emissions associated with equipment and vehicles used to construct the project, as well as emissions associated with manufacturing materials used to construct the project.

Neither the City of Milpitas nor BAAQMD have quantified thresholds for construction activities. The CalEEMod model was used to calculate CO_2 emissions generated from construction of the proposed residential project on Lot 1 over a period of 36 months starting in late 2013 and ending in 2015. It was estimated that construction of the Lot 1 residential development would emit 654 MT of CO_2 in 2014 and 575 MT in 2015. It is assumed that redevelopment of Lots 2 and 3 would have comparable construction emissions, even though construction equipment must meet more stringent emission reduction goals over time.

Given that the emissions would be temporary and that the project is in an urban setting close to construction supplies and equipment, and that the project will implement the best management practices outlined in Section 4.3, *Air Quality*, construction of the project would not contribute substantially to GHG emissions. **(Less than Significant Impact)**

4.5.4 Mitigation and Avoidance Measures for Greenhouse Gas Emissions Impacts

No mitigation is required or proposed.

4.5.5 Conclusion

Implementation of the proposed residential project on Lot 1 and future redevelopment of Lots 2 and 3 under the proposed General Plan Amendments will have a less than significant impact on operational GHG emissions. **(Less Than Significant Impact)**

Construction activities will have a less than significant short-term GHG impact. **(Less Than Significant Impact)**

4.6 ENERGY

This section was prepared pursuant to CEQA Guidelines Section 15126.4 (a)(1)(C) and Appendix F which requires that EIRs include a discussion of the potential energy impacts of proposed projects with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. The information in this section is based largely on data and reports produced by the California Energy Commission, the Bay Area Air Quality Management District (BAAQMD), and the Energy Information Administration of the U.S. Department of Energy.

4.6.1 Introduction and Regulatory Background

Energy consumption is analyzed in an EIR because of the environmental impacts associated with its production and usage. Such impacts include the depletion of nonrenewable resources (e.g., oil, natural gas, coal, etc.) and emissions of pollutants during both the production and consumption phases.

Energy usage is typically quantified using the British Thermal Unit (Btu).[15] As points of reference, the approximate amount of energy contained in a gallon of gasoline, a cubic foot of natural gas, and a kilowatt hour (kWh) of electricity are 123,000 Btus, 1,000 Btus, and 3,400 Btus, respectively. Utility providers measure gas usage in therms. One therm is approximately equal to 100,000 Btus.

Electrical energy is expressed in units of kilowatts (kW) and kilowatt-hours (kWh). One kilowatt, a measurement of power (energy used over time), equals one thousand joules per second.[16] A kilowatt-hour is a measurement of energy. If run for one hour, a 1,000 watt (1 kW) hair dryer would use one kilowatt-hour of electrical energy. Other measurements of electrical energy include the megawatt (1,000 kW) and the gigawatt (1,000,000 kW).

4.6.1.1 Regulatory Setting

Many Federal, State, and local statutes and policies address energy conservation. At the Federal level, energy standards set by the U.S. Environmental Protection Agency (EPA) apply to numerous products (e.g., the EnergyStar™ program). The EPA also sets fuel efficiency standards for automobiles and other modes of transportation. At the State level, Title 24 of the California Building Standards Code sets forth energy standards for buildings, rebates/tax credits are provided for installation of renewable energy systems, and the *Flex Your Power* program promotes conservation in multiple areas. The Title 24 standards have been revised and will be effective January 1, 2014.[17]

In January 2010, the State of California adopted the California Green Building Standards Code (CALGreen) that establishes mandatory green building standards for all buildings in California. The

[15] The British Thermal Unit (Btu) is the amount of energy that is required to raise the temperature of one pound of water by one degree Fahrenheit.
[16] As defined by the International Bureau of Weights and Measures, the joule is a unit of energy or work. One joule equals the work done when one unit of force (a Newton) moves through a distance of one meter in the direction of the force.
[17] California Energy Commission. "Building Energy Efficiency Program." 2013. Accessed March 15, 2013. Available at: http://www.energy.ca.gov/title24/

code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

At the local level, the City of Milpitas sets green building standards for new private and municipal development. Title II, Chapter 20 of the Milpitas Municipal Code defines new construction of different types and sizes based on the number of residential units or for nonresidential, the gross building area of development. Under these regulations, new residential projects constructing over five units are required to adhere to the Build It Green or LEED standards.[18, 19] The proposed project must prepare and submit a checklist demonstrating the achievement of a minimum of 50 points on the Build It Green scale or equivalent for LEED. The checklist must be verified by a GreenPoint Rater Certified through Build It Green and submitted to the City of Milpitas Chief Building Official.

4.6.2 Existing Setting

Total energy usage in California was approximately 7,826 trillion Btu in the year 2010 (the most recent year for which this specific data was available).[20] The breakdown by sector was approximately 19 percent (1,463 trillion Btu) for residential uses, 19 percent (1,501 trillion Btu) for commercial uses, 22 percent (1,765 trillion Btu) for industrial uses, and 40 percent (3,097 trillion Btu) for transportation.[21] This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

The two industrial buildings proposed to be demolished on Lot 1 total 106,657 square feet. Since the two buildings are currently vacant, they do not use any energy in operation. The site may consume a nominal amount of electricity for security lighting and other systems, but for the purposes of this EIR, Lot 1 is considered to use no energy. Given the nature of the existing and proposed land uses, the remainder of this discussion will focus on the three most relevant sources of energy: electricity, natural gas, and gasoline for vehicle trips.

While Lots 2 and 3 are currently occupied and consume energy, the project does not currently propose any physical changes to these properties. As a result, no specific analysis of energy consumption on these Lots is provided because there is no timeframe for the redevelopment. If these sites are redeveloped in the future under the proposed General Plan Amendments, they will incorporate site specific green building measures to reduce energy consumption.

[18] Build It Green is a non-profit organization that promotes healthy, energy and resource-efficient building practices in California. Build It Green provides a GreenPoint Rated system that verifies a home has been built according to proven green building standards.
[19] Created by the non-profit organization United States Green Building Council, LEED (Leadership in Energy and Environmental Design) is a certification system that assigns points for green building measures based on a 110-point rating scale.
[20] United States Energy Information Administration. "Table C4. Total End-Use Energy Consumption Estimates, 2010." Accessed March 13, 2013. Available at: http://www.eia.gov/beta/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/sum_use_tx.html&sid=CA
[21] United States Energy Information Administration. "Table C1. Energy Consumption Overview: Estimates by Energy Source and End-Use Sector, 2010". Accessed March 13, 2013. Available at: http://www.eia.gov/beta/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/sum_btu_1.html&sid=CA

The City of Milpitas encourages the use of building materials that include recycled materials and requires new buildings to be built to current codes, including the City's adopted Green Building Ordinance, which requires insulation and design to minimize wasteful energy consumption resulting in the use of less energy for heat and light and less water than a standard residential development. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption.

4.6.2.1 Electricity

Electricity supply in California involves a complex grid of power plants and transmission lines. In 2011, California produced approximately 70 percent of the electricity it consumed; it imported the remaining 30 percent from 11 western states, Canada, and Mexico. Electricity imports from the northwest states were particularly high in 2011 due to an increase in hydroelectric generation resulting from higher precipitation in the northwest.

The bulk of California's electricity comes from power plants. In 2011, 36.5 percent the state's electricity was generated by natural gas, 15.7 percent by nuclear, 13.4 percent by large hydroelectric, 8.4 percent by coal, and 11.5 percent by unspecified sources. Renewable sources such as rooftop photovoltaic systems, biomass power plants, and wind turbines, accounted for the remaining 14.5 percent of California's electricity. [22]

Electricity consumption in California increased by approximately 4.6 percent in the last decade, from approximately 260,408 gigawatt hours (GWh) in 2000 to approximately 272,342 GWh in 2010. Electricity consumption is forecast to increase by five to nine percent over 2010 levels by 2015, bringing total consumption to between 286,000 and 296,000 GWh.[23]

Pacific Gas and Electric (PG&E) provides both natural gas and electricity utility service in Milpitas for residential, commercial, industrial, and municipal uses. PG&E generates electricity at hydroelectric, nuclear, renewable, natural gas, and coal facilities. In 2011, natural gas facilities provided 25 percent of PG&E's electricity delivered to retail customers; nuclear plants generated 22 percent; hydroelectric operations accounted for 18 percent; renewable energy facilities including solar, geothermal, and biomass provided 19 percent; and 15 percent was unspecified.[24] Under the provisions of Senate Bill 107, investor-owned utilities were required to generate 20 percent of their retail electricity using qualified renewable energy technologies by the end of 2010. PG&E's 2011 electricity mix was 19 percent renewable.

Electricity usage for differing land uses varies substantially by the type of uses in a building, the type of construction materials used, and the efficiency of the electricity-consuming devices used. Electricity used in the PG&E Planning Area within which the project is located, is consumed

[22] California Energy Commission, Energy Almanac, "Total Electricity System Power." Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/electricity/total_system_power.html
[23] California Energy Commission. "2011 Integrated Energy Policy Report (CEC-100-2011-001-CMF)." Page 103. Accessed March 13, 2013. Available at: http://www.energy.ca.gov/2011publications/CEC-100-2011-001/CEC-100-2011-001-CMF.pdf
[24] PG&E. "Clean Energy Solutions." Accessed March 13, 2013. Available at: http://www.pge.com/en/about/environment/pge/cleanenergy/index.page

primarily by the commercial sector (41 percent), the residential sector (33 percent), and the industrial sector (approximately 16 percent).[25]

If the industrial buildings were occupied, then based on BAAQMD's BGM User's Manual, the average annual electricity usage would be 5.8 kWh per square foot per year.[26] The project proposes to demolish the two existing buildings on Lot 1 which total 106,657 square feet. At full occupancy, the two existing buildings would use approximately 618,610 kWh of electricity each year. In 2011, Santa Clara County consumed approximately 16,384 million kWh of electricity.[27]

4.6.2.2 Natural Gas

In 2010, approximately 12 percent of California's natural gas supply came from in-state production, while 88 percent was imported from other western states and Canada.[28] PG&E and two other major gas utilities provide 98 percent of the state's natural gas.[29] PG&E supplies Milpitas with natural gas through underground high-pressure pipes.

The most recent data from the California Energy Commission shows that between 2006 and 2011, on average, approximately 34 percent of the natural gas delivered for consumption in California was for electricity generation, 32 percent for industrial uses, 22 percent for residential uses, 11 percent for commercial uses, and less than one percent for transportation.[30] As with electricity usage, natural gas usage depends on the type of uses in a building, the type of construction materials used, and the efficiency of gas-consuming devices. In industrial buildings, natural gas can be used for a variety of applications including heating, ventilation, and air conditioning (HVAC) systems and boilers. Since the buildings are vacant, no natural gas is currently used on site.

According to the BAAQMD BGM User's Manual, the average annual natural usage for the existing buildings on Lot 1 would be 4,300 Btu per square foot, or 4.3 kBtu/sf per year.[31] If the two industrial buildings were in use, they would use approximately 458,625 kBtu, or 458.63 million Btus (MMBtu)

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[25] California Energy Commission, Energy Consumption Data Management System. "Electricity Consumption by Planning Area, 2011." Accessed March 13, 2013. Available at: http://ecdms.energy.ca.gov/elecbyplan.aspx

[26] Electricity factors for 'All Warehouses' in Climate Zone 4 are estimated based on the 2006 California Commercial End User's Survey. Bay Area Air Quality Management District. "Draft BAAQMD Greenhouse Gas Model User's Manual." Accessed March 13, 2013. Available at: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BGM%20Users%20Manual.ashx?la=en

[27] California Energy Commission, Energy Consumption Data Management System. "Electricity Consumption by County." 2008 (based on 2011 data). Accessed March 15, 2013. Available at: http://www.ecdms.energy.ca.gov/elecbycounty.aspx

[28] California Energy Commission. "Natural Gas Supply by Region." 2011. Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/naturalgas/natural_gas_supply.html

[29] California Energy Commission. "Overview of Natural Gas in California." 2013. Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/naturalgas/overview.html

[30] U.S. Energy Information Administration. "Natural Gas Summary." January 31, 2013. Accessed March 13, 2013. Available at: http://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SCA_a.htm

[31] Bay Area Air Quality Management District. "Draft BAAQMD Greenhouse Gas Model User's Manual." Accessed March 13, 2013. Available at: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BGM%20Users%20Manual.ashx?la=en

per year. In 2011, the State of California consumed approximately 2.2 trillion cubic feet of natural gas, or 2.26 billion MMBtu.[32, 33]

4.6.2.3 Gasoline for Motor Vehicles

California accounts for more than one-tenth of the United States' crude oil production and petroleum refining capacity.[34] In 2010, 21.5 billion gallons of gasoline, diesel, and jet fuel were consumed in California.[35] According to the California Energy Commission's *2011 Integrated Energy Policy Report*, California is experiencing a downward trend in sales of gasoline, diesel, and jet fuel, primarily due to low economic growth and high unemployment. It is expected that this trend will continue in the future due to high fuel prices, efficiency gains, competing fuel technologies, and mandated use of alternative fuels.

The average fuel economy for light-duty vehicles (autos, pickups, vans, and SUVs) in the United States has steadily increased from about 13.1 miles-per-gallon (mpg) in the mid-1970s to 22.6 mpg in 2011 (estimated).[36] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was subsequently revised to apply to cars and light trucks of Model Years 2011-2016.[37] In 2012, the Federal government raised the fuel economy standard to 54.5 miles per gallon for cars and light-duty trucks by Model Year 2025.[38]

The BAAQMD URBEMIS 2007 model, which takes into account the land use type, size, and location, estimates that the average length of vehicle trips to and from the existing buildings on Lot 1 would be 7.4 miles if the buildings were occupied. The two buildings that the project proposes to demolish (APNs 022-37-011 and -012) would generate approximately 743 daily trips (see Table 2 of the Supplemental Traffic Analysis, Appendix D of the EIR). Thus the daily total vehicle miles travelled (VMT) to and from the two buildings on the project site would be 5,498 miles. Based on the 2011 EPA estimated average fuel economy of 22.6 miles per gallon, the existing industrial development would result in the consumption of approximately 243 gallons of gasoline per day. The

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[32] United States Energy Information Administration. "Which states consume and produce the most natural gas?" January 15, 2013. Accessed March 15, 2013. Available at: http://www.eia.gov/tools/faqs/faq.cfm?id=46&t=8

[33] Conversion uses 1,027 Btu per cubic foot of natural gas.

[34] United States Energy Information Administration. "California State Energy Profile." Available at: http://www.eia.gov/beta/state/analysis.cfm?sid=CA

[35] California Energy Commission. "2011 Integrated Energy Policy Report (CEC-100-2011-001-CMF)." Page 139. Accessed March 13, 2013. Available at: http://www.energy.ca.gov/2011publications/CEC-100-2011-001/CEC-100-2011-001-CMF.pdf

[36] U.S. Environmental Protection Agency. "Light-Duty Automotive Technology, Carbon Dioxide Emissions and Fuel Economy Trends: 1975 through 2011." March 2012. Page i. Available at: http://www.epa.gov/otaq/cert/mpg/fetrends/2012/420r12001a.pdf

[37] U.S. Department of Energy. "Energy Independence & Security Act." Accessed March 13, 2013. Available at: http://www1.eere.energy.gov/femp/regulations/eisa.html.

[38] National Highway Traffic Safety Administration. "Obama Administration Finalizes Historic 54.5 mpg Fuel Efficiency Standards." August 28, 2012. Available at: http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/Obama+Administration+Finalizes+Historic+54.5+mpg+Fuel+Efficiency+Standards

existing 106,657 square feet of industrial space would use 88,859 gallons of gasoline each year if fully occupied.[39]

4.6.3 Thresholds of Significance

Based on Appendix F of the CEQA Guidelines, and for the purposes of this EIR, a project will result in a significant energy impact if the project will:

- Use fuel or energy in a wasteful manner; or
- Result in a substantial increase in demand upon energy resources in relation to projected supplies; or
- Result in longer overall distances between jobs and housing.

4.6.4 Energy Impacts

4.6.4.1 Estimated Energy Use of Lot 1

Implementation of the proposed residential project on Lot 1 would result in the construction 84 new single-family detached homes and the re-designation of six parcels (Lots 2 and 3) to make the general plan designation and zoning consistent with the current commercial land uses. Three other parcels, two of which would support the 84 proposed homes (Lot 1), would be designated *Single-Family Moderate* Density and zoned *R1-2.5 Single Family Residential*. No construction is currently proposed on Lots 2 or 3, which means that the current energy use for those sites would not change in the near term. Future redevelopment of Lots 2 and 3 under the proposed general plan and zoning changes could increase energy use. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption.

Energy would be consumed during both the construction and operational phases of the proposed residential project on Lot 1. The demolition and construction phase will require energy for the manufacture and transportation of building materials, preparation of the site (e.g., demolition of the existing buildings and grading), and the actual construction of the buildings. The operation of the proposed residences would consume electricity and natural gas primarily for building heating and cooling, lighting, cooking, and water heating. Gasoline would be used by residents of the homes for general transportation and for commutes to and from work.

Table 16 summarizes the estimated net increase in energy use resulting from implementation of the project. The BAAQMD BGM model estimates average residential electricity and natural gas use based on the California Residential Appliance Saturation Study.

[39] Calculations for annual gasoline usage use 365.25 days as a measure of one year in order to account for leap years.

TABLE 16 Annual Energy Use from Lot 1			
Type of Energy	**Existing Energy Use at Site**	**Project Energy Use[1]**	**Energy Use Increase**
Electricity	~ 0 kWh	622,860 kWh	622,860 kWh
Natural Gas	0 MMBtu	4,166 MMBtu	4,166 MMBtu
Gasoline	0 gallons	96,034 gallons	96,034 gallons

[1] Based upon the existing and proposed square footage of the buildings and the following Average Annual Energy Use Factors from URBEMIS 2007 and BAAQMD BGM models:

Single Family Residential (Climate Zone 4) – 7,415 kWh/unit/year and 49.6 MMBtu/unit/year (natural gas use)

[2] Estmated gasoline use based upon trip estimates in Table 2 of the Supplemental TIA in Appendix D of this EIR (803 daily trips for 84 single-family detached units), an estimated average trip length of 7.4 miles, and the U.S. EPA 2011 fuel economy estimates of 22.6 miles per gallon.

4.6.4.2 Operational Impacts from the Proposed Residential Project On Lot 1

As shown in Table 16 above, the residential project on Lot 1 would increase electricity use on Lot 1 by approximately 622,860 kWh per year, natural gas usage by 4,166 MMBtu per year, and gasoline consumption by 96,034 gallons over existing conditions.

The new residences would be required to build to the State CalGreen code, which includes insulation and design to minimize wasteful energy consumption. In order to comply with the City of Milpitas requirements, the project proposes to achieve 70 points on the Build It Green GreenPoint Rated checklist, 20 points more than required by the City of Milpitas. The GreenPoint Rated checklist measures a project's sustainability through five main categories: energy efficiency, water conservation, resource conservation, indoor air quality, and community-oriented design. The project would achieve 30 checklist points for energy efficiency by exceeding State Title 24 standards by 15 percent.

Implementation of the proposed sustainability measures would result in efficient energy use at the Lot 1 site, compliance with the CalGreen standards, and a verified GreenPoint Rating in compliance with the City of Milpitas code. While energy use would increase over existing conditions, the addition of 84 residences at an infill location would not substantially increase demand on energy resources in relation to projected supplies or existing demand. **(Less Than Significant Impact)**

4.6.5 Mitigation and Avoidance Measures for Energy Impacts

No mitigation is required or proposed.

4.6.6 Conclusion

The proposed residential project on Lot 1 would place residential uses at an infill site within reasonable distance of existing job opportunities. With implementation of the proposed green building design features the project would not result in the wasteful use of fuel or energy. The

project would not result in a substantial increase in demand upon energy resources in relation to projected supplies. **(Less Than Significant Impact)**

Future development on Lots 2 and 3 would likely be more energy efficient than the existing buildings and would be required to conform to the City's Green Building Ordinance which would minimize energy consumption. **(Less Than Significant Impact)**

SECTION 5.0 CUMULATIVE IMPACTS

Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, are considerable or which compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant projects taking place over a period of time. The CEQA Guidelines state (§15130) that an EIR shall discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the potential impacts which might result from approval of past, present and reasonably foreseeable future projects, in conjunction with the proposed project.

5.1 Cumulative Impacts

5.1.1 Thresholds of Significance

The discussions below address the following aspects of cumulative impacts:

- Would the effects of the proposed project, when combined with the effects of all past, present, and pending development result in a cumulatively significant impact on the resources in question?
- If a cumulative impact is likely to be significant, would the contribution of the proposed project to that impact be cumulatively considerable?

The City of Milpitas has 10 approved housing projects, three pending housing projects, and four housing projects currently under construction. The majority of this development is within the transit area and none of the projects are in proximity to the project site. The City recently approved an electronic billboard to be installed adjacent to the Starbucks on Lot 3. A discussion of that project is included below. No other projects within the City or in the neighboring cities of Fremont or San Jose are in close enough proximity to the project site to have the potential for cumulative impacts.

Based on the analysis in this EIR, the proposed project would result in a less than significant impact to aesthetics, agricultural/forestry resources, cultural resources, energy, geology and soils, GHG, hazards and hazardous materials, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems. The degree in which the proposed project would add to existing or probable future impacts on existing land uses and/or resources would be negligible. As a result, the project's contribution to a cumulatively significant impact in any of these resource areas would not be considerable.

The proposed project would result in significant air quality, biological resources, and noise impacts. The biological impacts will result from construction of the proposed project. These impacts are temporary and will be reduced to a less than significant level with implementation of the proposed mitigation measures. Because of the temporary nature of these impacts and the fact that the impacts will be mitigated, there would be no long term cumulative effect. The proposed bridge would have a

less than significant impact and, as there are no other proposed bridges in proximity to the site along Penitencia Creek, it would not have a cumulative effect. As a result, the projects contribution to a cumulatively significant biological resources impact would not be considerable.

The operational air quality impacts would result from placing housing in proximity to the Newby Island Landfill. There is no feasible mitigation to reduce this impact to a less than significant level. The nature of the impact is such that it only affects residents within a specific area of Milpitas and does not meet the criteria of a cumulative impact. The placement of 84 houses within the landfill's area of impact and the possible future construction of up to 152 additional houses would not be cumulatively considerable. In that the project exposes sensitive receptors to an impact, in does not by itself generate odors that cause an impact.

The operational noise impacts will result from placing residences and open space areas in a high noise area. The identified impact will be reduced to a less than significant level with implementation of the proposed mitigation measures. Because of the nature of this impact (the project is exposed to noise impacts, but it does not substantially contribute to ambient noise levels) and the fact that the impact will be mitigated, there would be no long term cumulative effect.

5.1.2 Cumulative Transportation Impacts

To determine future cumulative traffic volumes in the study area, the effects of the proposed General Plan Amendments were analyzed based on projected roadway link volumes using year 2030 land use data. Peak hour volumes (AM and PM) were developed using the City of Milpitas Travel Demand Forecast (TDF) model, which is a sub-area model of the VTA CMP TDF model.

5.1.2.1 Year 2030 Network Assumptions

The year 2030 roadway network includes the following planned transportation improvements:

- I-880 will be widened to include a high occupancy vehicle land in each direction from Montague Expressway north into Alameda County.

- Calaveras Boulevard will be widened to six lanes between Milpitas Boulevard and Abel Street. Operational improvements are also planned for intersections on Calaveras Boulevard between I-680 and I-880.

- Montague Expressway will be widened to provide eight lanes between Great Mall Parkway and I-880.

- McCarthy Boulevard will be extended north of Dixon Landing Road to connect to Fremont Boulevard. The planned extension would include two northbound and two southbound travel lanes.

5.1.2.2 Year 2030 Traffic Volumes

For the purposes of estimating the effect of the proposed land use changes, the traffic impacts of the proposed residential project on Lot 1 and General Plan Amendments on Lots 2 and 3 were evaluated relative to the existing land uses. The net project traffic volumes for the year 2030 analysis were calculated using a three-step process as follows:

- **Traffic Generation.** A comparison of the trip generation between the proposed General Plan Amendments and the existing land uses (see Table 17). The proposed changes in land use would decrease the total trip generation from the project site by 675 trips in the AM Peak Hour and 635 trips in the PM Peak Hour.

- **Traffic Distribution & Assignment.** The directions of approach and departure of the proposed and existing land uses were estimated along major travel corridors. Because traffic from the industrial/commercial and residential land uses have different origins and destinations, separate trip distributions were developed for each use. The peak hour trips generated by the proposed and existing land uses were assigned to specific street segments in accordance with their respective trip distributions.

- **Traffic Volume Tabulation.** For each roadway link, the projected Peak Hour traffic volumes with the proposed General Plan were estimated by subtracting the trips generated by the existing land uses from year 2030 traffic volumes, and adding the estimated traffic generated by the proposed General Plan Amendments.

TABLE 17
Year 2030 Trip Generation

Land Use	APN	Daily Total	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Existing Land Uses								
Industrial Park	011, 012, 019	5,703	564	124	688	148	557	705
Shopping Center	049	2,102	30	19	49	89	94	183
Service Station	040	1,834	73	70	143	85	82	167
Hotel	047	1,070	47	33	80	41	43	84
Office	045, 046	1,324	164	22	186	30	149	176
Pass-by Trips		*-1,338*	*-37*	*-35*	*-72*	*-60*	*-60*	*-120*
Subtotal		**10,696**	**842**	**234**	**1,076**	**333**	**865**	**1,198**
Proposed Land Uses								
Single-Family	011, 012, 019	2,259	44	133	177	150	88	238
Shopping Center	040, 049	2,710	31	20	51	92	96	188
Hotel	047	1,070	47	33	80	41	43	84
Office	045, 046	662	82	11	93	15	75	90
Pass-by Trips		*-434*	*0*	*0*	*0*	*-18*	*-19*	*-38*
Subtotal		**5,727**	**204**	**197**	**401**	**280**	**283**	**563**
Net New Project Trips		***-4,970***	***-638***	***-37***	***-675***	***-53***	***-582***	***-635***

5.1.2.3 Year 2030 Link Analysis

The analysis of year 2030 conditions was conducted based on projected roadway link volumes from the City of Milpitas Travel Demand Forecast (TDF) model. For roadway segments, the traffic operations were evaluated based on volume-to-capacity (v/c) ratios. A project is said to adversely impact a roadway segment if:

1. The roadway segment is projected to operate below its LOS standard under existing General Plan conditions and the proposed General Plan is projected to cause an increase in traffic of at least one percent of its capacity; or

2. The roadway segment is projected to operate at or better than its LOS standard under existing General Plan conditions and the proposed General Plan is projected to degrade the level of service to less than acceptable levels.

Year 2030 conditions with the proposed General Plan Amendments were evaluated relative to year 2030 conditions under the existing General Plan in order to determine potential impacts. Although many of the study segments are projected to operate at LOS E or F during the AM and PM Peak Hours, according to the City of Milpitas roadway segment impact criteria, the proposed land use changes would not result in any significant impacts to roadway segments. The proposed land use changes would reduce traffic on all of the surrounding roadways.

5.1.2.4 Conclusion

The proposed changes to the General Plan, which would replace industrial land uses with commercial and residential uses, would not result in any cumulative traffic impacts. The proposed General Plan Amendments would generate fewer overall traffic trips compared to the existing General Plan designations. **(Less Than Significant Impact)**

5.1.3 Cumulative Aesthetic Impacts

In January 2013, the City of Milpitas approved the installation of two LED electronic billboards along the east side of I-880 at 1545 and 1301 California Circle. Only the billboard at 1545 California Circle (adjacent to the existing Starbucks) is within close proximity to the proposed residential parcels on the project site. The billboard support column will be 50 feet tall (measured from grade) and the sign faces will be 14 feet by 48 feet (672 square feet per side). This billboard will be visible from all parcels within the project site.

The billboard FEIR identified residential land uses as sensitive receptors that could be impacted by the proposed LED billboards. The FEIR concluded that at a distance of 500 feet or more, the proposed billboards would have a less than significant impact on the visual character of the adjacent residential areas. The nearest proposed residences on Lots 1 and 2 would be approximately 480 feet from the approved billboard.

While the proposed housing would be slightly closer than the 500 foot distance identified in the billboard FEIR, ultimately the 20 foot difference would have no measureable effect on the visual character of the proposed residential area along California Circle, therefore the FEIR's conclusions concerning the compatibility of the billboard with existing residences at 500 feet would be applicable to the proposed project residences at 480 feet.

The billboard FEIR did identify a significant impact from spill light and sky glow due to operation of the billboards during evening hours. Mitigation measures, listed below, were included in the project to reduce spill light and sky glow impacts on nearby residences.

> Mitigation 4.2: As a condition of approval, require the final Project design specifications to include a combination of display angle, display light source shielding, LED display brightness control (illumination aim, focus, shielding, etc.) sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various display and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics.

The FEIR concluded that with implementation of this mitigation, to the satisfaction of the City's Planning and Neighborhood Services Director, the light, glare, and sky glow impacts of the billboard project would be reduced to less than significant.

5.1.3.1 Conclusion

With implementation of the mitigation measures identified in the billboard FEIR, the proposed housing on Lots 1 and 2 of the project would be exposed to less than significant visual and aesthetic impacts from the approved but not yet constructed billboard. **(Less Than Significant Cumulative Impact)**

SECTION 6.0 PROJECT ALTERNATIVES

Section 15126.6 of the CEQA Guidelines requires that an EIR describe a reasonable range of alternatives to the proposed project that could feasibly attain most of the project objectives while avoiding or considerably reducing any of the significant impacts of the proposed project. In addition, the No Project Alternative must be analyzed in the document.

In order to comply with the purposes of CEQA, it is necessary to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented while trying to meet most of the basic objectives of the project. The Guidelines emphasize a common sense approach. The alternatives shall be reasonable, shall "foster informed decision making and public participation," and shall focus on alternatives that avoid or substantially lessen the significant impacts.

The stated objectives of the project proponent are to:

1. Convert three existing office-use properties from industrial-use to residential General Plan and Zoning land-use categories in order to improve the diversity of for-sale housing opportunities in Milpitas.

2. Convert two existing office-use properties and construct a high-quality, medium-low density, market-rate, for-sale residential subdivision of approximately 84 single-family homes adjacent to existing residential neighborhoods, trails and a community park.

3. Provide medium-low density housing which supports convenient living that is close to shopping, services, and transportation yet transitions sensitively with adjacent industrial and commercial uses.

4. Improve encourage pedestrian and bicycle usage along Penitencia Creek.

The stated objectives of the City are to:

1. Promote and encourage high quality residential development, trails/bike path connectivity, parks and recreation development, and other quality-of-life assets that will set the tone for potential planning and transition of the surrounding area along California Circle as a vibrant mix of residential and commercial type use, well-connected and identifiable neighborhood.

2. Develop, plan, and encourage a mix of new commercial retail, service, and office as well as maintaining existing industrial developments to increase the sales tax base and employment opportunity in the City of Milpitas.

3. Encourage potential for additional commercial uses and future commercial or mixed use development along the east side of the Interstate 880 corridor.

4. Maintain remaining viable commercial property for commercial and industrial uses for sustainable economic development.

5. Provide a direct pedestrian and bicycle connection between the proposed residential and adjacent properties as well as the existing multi-family residential community across the Penitencia Creek.

6. Provide an appropriate residential design, density, circulation, and public benefit that can be integrated in future area planning and land use along California Circle.

An EIR is required to include a "No Project" alternative that "compares the impacts of approving the proposed project with the impacts of not approving the proposed project."[40]

The significant impacts identified in this EIR as resulting from the proposed project include significant unavoidable odor impacts due to the proximity of the proposed residences to Newby Island Landfill, as well as significant interior and exterior noise impacts for the proposed housing, and potential construction impacts to nesting raptors. The logical way to reduce the odor and noise impacts would be to propose the housing in a different location as the entire site is within the one mile radius of the Newby Island Landfill and WPCP and the noise sources cannot be avoided on-site. The biological resources impacts could occur at any project location with mature trees.

6.1 NO PROJECT ALTERNATIVE

The CEQA Guidelines [§15126(d)4] require that an EIR specifically discuss a "No Project" alternative, which shall address both "the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services." Since the project site is developed, one alternative would be to maintain the entire site as is. If the project site were to remain as is with industrial buildings on the eastern half of the site and commercial businesses of the western portion of the site, there would be no new impacts.

The entire project site is designated *Industrial Park* in the General Plan and is zoned *Industrial Park*. The proposed residential project on Lot 1 is not consistent with either the current General Plan designation or zoning. Given the General Plan land use designation (and corresponding zoning designation), Lot 1 could only be redeveloped with industrial buildings similar to those currently existing on-site, which would avoid the noise and odor impacts of the proposed project due to the fact that commercial and office uses are not considered sensitive receptors. Construction impacts would be comparable to the proposed project.

Lots 2 and 3 have no specific development proposals so the No Project alternative would not result in any physical changes to the proposed project. Without the proposed commercial General Plan Amendments, Lot 3 could be redeveloped under the No Project alternative with industrial land uses. Industrial land uses generate fewer traffic trips per square foot than commercial land uses and have

[40] CEQA Guidelines Section 15126.6(e)(1)

comparable water and energy usage. As a result, redevelopment of Lot 3 with industrial land uses would be comparable to the existing commercial land uses.

Conclusion: Implementation of the no-build "No Project" alternative would avoid the significant unavoidable odor impacts and significant noise impacts identified in this EIR. The no-build No Project alternative would not, however, allow for new housing to be constructed on the project site. This alternative does not meet any of the objectives of the proposed project or the City.

The redevelopment "No Project" alternative could result in the loss of the existing commercial businesses on Lot 3 and increased industrial development. This alternative does not meet any of the objectives of the proposed project or the City.

6.2 LOCATION ALTERNATIVE

In an effort to avoid the significant odor and noise impacts that would result from the proposed project but still provide new housing within the City of Milpitas, an alternative location could be considered.

The City of Milpitas has identified housing sites throughout the City in the General Plan. The City's Housing Element identifies 14 sites currently zoned for residential but currently developed with commercial or industrial land uses. Most sites that are currently designated for housing have been through some level of environmental review and have been found to be consistent with the General Plan and would likely avoid or mitigate exterior and interior noise impacts.

One specific site, 1005 North Park Victoria Drive, is the city's largest vacant single family detached housing site. There is General Plan level clearance for this site, but there has been no previous environmental review for this site so it is unknown what specific environmental consequences may result from development of this site. As the site is vacant, it may currently support Burrowing Owls or other special status species. The site is located at the base of the foothills and at this time it is unknown what geological issues could existing on-site. Other potential issues are increased traffic (as the site is currently vacant and therefore does not generate any trips, unlike the California Circle site which has buildings which generate traffic under baseline conditions and serve to reduce the magnitude of net new trips from the housing project), impacts to unknown cultural resources, and electricity usage on a currently vacant site. A site specific environmental analysis would, however, address these issues and would identify mitigation to lessen or avoid identified impacts. While placing housing on this site would likely reduce the significant odor and noise impacts of the proposed project, it could result in new impacts or impacts of greater severity for other resource areas compared to the proposed project. In addition, this site is designated *Single-Family Residential Low Density (3-5 DU/AC)* and would need a General Plan Amendment in order to construct approximately 8 DU/AC consistent with the residential density proposed on the project site. For all these reasons, this site is not considered to be environmentally superior to the proposed project site.

The remaining 13 housing sites are located in either the Midtown Specific Plan Area or the Transit Specific Plan Area. A Program EIR was prepared for both specific plan areas which studied approximately 1,279 acres for future development. Due to the distance of these sites from Newby Island, it is reasonable to assume that the odor impacts identified for the proposed project would be

significantly reduced at these locations. Noise impacts would likely be similar because the sites are located along major roadways. Impacts related to aesthetics, air quality (other than odors), biological resources, energy, geology and soils, GHG emissions, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems would be comparable to the proposed project. The proposed project has no significant traffic impacts. In all likelihood, higher density housing within the Midtown and Transit areas would have significant impacts to local intersections where mitigation may or may not be feasible.

While the North Park Victoria Drive site and sites with the Midtown and Transit Specific Plan Areas have been identified for housing, given the available information, none of the housing sites identified by the City could be considered environmentally superior (other than reducing/avoiding odor impacts) to the proposed project site due to the level and variety of identified or potential impacts compared to identified impacts on the project site. In addition, the project applicant does not own or control any of these identified housing site.

A large portion of the City's existing non-residential lands are in proximity to I-880, I-680, Newby Island Landfill, the WPCP, and/or other nearby odor sources including Los Esteros Substation, Zanker Landfill, the former Cargill Salt Pond, and the City's Main Sewer Pump Station. It is likely that conversion of underutilized non-residential properties for residential use in these areas would have noise impacts similar to the proposed project. Some of these sites would, however, be outside the one mile impact area for Newby Island Landfill and the WPCP, as well as the other identified odor sources.

Conversion of non-residential lands could result in new impacts. It is reasonable to assume that industrial lands and some commercial lands would have contaminated soil and/or groundwater. Depending on the location, it would be possible for the proposed residential units to have a significant transportation impact if they were located in an area that is already heavily congested. Lastly, some areas of the City are more sensitive in terms of subsurface cultural resources.

It is reasonable to assume that impacts related to aesthetics, air quality (other than odors), biological resources, energy, geology and soils, GHG emissions, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems would be comparable to the proposed project.

Substantive due diligence would be required to find a specific development site that reduced the projects identified impacts to a less than significant level and did not result in new significant impacts.

If a location alternative were to be found, the proposed General Plan Amendments on Lots 2 and 3 would not proceed as they are directly related to the redevelopment of Lot 1 with housing.

Conclusion: Implementation of the Location Alternative could lessen or avoid the odor and/or noise impacts that would result from the proposed project, but would have the potential to result in new impacts related to cultural resources, hazardous materials, and transportation. This alternative meets some, but not all the project objectives. This alternative would not meet any of the City's objectives. If a suitable location could be found that did not have sensitive cultural resources or hazardous

materials, or result in increased traffic impacts, this alternative would be environmentally superior to the proposed project.

6.3 ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the Location Alternative because of the project's significant unavoidable odor impacts and significant noise impacts could be avoided. The Location Alternative would achieve one of the objectives of the proposed project. This alternative would be inconsistent with the project objectives No. 1, 2, and 4 which set goals for the redevelopment of underutilized industrial lands and improvements to pedestrian and bicycle facilities along Penitencia Creek. Any alternative location that avoids odor and noise impacts is not currently under the control of the applicant for Lot 1, and it is uncertain if it could be acquired at a reasonable price and, therefore, the feasibility of this alternative is unknown.

SECTION 7.0 SIGNIFICANT UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as it is proposed. The following significant unavoidable impacts have been identified as resulting from the proposed project:

1. Implementation of the proposed residential project on Lot 1 and future residential development on Lot 2 under the proposed General Plan Amendment would expose future residences to significant unavoidable odor impacts from Newby Island Landfill.

All other significant impacts of the proposed project would be reduced to a less than significant level with the implementation of mitigation measures identified in this EIR

SECTION 8.0 IRREVERSIBLE ENVIRONMENTAL CHANGES AND IRRETRIEVABLE COMMITMENT OF RESOURCES

CEQA and the CEQA Guidelines require that an EIR address "significant irreversible environmental changes which would be involved in the proposed project, should it be implemented." [§15126(c)]

If the proposed project is implemented, development of Lot 1 and future development of Lots 2 and 3 would involve the use of non-renewable resources both during the construction phase and future operations/use of these sites. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Construction also involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources. Once the new development is complete, occupants will use non-renewable fuels to heat and light the buildings. The proposed and future residential projects will also consume water at a higher rate than the current land uses.

The City of Milpitas encourages the use of building materials that include recycled materials and requires new buildings to be built to current codes, including the City's adopted Green Building Ordinance, which requires insulation and design to minimize wasteful energy consumption resulting in the use of less energy for heat and light and less water than a standard residential development. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption. In addition, these sites are infill locations and are currently served by public transportation. The proposed project will, therefore, facilitate a more efficient use of resources over the long-term than greenfield sites or sites that are not within close proximity to jobs, services, and transit.

SECTION 9.0 GROWTH INDUCING IMPACTS OF THE PROJECT

For the purposes of this project, a growth inducing impact is considered significant if the project would:

- Cumulatively exceed official regional or local population projections;
- Directly induce substantial growth or concentration of population. The determination of significance shall consider the following factors: the degree to which the project would cause growth (i.e., new housing or employment generators) or accelerate development in an undeveloped area that exceeds planned levels in local land use plans;
- Indirectly induce substantial growth or concentration of population (i.e., introduction of an unplanned infrastructure project or expansion of a critical public facility (road or sewer line) necessitated by new development, either of which could result in the potential for new development not accounted for in local general plans).

The proposed redevelopment project on Lot 1 is proposed on an infill site in the City of Milpitas. The site is surrounded by existing infrastructure and both existing and planned development. Development of the project will not require upgrades to the existing sanitary sewer, water, and/or storm drain lines that directly serve the project site. The project does not include expansion of the existing infrastructure that would facilitate growth in the project area, other areas of the City, or outside the urban envelope. As with Lot 1, Lots 2 and 3 are infill sites served by existing infrastructure and would not require expansion of existing facilities to serve new development.

Redevelopment of Lots 1 and 2 would replace existing industrial buildings with new residences that are in proximity to retail services, recreational areas, transit, and major roadways. The proposed residential project(s) would be compatible with the nearby residential neighborhood and the existing commercial land uses on Lot 3, but could pressure adjacent industrial properties to redevelop with new or different land uses.

Redevelopment of Lot 3 would result in commercial development comparable to the existing land uses on-site and would be compatible with existing and proposed land uses in the immediate area.

Redevelopment of this site under the proposed General Plan Amendments would result in a net increase in housing Citywide. There is currently a shortage of available housing within the City of Milpitas compared to the number of jobs within the City. The increase in housing will incrementally decrease the overall jobs/housing imbalance within the City. The increase, however, represents a minor percentage increase in total housing and will not be a substantial change compared to existing conditions or planned population projections within the City. If adjacent and nearby industrial lands were redeveloped with housing in the future, it would further reduce the overall jobs/housing imbalance in the City.

The project would not have a significant growth inducing impact.

SECTION 10.0 RESPONSES TO NOTICE OF PREPARATION COMMENT LETTERS

The City of Milpitas received six letters in response to the Notice of Preparation (NOP). Copies of these letters are provided in Appendix K of this EIR. Responses to these letters are provided below to provide information to readers regarding where or how particular issues are addressed in this Draft EIR.

10.1 California Department of Transportation, March 28, 2013

Comment 1: Traffic Impact Study (TIS)
One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance potential adverse impacts by local development on State highways. Interstate 880 (I-880) currently experiences back-ups or congestion during the afternoon peak period at the junction of Route 237 and in the north bound direction at Dixon Landing Road. We request that, as part of the proposed project's environmental assessment, a Traffic Impact Study be prepared to evaluate the following:

- Mainline I-880 from Dixon Landing Road to the junction with Route 237;
- Ramp operations and queuing at the Dixon Landing Road interchange;
- Ramp operations and queuing at the junction of State Route 237 and Interstate 880;
- Level of Service and queuing at the freeway ramp intersections at California Circle and Dixon Landing Road (for both northbound and southbound ramps); and
- Intersection operation at the intersection of Dixon Landing Road and N. McCarthy Blvd.

Response 1: The TIA for the proposed project addressed freeway impacts consistent with the Congestion Management Plan (CMP) guidelines. The findings of the analysis, provided in Table 1 of the TIA, show that the proposed project will have no impact on local freeway facilities or operations.

Comment 2: We recommend using the Caltrans *Guide for the Preparation of Traffic Impact Studies* (TIS Guide) for determining which scenarios and methodologies to use in the analysis. The TIS Guide is a starting point for collaboration between the lead agency and Caltrans in determining when a TIS is needed. The appropriate level of study is determined by the particulars of a project, the prevailing highway conditions, and the forecasted traffic. The TIS Guide is available at the following website address: http://dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf.

The TIS should include:

1. Vicinity map, regional location map, and a site plan clearly showing project access in relation to nearby State roadways. Ingress and egress for all project components should be clearly identified. The State right-of-way (ROW) should be clearly identified. The maps should also include project driveways, local roads and intersections, parking, and transit facilities.

2. Project-related trip generation, distribution, and assignment. The assumptions and methodologies used to develop this information should be detailed in the study, and should be supported with appropriate documentation.

3. Average Daily Traffic, AM and PM peak hour volumes and levels of service (LOS) on all roadways where potentially significant impacts may occur, including crossroads and controlled intersections for existing, existing plus project, cumulative and cumulative plus project scenarios. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect study area roadways and intersections. The analysis should clearly identify the project's contribution to area traffic and any degradation to existing and cumulative LOS. Caltrans' LOS threshold, which is the transition between LOS C and D, and is explained in detail in the TIS Guide, should be applied to all State facilities. If the existing State highway facility is operating at less than the appropriate target LOS, the existing Measures of Effectiveness (MOE) should be maintained.

4. Schematic illustration of traffic conditions including the project site and study area roadways, trip distribution percentages and volumes as well as intersection geometrics, i.e., lane configurations, for the scenarios described above.

5. The project site building potential as identified in the General Plan. The project's consistency with both the Circulation Element of the General Plan and the Congestion Management Agency's Congestion Management Plan should be evaluated.

6. Identification of mitigation for any roadway mainline section or intersection with insufficient capacity to maintain an acceptable LOS with the addition of project-related and/or cumulative traffic. As noted above, the project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should also be fully discussed for all proposed mitigation measures.

   Response 2: A full TIA was prepared in accordance with all applicable requirements and guidelines and available traffic data. A discussion of the project's traffic impacts and proposed mitigation measures is provided in Section 4.3, *Transportation.* The full TIA is provided in Appendix B. Consistency with applicable Plans and Polices is discussed in Section 3.0 of this EIR.

Comment 3: ***Lead Agency***
As the lead agency, the City of Milpitas is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

The information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the County work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see end of this letter for more information regarding encroachment permits.

Response 3: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed. All identified mitigation measures for other resource areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment 4: ***Vehicle Trip Reduction***

Caltrans encourages you to locate any needed housing and neighborhood services near major mass transit centers, with connecting streets configured to facilitate walking and biking, as a means of promoting mass transit use and reducing regional vehicle miles traveled and traffic impacts on State highways. We also encourage you to develop Travel Demand Management (TDM) policies to encourage usage of nearby public transit lines and reduce vehicle trips on the State Highway System. These policies could include car-sharing programs, bicycle lanes and bicycle parking, and providing transit passes to residents, among others.

In addition, secondary impacts on pedestrian and bicyclists resulting from any traffic impact mitigation measures should be analyzed. The analysis should describe any pedestrian and bicycle mitigation measures and safety countermeasures that would in turn be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on State highways.

Response 4: The proposed housing sites are located near existing services and transit as discussed in this EIR. No TDM plan is currently proposed. The proposed project will not have a significant impact on the local transportation network so no mitigation is required or proposed. The project will, however, make improvements to the adjacent creek trail.

Comment 5: ***Traffic Impact Fees***

Please identify traffic impact fees to be used for project mitigation. Development of plans should require traffic impact fees based on projected traffic and/or based on associated cost estimates for public transportation facilities necessitated by development. Scheduling and costs associated with planned improvements on Departmental ROW should be listed, in addition to identifying viable funding sources correlated to the pace of improvements for roadway improvements, if any.

Response 5: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed.

Comment 6: ***Regional Impact Fees***

Interstate 880 is critical to regional and interregional traffic in the San Francisco Bay region. It is vital to commuting, freight, and recreational traffic and is one of the most congested regional freeway facilities. Given the proximity of the proposed project to the interchange ramps, the traffic generated could have significant regional impact to the already congested state highway system. The Department encourages the City of Milpitas to condition the project with a contribution to a regional transportation fee program to mitigate and plan for the impact of future growth on the regional transportation system. The fees would be used to help fund regional transportation programs that add capacity increasing improvements to the transportation system to lessen future traffic congestion.

Reducing delays on State facilities will not only benefit the region, but also reduce any queuing on local roadways caused by highway congestion. The purpose of regional impact fee program would

improve mobility by reducing time delays and maintaining reliability on major roadways throughout the San Francisco Bay Area.

Response 6: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed.

Comment 7: ***Mitigation Reporting Guidelines***

The California Environmental Quality Act (CEQA) requires the adoption of reporting or monitoring programs when public agencies include environmental impact mitigation as a condition of project approval. Reporting or monitoring takes place after project approval to ensure implementation of the project in accordance with mitigation adopted during the CEQA review process.

Some of the information requirements detailed in the attached Guidelines for Submitting Transportation Information from a Reporting Program include the following:

- Name, address, and telephone number of the CEQA lead agency contact responsible for mitigation reporting;
- Type of mitigation, specific location, and implementation schedule for each transportation impact mitigation measure; and
- Certification section to be signed and dated by the lead agency certifying that the mitigation measures agreed upon and identified in the checklist have been implemented, and all other reporting requirements have been adhered to, in accordance with Public Resources Code Sections 21081.6 and 21081.7.

Further information is available in the following website:
http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html.

Response 7: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed. All identified mitigation measures for other resource areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment 8: ***Encroachment Permit***

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See the website linked below for more information:
http://www.dot.ca.gov/hq/traffops/developserv/permits.

Response 8: If necessary, the project will comply with all Caltrans requirements for encroachment permits.

10.2 Kristen Valus, April 8, 2013

Comment 1: We are writing as concerned residents of California Landing Villas about the proposed pedestrian bridge associated with the Waterstone Residential Project. Per your project description, *"an approximately six-foot tall, clear-span pedestrian bridge over the creek to provide connectivity between the proposed residential development and the existing residential neighborhood east of the creek. The approximate location of the bridge is at the southern end of the site as shown in the adjacent figure. The final location of the bridge will be determined in coordination with the Santa Clara Valley Water District."*

We oppose this location of the pedestrian bridge for several reasons. The bridge will allow increased access to our neighborhood as a "cut through" to Dixon Landing Park. We are concerned about the increased accessibility promoting more crime in our neighborhood as well as a loss of privacy. Our HOA spent a good deal of money building a privacy fence along the creek to keep our neighborhood relatively secure from the public using the creek trails. We absolutely oppose an access gate in our fence for the public, nor do we want people "jumping the fence" because they are too lazy to walk around. Terra Mesa Way is technically a private street. Also, the height of the bridge would be seen from the second and third stories of our homes.

We understand the benefit of the new residents being able to access Dixon Landing Park, however, there are other ways to promote this access without using our neighborhood as a thoroughfare. We suggest you work with the developer to expand the current traffic bridge over the creek on California Circle to allow for bike lanes in both directions and a wide walking path so new residents can access the park by going along Dixon Landing Road to Milmont Drive. Alternatively, we strongly recommend the developer consider moving the pedestrian bridge to intersect with Aspenridge Dr. where our fence and community ends, so the public would be using public (not private) streets to access Dixon Landing Park.

Finally, consider not building a bridge at all. We do not want the pedestrian bridge connecting in our neighborhood and we, along with our HOA, will continue to fight this aspect of the proposal throughout the city's approval process.

> *Response 1:* A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area. The City and the project applicant, in consultation with the SCVWD, have agreed to relocate the proposed bridge to align with Aspenridge Drive.

10.3 Lane Tomita, April 14, 2013

Comment 1: I was not able to make the council meeting on the Waterstone. I live on the corner of Terra Mesa Way and Calle del Sol. Looking at the Notice of Preparation for this project I see that there's a bridge planned to cross the creek right where I live. I'm opposed to the location of this bridge. Terra Mesa Way and Calle del Sol are private streets. I feel that the bridge should be moved and connect to a city street like Aspenridge or no bridge at all. I feel the bridge is not a marketing attribute to the project but an enabler for unsavory people or kids to cause trouble on both sides of the bridge. We already have issues with people cutting holes in the fence or parking their cars in our

area when they live in the houses. We don't need people parking their cars in our area and then crossing the bridge to get to someones house. We don't need people casing our complex to take delivery packages.

Response 1: The City and the project applicant have agreed to relocate the proposed bridge to align with Aspenridge Drive.

10.4 Helen Lim, April 16, 2013

Comment 1: I am a long-time homeowner and resident at California Landing Villas, which is east of the proposed Waterstone Residential Project to consist of 84 new homes on California Circle. Included in the proposal is a pedestrian bridge, which I strongly oppose for the following reasons:

1) While I understand that change happens and that the city needs revenues, a 3rd bridge which crosses Lower Penitencia Creek is not necessary since there are already 2 existing and well-constructed bridges on both ends of California Circle.

Response 1: A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area.

Comment 2: 2) While Trumark Homes is anticipated to fund/build the bridge if the plan is accepted, the City will be responsible for it maintenance, and I do not think that it will be maintained properly or frequently. The city trail which is adjacent to the creek has been neglected since last year's lay-offs. Vegetation is overgrown, and the trail is very trashy. The area looks very slummy.

3) Since the trial maintenance has been significantly reduced, there is a lot of trash (e.g., broken beer bottles and other glass), and I suspect trash will be left on this new bridge or tossed over it into the creek.

Response 2: As noted in the project description, the cost for future maintenance of the bridge will be the responsibility of the City.

Please note that the City is not responsible for maintenance of the trail and it is under the jurisdiction of the SCVWD.

Comment 3: 4) In addition, I suspect that adding this bridge will invite more crime (e.g., vandalism) and also provide an additional exit for lawbreakers.

5) This bridge will not be easily accessible to law enforcement because motorizes vehicles are currently not allowed along this trail, and there are 3 waist-high posts that the city installed to prevent such traffic. (One had been vandalized and removed a couple yrs ago right after they were replaced.) These posts are near Terra Mesa Way, which is next to the east end of where the proposed bridge will be. MPD will either have to park at Aspenridge (the boundary between California Landing Villas and the single family homes south of the proposed bridge) and run to the bridge, or police will have to access the bridge on the west side (via the new homes). Neither east nor west sides of the

bridge would be quickly or easily accessible and would delay response to any reported crime in progress.

6) The trail has no public lighting at night, and I suspect that the proposed bridge will not have lights either. This again provides advantages to lawbreakers.

Response 3: There is no indication that construction of pedestrian bridge between two residential areas would increase criminal activities. The proposed development will place homes on a currently vacant industrial parcel which would likely reduce unacceptable behaviors occurring on the project site or along the creek trail.

If issues were to occur on the bridge, the emergency response would be the same as for any other pedestrian bridge or similar structure in Milpitas.

Comment 4: 7) The proposed bridge is supposed to be six feet high, which seems short. What if someone tries to commit suicide from it?

Response 4: The proposed height of the railings is consistent with similar structures in the area and most likely high enough to discourage most people from climbing on it.

Comment 5: 8) The water level at the creek seems to get higher now during periods of heavy rain. Maybe it's a result of changes made to the floor of the creek a few years ago—I don't know. But, the levees aren't that big, and it seems that the proposed bridge might affect the integrity of the levees on both sides of the creek. I'd be curious to know SCV Water District's input regarding the proposed bridge. We also saw flooding twice at the park this past December. When we flooded here in 1998, the city pumped water out from our area to the creek, and, again, I fear the levees will be compromised with the addition of the bridge.

Response 5: As discussed in the project description, Section 2.0 of this EIR, the proposed bridge will be a clear span bridge that will connect directly to the creek trails. No footings, cantilevers, or other supports would be located within the creek or between the banks/levees which could comprise the structural integrity of the levees. Furthermore, final design and installation will be in coordination with the Santa Clara Valley Water District.

Comment 6: 9) I use the trail regularly, despite it's decline in appearance and the land mines (dog poo), and I think the new homeowners should be encouraged by the city to enjoy the trail and to make healthy lifestyle choices. I.e., the new homeowners can walk to either of the 2 existing bridges if they wish to visit Dixon Landing Park. When people visit the park, they're usually active there, so why not make them walk a little farther to either of 2 bridges that are already here? Plus, for the regular Starbucks drinkers, having the new bridge may make our residents lazier by taking the shortcut on the bridge and thereby crossing thru the new development.

Response 6: This comment is acknowledged.

Comment 7: 10) My community already gets alot of foot and auto traffic because of the public park across the street. There's alot of trash that gets strewn in our complex, not to mention parking problems. We don't need more outsiders (e.g., from the new project) parking in our private parking

spaces if they can't find parking where they're at. The Brander-Mill apartment residents already do that (use our parking spaces).

Response 7: It is reasonable to assume that without a safe and convenient pedestrian path to the park, future residents of the project site may drive to the park. Nevertheless, it is beyond the scope of this EIR to try to predict or mitigate for people potentially parking in restricted areas off the project site. Increased competition for public parking is not considered an environmental impact under CEQA.

10.5 Dieter Griesmeier, April 26, 2013

Comment 1: The Homeowners and residents of California Landing Villas Association want to express their strong opposition to the proposed 220-foot long pedestrian bridge of the Penitencia creek at the current position, location near Terra Mesa Way.

Also, residents of the single-family homes in the community adjacent to California Landing Villas join us in rejecting this bridge location.

Many Homeowners and residents who live near the proposed bridge location will lose privacy within their units as a long part of the bridge' walkway runs along the first level of homes in this area, near Terra Mesa Way. People crossing the bridge will have direct, close-up view into many California Landing Villas homes. Women and children especially will feel threatened knowing that anybody walking by can see into their home and watch them in the "privacy" of their home.

Response 1: The City and the project applicant, in consultation with the SCVWD, have agreed to relocate the proposed bridge to align with Aspenridge Drive.

In terms of privacy issues, the bridge will not be higher than the existing levee trail and would not afford any more direct views into the upper floors of any residences on the east side of the creek.

Comment 2: Moreover, the proposed bride in this location will increase foot traffic in the area as many people will use it as a short-cut which did not exist before and which the bridge will make possible. In addition, some people will be on the bridge at night just to smoke and for other outdoor socializing, such as just "hanging out". Some will likely jump over "our fence" on Terra Mesa Way and will cause damage. We had to repair our fence twice in the past four months as holes were cut into the mesh fence to get access to our complex as a short cut.

Response 2: It appears that there is currently an issue with persons on the creek trail cutting through the fence at California Landing Villas. This is an existing issues and is unlikely to measurably increase as a result of the pedestrian bridge and the increase in local residents as persons purchase and live in the proposed single-family houses on the west side of the creek. The proposed development will place homes on a currently vacant industrial parcel which would likely reduce unacceptable behaviors occurring on the project site or along the creek trail.

Comment 3: The homeowners, residents and officers of the California Landing Villas community want to be a part of the solution to any problems that are bound to surface as plans to construct the bridge move forward.

Naturally we all have large emotional and financial interest in our homes and wish Milpitas official involved in approving the placement of the bridge would give us the opportunity to contribute ideas that will help solve problems that affect our community. The more input that's collected, the more likely it will be that the best solutions are chosen.

Regarding the bridge issue we offer some alternatives that might be more acceptable to the community. Attachment one, is a picture with the proposed new position of the pedestrian bridge. With the new location, parallel to the California Circle bridge, you have decreased the length of the bridge and you are farther away from homes so you can protect the privacy and more people will use it.

Attachment two, shows a picture, how it would look like, based with my limited capability of modifying the current location on the new pedestrian bridge.

We hope you will consider these ideas in the spirit of working together to keep our community a wonderful, attractive place to live, and we wish we will have ongoing opportunities to contribute views as proposals that affect California Landing Villas in particular come before Milpitas officials for action.

Response 3: These comments are acknowledged.

10.6 Janet Kan, May 2, 2013

Comment 1: We are residents of the California Landing community and we learned about the Waterstone Residential Project recently. We generally support the project with the exception of the proposed pedestrian bridge crossing the water district creek.

1) Is this bridge necessary?
There are already two bridge crossings, California Landing and within 800 feet of the proposed crossing location. These crossings are adequate connectivity between the east and west banks of the creek in my opinion.

The proposed project is already adjacent to the western creek trail where future residents can readily access for exercising and leisure use.

Response 1: A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area.

Comment 2: 2) Is this bridge practical?
The east end of the bridge is in the alignment of Terra Mesa Way, which is a private street owned by our community. There is a fence on the western boundary of our community. Thus, future users of the bridge will need to walk north to California Circle or south to Aspenridge Drive to exit the east

trail. The total walk distance will almost be the same as walking along the creek trail in a loop. Why build this bridge?

Response 2: Please see Response 1 above.

Comment 3: 3) Safety & Privacy Issues with Additional Foot/Bike Traffic
We are concerned that the addition of anew pedestrian bridge will increase foot and bike traffic through Calle Del Sol, Montrcito Way and Terra Mesa Way because these are the most direct routes to Dixion Landing Park. These are all private streets. Increase traffic into our private streets increase our on-going trespassing issues along the trail and reduce privacy of our community.

There are essentially no sidewalks on the above mentioned streets. Increased pedestrians and bikers will certainly increase the chance of traffic accidents.

We highly object the construction of this bridge. We don't need an impractical bridge to increase connectivity. The communities are already well connected.

Response 3: The City and the project applicant have agreed to relocate the proposed bridge to align with Aspenridge Drive.

SECTION 11.0 LEAD AGENCY AND CONSULTANTS

Lead Agency

City of Milpitas
Steven McHarris, Planning & Neighborhood Services Director
Sheldon AhSing, Senior Planner
Cindy Hom, Assistant Planner

Consultants

David J. Powers & Associates, Inc.
Environmental Consultants and Planners
San José, CA

Akoni Danielsen, Principal
Shannon George, Senior Project Manager
Zach Dill, Graphic Artist

Hexagon Transportation Consultants
Transportation Consultants
San José, CA

Illingworth & Rodkin
Air Quality
Petaluma, CA

SECTION 13.0 REFERENCES AND PERSONS CONSULTED

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Persons Consulted

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