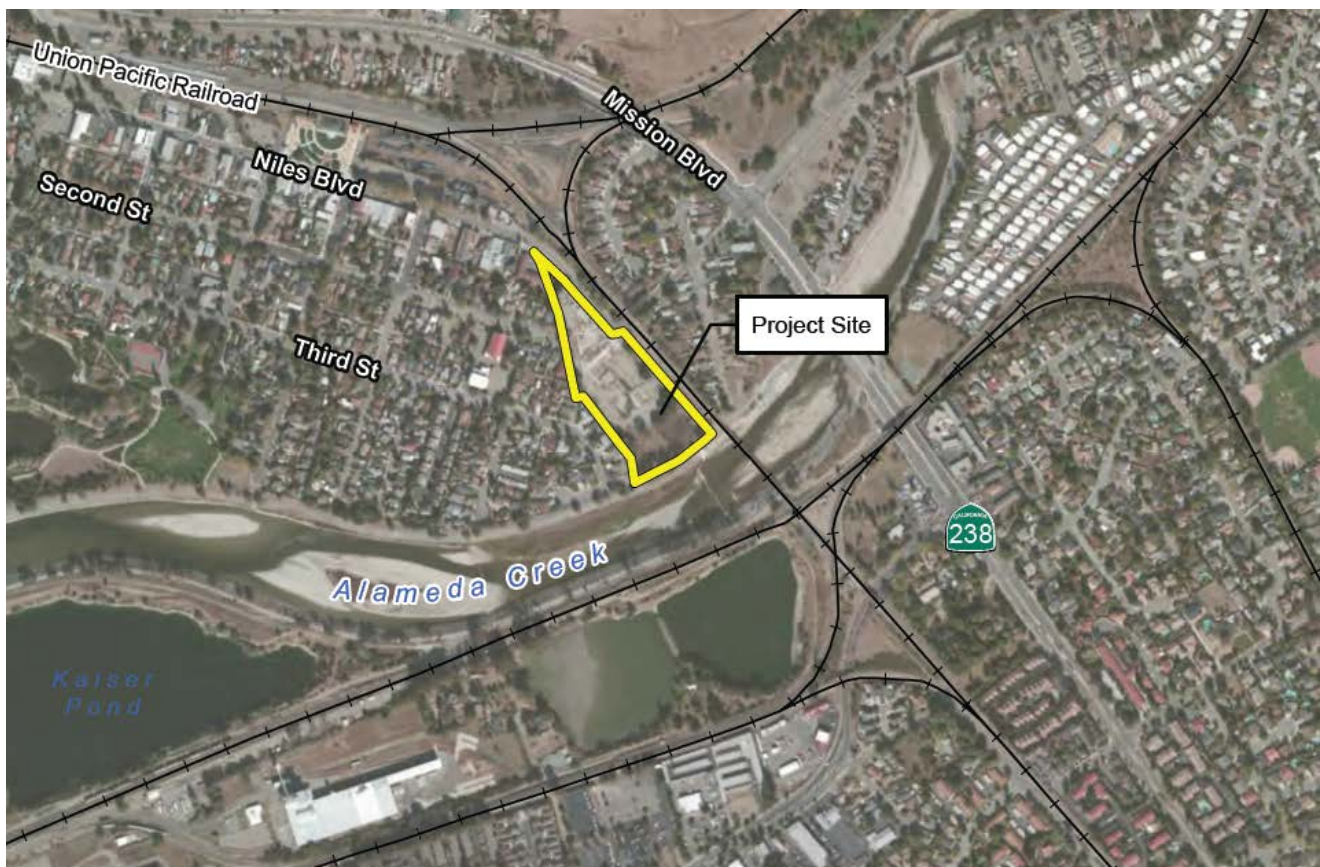


NILES GATEWAY MIXED-USE PROJECT

Final Environmental Impact Report
SCH # 2018012041

Prepared for
City of Fremont

September 2018



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CHAPTER 1

Introduction

1.1 Purpose of this Document

This Final Environmental Impact Report (Final EIR) document includes all agency and public comments received on the Draft Environmental Impact Report (Draft EIR, SCH #2018012041) for the Niles Gateway Mixed-Use Project (proposed project) pursuant to the requirements of the California Environmental Quality Act (CEQA). Written comments were received by the City of Fremont during the 45-day public comment period from May 25, 2018 through July 9, 2018. Late written comments were also received through July 13, 2018.

Section 15088(a) of the CEQA Guidelines states that:

“The lead agency shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.” Accordingly, the City of Fremont has evaluated the comments received on the Draft EIR for the proposed project and prepared written responses to those comments.

The Final EIR is comprised of the following elements:

- Draft EIR and Appendices.
- List of persons, organizations, and public agencies commenting on the Draft EIR.
- Copies of all comments received.
- Written responses to those comments.
- Revisions to the Draft EIR initiated by City staff or resulting from comments received.

This Final EIR document has been prepared in accordance with CEQA, and will be used by the decision-makers during project hearings.

1.2 Organization of the Final EIR

The Final EIR is organized as follows:

Chapter 1 – Introduction: This chapter summarizes the project under consideration and describes the contents of the Final EIR.

Chapter 2 – Agencies and Persons Commenting on the Draft EIR: This chapter contains a list of all of the agencies, organizations, and individuals that submitted comments on the Draft EIR during the public review period.

Chapter 3 – Written Comments on the Draft EIR and Responses to Comments: This chapter contains the comment letters received on the Draft EIR, followed by responses to individual comments. Letters are grouped by agencies, organizations, and individuals, but are otherwise presented in the order in which they were received. Each comment letter is presented with brackets indicating how the letter has been divided into individual comments. Each comment is given a binomial with the letter number appearing first, followed by the comment number. For example, comments in Letter 1 are numbered 1-1, 1-2, 1-3, and so on. Immediately following the letter are responses, each with binomials that correspond to the bracketed comments.

Some comments that were submitted to the City do not pertain to CEQA environmental issues or do not address the adequacy of the analysis contained in the Draft EIR. When a comment does not directly pertain to environmental issues analyzed in the Draft EIR, does not ask a question about the adequacy of the analysis contained in the Draft EIR, expresses an opinion related to the merits of the project, or does not question an element of or conclusion of the Draft EIR, the response notes the comment and may provide additional information where appropriate. The intent is to recognize the comment. Many comments express opinions about the merits or specific aspects of the proposed project and these are included in the Final EIR for consideration by the decision-makers.

Chapter 4 – Revisions to the Draft EIR: This chapter summarizes refinements and text changes made to the Draft EIR in response to comments made on the Draft EIR and/or staff-initiated text changes. Changes to the text of the Draft EIR are shown by either a line through the text that has been deleted, or is underlined where new text has been inserted. The revisions contain clarification, amplification, and corrections that have been identified since publication of the Draft EIR. The text revisions do not result in a change in the analysis and conclusions presented in the Draft EIR.

Chapter 5 – Mitigation Monitoring and Reporting Program: This chapter contains the Mitigation Monitoring and Reporting Program (MMRP) to aid the City in its implementation and monitoring of measures adopted in the EIR, and to comply with the requirements of Public Resources Code Section 21081.6(a).

1.3 Summary of Proposed Project

The project site is located at 37899 Niles Boulevard in the northeastern portion of the City of Fremont. The parcel is generally triangular in shape and flat in topography. The frontage of the northeastern part of the site is on the west side of Niles Boulevard before it makes a 90-degree turn eastward towards Mission Boulevard. A dead-end 0.73-acre segment of Niles Boulevard continues southward from the 90-degree turn along the remainder of the site's eastern edge.

The project site contains remnants of the former Henkel/Schuckl Cannery and was used for a variety of industrial land use activities including a foundry, cannery, herbicide manufacturing, metal treatment, and chemical manufacturing between the early 1900s and 2002. All structures associated with the previous industrial uses were demolished in 2009 and remnants of the building foundations are all that remain. Debris piles containing soil, broken paving materials, and discarded items still remain throughout the site. Vehicular access to the site is currently from Niles Boulevard. Curb, gutter, and sidewalk are located along the northern portion of the project frontage with Niles Boulevard. The project site south of the 90-degree turn of Niles Boulevard is accessed from the roadway that continues south from Niles Boulevard and dead-ends at the Alameda Creek Trail. Vegetation on the site generally consists of ornamental trees and shrubs located around the perimeter and weedy vegetation within the center of the site.

The proposed project would include development of a vacant 6.07-acre parcel with two types of buildings consisting of 95 dwelling units and 7,333 square feet of non-residential uses. The 95 dwelling units would consist of 82 townhomes and 13 "Creative-Retail-Artist-Flex-Tenancy" (CRAFT) units. The 7,333 square feet of non-residential uses would consist of 5,883 square feet of retail/restaurant uses and 1,450 square feet of community center space. In total, 187,773 square feet of building floor area is proposed to be developed on the site. Northbound Niles Boulevard would be re-stripped to accommodate a new left turn pocket lane at a new project driveway, at the north end of the site on Niles Boulevard, which would connect to a private street (Street A) that would encircle the project site and connect with Niles Boulevard at the 90-degree turn. As part of the project, the City would vacate the portion of Niles Boulevard south of the 90-degree turn.

A total of 94 new surface parking spaces would be established, including 25 new diagonal parking spaces on Niles Boulevard along the frontage of the CRAFT building, 65 parallel parking spaces on the west and east side of the project site along Street A, and four off-street spaces in a parking lot in the townhome area. Each CRAFT unit and townhome would have enclosed parking spaces (one to two spaces in each unit's garage), providing 188 additional spaces. Collectively, 282 new parking spaces would be provided.

The project would require a General Plan Amendment to change the land use designation from Service Industrial (Special Study Area) to Town Center and Medium Density Residential and a Rezoning of the existing parcel from I-S (Service Industrial) with an Historical Overlay District (HOD) to Planned District P-2014-0338 (HOD). The proposed project would also require the following entitlements: a Vesting Tentative Tract Map, Private Street, General Conformity Finding for a General Street Vacation, Tree Removal Permit, and Preliminary Grading Plan.

1.4 Required Jurisdictional Approvals

City of Fremont

Project implementation would require a series of interrelated planning and regulatory approvals by the City of Fremont, as Lead Agency. Specifically, the City is considering taking the following approval actions:

- General Plan Amendment
- Preliminary and Precise Planned District Rezoning
- Vesting Tentative Tract Map
- Private Street
- General Plan Conformity Finding for a General Street Vacation
- Tree Removal Permit
- Preliminary Grading Plan

The project would also require Historical Architectural Review Board (HARB) and Planning Commission consideration and recommendation to the City Council for final approval.

The project would require review and recommendation by the Planning Commission to the City Council, followed by consideration and action by the City Council. The EIR is intended to provide the CEQA-required environmental documentation for use in considering these and any other City approvals required to implement the project.

Other Governmental Agency Approvals

As the Lead Agency and as appropriate under CEQA, the City also intends this EIR to serve as the CEQA-required environmental documentation for consideration of this project by other Responsible Agencies and Trustee Agencies which may have limited discretionary authority over development proposals associated with the project. Under the CEQA *Guidelines*, the term “Responsible Agency” includes all public agencies, other than the Lead Agency, which have discretionary approval power over aspects of the project for which the Lead Agency has prepared an EIR (Section 15381); and the term “Trustee Agency” means a state agency having jurisdiction by law over natural resources affected by the project which are held in trust by the people of California (Section 15386).

Responsible Agencies and Trustee Agency approvals for the project may include, but are not limited to, the following:

Local Agencies

- Alameda County Water District (ACWD)

- Alameda County Public Works Agency (ACPW)
- Union Sanitary District (USD)

Regional and State Agencies

- San Francisco Bay Regional Water Quality Control Board (RWQCB)

1.5 Public Participation and Review

The City of Fremont has complied with all noticing and public review requirements of CEQA. This compliance included notification of all responsible and trustee agencies and interested groups, organizations, and individuals that the Draft EIR was available for review. The following list of actions took place during the preparation, distribution, and review of the Draft EIR:

- On January 19, 2018, the City sent a Notice of Preparation (NOP) to the State Clearinghouse (SCH No. 2018012041), responsible and trustee government agencies, organizations, and individuals potentially interested in the project. The NOP initiated a 30-day period during which residents, stakeholders, and public agencies were invited to submit comments on the scope of topics that should be studied in the EIR. An Initial Study (Environmental Checklist) was prepared for the project to evaluate the potentially significant effects the project may have on the environment, and was available for review during the 30-day period. A scoping meeting was held on February 12, 2018, to provide additional opportunity for comment. The 30-day scoping period for the project remained open through February 22, 2018.
- On May 25, 2018, a Notice of Completion (NOC) was filed with the State Clearinghouse to announce the availability of the Draft EIR. Copies of the Draft EIR were distributed to the State Clearinghouse and interested agencies following the requirements of CEQA Guidelines Sections 15085 and 15206. Notices of the Draft EIR's availability were also distributed to interested agencies, organizations, and individuals using the same distribution process as outlined above. The Draft EIR was also published on the City's website and filed at the County Clerk's office. The 45-day public comment period began on May 25, 2018, and ended on July 9, 2018.

CHAPTER 2

Agencies, Organizations, and Individuals Commenting on the Draft EIR

This chapter documents the comments on the Draft EIR that were submitted by agencies, organizations, and individuals during the 45-day public review and comment period (May 25 through July 9, 2018; late comments were also accepted through July 13, 2018). All of the comments received and the responses to those comments are presented in Chapter 3 of this Final EIR.

2.1 List of Comment Letters Received

The City received 28 comment letters during the comment period on the Draft EIR. **Table 2-1** below indicates the numerical designation for each comment letter, author of the comment letter, and the date of the comment letter. Letters are grouped by agencies, organizations, and individuals, but are otherwise presented in the order in which they were received.

**TABLE 2-1
COMMENT LETTERS CONCERNING THE NILES GATEWAY MIXED-USE PROJECT DRAFT EIR**

Letter #	Entity	Author(s) of Comment Letter/e-mail	Date Received
Agencies			
1	Alameda County Water District (ACWD)	Ed Stevenson	July 9, 2018
2	Alameda County Transportation Commission (Alameda CTC)	Saravana Suthanthira	July 9, 2018
Organizations			
3	Protect Niles	Robert Daulton	July 8, 2018
4	Sierra Club, San Francisco Bay	Jewell Spalding	July 13, 2018
Individuals			
5		Deni Caster (1)	May 27, 2018
6		Arin Westendorf	June 1, 2018
7		Lorna Jaynes	June 4, 2018
8		Sherry and John Ryan	June 12, 2018
9		Ron Warnecke	June 25, 2018
10		Deni Caster (2)	June 26, 2018
11		Joe Wilkinson	June 28, 2018
12		Patricia Finch	June 29, 2018
13		Sally Morgan	June 29, 2018
14		Mark Phillips and Monica Vincent	July 1, 2018
15		Gloria and George Gates	July 4, 2018
16		David Kiehn	July 6, 2018
17		Pamela Bevans	July 6, 2018
18		Jan Harvey	July 7, 2018
19		Victoria Mayer	July 7, 2018
20		Anil Nair	July 8, 2018
21		Julie and Mark Aragon	July 8, 2018
22		Renee Guild	July 8, 2018
23		Robert Daulton	July 8, 2018
24		Carol Drake	July 9, 2018
25		Corinne Cruz	July 9, 2018
26		Dave Jacobs	July 9, 2018
27		Julie Cain	July 9, 2018
28		Sandi Grantham	July 9, 2018

CHAPTER 3

Comments and Responses

3.1 Introduction

This section contains the comment letters that were received on the Draft EIR. Following each comment letter is a response by the City intended to supplement, clarify, or amend information provided in the Draft EIR or refer the reader to the appropriate place in the document where the requested information can be found. Comments that are not directly related to environmental issues may be discussed or noted for the record. Where text changes in the Draft EIR are warranted based upon the comments, those changes are discussed in the response to comments and also included in Chapter 4, *Revisions to the Draft EIR*.

3.2 Master Responses

This section presents responses to environmental issues raised in multiple comments. Rather than responding individually, master responses have been developed to address such comments comprehensively and these master responses are organized per topic in this section. The Master Response number is then identified in the individual response to comment so that reviewers can readily locate all relevant information pertaining to the following issues of concern.

Master Response 1: General CEQA

A number of comments were received stating that the scope of the Draft EIR was too narrow, and that resource topics in the Initial Study (namely noise, population, recreation, hydrology and water quality, hazards and hazardous materials, and geology and soils) should be addressed in a full EIR. In response to comments that the Initial Study topics should be addressed in the EIR, the purpose of the Initial Study, EIR, and CEQA warrants clarification in that a “full EIR” was in fact prepared for the project. The Initial Study evaluated each of the potential impacts of the project addressed in Appendix G of the CEQA Guidelines and, based upon appropriate thresholds of significance, identified those impacts that would be less than significant or less than significant with mitigation measures incorporated into the project. In contrast, those impacts with potentially significant and unavoidable impacts and/or that warranted more detailed analysis were studied further in the Draft EIR to provide an opportunity to address the extent of potential impacts, to explore possible mitigation to avoid impacts to the degree possible, and to consider project alternatives that would lessen or avoid any impacts. These comments are similar to those provided during the NOP scoping period and responded to in Response 1 in Chapter 2, *Introduction and Background* of the EIR.

The City prepared the Initial Study and EIR in compliance with CEQA and the CEQA Guidelines with respect to process, content, and level of analysis. The Initial Study evaluated the direct and indirect impacts of the proposed project in accordance with the requirements of CEQA *Guidelines* Sections 15064(d) and 15126.2(a). The analysis is based on thresholds of significance specific to each environmental topic, as listed in the Initial Study. These thresholds of significance are used to establish the magnitude of environmental impact of a project, and whether the project's impacts rise to a level significance resulting in a significant impact. As shown in Appendix A of the EIR, the Initial Study concluded that the proposed project would have potentially significant impacts to aesthetics, air quality, hazards and hazardous materials, noise, and transportation and traffic before mitigation. Consistent with CEQA *Guidelines* Section 15063(c)(3)(A), the Initial Study determined that impacts related to aesthetics (visual character), and transportation and traffic would be potentially significant and warranted further analysis in an EIR. The Initial Study concluded that impacts to air quality, hazards and hazardous materials, and noise would be less than significant with mitigation incorporated for these three resource areas, thus identifying the effects determined not to be significant in accordance with CEQA Guidelines Section 15063(c)(3)(B).

As described on page 2-3 of the Draft EIR, the information and analysis in the Initial Study provides substantial evidence that supports the conclusion for resource topics *not* addressed in further detail in the Draft EIR, that: 1) CEQA standards triggering preparation of further environmental review do not exist for those topics; and 2) impacts under these topics would be less than significant, with incorporation of appropriate mitigation measures where applicable. These topics are analyzed for full disclosure of the environmental determination in the Initial Study, which, along with the NOP, are part of the EIR. The decision to prepare an EIR was done in accordance with Section 15081 of the CEQA Guidelines, at the conclusion of the Initial Study after applying the standards described in Section 15064 of the Guidelines.

Although the comments state that the Initial Study and EIR contained inadequate analysis, no evidence of other analysis that draws a different conclusion was provided. The comments contain general statements that resource topics addressed in the Initial Study should be evaluated in the EIR. The comments, however, provide no substantial evidence to support the conclusion that the City's analysis is inadequate.

Concerning one comment that "the Court did NOT require the EIR be limited to [the] two issues of Aesthetics and Traffic alone," it is noted that the Superior Court did, in fact, hold that substantial evidence supported a fair argument of potential significant effects only with respect to aesthetics and traffic. The Superior Court ruling was upheld by the California Court of Appeal on July 16, 2018.

The EIR complies with the standards set forth in Section 15151 of the CEQA Guidelines. The analysis contained in the Draft EIR and Initial Study provides adequate disclosure as to the project's potential effects, as required by CEQA.

Master Response 2: Aesthetics

A number of comments state that the proposed project is not compatible with the *Niles Design Guidelines and Regulations* (“Guidelines”) and that the project design is incompatible with the character of the Niles community. Two commenters acknowledge that the project site is not part of the Niles Commercial Core because the site was zoned for light industrial use when the Guidelines were adopted in 2002, and state that the project should nevertheless be subject to the Guidelines. Three commenters compared the proposed project to the 2011 Fire Station #2 at Niles Boulevard and G Street, arguing that the fire station design is compatible with the character of Niles and the project could be designed to similarly fit more closely within its architectural context such as, for example, the use of more brick and less metal as exterior materials, or by taking more design cues from the project site’s former modern style factory office building, designed by architects Wurster and Bernardi.

As stated on pages 4.A-12 - 4.A-14 of the Draft EIR, “The Guidelines explicitly apply to the ‘commercial properties within the core area of the Niles Historic Overlay District’ (the Niles Commercial Core Area) The project site is located outside the Niles Commercial Core Area.”

The Guidelines themselves explain that their applicability is limited to “commercial properties within the core area of the Niles Historic Overlay District as shown on Figure 1 [Draft EIR Figure 4.A-7].” While the project site abuts the Niles Commercial Core Area, the site is clearly outside the commercial core and, thus, is not subject to the Guidelines.

Despite the inapplicability of the Guidelines, the Draft EIR fully analyzed compliance with the Guidelines with respect to the project’s commercial component (the CRAFT building), which would be adjacent to the Niles Commercial Core Area, “with regard to site and architectural design, scale/size, materials, textures, and colors The analysis addresses the commercial component of the proposed project for consistency with the Guidelines in the context of the CEQA requirement for analysis of a project’s potential to substantially degrade the existing visual character or quality of the site and its surroundings.” (Draft EIR pages 4.A-14 - 4.A-15). The Draft EIR’s analysis concludes, on page 4.A-35:

[T]he proposed CRAFT building would comply or substantially comply with the Guidelines. In instances where the proposed project would not comply with applicable guidelines—Guidelines 1.4 (Historic “Keyhole” Entries), 7.3 (Storefront Width), 8.2 (Second-Story Awnings), 8.5 (Retractable Awnings), and 8.6 (Colorful Awnings)—the variation in materials, scale, and size would be appropriate and would not substantially degrade the existing visual character or quality of the project site and its surroundings.

In addition, the Draft EIR finds that, while the proposed project would change the visual conditions of the project site, the project “would achieve a high-quality design that would be visually compatible with immediate and broader surrounding land uses.”

Accordingly, the Draft EIR appropriately determines that, while the proposed project would alter the visual character of the project site and vicinity, it would not substantially degrade the existing

visual character or quality of the site and its surroundings and, therefore, effects with respect to Aesthetics would be less than significant.

Commenters are correct in stating that the project site was zoned for industrial uses when the Guidelines were adopted in 2002. The current zoning remains I-S (Service Industrial), and the General Plan land use designation is Service Industrial (Special Study Area). The former industrial buildings themselves were extant in 2002. However, the City has taken no action to revise the Guidelines since the industrial buildings were demolished in 2009, meaning that the project site remains outside the Niles Commercial Core Area and not subject to the Guidelines.

Concerning Fire Station #2, a direct comparison with the proposed project is not appropriate, in terms of the Guidelines, because the fire station is located within the Niles Commercial Core Area.

Ultimately reasonable minds may disagree about the aesthetics of the project, and the question will be for the approval authority to resolve. The purpose of the EIR is not to resolve differences in taste, but to fully disclose how the project would affect the visual environment of the project site. By providing project plans, photo-simulations and accompanying analysis, and a detailed comparison of project to the Guidelines, discussing both consistencies and inconsistencies alike, the EIR satisfies its disclosure function. Statements indicating that commenters do not like the proposed project design do not address the adequacy or accuracy of the Draft EIR, and no further response is required. However, these comments will be transmitted to the decision-makers for their review during consideration of the proposed project.

Master Response 3: Traffic Impacts

Some commenters argued or implied that the Draft EIR did not adequately disclose the traffic impacts of the project and that the impacts associated with the project would be worse than those disclosed by the Draft EIR.

The Draft EIR analyzes effects on local intersections based on the City of Fremont's significance criteria, which are set forth on Draft EIR page 4.B-18 and restated below.

Signalized Intersections

For intersections that are part of the Alameda County Congestion Management Program (CMP), the project would result in a significant traffic impact if for either peak hour:

1. The level of service (LOS) at the intersection degrades from LOS E or better under no project conditions to an unacceptable LOS F under project conditions; or
2. If the intersection is already operating at LOS F under no project conditions, the addition of the project causes the intersection average control delay to increase by more than four seconds per vehicle.

This standard applies to three of the four signalized study intersections: Mission Boulevard (SR-238)/Nursery Avenue, Mission Boulevard (SR-238)/Niles Boulevard and Niles Canyon Road; Mission Boulevard (SR-238)/Mowry Avenue.

For non-CMP signalized intersections (i.e., the intersection of Niles Boulevard/Nursery Avenue), a significant traffic impact would occur if for either peak hour:

1. The level of service at the intersection degrades from LOS D or better under no project conditions to an unacceptable LOS E under project conditions; or
2. If the intersection is already operating at LOS E or worse under no project conditions, the addition of the project causes the intersection average control delay to increase by more than four seconds per vehicle.

As noted in the Draft EIR, the use of a different LOS threshold on CMP signalized intersections, compared to non-CMP signalized intersections derives from Policy 3-4.2 of the Fremont General Plan Mobility Element, which establishes LOS E as the acceptable LOS for signalized intersections within the CMP network, and LOS D for other signalized intersections. This policy is derived from Alameda CTC Congestion Management Program policies that is consistent with Congestion Management Program Legislation – Government Code Section 65089.

The justification for the use of a four-second increase in average vehicle delay as a trigger for significant impact (absent a degradation from acceptable to unacceptable LOS) is that a lesser change is unlikely to be perceptible to a typical motorist. Therefore, basing a significant effect on an increase in average vehicle delay of less than four seconds would overstate impacts.

Unsignalized Intersections

Project impacts on an unsignalized intersection are considered significant if the contribution of the project traffic is at least five percent of the total traffic, and if the addition of project traffic results in the intersection meeting the peak-hour signal warrant.

As explained under Impact 4.B-1, Draft EIR page 4.B-19, while the project would increase traffic volumes on local streets, it would not result in any of the significance thresholds above being exceeded, compared to either Existing Conditions or Background Conditions, the latter of which includes the addition of traffic from several projects anticipated to be completed in the short term (see Draft EIR page 4.B-11). Therefore, project traffic effects with respect to local intersections were determined to be less than significant. This is not to say that all intersections operate at “free flow” conditions, in which motorists enjoy little or no delay. As shown in Draft EIR Table 4.B-8, page 4.B-21, it can be seen that existing a.m. peak hour operations at the intersection of Mission Boulevard/Mowry Avenue are at level of service (LOS) F, indicating “heavily congested or breakdown conditions.” However, because the project would add an average of 2.2 seconds of delay per vehicle, which is less than the four-second threshold noted above, the project would not result in a significant impact. Other signalized intersections would operate at acceptable LOS (LOS E for CMP intersections, and LOS D for other intersections) under Existing plus Project Conditions. For Background plus Project Conditions (Table 4.B-9, page 4.B-25), the intersection of Niles Boulevard/Nursery Avenue would degrade from LOS E to LOS F in the p.m. peak hour, but the project would add an average of 0.3 seconds of delay, less than the four-second threshold, and the impact would be less than significant. None of the three unsignalized intersections would exceed the significance thresholds above under either Existing plus Project Conditions or

Background plus Project Conditions and, thus, impacts at those intersections would be less than significant.

Under Cumulative plus Project Conditions (Impact 4.B-2, Draft EIR page 4.B-27), the proposed project, in conjunction with traffic from cumulative development, including forecast General Plan buildout to 2035 and General Plan improvements, would result in a significant impact in the p.m. peak hour at the intersection of Mission Boulevard/Niles Boulevard-Niles Canyon Road (see Table 4.B-10, page 4.B-29). At this intersection, the project would add an average of 4.1 seconds of vehicle delay to an intersection already operating at unacceptable LOS, which would exceed the four-second threshold and, therefore, would be significant. As explained on Draft EIR p. 4.B-29, mitigation to a less-than-significant level would require the addition of another through-lane on either Mission Boulevard, Niles Boulevard, or Niles Canyon Road approaching the intersection. However, the existing right-of-way is not wide enough to accommodate the improvement, and implementation of this improvement would adversely affect existing businesses, residences and utilities as a result of the acquisition of necessary right-of-way to complete the improvement. Moreover, additional physical improvements would not be consistent with the Fremont General Plan (page 3-26, Mobility Chapter), which notes that the General Plan promotes policies that shift away from those that increase roadway capacity towards those that improve other modes of travel. For these reasons, the Draft EIR finds that this cumulative impact would be **significant and unavoidable**. Cumulative effects at other signalized and unsignalized intersections would be less than significant.

One comment (Comment 4-1) states, “Table 4.B-10 shows that 6 of the 7 intersections studied already are operating at unacceptable LOS F for both morning and evening peak commute times.” However, as stated above, Table 4.B-10 does not represent existing conditions, but rather Cumulative and Cumulative plus Project Conditions (2035). Under Existing Conditions (Table 4.B-8), only one signalized intersection (Mission Boulevard/Mowry Avenue) is at unacceptable LOS (LOS F), while at one unsignalized intersection (Mission Boulevard/Sullivan Underpass), the minor street movement (Sullivan Underpass) is at an unacceptable LOS.

This same comment suggests that it is not appropriate to include in the analysis of Cumulative Conditions the General Plan-identified improvements at the intersection of Mission Boulevard/Mowry Avenue. However, the premise underlying the cumulative analysis is to include reasonably foreseeable development and reasonably foreseeable improvements. Therefore, improvements at this intersection are appropriately considered in the cumulative analysis.

Master Response 4: Alternatives

A number of comments state general support for fewer units at the site. Many comments also disagree with the 60-Unit Reduced Density discussion under Section 5.F, *Alternatives Considered but Rejected*. The comments state that the reason for dismissing a 60-Unit Reduced Density alternative was inadequate and requested that it be fully analyzed in the EIR.

To provide background, Section 15126.6(a) of the CEQA Guidelines requires that an EIR describe a range of reasonable alternatives to the proposed project, or to its location, that would *feasibly obtain most of the project's basic objectives while avoiding or substantially lessening any of significant effects of the project*, and to describe the comparative merits of the alternatives as compared to the project (emphasis added). The term “feasible” is defined in Public Resources Code Section 21061.1 as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Under CEQA Guidelines Section 15126(f), “the range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.” The discussion of the alternatives should also include sufficient information about each alternative to allow evaluation, analysis, and comparison with the proposed project.

The EIR identifies a significant and unavoidable impact under Cumulative plus Project conditions at the intersection of Mission Boulevard (SR-238)/Niles Boulevard-Niles Canyon Road. As stated on page 5-2 of the EIR, the alternatives analysis “focuses on project alternatives that could avoid or substantially lessen the transportation and traffic impacts of the project.” In addition to the No Project Alternative, the EIR analyzes two alternatives that would reduce the significant and unavoidable impact under Cumulative plus Project conditions by reducing the number of project-generated trips. The EIR describes the rationale for selecting the alternatives on page 5-2, as required by CEQA Guidelines Section 15126.6(c). The EIR then provides a comparison of each of the three alternatives to meet the project objectives on pages 5-4, 5-7, and 5-9. Except for the No Project Alternative, both Alternative 1 (86-Unit Reduced Density) and Alternative 2 (75-Unit Reduced Density) were found to meet the basic objectives of the proposed project such as contributing housing at a density at or above the housing inventory identified in the General Plan Housing Element. Therefore, the Draft EIR presents a reasonable range of alternatives that would meet most of the project sponsor’s objectives and provides analysis in compliance with CEQA.

With regard to the 60-Unit Reduced Density Alternative, as described on page 5-14 of the EIR, this alternative “was rejected from further consideration because it would not meet the project objective to develop housing at a density consistent with the housing inventory identified in the General Plan Housing Element, which identifies a density of 75 units on the project site.” Section 15126.6(f)(1) of the CEQA Guidelines allows for the consideration of factors that may be taken into account when addressing the feasibility of alternatives including general plan consistency, other plans, or regulatory limitations. For purposes of the alternatives analysis, the City as lead agency is responsible for selecting a range of project alternatives for examination and disclose its reasoning for selecting those alternatives. CEQA Guidelines Section 15126.6(a) states that “there is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.” The EIR need not analyze every possible alternative; the lead agency need only identify suitable alternatives that: (1) meet the threshold criteria of reducing significant environmental impacts; (2) attain most of the basic project objectives; (3) are

potentially feasible; and (4) are reasonable and realistic. Candidate alternatives that do not satisfy all four criteria may be excluded from the EIR (CEQA Guidelines Section 15126.6(c)). Thus, rejecting the 60-Unit Reduced Density Alternative because it is not consistent with the General Plan Housing Element is valid. It is noted, however, that because the proposed project would develop market-rate housing, a category of housing affordability for which the City of Fremont exceeded its Regional Housing Needs Allocation (RHNA) total in the most recently completed reporting period (2007-2014),¹ the reduction by 15 units in the assumed Housing Element density on the site would not result in any decrease in below-market-rate housing units and thus would not be anticipated to jeopardize the City's compliance with the current 2015-2023 RHNA. The alternatives as presented in Chapter 5 of the EIR provide an appropriate level of analysis to meet the requirements of CEQA. Although the 60-Unit Reduced Density Alternative was rejected from further consideration in the Draft EIR, analysis of the potential impacts is provided in Chapter 4 (Revisions to Draft EIR) in response to a number of comments.

Ultimately, the determination as to whether an alternative is feasible, is made by the lead agency's decision-makers (in this case the City Council) as part of the project review process rather than being made as a conclusion within an EIR (California Public Resources Code, Section 21081(a)(3); CEQA Guidelines Section 15091(a)(3)). The project approval process can only occur after certification of the Final EIR and is procedurally separate from the environmental review process. In making that determination, the City Council would independently weigh the relative advantages and disadvantages of the proposed project and its alternatives, and then choose to approve, modify, or disapprove the project as proposed, or choose to adopt one of the alternatives presented in the document, if determined feasible (California Public Resources Code, Section 21081(a)(3); CEQA Guidelines Section 15091(a)(3)). Modifications to the project could theoretically include further reduction in the number of residential units, assuming such a change would result in no new or substantially more severe impacts, a conclusion that appears likely.

3.3 Individual Responses

This section contains responses to comments submitted during the public review period. Commenters on the Draft EIR, their associated agencies, and assigned letter identifications are listed in the table below. This section presents the comment letters received on the Draft EIR. Each comment letter received during the public comment period was bracketed to identify individual topics, and individual responses to those comments are provided. In situations where the comment issue(s) was identified in multiple letters, a "Master Response" was prepared to address the general concern, and the response to comment may refer the reader to one of the Master Responses provided above. If a subject matter of one letter overlaps that of another letter, the reader may be referred to more than one group of comments and responses to review all information on a given subject. Where this occurs, cross-references are provided.

¹ Association of Bay Area Governments, "San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA)," September 2015; page 2. Available at: https://www.abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf. Reviewed August 20, 2018.

Comment Letter 1

From: Ed.Stevenson@acwd.com
To: DWage@fremont.gov
Cc: Traci.Fung@acwd.com; Toni.Lyons@acwd.com; Chris.Delp@acwd.com; Shane.Onesky@acwd.com; Juniet.Rotter@acwd.com; Steven.Inn@acwd.com; Michelle.Myers@acwd.com; Thomas.Niesar@acwd.com; Leonard.Ash@acwd.com
Subject: ACWD Comments, Draft Final Environmental Impact Report for the Niles Gateway Mixed-Use Project
Date: Monday, July 9, 2018 8:14:52 PM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.jpg](#)
[COF Niles Gateway Mixed-Use Draft FEIR ACWD Comments 7-9-2018.pdf](#)

David, please find ACWD's (slightly tardy) comments on the Draft FEIR attached. Thank you,

Ed Stevenson

Manager of Engineering & Technology Services

Alameda County Water District

43885 South Grimmer Boulevard

Fremont, CA 94538

Phone: 510.668.4401 Fax: 510.651.1760





DIRECTORS

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Finance

July 9, 2018

David Wage
 Associate Planner – Current Development
 City of Fremont, Planning Division
 39550 Liberty Street
 Fremont, CA 94538

Dear Mr. Wage:

Subject: Draft Final Environmental Impact Report for the Niles Gateway Mixed-Use Project

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the Draft Final Environmental Impact Report (Draft FEIR) for the Niles Gateway Mixed-Use Project (Project) located at 37899 Niles Boulevard. ACWD previously reviewed and provided comments to the City of Fremont in letters dated: May 13, 2008, on the Notice of Preparation and Draft Environmental Impact Report for the demolition of the structures at the subject property; November 3, 2008, on the Notice of Preparation and Draft Environmental Impact Report; May 25, 2011, on the Preliminary Plan Review Procedure documents; January 14, 2015, on the Draft Initial Study and Mitigated Negative Declaration; July 14, 2017, on PLN2014-00338 Niles Gateway Mixed-Use; and February 22, 2018, on the Notice of Preparation of a Draft Environmental Impact Report (FEIR). The City of Fremont (City) is encouraged to review all previous comments to ensure that the FEIR addresses all ACWD comments and concerns.

In addition, the following supplemental comments are provided based upon ACWD’s review of the Draft FEIR:

1. Access and Circulation:

ACWD acknowledges and appreciates the City’s incorporation of ACWD’s previous comments regarding continued access through the south end of Niles Boulevard to ACWD recharge facilities along Alameda Creek located southeast of the Project site. The City and Project proponent should continue to coordinate with ACWD on the granting of the minimum 15 foot-wide, non-exclusive easement to ACWD for continued access to its facilities along Alameda Creek prior to the vacation of Niles Boulevard.

1-1

2. Hazards and Hazardous Materials:

ACWD previously requested that a mitigation measure be added to ensure that the planned public water system will be constructed in “clean corridors” for the protection of the health and safety of workers both during installation of the public water system and during its long-term routine operation, maintenance and eventual replacement. In addition, ACWD previously requested that Mitigation Measure HAZ-1 be revised to include a requirement that ACWD review and approve the Risk Management Plan and revised land use conditions. The Draft FEIR includes a response that Mitigation Measure HAZ-1 “would ensure the project complies with the land use conditions established for the site.” No additional mitigation measure was added regarding clean corridors, and Mitigation Measure HAZ-1 was not revised to include a requirement that ACWD review and approve the Risk Management Plan and revised land use conditions.

1-2

Please note that ACWD may require, as a condition of its various development-related approvals, and in addition to the Risk Management Plan if necessary, that all public water system infrastructure must be installed within such clean corridors so that the soil or groundwater do not pose a risk to the health and safety of workers, and such that no special construction measures must be taken to comply with any Risk Management Plan or to protect worker health and safety. The use of upgraded water distribution materials for the protection of the water system and water quality may also be required.

3. Hydrology and Water Quality:

a. ACWD acknowledges and appreciates that the City and Project proponent have incorporated ACWD’s previous comments regarding site stormwater drainage and ACWD’s request that the planned location of such discharges be relocated downstream of ACWD Rubber Dam #3 in Alameda Creek. ACWD notes that the Project Description has been revised accordingly.

1-3

b. ACWD previously requested that a mitigation measure be added to address the potential for the proposed development to increase leaching of 2,4-Dinitrotoluene (2,4-DNT) to groundwater. The City’s response to ACWD’s comment states that “Section 4.8 (Hazards and Hazardous Materials) of the Initial Study (Appendix A) addresses the comment.” However, Section 4.8 refers specifically to the updated Risk Management Plan and revised land use conditions for the Project site that will be submitted by Project proponents to the Regional Water Quality Control Board for its review and approval and this process is not related to the City’s Municipal Regional Stormwater NPDES Permit.

1-4

The proposed development could increase the potential for leaching 2,4-DNT to groundwater because bio-retention ponds BR #3 and BR #4 would employ focused infiltration as a design strategy for disposal of some of the captured and/or ponded stormwater runoff within the Fuel Oil Storage Area (reference Figure 3-10, page 3-19 of the Draft FEIR for a detail drawing of the bioretention system). Therefore, ACWD’s comment should also be addressed in Section 4.9 Hydrology and Water Quality, specifically the

City of Fremont
Page 3
July 9, 2018

section related to the City's Municipal Regional Stormwater NPDES Permit. The provision of the implementation of Low Impact Development measures includes the review of existing soil conditions to ensure they allow for safe infiltration of stormwater into the ground and that no risk of groundwater contamination exists (both from the stormwater itself being infiltrated and leaching of contaminants within existing soil conditions). Please note that ACWD may require, as a condition of its various development-related approvals, and in addition to the Risk Management Plan if necessary, that the potential for leaching 2,4-DNT to groundwater be minimized. This may result in design modifications that would preclude infiltration of storm water from BR #3 and BR #4.

↑
1-4
cont.

4. ACWD Contacts: The following ACWD contacts are provided so that the City can coordinate with ACWD as needed during the CEQA and Project development processes:
 - a. Michelle Myers, Groundwater Resources Manager, at (510) 668-4454, or by email at michelle.myers@acwd.com, for coordination regarding ACWD's groundwater resources, groundwater wells, and drilling permits.
 - b. Chris Delp, Project Engineering Supervisor, at (510) 668-4422, or by email at chris.delp@acwd.com, for coordination regarding existing and proposed ACWD facilities, including access from Niles Boulevard.
 - c. Juniet Rotter, Development Services Supervisor, at (510) 668-4472, or by email at juniet.rotter@acwd.com, for coordination regarding public water systems and water service.

Again, thank you for the opportunity to comment on the Draft Final Environmental Impact Report for the Niles Gateway Mixed-Use Project.

Sincerely,



Ed Stevenson
Manager of Engineering and Technology Services

jr/tf

By Email

cc: Toni Lyons, ACWD
Chris Delp, ACWD
Shane O'Nesky, ACWD
Juni Rotter, ACWD
Steven Inn, ACWD
Michelle Myers, ACWD
Thomas Niesar, ACWD
Leonard Ash, ACWD

Letter 1 Response – Alameda County Water District (ACWD)

- 1-1 The comment acknowledges the project’s provision of a private street where the current right-of-way dead-ends at the Alameda Creek Trail and seeks to ensure that Alameda County Water District (ACWD) personnel will continue to have access along this street to ACWD facilities along Alameda Creek. The comment is noted, and the City and project applicant will continue to coordinate with ACWD regarding continued access to ACWD recharge facilities along Alameda Creek. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 1-2 The comment states that ACWD had previously requested a mitigation measure ensuring that potable water service to the project site be installed within so-called “clean corridors” to protect utility worker safety, and that ACWD had requested that it be granted authority to review and approve of the required Risk Management Plan for the site. The comment also states that ACWD may require such “clean corridors” as its own condition of utility installation. The prior version of the project that was approved (and subsequently overturned by the Alameda County Superior Court) included a condition of approval, Special Project Condition B-2, ACWD Permits and coordination, as follows:

To ensure that groundwater is protected and stormwater management system is designed to minimize pollutants, the applicant and/or developer shall coordinate and seek approval of all applicable permits required by the Alameda County Water District (ACWD) prior to commencement of any grading or development of the project. The applicant and/or developer shall closely coordinate and share its environmental remediation plan and any amendments thereto approved by the Regional Water Quality Control Board (which is the current lead regulatory agency for the remediation), ensure that the public water system extension and all appurtenances will be constructed in ‘clean corridors,’ obtain necessary permits for drilling and well destruction, and coordinate drainage design and stormwater pollution prevention planning and implementation with ACWD. The applicant and/or developer shall also coordinate with ACWD on access and improvements along the south end of Niles Boulevard and/or planned linear park area.

Imposition of a comparable condition for the currently proposed project would ensure that installation of utility lines would not result in worker exposure to potential soil or groundwater contamination, and would obviate the need for a mitigation measure. However, as explained in the Initial Study, remediation efforts undertaken by the project sponsor since 2015, and approved by the Regional Water Quality Control Board (RWQCB), have rendered the project site suitable for residential use. Therefore, residual contamination is not anticipated to be present in quantities or concentrations that could result in adverse health effects. Regarding the Risk Management Plan, Mitigation Measure HAZ-1 requires that an updated Risk Management Plan be reviewed and approved by the RWQCB prior to issuance of grading or building permits. The RWQCB is the regulatory agency with authority over site remediation and, as such, is the agency

- that will review and approve the updated Risk Management Plan. ACWD will be able to consult with RWQCB staff and comment on the updated Risk Management Plan. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 1-3 The comment acknowledges that the proposed project would discharge stormwater downstream of SVWD's #3, as previously requested by ACWD. The comment is noted. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 1-4 The comment states that ACWD had previously requested the inclusion of a mitigation measure addressing the potential for the project to result in leaching to groundwater of the chemical 2,4-Dinitrotoluene (2,4-DNT). The comment specifically states that this potential exists at the project's proposed bioretention areas #3 and #4. In response to this comment, the project sponsor has agreed to construction bioretention areas #3 and #4 with impermeable liners below the layer of filter media/planting soil mix. At these two bioretention areas, the filter media/soil mix would provide stormwater treatment, as at the other bioretention areas. However, instead of then percolating into the ground, the treated stormwater would be piped to the outfall near the southwest corner of the project site. This would obviate the potential for leading of 2,4-DNT to groundwater at these bioretention basins and would preclude the need for a mitigation measure. Accordingly, the comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

Comment Letter 2

From: CMarks@alamedactc.org
To: DWage@fremont.gov
Subject: Alameda CTC Comments on Niles Gateway DEIR
Date: Monday, July 9, 2018 5:41:51 PM
Attachments: [image001.jpg](#)
[20180709101637.pdf](#)

Hi David,

We have reviewed the Niles Gateway DEIR and found the project to be exempt from review under our Congestion Management Program, Land Use Analysis Program, as it will generate fewer than 100 net pm-peak trips. We do not have any further comments. Please see the attached letter.

2-1

Best,

Chris G. Marks, Associate Transportation Planner
Alameda County Transportation Commission
1111 Broadway, Suite 800, Oakland, CA 94607
510.208.7453 direct dial | 510.208.7400 main line
Email: cmarks@alamedactc.org Website: www.alamedactc.org
Facebook: www.facebook.com/AlamedaCTC Twitter: [@AlamedaCTC](https://twitter.com/AlamedaCTC)

MissionStmt1





July 9, 2018

David Wage
City of Fremont
Planning Division
39550 Liberty Street
Fremont, CA 94537

SUBJECT: Response to the Notice of Availability of a Draft Environmental Impact Report (DEIR) for the Niles Gateway Mixed-use Project

Dear Mr. Wage:

Thank you for the opportunity to respond to the Notice of Availability of a Draft Environmental Impact Report (DEIR) for the Niles Gateway Mixed-use project. The project is located on the 6.07-acre former Henkel/Schuckl cannery site (demolished in 2009), in the City of Fremont at 37899 Niles Blvd. The project will allow 95 residential units (townhomes and condominiums) and 5,883 square-feet of retail/restaurant space, and 1,450 square-feet of community space on a now-vacant lot.

We have reviewed the DEIR and determined that the proposed project is estimated to generate fewer than 100 new pm-peak hour trips before applying reductions for pass by and non-auto trips (trips anticipated to be shifted to other modes), and therefore would not meet the Congestion Management Program trip generation threshold. Therefore, this project is exempt from review under the Congestion Management Program Land Use Analysis Program.

2-2

Thank you for the opportunity to respond to this DEIR. Please contact me at (510) 208-7426 or Chris G. Marks, Associate Transportation Planner at (510) 208-7453 if you have any questions.

Sincerely,

Saravana Suthanthira
Principal Transportation Planner

cc: Chris G. Marks, Associate Transportation Planner

Letter 2 Response – Alameda County Transportation Commission (Alameda CTC)

- 2-1 The comment states that the Alameda County Transportation Commission (Alameda CTC) reviewed the Draft EIR and because the project would generate fewer than 100 new p.m. peak hour trips, the project is exempt from review under the Congestion Management Program (CMP). The comment is noted and no further response is required.
- 2-2 The comment again indicates that the proposed project would be exempt from review under the Alameda CTC CMP, as the proposed project's estimated trip generation would be below the CMP trip generation threshold. The comment is noted and no further response is required.

From: Robert Daulton
To: [David Wage](#)
Subject: PROTECT NILES comments on Niles Gateway DEIR
Date: Sunday, July 8, 2018 11:34:59 PM



PROTECT NILES comments on Niles Gateway DEIR

Mr. David Wage
Associate Planner
City of Fremont, Planning Division
dwage@fremont.gov

Mr. Wage,

Protect Niles (PN) is a group of concerned Niles residents who seek to ensure that the proposed development at 37899 Niles Boulevard is thoroughly evaluated in an Environmental Impact Report (EIR). On behalf of this group, we present the following comments and suggestions in regards to the Niles Gateway Project Draft EIR published by the City of Fremont.

PN contends the Niles Gateway Project Draft EIR is purposely deficient in that it focuses only upon Aesthetic Resources and Transportation and Traffic. This is inadequate for understanding the actual scope of impacts this project will have on the surrounding community. Areas pursuant to CEQA guidelines which must be considered in addition to these include at the very least:

- Geology and Soils, and
- Hydrology and Water Supply

As well, a more comprehensive examination of the areas of Land Use, Noise, and Population would demonstrate the willingness of the City of Fremont to respond in depth to the concerns of the community regarding the difficulties they may encounter as a result of this project.

The mitigations suggested for the two main issues examined by the DEIR are non-existent.

A review of events

Instead of offering a “best practice” approach to the CEQA process, the City has taken the community on a wild sleigh ride of responses to this project beginning with its outright rejection by the Historical Architectural Review Board. Next, a blasé acceptance of the developer’s every wish by City Council vote resulted in an initial massively flawed design being foisted upon the community. In a clear case of prejudice of a city government against its citizens, the City of Fremont presumed that it was their right to ignore the environmental laws of the state to support a preferred developer. City staff sidelined the concerns of the Niles community, and Protect Niles was formed to challenge in court the legality of the City’s actions. The suit resulted in a judgement by the Superior Court of Alameda requiring an EIR for this project. The finding was largely based upon the Aesthetics and Traffic issues which were obvious and apparent to HARB and to isolated members of the City Council and the community at large.

In Chapter 1, Section C, the DEIR makes note that, “The City, as lead agency, determined that preparation of an EIR was necessary for the proposed project because there was ‘substantial evidence that the proposed project may have a significant effect on the environment.’” Please correct this misleading statement. The City of Fremont fought against an EIR throughout negotiations with community groups and all the way to the Superior Court of Alameda.

In contrast to the abbreviated scope of the present DEIR, the Court did NOT require the EIR be limited to these two issues of Aesthetics and Traffic alone. Once again it appears that the City and the developer are proceeding to grudgingly perform the absolute minimum required of them in order to pass muster as ordered by the Superior Court rather than go the extra mile to make certain this project results in a benefit for the surrounding community.

3-1

Areas of concern

Chapter 1. E - Alternatives.

The alternative of a 60-unit Reduced Density was summarily rejected without cause given. We request that this 60-unit alternative be addressed and examined with a plan, a depiction, and discussion.

This section states, “All three alternatives **would reduce** the significant and unavoidable cumulative impact related to traffic.” And yet Table 1, Impact 4.B 2 states that mitigation measures of these traffic issues are “not feasible”. Clearly, a lower density project reduces significant cumulative traffic impacts. This is indeed a mitigation which can be accomplished by the lower Reduced Density Alternative.

3-2

Chapter 4. Aesthetic Resources

While the proposed Alternative 2 is an improvement, the architectural design remains unchanged from the original proposed design. The Fremont Historical Architectural Review Board found this design “incompatible” with Niles’ existing, predominately Craftsman design. The HARB cited the excessive use of metal and insufficient use of brick or tile, and that the architecture does not relate to the historical character of the rest of Niles.

The project does not conform to the Niles Design Guidelines & Regulations, which were adopted with significant input from the community. The Niles Gateway Project is identified in the Planning documents as part of the Niles Town Center, and should be subject to the same requirements regarding width of sidewalks (15 feet on Niles Blvd.), width of public streets, and parking requirements.

The City has consistently attempted to distance this project from the Niles Design Guidelines, while simultaneously positioning this project as a continuation of the commercial core of Main Street Niles. You cannot have it both ways. In order for this project to assimilate with downtown shopping district of Niles in an integrated fashion, it must embrace the Guidelines. This would seem to have been the simplest part of this project, as well as the most obvious given the occupancy of this site at the very entryway to the historic town center. The project is squarely within the Historic Overlay District. Fremont General Plan, Policy 4-1.7 seems particularly applicable here:

3-3

“...community plans should include design guidelines that express the desired qualities of centers, corridors, and neighborhoods.”

Niles has a well defined set of regulations and guidelines developed by a coalition of people from the

Niles community and the city in 2002. The site was not included in the commercial core at the writing of the Niles Regulations and Guidelines due to it still being zoned as light industrial. The proposed Gateway Project is extending the Commercial Core to this site and it will stand at the entrance to the Commercial Core. It functions as, and was sold to the community as, an extension of the existing Commercial Core. To exempt the project from the strictest interpretations of the district’s Design Guidelines is a degradation of the historic quality and flavor of the area as a whole, and will impact the tourism, shopping, overall aesthetics and quality of life of the Niles community.

Many of the design elements presented are architecturally inappropriate according to the Niles Guidelines:

- The use of roll-up doors
- The lack of Kraffile accents
- The use of ground to ceiling windows.
- The use of cookie cutter awnings, which are now common among most all new commercial building designs throughout other projects in other communities.

As members of our organization who actually participated in the writing of the guidelines have stated, the purpose of the guidelines is to protect our community and historical downtown area from a modernizing of the architecture, or degradation of the historical character of the central district of Niles.

There are also concerns about adding 13 new vacancies to the commercial core of Niles. There are anywhere from 5-8 vacant retail storefronts in the HOD at any given time. The rents have gone up on some buildings which have made it difficult to sustain businesses. There is a great concern that adding 13 units (which will probably have a price of around \$1million each) will raise the costs of the downtown and further force more businesses out. We also would question the common sense aspects of purposely positioning residential units above a restaurant. Neither occupant is likely to enjoy such a relationship.

3-3
(cont'd.)

3-4

Comment Letter 3

There is a lack of adequate traffic flow improvements, such as roundabouts and/or other street improvements on Niles Blvd. We suggest the incorporation of a roundabout at the corner of Niles Boulevard and Niles Canyon Road as an alternative design.	3-5
There is not enough off-street parking, and curb space for drop-off and pick-up of passengers, of particular importance in this age of ride-sharing services such as Uber and Lyft.	3-6
Parking is a CEQA issue in Niles. This is based on Alameda County Superior Court findings, and the City of Fremont City Council official declaration of acceptance of then over 260 parking deficiency in the adjacent Parking District.	3-7
Alternative B, calls of an additional 1,000 square feet of Commercial Space, without a discussion of Commercial Parking. On-street Parking on the Project Site frequently does not have a sidewalk on the pedestrian side of the parking space. Particularly for Commercial Parking spaces an adjacent sidewalk for parallel parking spaces should be required.	3-8
Some of the proposed diagonal parking on Niles Boulevard is unsafe, due to the lack of line-of-sight clearance from curves in the road.	3-9
The unbroken line of on-street Parking spaces is a visually offensive, and should be in violation of City of Fremont Parking codes. Fremont Parking codes require landscape breaks in parking lots.	3-10
Curb space for drop-off and pick-up should be required in this Planned Unit Development.	3-11
The Niles Gateway Project would benefit greatly from a Loop Road, designed to City of Fremont Standards. This is particularly true if a "Roundabout" is not included at the entrance intersection at the Railroad Underpass. Driveway circulation routes should be not be allowed in "driveways" (Roadways bordered on both sides by an unbroken line of garages). A "Loop Road" to City of Fremont Standards would be of great benefit to the Community, when a future the Council of the City of Fremont directs an intertie-connection to the existing street network in Niles (if only for Special events which have a temporary closure of Niles Boulevard).	3-12

Further issues

Geology and Soils

Comment Letter 3

The EIR makes no mention of the historic use of the project property as a town dump, despite documents submitted to the City in previous Comments dating from 1968 that show this. There is a need for 20 ft. deep trenching (not geotechnical boring, which is designed to identify contaminants in the soil, not underlying deep soil structure) in order to assure that the buildings will not be built on unstable rubble.

3-13

The response to the Scoping document for this EIR seems to confuse the Mission Fault (also known as the Southeaster Extension of the Hayward Fault - identified in the Uniform Building Code adopted by the City of Fremont) with the more distant Hayward Fault. The Mission Fault is a hidden Thrust Fault with evidence of a potential lateral and vertical accelerations equal to or greater than the Hayward Fault. Note: The Northridge Earthquake was particularly damaging due to the vertical accelerations.

3-14

There is visual evidence on the site of recent excavations of a depth of more than three feet of significant sections of land near Alameda Creek. This removal of debris and rubble was done in very recent years and is not documented in the report. The entirety of the site was once in the course of Alameda Creek. The bluff at the end of 2nd Street was an historic bank of Alameda Creek. The entirety of the subject site was subject to flooding and was used as an unregulated landfill. A boring in the earlier site evaluations encountered construction debris at a depth of 15 feet.

3-15

As evidenced by the failure of the roadway on the adjacent Chase Court and 300-feet of 3rd Street, rubble cannot be compacted. This landfill needs to be investigated by trenching and characterized, prior to approval of the Project. The current response to the Scoping EIR indicates that the landfill will be investigated as part of the issuance of Grading Permits. There is no evidence of Grading Permits for the recent excavations at the Alameda Creek side of the Niles Gateway Project site. A Mitigation for a recent Project in Santa Clara County, which was being built on a prior landfill, was to place a 2-foot thick layer of clay over the site to prevent release of Methane under the new construction.

3-16

Documentation of the Niles Gateway Landfill, may include maps of known and suspected deposits of toxic sludge from Pacific States Steel, maintained by Alameda County Flood Control, Hayward, CA. Trenching on embankments done by Corps of Engineers for the Flood Control Project on Alameda Creek. Among the potential holders of these documents is Alameda County Water District.

3-17

Hydrology and Water Supply

This project exists directly adjacent to a main water supply for the City of Fremont, and a scenic natural resource for the entirety of Alameda County. The omission of a comprehensive overview of the water issues associated with the development is a dangerous and negligent oversight.

3-18

The latest plan has removed the detention tank previously located at the end of Niles Boulevard - has it been relocated?

3-19

Comment Letter 3

A pump is required at the south-east corner of the development to handle accumulated runoff. Is there a contingency for pump failure? What parts of the development may flood when this pump fails?

3-20

The stormwater runoff is now to be channeled through a new 24" pipe, replacing the old, existing 10" pipe at the southeast corner of the site. This new installation is subject to permitting by the Regional Water Quality Control Board.

3-21

The northern stretch of Street A drains into an inadequate storm drain at the intersection of Niles Boulevard and Niles Canyon Road. This intersection is commonly flooded during heavy rains. The stormdrain there empties into an existing 24" outfall under the train bridge, directly into the accumulation pond created by rubber dam No. 3. This outfall is underwater during periods when the dam is filled, and fish kills have occurred in this area before due to runoff. This entire system along the former public right-of-way needs to be examined and assessed for upgrades.

3-22

In sum

- This project is an extension of the Commercial Core of the Niles HOD.
- The project does not comply with the Niles Design Guidelines, and presents as out of character with the surrounding community.
- The impact of traffic in the vicinity of the project can be mitigated by lower density.
- There is no reason given for the lack of a developed plan for a 60-unit project.
- The entire scope of this EIR is unnecessarily abbreviated and incomplete.
- Protect Niles supports the lowest possible density development as providing the greatest mitigation of identified impacts.

3-23

Protect Niles views the DEIR as presenting the absolute minimum effort required by the judgement rendered by the Superior Court of Alameda. The City of Fremont and the developer of the site have fought against an in-depth examination of the impacts of this project for years, preferring at great cost of time and money to present the community with a take-it-or-leave-it project. Forced by the community to comply with the letter of the Court's judgement, the City has again fallen short of the spirit of effort and vision that would produce a project of excellence for the benefit of the residents of Niles.

3-24

Letter 3 Response – Protect Niles

- 3-1 The comment describes as misleading the Draft EIR’s statement that the City of Fremont determined that an EIR was required in light of substantial evidence of a potential significant environmental effect. The comment states that the City opposed preparation of an EIR until an EIR was required by Alameda County Superior Court order. Finally, the comment states that the court did not order that the scope of the EIR be limited to Aesthetics and Traffic. The comment is noted. The City acknowledges and describes the previously approved project and subsequent lawsuit (*Protect Niles v. City of Fremont*, Case No. RG15-765052) on page 3-1 of the Draft EIR. The revised project (the current proposed project) underwent a new review and subsequently a new CEQA process. As described in Master Response 1 in Section 3.2 of this chapter, the City has prepared the Initial Study and EIR in compliance with CEQA and the CEQA Guidelines with respect to process, content, and level of analysis. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-2 The comment states that the 60-unit alternative, which the Draft EIR “considered but rejected,” should have been fully analyzed. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the feasibility of proposed alternatives, including the 60-Unit Reduced Density Alternative, a complete analysis of which has been added to the EIR. The comment is correct in stating that a 60-unit project would reduce significant cumulative traffic impacts, as would Alternative 1 (86 units) and Alternative 2 (75 units). As described on pages 5-13 and 5-14 of the Draft EIR, due to the reduction in residential units in comparison to the proposed project, the proposed alternatives would eliminate the significant-and-unavoidable impact related to cumulative intersection operations and would also further reduce less-than-significant impacts on other resource topics while meeting most of the basic objectives of the proposed project. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-3 The comment states that while Alternative 2 (75-Unit Reduced Density Alternative) “is an improvement” [it is unclear whether the commenter means “an improvement” compared to the proposed project or compared to the previously approved project], the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*, including certain architectural details. The comment also states that the project should be subject to requirements applicable to the Niles Town Center. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*, which also applies to Alternative 2.

Concerning the Niles Town Center, “Town Center” is a General Plan designation and Town Center- Pedestrian is a zoning designation applicable to many properties along Niles Boulevard, separate from the Niles Historic Overlay District and the *Niles Design Guidelines and Regulations*, which apply within the Commercial Core of the Historic

Overlay District. As stated on page 3-1 of the Draft EIR, among the requested approval actions for the proposed project is a General Plan Amendment to change the land use designation from Service Industrial (Special Study Area) to Town Center and Medium Density Residential. Therefore, if the project is approved, the northern portion of the project site (north of the 90-degree turn of Niles Boulevard), which would accommodate the CRAFT building and its retail and restaurant space, would be designated Town Center under the General Plan. (The remaining, fully residential, portion of the site would be designated Medium Density Residential.)

The Community Plans Element of the Fremont General Plan, includes policies applicable to the Niles Town Center, which the project would be subject to:

- NILES COMMUNITY PLAN POLICY 11-8.1: Enhancing the Character of Niles Town Center – Enhance the character of Niles Town Center by preserving and restoring historic buildings, attracting new infill development that is compatible in scale and design with existing development, continuing streetscape and signage improvements, enhancing gateways, and maintaining a comfortable environment for pedestrians.
- NILES COMMUNITY PLAN POLICY 11-8.2: Opportunity Sites in Niles – Direct development in Niles to key opportunity sites, as identified in this Community Plan. Development on these sites should increase retail activity, provide a mix of housing types, eliminate gaps in the development pattern, and complement historic architectural styles.
- NILES COMMUNITY PLAN POLICY 11-8.7: Pedestrian-Oriented Town Center – Maintain a pedestrian-oriented environment along Niles Boulevard and the lettered cross streets extending to Second Street. Consistent with the Community Character Element, new buildings on Niles Boulevard should be constructed to the front setback, with parking located to the rear. In the heart of the business district, the goal should be continuous ground floor storefronts along the boulevard, complemented by an attractive, pedestrian-friendly streetscape.
- NILES COMMUNITY PLAN POLICY 11-8.3: Niles Retail Mix – Expand the mix of retail uses in Niles, leveraging the District’s historic character to retain existing businesses and encourage new retail uses for residents, visitors, and the local workforce.

The project would be consistent with the above policies because it would eliminate an abandoned and blighted key gateway property in Niles and with its completion would enhance the historic character of Niles’ town center, create a sense of arrival to the Niles district and the Alameda Creek Trail, and would reinforce the vitality and eclectic nature of the Niles community. The project would also provide increased retail opportunities, a mix of housing types, and streetscape improvements with active ground-level storefronts that would be compatible with the historic character of Niles Boulevard and the Niles HOD guidelines. Furthermore, the project would include street improvements that would generally be consistent with City standards for Niles Boulevard, including sidewalk and street widths, as well as meeting the City’s off-street parking requirements. The project is seeking two deviations from City standards, for 12-foot sidewalks (instead of the required

14-foot width) along a portion of the Niles Boulevard frontage to accommodate variation in the depth of the building facade; and to provide a 4-foot wide step in parts of the Niles Boulevard sidewalk to accommodate vertical elevation differences between the parking and the retail frontage.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 3-4 The comment expresses concern over the addition of new retail spaces to Niles in light of existing retail vacancies and increasing retail rents. In general, retail vacancy is an economic and social effect that is not treated as a significant effect on the environment under CEQA. However, CEQA Guidelines Section 15131(a) acknowledges that an EIR “may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. ... The focus of the analysis shall be on the physical changes.” Accordingly, the Court of Appeal has held that “urban decay” may be a physical effect that requires under CEQA. However, urban decay is more than simple retail vacancies. As one court has defined it, urban decay is:

... physical deterioration of properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and structures, and the health, safety, and welfare of the surrounding community. Physical deterioration includes abnormally high business vacancies, abandoned buildings, boarded doors and windows, parked trucks and long-term unauthorized use of the properties and parking lots, extensive or offensive graffiti painted on buildings, dumping of refuse or overturned dumpsters on properties, dead trees and shrubbery, and uncontrolled weed growth or homeless encampments.²

The foregoing does not describe the Niles Commercial Core. The buildings along Niles Boulevard, although many date to around the turn of the 20th century, are generally in good condition and well-maintained. While there are some commercial vacancies, there are no demonstrably abandoned buildings, nor are doors and windows boarded up. In the case of the proposed project, although there would be 13 dwelling units in the CRAFT building, four would be townhouses situated perpendicular to Niles Boulevard and not atop ground-floor retail spaces, while two other dwelling units would be above the proposed restaurant space at the north end of the project’s Niles Boulevard frontage. In terms of retail space, the building is designed to be partitioned into between four and seven storefronts along an approximately 250-foot-long frontage, and the total amount of retail space proposed is less than 5,900 square feet. The 250-foot frontage is less than the roughly 300-foot length of the shorter blocks in the Niles Commercial Core (e.g., between H and I Streets). Therefore, assuming storefronts of comparable depth and assuming existing retail occupancy of 80 percent, the increase in overall retail floor area along Niles Boulevard would be about 15 percent. Moreover, the retail space would be

² *Placerville Historic Preservation League v. Judicial Council of California*, 16 Cal.App.5th 187 (2017).

far too small to accommodate a so-called “big box” store—the kind of retail that is most commonly associated with the potential for resulting in closure of smaller, local businesses. At the same time, the proposed project would generate approximately 300 new residents in Niles who could patronize both existing and new retail stores and restaurants. In light of the foregoing, the proposed project would not result in urban decay, and no significant physical environmental effects would be anticipated with respect to retail vacancies.

Evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment are beyond the scope of CEQA (see Public Resources Code Section 21082.2(c) and CEQA Guidelines Section 15384). No evidence has been provided by the commenter relating to the displacement of businesses leading to physical environmental impacts. As a result, the comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 3-5 The commenter recommends installation of a roundabout “at the corner of Niles Boulevard and Niles Canyon Road.” While Niles Canyon Road does not begin until Mission Boulevard (as stated on Draft EIR page 4.B-3), it is presumed that the comment refers to the location adjacent to the project site where Niles Boulevard makes a 90-degree turn towards Mission Boulevard. The Draft EIR evaluated traffic safety (Impact 4.B-4, page 4.B-39), and identified no significant impacts. Therefore, no mitigation is required.

For information, a roundabout was considered at this location; however, it was determined not to be appropriate for reasons that include land acquisition cost, existing physical constraints, potential impacts on the feasibility of the project and compatibility with bicycle traffic. There is insufficient right-of-way available to accommodate a roundabout. The Niles Boulevard right-of-way is approximately 50 feet in width and in contrast, a roundabout typically requires a minimum of 105 feet in width.³ Therefore, right-of-way would need to be acquired from the property to the north, which is currently owned by Union Pacific Railroad. In addition, there is a significant grade change along the 90 degree turn towards Mission Boulevard, as Niles Boulevard goes under a railroad underpass. The grade change and existing railroad bridge are physical constraints that make a roundabout inappropriate at this location. Alternatively, the roundabout design could be shifted onto the project site; however, this would have an impact on the site design and overall feasibility of the project. Finally, the City is encouraging bicycle ridership with plans to install bike lanes along Niles Boulevard. City transportation staff has concerns about the compatibility of bicycle traffic with a roundabout in this location.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

³ Caltrans, *Highway Design Manual*, July 2, 2018; page 400-38 (page date, December 16, 2016). Available at: <http://www.dot.ca.gov/design/manuals/hdm/chp0400.pdf>. Reviewed August 1, 2018.

- 3-6 The comment states that the proposed project would provide insufficient parking and curb space for ride-share (e.g., Uber, Lyft) pickup and drop off. As described on page 3-17 of the Draft EIR, the proposed project would be required to provide 221 off-street parking spaces per the City of Fremont Municipal Code, Chapter 18.183.030. With a planned supply of 256 off-street parking spaces (excluding 25 on-street spaces), the supply would meet the City's requirements and provide an excess of 28 spaces. Concerning parking demand, application of standard rates published by the Institute of Transportation Engineers in *Parking Generation*, 4th Edition, indicates that the proposed project would have an anticipated demand for 230 parking spaces, which is less than the 256 spaces provided. Based on both the City's criterion and standard parking generation rates, it is anticipated that the parking supply as proposed would be adequate to meet the parking demand generated by the proposed project. Regarding pick-up and drop-off space for transportation network company (e.g., Uber and Lyft) passengers, the proposed project could easily accommodate pick-up and drop-off of such passengers on its internal street network. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-7 The comment states that parking must be analyzed under CEQA for a project in Niles, given the City-recognized parking deficit in the Niles Parking District. A discussion of parking is provided in Section 4.B, *Transportation and Traffic* of the Draft EIR, which concludes that the parking supply as proposed would be adequate to meet the parking required under the Fremont Municipal Code. As noted in Response 3-6, above, the project would provide more than sufficient parking to meet project demand. Therefore, the project would not generate excess parking demand that could affect the adjacent parking district. This comment does not present any additional information on environmental issues that have not been adequately addressed in the Draft EIR. No additional analysis is required.
- 3-8 The comment states that an alternative that provides more retail space than the proposed project should provide additional parking. Alternative 1 and Alternative 2 would each provide approximately 560 square feet more of retail/restaurant space than would the proposed project. Because the alternatives would be developed according to essentially the same site plan as the proposed project, albeit with less residential density, the number of off-street parking spaces provided would be similar under each alternative, and would continue to meet the Fremont Municipal Code requirement. This comment does not present any additional information on environmental issues that have not been adequately addressed in the Draft EIR. No additional analysis is required.
- 3-9 The comment expresses concern about the safety of the project's proposed diagonal parking spaces. As described on page 4.B-41 of the Draft EIR, diagonal parking typically functions acceptably on low-speed streets in commercial districts where drivers are already accustomed to watching for potential conflicts (i.e., cars backing out, pedestrians accessing vehicles, etc.), and given the low speeds, are able to easily stop in a short distance if a parking maneuver were to occur. For vehicles traveling 25 mph on Niles Boulevard, stopping sight distance at any of the diagonal parking spaces would exceed

- 150 feet, or the minimum stopping sight distance needed, based on Caltrans design standards. Therefore, the proposed diagonal parking design would be adequate to allow a vehicle on Niles Boulevard to stop if necessary to allow a car to back up from one of the diagonal parking spaces on Niles Boulevard, and no adverse circulation or safety affects are anticipated as a result of diagonal parking. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-10 The comment states that the contiguous on-street parking spaces would be in violation of the Fremont Municipal Code due to the lack of landscape breaks. Chapter 18.183 of the Fremont Municipal Code contains certain screening and landscaping requirements for off-street parking. However, as described on page 3-17 of the Draft EIR, the 25 new diagonal parking spaces on Niles Boulevard are considered on-street parking spaces and would not subject to the same regulations. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-11 The comment states that curb space for pickup and drop-off use should be included in the project. Please refer to response to Comment 3-6.
- 3-12 The commenter recommends that the project be designed to include a “Loop Road,” designed to City of Fremont standards.” As described in the Draft EIR on page 3-12, the project would include a private street that would circle the perimeter of the site, providing for two-way circulation and connecting to Niles Boulevard at each end. The Draft EIR evaluated on-site circulation (page 4.B-40) and identified no significant impacts. Therefore, no mitigation is required. Regarding a potential roundabout, please refer to response to Comment 3-5. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-13 The comment alleges “the historic use of the project property as a town dump,” and questions the reliability of the project’s geotechnical report. This statement appears to be based on internal correspondence from the Alameda County Water District (ACWD), dated between 1968 and 1986, that discuss the possibility of the deposition in the project vicinity of steel slag (a non-metallic byproduct of steel manufacture, often used in manufacture of concrete or used as road base) from the then-extant Pacific States Steel facility, which was located in Union City, about two miles north of the project site. The correspondence, submitted in response to the Notice of Preparation and included in Draft EIR Appendix B, does not conclusively demonstrate that any steel slag was deposited at the project site. In particular, the 1968 correspondence makes reference to slag being deposited via ACWD’s Vallejo Street gate on property owned by the construction firm Redgwick and Banke. According to a 1969 article in the Hayward Daily Review newspaper, the slag was, indeed, transported via Vallejo Street (on the opposite side of the Union Pacific Railroad tracks from the project site) and trucked west, beyond the site,

to the Redgwick and Banke property “at the end of Third Street fronting on Alameda Creek.”⁴

The commenter is incorrect that geotechnical borings are “designed to identify contaminants in the soil, not underlying deep soil structure.” While it is true that hazardous materials investigations undertake soil borings to evaluate potential soil and groundwater contamination, it is equally true that soil borings are a widely accepted method in geotechnical investigations for evaluation of subsurface soil conditions. In this instance, the Preliminary Geotechnical Investigation referenced in the Initial Study (Draft EIR Appendix A, Section 4.6, Geology, Soils, and Seismicity) undertook five exploratory borings, to depths of between 29 and 49 feet, to characterize subsurface conditions. The geotechnical report identified up to four feet of fill consisting of loose to medium dense silty sand with gravel, along with concrete rubble, but only in the northern portion of the project site, formerly occupied by industrial buildings. No such fill or rubble was identified in the two borings at the south end of the site, which were near the southern property boundary that abuts the Alameda Creek Trail.⁵ No evidence has been presented of the site having served as a “dump.” The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 3-14 The comment makes reference to the Mission Fault. As explained in Draft EIR Chapter 2 (page 2-13):

The California Geological Survey maintains a Fault Activity Map of California that shows where faults have been recognized and mapped. Based on the mapping, the Mission Fault is depicted with the purple color zone (undivided Quaternary). The purple zone depicts faults not considered to be active in the last 11,000 years and consequently not deemed active by the State.¹ The Mission Fault is positioned approximately 780 feet northeast of the site. Fault investigations are required when a property is within 500 feet of a mapped fault trace [reference omitted]. Thus, even if the Mission Fault were considered active, the project site is outside of the area that would require a fault investigation. Consequently, implementation of the proposed project would not expose residents, workers, or visitors to a significant risk associated with seismic hazards related to the Mission Fault.

FOOTNOTE

¹ California Code of Regulations Title 14, Section 3601 defines an “active fault” as a fault that has had surface displacement within Holocene time (about the last 11,000 years).

- 3-15 The comment states that excavation has occurred on the project site, that the site was once in the course of Alameda Creek, that the site was subject to flooding, that the site

⁴ Hayward Daily Review, “Potential Truck Problem Halted,” January 28, 1969; page 18.

⁵ Cornerstone Earth Group, 2013. *Preliminary Geotechnical Investigation*, August 30, 2013.

was used as an unpermitted landfill, and that construction debris was encountered in a previous soil boring at a depth of 15 feet.

Excavation has occurred on the project site since the 1970s in connection with hazardous materials remediation. While the project site may have, at one time, been within the course of Alameda Creek, the site is documented in its current configuration since at least the 1960s, and has been in industrial use since the early 20th century. Regarding the alleged use of the site as a landfill, please refer to response to Comment 3-13.

- 3-16 The comment states that rubble underlying the site cannot be compacted and that additional investigation is required with respect to subsurface conditions at the site. Please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-17 The comment states that the site may be underlain by “toxic sludge” from a nearby former steel mill. Please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-18 The comment states that the EIR does not include a comprehensive overview of the use of the adjacent Alameda Creek as a potable water supply and a scenic resource. Section 4.9 (Hydrology and Water Quality) of the Initial Study (Appendix A of the Draft EIR) analyzed construction and operation issues related to hydrology and water quality as a result of the proposed development of the project. Please refer also to response to Comment 3-13. Section 4.A, Aesthetics, of the Draft EIR discusses visual quality and aesthetic impacts. It is noted that the project would not preclude existing access via Niles Boulevard to the Alameda Creek Trail. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-19 The comment states that the project would not include a “detention tank” previously proposed for the dead end of Niles Boulevard. The comment presumably refers to a hydromodification vault that was proposed when the project proposed to direct stormwater to a nearby 15-inch outfall into Alameda Creek, upstream of the Alameda County Water District (ACWD)’s Rubber Dam #3. As described in the Draft EIR on page 3-17 and shown in Draft EIR Figure 3-10, the outfall is currently proposed downstream of Rubber Dam #3. This change was made at the request of ACWD. As also stated in the Draft EIR, the project would replace an existing 10-inch diameter outfall pipe at that location with a new 24-inch outfall pipe. With the proposed 24-inch pipe, the current plan does not include a hydromodification vault. As described on page 77 of the Initial Study, all site drainage would be either collected into proposed storm drains and routed to one of 12 bioretention basins on the project site, or flow as surface flow directly to one of the bioretention basins. The bioretention basins would be designed to treat the water, removing sediment, pollutants, trash and debris. The proposed 24-inch outfall

would convey the portion of this treated stormwater that does not infiltrate to groundwater into Alameda Creek.

- 3-20 The comment questions whether there is a contingency plan in the event of pump failure in the stormwater pump proposed to convey stormwater to bioretention area #8 at the southwest (not southeast) corner of the project site and asks whether on-site flooding would occur in the event of pump failure. As shown on project plans Sheet TM-5, water would arrive at bioretention area #8 from gravity flow. Once the water reaches bioretention area #8 (because the pipes are underground in the street and continually falling to lower elevations since its gravity flow) the water would be at too low an elevation to then begin its percolation through the engineered media filtration to be cleaned. Accordingly, water would be pumped up to the surface so that it can percolate back down through media to be cleaned and ultimately discharged into Alameda Creek.

In the event the pump breaks down, the water would still reach bioretention area #8 (because the system is designed with gravity flow conveyance). In this circumstance, however, instead of being pumped up to the surface, the water would begin filling the vertical catch basin until it reaches a 15-inch overflow pipe, at which point it would flow out and be discharged to Alameda Creek. Since water seeks its own level, as long as the overflow pipe is at a lower elevation than any of the storm drain inlets (which it is, as designed), the water would not back up to the point of overflowing out of any of the other area's storm drain inlets.

The proposed project would meet the requirements of the National Pollution Discharge Elimination System (NPDES) permit, Alameda Countywide Clean Water Program, as well as other local, State, and federal requirements for stormwater quantity and quality.

In addition, as described on page 2-16 of the Draft EIR, the project's drainage system would be subject to review by the Alameda County Public Works Agency for grading and drainage, which would ensure that the system, and the existing system it would connect to, is adequately constructed, sized, and managed to minimize or eliminate project effects related to water quality and stormwater discharge. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 3-21 The comment states that the proposed replacement of an existing 10-inch diameter outfall pipe at that location with a new 24-inch outfall pipe (see response to Comment 3-19, above) would require approval from the Regional Water Quality Control Board. The comment is noted. As listed on page 3-22 of the Draft EIR, the proposed project may require approval from the Regional Water Quality Control Board (RWQCB). The project applicant will comply with the RWQCB permit requirements. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 3-22 The comment states that Street A would drain into a storm drain at the intersection of Niles Boulevard and Niles Canyon Road, which is commonly flooded during rains. As

- stated on page 2-16 of the Draft EIR, the project sponsor revised the project to discharge stormwater downstream of Rubber Dam #3. This change would result in the majority of the site's stormwater being routed to the new 24-inch-diameter pipe located at the southwest corner of the site, and would no longer connect into the existing storm drainage system adjacent to UPRR. As shown on Figure 3-10 of the Draft EIR, only bioretention area #1 (BR #1) would have a connection to the existing storm drainage system. Nonetheless, as noted on pages 2-15 and 2-16 of the Draft EIR, the project must comply with a number of regulations. The drainage system would be subject to review by the Alameda County Public Works Agency to ensure that the system, and the existing system it (BR #1) would connect to, is adequately constructed, sized, and managed to minimize or eliminate project effects related to water quality and stormwater discharge. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-23 The comment summarizes prior comments, stating that the proposed project is “an extension of the Commercial Core area of the Niles HOD,” the project does not comply with the Design Guidelines, traffic impacts can be mitigated with lower density, the 60-unit alternative was rejected without sufficient reason, the scope of the EIR is “unnecessarily abbreviated and inadequate,” and the commenter supports “the lowest possible density development as providing the greatest mitigation of identified impacts.” As noted on page 4.A-12 of the Draft EIR, the proposed project is not located in the Commercial Core, rather the northernmost tip of the site abuts the southern boundary of the Niles Commercial Core Area. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project's compatibility with the *Niles Design Guidelines and Regulations*; Master Response 3 in Section 3.2 of this chapter for a discussion of traffic-related concerns and the feasibility of mitigation measures; Master Response 4 in Section 3.2 of this chapter for a discussion of the feasibility of proposed alternatives, including a 60-Unit Reduced Density Alternative; and Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedure and the scope of the EIR. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 3-24 The comment states that the Draft EIR represents the “absolute minimum effort” required by the Alameda County Superior Court judgment and claims that “the City has again fallen short of the spirit of effort and vision that would produce a project of excellence for the benefit of the residents of Niles.” The comment is noted and will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.



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Reply to: jewellspalding@mac.com
corrected

July 12, 2018

Via Email Only: dwage@fremont.gov
Mr. David Wage
City of Fremont
Planning Division
39550 Liberty Street
Fremont, CA 94537

Re: Draft Environmental Impact Report (DEIR),
Niles Gateway Mixed-Use Project

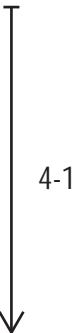
Dear Mr. Wage:

The following are comments from the Sierra Club, which have been prepared by the Southern Alameda County Group of the San Francisco Bay Chapter. Thank you for the opportunity to submit comments regarding the Niles Gateway Mixed-Use Project Draft Environmental Impact Report (DEIR). Further, we appreciate your extending providing us with a few additional days to provide these comments.

The Niles Gateway Mixed-Use Project, as described in the project’s January 2018 Initial Study, involves the development of 95 residential units, including 13 “Creative-Retail-Artist-Flex-Tenancy” (CRAFT) units 5,883 square feet of retail/restaurant uses and a 1,450 square foot community center. The site previously had been used for a variety of industrial uses during the last century. All structures associated with the previous industrial uses were demolished in 2009, leaving only building foundations and debris on the site. The project would require changing the City’s General Plan land use designation and rezoning the vacant industrial parcel to develop residential units.

- 1. The DEIR does not Adequately Deal with Impacts on Traffic, Trails and Transportation.

The project site is a roughly 6.8 acre triangular shaped parcel with frontage on the northeast on the west side of Niles Boulevard before it make a 90-degree turn eastward going under a railroad trestle and continuing eastwards towards the intersection of Mission Boulevard/Niles Boulevard/Niles Canyon Road. Vehicular access to the site is currently from Niles Boulevard. The project area is bounded on the southwest side by the Alameda Creek Trail and Alameda Creek.



The project would be located within very short distances of at least 7 overloaded traffic intersections, all but one of which (Niles Boulevard and J Street) already show very high peak hour intersection levels of service (LOS). Table 4.B-10 shows that 6 of the 7 intersections studied already are operating at unacceptable LOS F for both morning and evening peak commute times. (The final intersections operate at LOS E during much of the morning period and a faulty LOS C at other times.) While admitting that these problems are currently severe, the DEIR nonetheless assumes in its analysis that mitigation measures in the General Plan EIR Mitigation Monitoring Program for the intersection of Mission Boulevard and Mowry Avenue (one of the LOS F intersections) will be fully implemented by 2035. It then, using those mitigated data as a starting point, posits that since additional traffic from the project would not constitute a high enough percent increase in traffic congestion at these intersections, the impacts should simply be considered “significant and unavoidable,” and not addressed further.

4-1
cont.

Our primary concern is that the DEIR fails to propose any mitigation for these terrible traffic conditions, which obviously will be made worse by the project. Instead of relying on proposed mitigation measures for other projects, and adding this project to the list of “culprits” for the traffic nightmares developing on Mission Boulevard, CEQA requires consideration of some environmentally superior alternative. The DEIR does consider two alternatives, both with reduced density. The analysis of why the preferred Alternative 2 (75-unit reduced density alternative), is preferable however, is inadequate. The DEIR simply states, that since the number of dwelling units would be less, the expected daily trips and average delay attributed to the project would be reduced. That is obviously the case. But it does not mitigate the effects of the project, which admittedly makes the traffic situation worse. Using the same argument, however, the DEIR rejects, without adequate analysis, the 60-unit Reduced Density Alternative (Sec. 5-14). Why would this last alternative be “environmentally superior”?

Another concern is that the DEIR does not contain adequate analyses of impacts of the project on local trails or planned trail projects, or on local transit services.

4-2

Finally, in its analysis of the Roadway Network and Regional Roadways, the DEIR fails to include any analysis of effects of the proposed East-West Corridor, which would be located just north of the Niles District and the project, or changes to BART and ACE forward or other regional transit access currently being discussed.

4-3

2. DEIR Omissions.

Many items in the Initial Study and DEIR environmental checklist only address possible negative impacts during the project’s construction. Overall, this DEIR does not adequately address possible long-term environmental impacts from the increase in residents, businesses, cars, and human activity in an area proximal to Alameda Creek and Alameda County Water District’s (ACWD) water supply. Long-term and quantified impacts from this development in the following environmental checklist areas need to be included in the final EIR: Air Quality, Biological Resources, Greenhouse Gas

4-4

Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Land Use Planning, Transportation and Traffic, and Utilities and Service Systems. 4-4 cont.

A. Biological Resources. The Initial Study states that the project area contains suitable habitat for nesting and foraging (including for special-status birds), human habitation-adapted species, and remnant grassland-adapted species. Therefore, the EIR should state that applicable laws and codes (e.g.: Migratory Bird Act) would be followed. In addition, the EIR should mitigate vegetation removal by providing a list of plant species that will be used to landscape the project (the Project Description only notes "proposed" trees). The landscape design should benefit existing and documented species in the "project site", "study area" and "regional project area", by including native, drought-tolerant, and wildlife-attracting plants that will not require enhancements (fertilizers that could negatively impact adjacent terrestrial and aquatic habitats) or pesticides/herbicides. 4-5

B. Greenhouse Gas Emissions. The project's commitment to installing solar energy systems on both the CRAFT and townhomes should be included in the EIR. Also, though traffic is currently addressed in the DEIR as "significant and unavoidable," increased GHGs emitted by the addition of residents' and business visitors' cars, particularly during peak traffic hours when idling cars are concentrated in the project area, needs to be quantified, analyzed and included in the EIR. 4-6

C. Land Use and Land Use Planning. Neither the DEIR nor the Initial Study address impacts to Alameda Creek Trail and its users. While proposed tree types are listed in the Project Description, the DEIR does not state how landscaping on the Creek-adjacent edge of the project would impact wildlife that are commonly viewed (and listed in the Biological Resources section of the Initial Study) along the Alameda Creek Trail. 4-7

4. Recreation. Impacts on the Alameda Creek Trail (EBRPD), Quarry Lakes Regional Recreation Area (EBRPD), and Rancho Arroyo Park (COF) have not been addressed either in the Initial Study or the DEIR. 4-8

5. Air Quality. The DEIR mitigations for possible release of toxic air contaminants and particulate matter (PM2.5), only address their possible release due to direct construction activities such as emissions from delivery vehicles. The mitigation should also address the release of possible contaminants from any remnant hazardous materials in structures and soils from the project area's prior use. Also, as stated above under GHG Emissions, with traffic determined as "significant and unavoidable," local air quality impacts by the addition resident and business patron cars needs to be quantified and included in the EIR. 4-9

6. Hazards and Hazardous Materials. The Initial Study noted that the prior use of hazardous materials at this site makes it "less than significant with mitigations" of creating a hazard to the public or the environment. The DEIR states that this mitigation would be an updated Risk Management Plan and revised land use conditions to be submitted for approval to the Regional Water Quality Control Board 4-10

(RWQCB) before specific COF permits are applied for. In addition to providing the RWQCB approval to the COF, we request that the EIR include that notification of the availability of the updated Plan and land use conditions be provided to impacted residents (those notified of the availability of the DEIR) and interested parties (those submitting comments to the Initial Study and/or the DEIR), and that they be easily accessed through the City of Fremont’s website.

↑
4-10
cont.

The Sierra Club appreciates housing that provides incentives for reducing solid waste and promoting recycling that will help the environment, provisions for alternative energy supplies, green building materials, and energy efficiency measures, as well as supports walking, biking, and transit use. While the Niles Gateway Mixed-Use Project DIER does reference solar panels in Appendix A in accordance with the COF’s Climate Action Plan (CAP) and storm water runoff capture systems in the Project Description, it does not adequately address how the above incentives and provisions could be incorporated to reduce GHG emissions and minimize environmental impacts. In addition, inclusion of measured, long-term impacts due to increased residents, businesses/retail, and cars in a compact and biologically sensitive area and region are needed.

↑
4-11

Thank you for considering these comments. If you have any questions regarding them, please feel free to contact the undersigned. We look forward to seeing your responses and the final EIR.

Sincerely,

S/Jewell Spalding
Jewell Spalding, Chair

Southern Alameda County Group
San Francisco Bay Chapter
Sierra Club

cc: Chapter Chair & Office

Letter 4 Response – Sierra Club, San Francisco Bay

- 4-1 The comment states that the Draft EIR does not adequately analyze traffic impacts, assumes certain traffic improvements as called for in the Fremont General Plan, does not identify mitigation for significant traffic impacts. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic-related issues and the feasibility of mitigation measures. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the purpose of an alternatives analysis and the feasibility of proposed alternatives, including the 60-Unit Reduced Density Alternative. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 4-2 The comment states that the Draft EIR does not analyze effects on nearby trails or transit. The project site abuts the Alameda Creek Trail; however, construction activities would remain within the boundary of the site. Project construction would not extend into the trail area and, thus, would not block access to or prevent use of the trail. In addition, the Initial Study (Appendix A of the Draft EIR) identified construction-related mitigation measures which would reduce construction-period air quality and noise impacts to a less-than-significant level. Once constructed and as noted on page 3-5 of the Draft EIR, the project would provide a trail connection between the Niles Town Center, Alameda Creek, and the regional park system. Furthermore, new residential developments, are required to comply with City requirements with respect to payment of development impact fees. As described on page 100 of the Initial Study, “City Council passed resolutions implementing Development Impact Fees for all new development in 1991 to offset impacts on public facilities and services.” Thus, through payment of development impact fees for parkland acquisition and improvements within the City, the project would avoid any impacts to recreational resources. There is no reason to believe, nor does the comment identify any evidence, that the proposed project’s approximately 300 new residents (about 2.7 percent of the Niles population of approximately 11,100, and about 0.15 percent of the population of Fremont as a whole) would generate sufficient use of trail facilities such that degradation of existing or planned trail facilities would sustain substantial deterioration or overuse, nor would it be anticipated that any other, more distant, recreational facilities would be adversely affected by the project’s relatively small population increase.⁶ Moreover, as noted in the Initial Study on page 98, population growth at the project site would be consistent with Fremont General Plan projections and thus would be accounted for in regional open space planning.

Project impacts in relation to public transit (including Bay Area Rapid Transit (BART) and Altamont Corridor Express (ACE)) were analyzed on page 4.B-42 of the Draft EIR. The proposed project would increase traffic volumes on the area roadway network; however, the project would have a less-than-significant impact on the performance of

⁶ Population estimate for Niles based on 2010 census data for tracts 4411 and 4412; citywide population from 2010 census data in Fremont General Plan Housing Element, 2015-2023, page 74.

- public transit. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 4-3 The comment states that the Draft EIR fails to analyze effects of the East-West Corridor, or East-West Connector, which is a proposed connection between I-880 and State Route 238 (Mission Boulevard), using a combination of new roadways, improvements to existing roadways, and improvements to intersections along Decoto Road, Fremont Boulevard, Paseo Padre Parkway, Alvarado-Niles Road and Mission Boulevard.⁷ Under CEQA, the focus of the analysis is on the direct physical changes in the environment which may be caused *by the project* (emphasis added) and reasonably foreseeable indirect physical changes in the environment which may be caused by the project (CEQA Guidelines Section 15064(d)). The East-West Connector is appropriately factored in the EIR's cumulative conditions. As described on page 4.B-33 of the Draft EIR, the analysis is based on the Alameda Countywide Transportation Demand Model (ACTDM). The ACTDM was used to forecast the 2020 and 2040 traffic volumes and accounts for expected future developments including funded and approved transportation network and transit changes in Alameda County. The East-West Corridor project is accounted for in the ACTDM model.⁸ The cumulative traffic impact analysis in the Draft EIR, therefore, accounts for the traffic generated by planned and proposed developments in Alameda County, and appropriately evaluates the proposed project's impacts on the local and regional roadway system. Please refer to Response 4-2 above which addresses impacts to public transit.
- 4-4 The comment states that the Draft EIR analysis is limited to construction impacts and does not include operational impacts related to Alameda Creek and its use as a water supply, including impacts related to air quality, biological resources, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and land use planning, transportation and traffic, and utilities and service systems. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedure and the purpose of an Initial Study. Long-term operational impacts of the proposed project were characterized and quantified where appropriate in the Initial Study and Draft EIR for all applicable resource topics as follows:
- Operational impacts to air quality are quantified and described on pages 38-41 of the Initial Study (Appendix A of the Draft EIR). As described on pages 38 and 39 of the Initial Study, operational emissions of ROG, NOx, PM10, and PM2.5 would not exceed the applicable BAAQMD CEQA thresholds of significance.
 - Operational impacts to biological resources are described on page 49 of the Initial Study (Appendix A of the Draft EIR). Notably, once constructed, operation of the proposed project would have no impact on nesting birds because nests are not expected to be destroyed or adversely affected by ordinary operational activities.

⁷ Alameda County Transportation Commission, 2017. "I-880 to Mission Blvd. East-West Connector Capital Project Fact Sheet." March 2017.

⁸ Alameda County Transportation Commission, 2011. *Alameda Countywide Transportation Model Update Projections 2009 Model Documentation, Appendix F Transportation Project List*. August 9, 2011.

- Operational impacts associated with greenhouse gas emissions are described and quantified on pages 65-66 of the Initial Study (Appendix A of the Draft EIR). In particular, annual project emissions per service population would be 3.7 metric tons of CO₂e per year, which would be below the BAAQMD efficiency threshold of 4.6 metric tons of CO₂e per service population per year and, therefore, neither a significant impact nor a significant cumulative impact would result from the proposed project.
- Operational impacts associated with hazards and hazardous materials are described on pages 71-73 of the Initial Study (Appendix A of the Draft EIR). Overall, the project uses would not create a significant hazard to the public or environment through the routine transport, use, or disposal of hazardous materials. In addition, the project applicant conducted additional remediation efforts under the regulatory jurisdiction of RWQCB with the purpose of removing or amending several restrictions associated with previous remediation efforts that would allow development of residential uses on the project site, thereby ensuring that subsurface soil and groundwater quality is safe for residential use and, by extension, that residual contamination would not result in off-site impacts.
- Operational impacts to hydrology and water quality are described on pages 77-80 of the Initial Study (Appendix A of the Draft EIR). Notably, operational impacts related to potential violation or water quality standards and substantial degradation of water quality would be less than significant.
- Impacts to land use and land use planning are inherently operational impacts that were analyzed on pages 81-84 of the Initial Study (Appendix A of the Draft EIR).
- Operational and cumulative transportation and traffic impacts are described and quantified in Section 4.B, *Transportation and Traffic* of the Draft EIR.
- Operational impacts to utilities and service systems are described on pages 109-112 of the Initial Study (Appendix A of the Draft EIR). In particular, the proposed project would be adequately served by proposed and existing utility infrastructure. In addition, since more than 25 years of remaining capacity exists at the Altamont Landfill, the proposed project would not substantially reduce the existing landfill capacity, and operation of the project would represent a less-than-significant impact on solid waste disposal.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 4-5 The comment states that the analysis of biological resources fails to disclose applicable regulatory and legal standards and fails to provide for mitigation for loss of habitat. As stated on page 48 of the Initial Study (Appendix A of the Draft EIR), “disruption of nesting migratory or native birds is not permitted under the federal Migratory Bird Treaty Act (MBTA) or the California Fish and Game Code, as it could constitute unauthorized take. The loss of any active nest by, for example, trimming or removing a tree or shrub containing a nest, must be avoided under federal and California law.” As described on page 49 of the Initial Study (Appendix A of the Draft EIR), compliance with the City’s standard development requirements per Chapter 18.218 of the Fremont Municipal Code would prevent nesting birds from being adversely affected by project construction, which

would in turn comply with the requirements of the MBTA. To provide clarification, the paragraph following the italicized text on page 49 of the Initial Study is revised as follows and is reflected in Chapter 4 (Revisions to Draft EIR) of this Final EIR:

Compliance with the City's standard development requirements per Chapter 18.218 of the Fremont Municipal Code, Section 3503 of the California Fish and Game Code, and the Migratory Bird Treaty Act would prevent nesting birds from being adversely affected by project construction and impacts would be less than significant. With regard to vegetation, the Initial Study did not identify a significant impact related to removal of on-site vegetation; therefore, mitigation measures are not warranted. As described on page 3-18 of the Draft EIR, on-site vegetation would include new trees, shrubs, and ornamental landscaping along the Niles Boulevard and internal street frontages. As noted on Figure 3-11 in the Draft EIR, the landscape plan is conceptual. The final landscaping plan would be reviewed by the City and would be required to incorporate elements as outlined by the Fremont Municipal Code, State of California Water Efficient Landscape Ordinance (WELO), Municipal Regional National Pollution Discharge Elimination System Permit Provision C.3 (C.3), City Tree Preservation Ordinance, Bay-Friendly Landscape (BFL) practices, Citywide Design Guidelines (CDG) and other outside agency policies in relation to native and drought tolerant landscaping.

Regarding potential loss of habitat, as stated on page 2-14 of the Draft EIR, a biological investigation was undertaken to inform the Initial Study. This analysis determined that "loss of the non-native grassland onsite from construction would not be significant due to similar and higher quality annual grassland habitat within the project vicinity," and that "the foraging habitat along Alameda Creek adjacent to the site would not be disturbed by project construction or implementation, and existing trees there would remain." Additionally, in accordance with standard City requirements, the project sponsor would implement measures prior to vegetation removal that would avoid significant impacts to wildlife, including avoidance of construction during bird nesting season, preconstruction surveys to identify nesting activity, establishment of buffer zones if applicable, and monitoring of any nesting sites identified during preconstruction surveys. Accordingly, no mitigation is required.

Concerning proposed landscaping, as described on page 71 of the Initial Study (Appendix A of the Draft EIR), landscaping maintenance may require the use of limited quantities of industry standard hazardous materials such as herbicides or pesticides but not in such a manner as to represent a significant threat to human health and the environment. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 4-6 The comment states that the project should incorporate solar energy systems to reduce greenhouse gas emissions. Compliance with the City of Fremont's residential solar requirements, which stipulate that all residential buildings must have a solar photovoltaic

- system installed, was included in the estimation of project greenhouse gas emissions, as described on page 65 of the Initial Study (Appendix A of the Draft EIR). In addition, the CalEEMod model was used to estimate greenhouse gas emissions from motor vehicle trips based on project-specific information. As described on page 63 of the Initial Study (Appendix A of the Draft EIR), transportation associated with the project would result in greenhouse gas emissions from the combustion of fossil fuels in daily automobile and truck trips. However, not all of these emissions would be “new” to the region or state since drivers would likely have relocated from another area. To be conservative, however, all vehicle trips predicted to be generated by the project scenarios in the transportation analysis were assumed to be new trips in this analysis. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 4-7 The comment states that neither the Draft EIR nor the Initial Study discusses effects on the Alameda Creek Trail or its users, including potential effects of new landscaping on wildlife. As stated in Response 4-5 above, the project would not result in significant effects on habitat along Alameda Creek and that existing trees along the creek would remain. Therefore, the project would not adversely affect existing species found along the creek. Please also refer to Response 4-2 above which addresses impacts to Alameda Creek Trail. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 4-8 The comment states that effects on existing recreational facilities, including the Alameda Creek Trail, Quarry Lakes Regional Recreation Area, and Rancho Arroyo Park, are not analyzed. Please refer to Response 4-2 above regarding impacts to recreation.
- 4-9 The comment states that, in addition to vehicular emissions and emissions from construction equipment, the Draft EIR should mitigate emissions from potential subsurface contamination at the site. Traffic emissions from the proposed project were quantified in Table 4.3-3 on page 38 of the Initial Study (Appendix A of the Draft EIR). There are no structures remaining on the site and, therefore, there would be no hazardous materials in structures. In addition, since subsurface soil beneath the project site has been remediated to residential standards (and approved by RWQCB), there would be no adverse effects to human health from construction-generated emissions, as long as BAAQMD’s fugitive dust control measures are implemented. As discussed on page 36 of the Initial Study, these measures are required by the Fremont Municipal Code. Moreover, a 2014 Supplemental Site Characterization Report prepared for the project site stated that the results of a soil gas analysis determined that “concentrations are below applicable residential screening levels,” meaning that no significant effect would result from any residual soil gases at the site.⁹ The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

⁹ ENGEQ Inc., *Supplemental Site Characterization Report – Henkel Property / 37899 Niles Boulevard, Fremont, California*. June 5, 2014.

- 4-10 The commenter requests that the updated Risk Management Plan for the project site and any resulting conditions of land use be made publicly available. The Regional Water Quality Control Board, which is the lead agency for all remediation actions at the site, makes all such documentation available on its GeoTracker website, <http://geotracker.waterboards.ca.gov>.¹⁰ The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 4-11 The commenter “appreciates housing that provides incentives for reducing solid waste and promoting recycling that will help the environment, provisions for alternative energy supplies, green building materials, and energy efficiency measures, as well as supports walking, biking, and transit use,” and acknowledges that the project would include solar panels and stormwater treatment. However, the comment states that the Draft EIR “does not adequately address how the above incentives and provisions could be incorporated to reduce GHG emissions and minimize environmental impacts.” The comment concludes by stating that “inclusion of measured, long-term impacts due to increased residents, businesses/retail, and cars in a compact and biologically sensitive area and region are needed.” The comment appears to suggest that the City should require additional measures to reduce greenhouse gas emissions, by the proposed project or by all projects, or both. As explained in the Initial Study (pages 61-69 of Draft EIR Appendix A), project effects related to greenhouse gas emissions would be less than significant. As explained in the Initial Study, this is in part due to the City’s existing requirement for solar panels, which would generate more than half of the project’s electrical needs. Given the less-than-significant effect, however, no mitigation is required. Therefore, any further requirements with respect to greenhouse gas emissions reduction could only be imposed outside the CEQA framework. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

¹⁰ Information regarding the project site is available on GeoTracker at:
http://geotracker.waterboards.ca.gov/profile_report?global_id=SL181251125.

Comment Letter 5

From: deni caster
To: [David Wage](#); [Kristie Wheeler](#); [Wayne Morris](#)
Subject: Niles Gateway Concept #2 EIR question
Date: Sunday, May 27, 2018 9:25:22 PM

Hi David,

I do not at all understand how anyone could believe that 2 Amtrak trains could provide all that needs to be studied for vibration effects on 2 & 3 story units, especially when the tracks are elevated, and I believe will be inline with the 2nd story windows.... AND considering that there will not be the linear park providing a buffer.

This makes NO sense.....

Can someone provide me with an explanation? Conversations with Niles residents who live near the tracks clearly points out the issues with freight train vibrations, and those are ranch style homes - not multi-level.....

Is there some explanation other than saying it was (inadequately) addressed in the 1st project's Neg Dec (based on Lennar's own Engeo Company's reports...or at least the City of Concord found collusion between Engeo and Lennar).

Does the City of Fremont not care about the conditions its new residents will put up with just to live there?

Deni Caster

5-1

Letter 5 Response – Deni Caster (1)

5-1 The comment expresses concern regarding the impact of train vibration effects on two- and three-story units. A recent California Supreme Court case found that “agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project’s future users or residents.” In *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369, the Supreme Court explained that an agency is only required to analyze the potential impact of such existing environmental conditions on future residents for certain specified projects or if the project would exacerbate those existing environmental hazards or conditions. CEQA analysis is, therefore, concerned with a project’s impact on the environment, rather than with the environment’s impact on a project and its users or residents. The existing train operations are considered as part of the existing environment and would not be a significant impact under CEQA.

Although analysis of existing environmental conditions on future residents is not required under CEQA, Section 4.12, *Noise* of the Initial Study (Appendix A of the Draft EIR) addresses train noise and vibration. As described on page 90 of the Initial Study, noise measurements were conducted in 2013, by Illingworth and Rodkin, which captured rail activity of approximately 12 train pass-by events per day. Implementation of Mitigation Measure NOI-1 would require noise reduction measures that would reduce impacts related interior noise compatibility and train noise to a less-than-significant level.

As described on pages 95-96 of the Initial Study, groundborne vibration exposure impacts at the site resulting from existing railroad train pass by events would be less than significant, as maximum vibration levels measured, ranging from 72 to 74 VdB, are below the Federal Transit Administration’s threshold of 80 VdB for infrequent events.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: Arin Westendorf
To: [David Wage](#)
Subject: Niles gateway project
Date: Friday, June 1, 2018 2:47:49 PM

Mr. Wage,

Thank you for posting all the information regarding the Niles Gateway project. I am a Niles resident living a stones throw away from the development.

I am not opposed to smart and reasonable development in the City of Fremont but I think a man or woman of common sense will ask why so many units? As we all know it is for profit, not for quality of life.

What about the impact on the schools that are already at max capacity many cases. My family had to go to an out of district school when my daughter entered kindergarten due to overcrowded schools.

6-1

What about the fact that traffic in Niles at the location of the proposed development is already clogged it takes 30 minutes to go 1/2 a mile. We will be adding an estimated 200+ cars in Niles? The geographical spacing is just not capable of having that much congestion.

6-2

Let alone the impact of the people of Fremont’s access to clean and safe drinking water. The proposed location had a factory that made Agent Orange, a chemical that resides in the body for life. Is the risk of a Flint, Michigan situation worth the profit? That would cost the City of Fremont and the state of California in the long run.

6-3

Why is it that so many residents and historical review board voices mean nothing to the people approving these developments?

With the childish tactics from Lennar by adjusting the number of “townhouses” vs. “condos”, compared to the original plan is just disappointing. Of course their one and only sight is on profit and profit only. But what if we worked together and brainstormed ways everyone could be happy?

What are ways we can all win?

1) What if there was a very clear and very safe green bike path from the development to the bart station? This would reduce car traffic for commuters headed to Sf. This could promote the culture of bikes vs cars.

2) What if the builder offset the amount of units to be built by building a public tech center where people could work “From Home.” Could be purchased By the city, Facebook, or any other company/ group who’s workers would benefit and still allow access for the students, entrepreneurs, working professionals, and other public to use. Perhaps by a membership? Lennar would make the money they need to profit, New homeowners from the development working in the Silicon Valley would stay off the roads by working at the tech center, and the community would benefit from a bike-to-office space. There could be printers, scanners, conference rooms, Community spaces, WiFi.

I know we already have public libraries but more and more of these spaces like “we work” and “impact hub” of San Francisco and Oakland are popping up and it is a sign of the future of the working environment in and ever growing population in the Bay Area. Why not be on the map for that! Why not communicate with the big name companies in the Bay Area about the idea. They already spend lots of money busing people in from these areas. We live in an area with progressive thinkers let’s be one of them.

We have a choice to set our selves apart with smart planning for the future for the overall happiness of the people in office, people in the community, and companies wanting to work here, including Lennar.

Maybe if we set an example others (builders) will follow suit. We all can still make a profit and still make sure our cities function well so long as we consider all needs and are driven by smart planning.

Comment Letter 6

3) What if we minimize the negative impact of construction and development by implementing solar panels/ Green energy systems into the construction of the building to offset the energy usage by new development and or provide clean energy for the businesses and perhaps the surrounding area?

I would also like to add that I am thankful and grateful to the city of Fremont and the systems that we have in place. We have wonderful city services and the like. I know that everyone in office works hard and it takes a lot to hear all the voices and opinions. Thank you once again for working on this project and representing the people of the city.

Proud citizen of Fremont with high hopes for the people in office to do the right/smart thing:),

~Arin
510-789-9216
37967 2nd St.
Fremont, CA 94536

Thank you so much for considering our different ideas! And for reading this very long email! :)

Letter 6 Response – Arin Westendorf

- 6-1 The comment raises a concern regarding the proposed project’s impact to school capacity. Chapter 2, *Introduction* of the Draft EIR addressed concerns regarding the projected population at the project site and school capacity. As described on page 2-8 of the Draft EIR, the Fremont Unified School District (FUSD) does not currently guarantee that a child in a certain area will be able to attend the elementary school closest to their home. In such instances, the child is offered a spot at another school that has available space (called overloading), and that school can be close by or across town. There is no way to predict whether a child from the proposed project would be overloaded to another school; it would be dependent on the school attendance figures at the time of enrollment for each student.

Additionally, as described on page 102 of the Initial Study (Appendix A of the Draft EIR), the project applicant would pay the State-mandated school impact fees to the FUSD that are being levied at the time of development. The California Legislature has declared that payment of the State-mandated school impact fee is deemed to be full and adequate mitigation under CEQA on the provision of school facilities (California Government Code Section 65996). The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 6-2 The comment states that the project would cause increased traffic congestion. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic-related issues. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 6-3 The comment expresses concern over former “Agent Orange” production at the project site. Agent Orange is a mixture of equal parts of two herbicides, 2,4,5-trichlorophenoxyacetic acid (2,4,5-T) and 2,4-dichlorophenoxyacetic acid (2,4-D).

According to previously prepared hazardous materials investigations of the project site, herbicides containing these two compounds were formulated at the project site prior to 1980.¹¹ According to the 2013 Phase I Environmental Site Assessment (ESA) for the project site, cleanup activities began at the site in 1978 and resulted from a spill of 2,4-D. Subsequently, according to the Phase I ESA, some 390 tons of affected soil was excavated and removed from the southern portion of the site and another 1,150 tons of affected soil was excavated and removed from the western edge of the site (following removal of several underground tanks). In the 2000s, 1,690 tons of soil was treated and reused onsite. As of the time the 2013 Phase I ESA, the only remaining recognized environmental condition was residual contamination with petroleum hydrocarbons at a

¹¹ Exceltech Inc., *Investigation of Oil Contaminated Soil and Groundwater for Amchem Products Inc., 37899 Niles Boulevard, Fremont CA*. August 15, 1986; page 1-3.

depth of about 10 feet below the surface, in the location of a former oil storage area on the site; this location had been covered with an asphalt cap and was the subject of a deed restriction.¹²

As stated in the Initial Study, the Regional Water Quality Control Board (RWQCB) had by then issued a “No Further Action” letter indicating that residential development could be pursued at the site, subject to a number of conditions. With the goal of removing or amending several of the conditions, the project sponsor subsequently conducted additional remediation efforts in 2015, involving the removal of 7,700 cubic yards of soil affected by petroleum hydrocarbons. In 2016, RWQCB approved the remediation report, concurring that the concentrations in soil had achieved acceptable results. Based on the foregoing, there is no reason to believe that residual herbicide remains at the project site in concentrations that could pose a concern. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

¹² Engeo, 2013, *Phase I Environmental Site Assessment*, Henkel Property, Fremont, California, August 22, 2013.

Comment Letter 7

Lorna Jaynes
37978 2nd Street
Fremont, CA 94536

David Wage, Associate Planner
39550 Liberty Street
Fremont, CA 94538

Re: Niles Gateway Mixed-Use Project

Dear Mr. Wage,

I wish to express my support for Alternative 1 or 2 of the Draft Environmental Impact Report. However, there appear to be significant remaining flaws in the proposed alternative that must be addressed, as noted below:

1. The architectural design of Alternative 2 is unchanged from the original proposed design. The Fremont Historical Review Board found this design “incompatible” with Niles’ existing, predominately Craftsman design. The HARB cited the excessive use of metal and insufficient use of brick or tile, and that the architecture does not relate to the historical character of the rest of Niles. Perhaps it’s time for a new architect to take a fresh look at the rest of Niles and come up with a new design?
2. The project does not conform to the *Niles Design Guidelines & Regulations*, which were adopted with significant input from the community. The Fremont General Plan specifically states that the Guidelines govern and “remain in effect” (COF General Plan, Community Plans, 11-128). The Niles Gateway Project is identified in the Planning documents as part of the Niles Town Center, and should be subject to the same requirements regarding width of sidewalks (15 feet on Niles Blvd.), width of public streets, and parking requirements. Specifically, the proposed Alternative 2 does not have enough off-street parking for the restaurant and community center, and curb space for drop-off and pick-up of passengers. This will lead to many problems for the surrounding Niles community, especially on Event Days, where parking is already inadequate.
3. Lack of adequate traffic flow improvements, such as roundabouts and/or other street improvements on Niles Blvd. where there will be diagonal parking with vehicles backing into a blind curve.
4. The EIR makes no mention of the historic use of the project property as a town dump, despite documents submitted to the City in previous Comments dating from 1968 that show this. There is a need for 20 ft. deep trenching



(not geotechnical boring, which is designed to identify contaminants in the soil, not underlying deep soil structure) in order to assure that the buildings will not be built on unstable rubble.

↑
7-5
cont.

Thank you for considering these comments. We look forward to your incorporating them in a final EIR.

Sincerely,

A handwritten signature in cursive script that reads "Lorna Jaynes". The signature is written in black ink and is positioned below the word "Sincerely,".

Lorna Jaynes

Letter 7 Response – Lorna Jaynes

- 7-1 The comment supports Alternative 1 and Alternative 2. The comment is noted and will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.
- 7-2 The comment expresses concern over Alternative 2's compatibility with the *Niles Design Guidelines and Regulations*. As described on page 5-11 of the Draft EIR, the overall design and aesthetic character of Alternative 2 would be similar to the proposed project. Instances where Alternative 2 would not comply with applicable guidelines (i.e., *the Niles Design Guidelines and Regulations*) would be largely the same as those under the proposed project (e.g., absence of keyhole entries, width of storefront entries, and non-compliant awning design, as described in the discussion of Impact 4.A-1 Section 4.A, *Aesthetics*). Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project's compatibility with the *Niles Design Guidelines and Regulations*, which also applies to Alternative 2. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 7-3 The comment states that the proposed project is inconsistent with the *Niles Design Guidelines and Regulations* and should be subject to requirements applicable to the Niles Town Center. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project's compatibility with the *Niles Design Guidelines and Regulations*. Concerning the Niles Town Center, please refer to Response 3-3.
- Concerning parking impacts pick-up/drop-off spaces, please refer to response to Comment 3-6.
- 7-4 Concerning diagonal parking, please refer to response to Comment 3-9. Regarding a potential roundabout, please refer to response to Comment 3-5.
- The comment does not raise any new environmental issues that have not been addressed adequately in the Draft EIR, and additional analysis is not required.
- 7-5 The comment alleges “the historic use of the project property as a town dump,” and questions the reliability of the project's geotechnical report. Please refer to response to Comment 3-13.

Comment Letter 8

From: Sherry Ryan
To: [David Wage](#)
Cc: [David Bonaccorsi](#)
Subject: FW: Niles Gateway Project
Date: Tuesday, June 12, 2018 9:37:27 AM

We are opposed to the Niles Gateway Project.

I 8-1

This is another example of the poor planning and lack of control exercised by the City of Fremont which is destroying the quality of life in our city.

Our son lives 3 blocks from the Niles School yet our grandson had to go to attend kindergarten at Gomes – a good school but not the one but not the one they purchased a home near. The school at Niles is full. Permitting this development to proceed without adequate space to accommodate the additional students is irresponsible of city government.

I 8-2

City leadership must start taking accountability to manage responsible growth within Fremont. Developers should never be allowed to build additional homes without adequate onsite parking, capacity in nearby schools and other community infrastructure.

Sincerely,

John & Sherry Ryan
37859 Benchmark Ct.
510 791 5975

Letter 8 Response – Sherry and John Ryan

- 8-1 The comment in opposition to the proposed project is noted. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.
- 8-2 The comment raises a concern regarding the proposed project's impact in relation to school capacity. Please refer to response to Comment 6-1.

Comment Letter 9

From: Ron Warnecke
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project (PLN2014-00338)
Date: Monday, June 25, 2018 6:06:56 PM

Dear David,

I would like to give my complete support to Niles Gateway Mixed-Use Project (PLN2014-00338).

9-1

Ron Warnecke
390 Riverside Avenue
Fremont, Ca 94536
510-305-4106

Letter 9 Response – Ron Warnecke

- 9-1 The comment expresses support for the proposed project. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: deni caster
To: [David Wage](#)
Cc: [Kristie Wheeler](#)
Subject: Objections to Niles Gateway DEIR
Date: Tuesday, June 26, 2018 4:30:20 PM
Attachments: [Caster DEIR Reply 1.pdf](#)
[Exhibit B.3 Looking across site from Alameda Cr Trail.jpg](#)
[Exhibit C.2 End of Chase Ct..jpg](#)

Hi David,
Attached are Exhibits I am addressing.

Exhibit A.1 is the "color/material palette" of the original Gateway project found on the Valley Oaks, Niles Gateway Facebook page. This palette was posted there prior to the City Council approving the 1st plan.

Exhibit A.2 is the "color/material palette" from the DEIR. Here are the differences I can see:

- the #5 material was a metal siding and is now a cement board siding
- the #4 metal color *may be* lighter now
- #13, "tile ornamentation around signage and street address" has been added, but no sample was provided.

We have been told countless times by Mr Rich and his attorneys that after the Planning and Council meetings for Plan #1, things were changed. We have asked to see those changes and cannot find them anywhere, other than these 2. During our attempt at settlement negotiations with Lennar we were told they would be provided, but never were. At the appeal hearing last week at the State of CA Appellate Court we again heard from Mr Rich's attorney that changes have been made, and why are we not satisfied. Everything looks exactly the same.....

Exhibit B.1 is a representative photo of the view of the hills from the Alameda Creek Trail.

Exhibit B.2 is a close-in shot of a view from a portion of that trail, closer to the NE corner, such that when the Project is imposed over it, not much is missing.

Exhibit B.3 is a photo taken from the Alameda Creek Trail, looking at the expansive view of the hills.

This project will most definitely have a negative impact on all of those that use this trail and will miss this viewshed. This is especially true when you consider that the project is lining up the townhomes, facing Alameda Creek to form a 2 or 3 story visual wall. If the project turned these units perpendicular to the creek, there may be some views between them. Note that there are no other residences that front the Creek, including the much more expensive and luxurious Riverwalk Homes off Paseo Padre, on the creek. They at least respected the views.

Exhibit C.1 also shows an inaccurate picture of how this row of homes will appear. Per Exhibit C.2, another photo, you can see where the fenced line is, and in your rendition of these homes, there does not appear to be a fence dividing their space from the trail. For representation sake, these exhibits from ESA should be much closer to actual.

Please have these issues addressed as part of the Aesthetic issues of the DEIR as well as answering the question - why is every house being built in Mission San Jose of the same style as all the other homes.... Mission style. Why does Niles have to fight to get something that looks different from the Valley Oaks Innovation District and that truly reflects the history it is KNOWN for (films, trains, movie studio..not chemical plants).

Deni Caster
Protect Niles member
Former Niles resident

from prior to City Council meeting & approval of 1st project.

"CRAFT" BUILDING



1 STUCCO COLOR 1
2 STUCCO COLOR 2
3 BRICK



4 METAL COLOR
5 METAL PANEL
6 ROOF



7 ROOF
8 WOOD BOARDS



7 ROLL-UP DOORS



9 STOREFRONT / RESTAURANT



8 TRELLIS / AWNING



10 TRASH ENCLOSURE



"CRAFT" BUILDING



In Niles, F

Like

Write

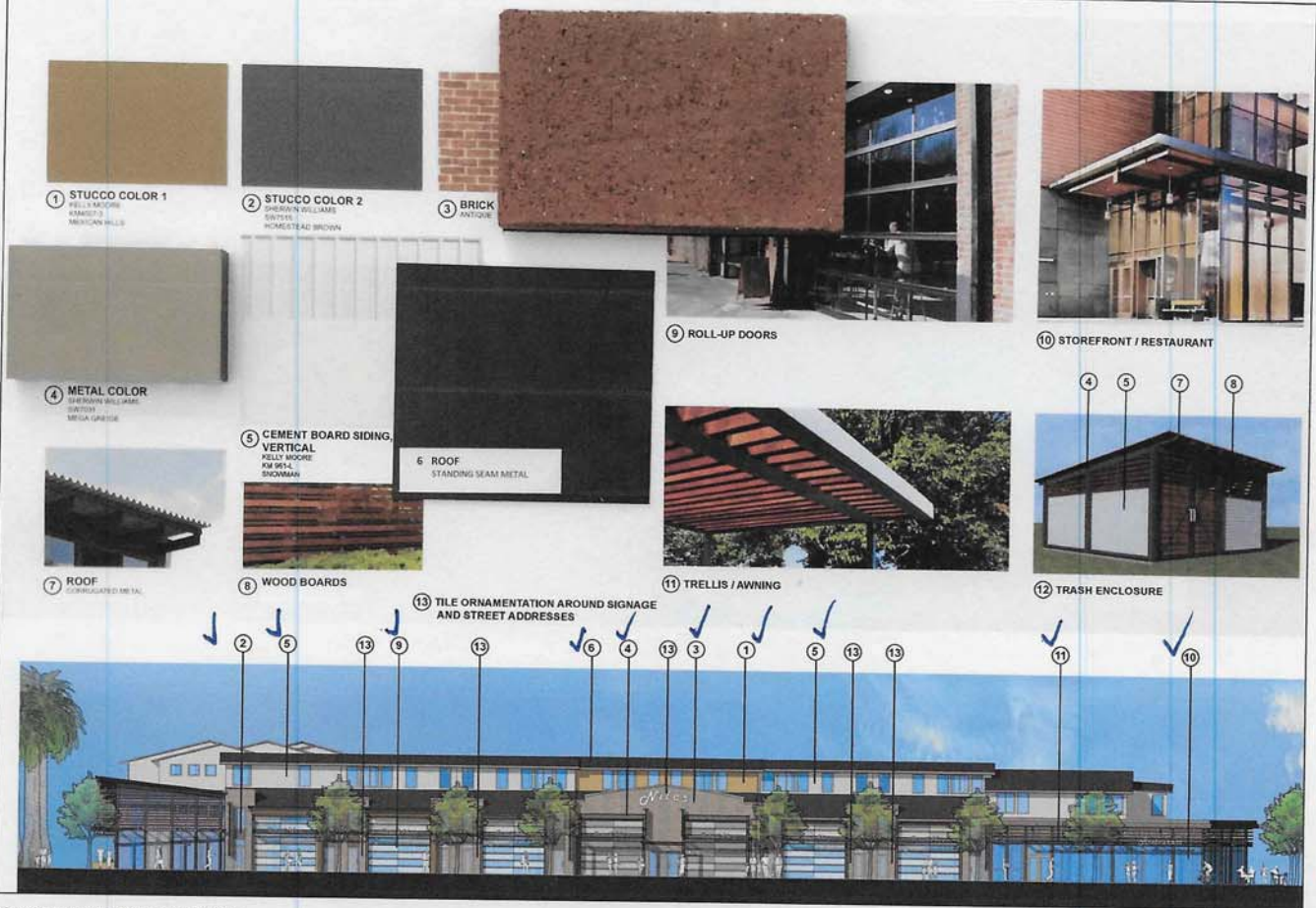
People You M



Mik 11 r

Caster Exhibit A.1

#5 was metal panel.
#13 new - no photo of sample.



SOURCE: Valley Oak Partners LLC, 2017

Niles Gateway Mixed-Use Project

Figure 4.A-11
CRAFT Building Materials and Colors



Caster
Exhibit A.2



Viewpoint 3: View of project site from south. View facing northeast.

= Alameda Creek View



Viewpoint 4: View to project site from Victory Lane. View facing southwest.

PROJECT: S:\P\17\000021\1700021000 - Fremont Niles Gateway\04-Concepts\04-05-Modeling\04-05-Modeling\04-05-Photos\4

SOURCE: ESA, 2018

Niles Gateway Mixed-Use Project



Coster exhibit
B.1

Figure 4.A-3
Project Area Views



Alameda Creek view A (Existing)



Alameda Creek view A (Project)

SOURCE: Valley Oak Partners, LLC, 2018

Niles Gateway Mixed-Use Project

Figure 4.A-20
Digital Rendering Viewpoint 5



*Caster
Exhibit B.2*



Looking northeast from the end of Chase Court (Existing)



Looking northeast from the end of Chase Court (Project)

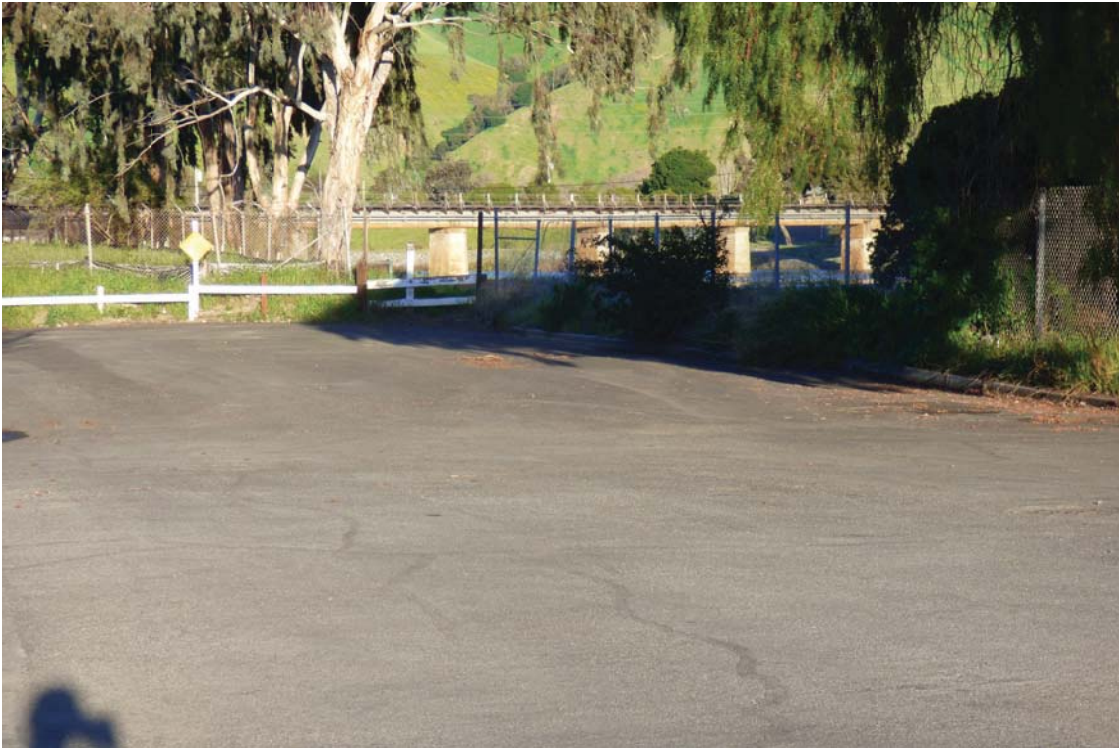
SOURCE: Valley Oak Partners, LLC, 2018

Niles Gateway Mixed-Use Project

Figure 4.A-16
Digital Rendering Viewpoint 1



*Poster
Exhibit
C.1*



Letter 10 Response – Deni Caster (2)

10-1 The comment states that the project’s proposed material and color palette has not changed substantially from that of the previously approved project on the same site, despite the sponsor’s statements to the contrary. The comment also states that the proposed project would block views from the Alameda Creek Trail of the hills to the east. The comment also states that the rendering in Draft EIR Figure 4.A-16 inaccurately depicts the proposed project. Finally, the comment expresses dissatisfaction with the project’s architectural style.

Comments regarding differences between the prior project and the currently proposed project do not reflect the adequacy or accuracy of the Draft EIR. For purposes of CEQA review, the current project is independent of any project previously considered. The comment will be forwarded to City decision-makers for consideration in their deliberations on the proposed project.

Views of the Niles hillside from the Alameda Creek Trail are discussed in Section 4.1, *Aesthetics* of the Initial Study (Appendix A of the Draft EIR). As indicated on page 26 of the Initial Study, views to the Niles hillside would not be fully obscured because the proposed project would include east-west view corridors through the site in the form of private streets and pedestrian pathways. While the view of the hills from a particular location adjacent to the project site would be at least partially obscured, the same view would be available just a short distance away. Therefore, the proposed project would not have a *substantial* adverse effect on a scenic vista or *substantially* degrade the existing visual character or quality of the site and its surroundings.

In addition, as described on page 4.A-44 of the Draft EIR, in accordance with the goals, policies, and implementation measures of the Fremont General Plan and the requirements of the Fremont Municipal Code, the proposed project would be subject to design review to ensure that the development is consistent with the desired character of an area and complies with City requirements for building heights, scale, massing, materials, colors, detailing, and sensitivity to neighborhood context.

Regarding Figure 4.A-16, as described on page 4.A-35 of the Draft EIR, the digital renderings represented in Figures 4.A-16 through 4.A-20 do not comprise photorealistic simulations of the proposed project; the purpose of the digital renderings is to provide the viewer with a general visual sense of the design, colors, and massing of the proposed project and its relation to existing views of the project site.

The comment concerning the proposed project’s architectural style does not reflect the adequacy or accuracy of the Draft EIR. The comment will be forwarded to City decision-makers for consideration in their deliberations on the proposed project.

Comment Letter 11

From: Joe Wilkinson
To: [David Wage](#)
Subject: Henkel Property
Date: Thursday, June 28, 2018 6:36:59 PM

Dear Mr. Wage,

Many of us are concerned that the city ignores the needs of Niles residents, and Fremont residents in general, in favor of developers who have more influence on the planning commission and city council than we, the citizens.

The latest situation with the Henkel property is evidence that these concerns are well founded. The developer spends his time in court, the city ignores Niles Design Regulations agreed to in 2002.

11-1

Please do not ignore the design regulations and the negative effect of this potential development on the already terrible traffic situation.

Thanks,

Joe Wilkinson
36544 Montecito Drive

Letter 11 Response – Joe Wilkinson

- 11-1 The comment states that the proposed project design is not consistent with the *Niles Design Guidelines and Regulations*. The comment is noted, and will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 12

From: Joel Pullen
To: [David Wage](#)
Subject: Fwd: Niles Gateway PLN2014-00338
Date: Friday, June 29, 2018 10:42:28 AM

Joel Pullen | Senior Planner | Community Development Dept. | (510) 494-4436

Begin forwarded message:

From: Pat Finch <pat234finch@yahoo.com>
Date: June 29, 2018 at 10:41:57 AM PDT
To: "jpullen@fremont.gov" <jpullen@fremont.gov>
Subject: Niles Gateway PLN2014-00338
Reply-To: "pat234finch@yahoo.com" <pat234finch@yahoo.com>

I am writing to express my disappointment with the city about not following the EIR for this property. I am also upset that the city is not following the regulations for preserving Niles Downtown.

12-1

I have I have lived in Fremont since 1976, and moved to Niles in 1996. The traffic has gotten steadily worse. The area is already rated a grade F. Trying to fight your way into or out of Niles during commuter traffic is a nightmare now -- adding all those additional homes will only exacerbate the situation. Lower density, please.

Please seriously consider reducing the number of housing units at this site and absolutely encourage the building of more affordable housing in our city.

12-2

Thank you for your consideration to my requests.

Patricia Finch
234 Felicio Cmn
Fremont 94536

[Sent from Yahoo Mail on Android](#)

Letter 12 Response – Patricia Finch

- 12-1 The commenter expresses disappointment with the City “not following the EIR for this property” and also for “not following the regulations for preserving Niles Downtown.” The meaning of the first portion of the comment is not entirely clear. Regarding the environmental review process, please refer to Master Response 1 for a discussion of general CEQA procedures, including the purpose of an Initial Study and EIR. Concerning the *Niles Design Guidelines and Regulations*, please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.
- 12-2 The comment suggests that the project reduce the number of housing units proposed. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of feasibility of proposed alternatives, including lesser density alternatives.

The comment also encourages building affordable housing as a part of the proposed project. This comment is noted and will be presented to decision makers as relevant to overall project approval, but does not raise a potential environmental impact and, therefore, is not relevant to CEQA review. Generally, affordability of housing is an economic and social effect that is not treated as a significant effect on the environment under CEQA (see CEQA Guidelines Section 15131). Evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment are beyond the scope of CEQA (see Public Resources Code Section 21082.2(c) and CEQA Guidelines Section 15384). In addition, the project would comply with the requirements of the City’s Affordable Housing Ordinance.

The comment provided with respect to affordable housing does not alter the conclusions of the Draft EIR, nor does the comment present any additional information on environmental issues that have not been adequately addressed in the Draft EIR. No additional analysis is required.

Comment Letter 13

From: David Wage
To: ["Sally Morgan"](#)
Subject: RE: PLN2014-00338 Niles Gateway
Date: Monday, July 2, 2018 7:59:00 AM

Good Morning Sally,

Thank you for sharing your concerns and comments. Your comments will be included in the Final EIR and a response will be provided.

Regards,

David Wage
Associate Planner - Current Development
Planning Division - Community Development
39550 Liberty Street
Fremont, CA 94538
(510) 494-4447

From: Sally Morgan [mailto:sallymorgan510@gmail.com]
Sent: Friday, June 29, 2018 8:14 AM
To: Joel Pullen
Subject: PLN2014-00338 Niles Gateway

I am writing to express my disappointed with the city AGAIN about not following any EIR for this property. I am EXTREMELY upset that the city is not following the regulations for preserving Niles Downtown, not following any traffic mitigations-please do a better job of a TDM---so what if that area is already a Grade F--that area does *not need more traffic*--please also consider reducing the number of housing units and absolutely build affordable housing.. Thank you for your time. Sally Morgan

13-1

Letter 13 Response – Sally Morgan

13-1 The comment states that the proposed project would not comply with the *Niles Design Guidelines and Regulations* and would increase traffic and therefore should provide for transportation demand management (TDM). Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetic impacts, including with respect to the *Niles Design Guidelines and Regulations*. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic impacts. The comment also states that the proposed project needs to “do a better job of a TDM.” Per Chapter 10.20 of the Fremont Municipal Code, transportation demand management (TDM) means a set of strategies aimed at reducing the demand for roadway travel, particularly in single occupancy vehicles. The provisions of Chapter 10.20 apply to all employers of 50 or more employees at a single worksite wherein the City: (a) approves a new building or addition in excess of 10,000 square feet; (b) grants additional floor area ratio (FAR) in accordance with provisions of Chapter 18.250; or (c) adopts an environmental document containing mitigation measures to reduce trips and/or transportation demand. As described on page 98 of the Initial Study (Appendix A of the Draft EIR), the proposed project would generate approximately 27 employees. Therefore, the preparation of a TDM would not be required for the proposed project.

The comment also requests that a reduction in the number of housing units be considered. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of reduced density alternatives.

In addition, the comment encourages building affordable housing as a part of the proposed project. Please see the response to Comment 12-2.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 14

From: mark phillips
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project
Date: Sunday, July 1, 2018 11:32:13 AM

Mr. Wage,

My wife grew up in Niles and we have good friends there. We visit there often and have a special place in our hearts for the unique character of Niles which is like no other place in the greater bay area. Our concern for the Niles Gateway Mixed-Use Project is primarily based on what appears to be a disregard for this special character of Niles. We are referring to the architectural design employing, as stated by the Historical Review Board, an excessive use of metal and insufficient use of brick or tile and that the project is “incompatible” with the existing architecture in Niles.

14-1

There are other issues as well relating to parking, traffic flow and the previous use of the property as a town dump and the resulting effect on the soil stability.

14-2

We hope that the planning department will adequately address these concerns and that Niles does not begin a metamorphosis into just another exit off the freeway with no particular charm.

Regards,

Mark Phillips and Monica Vincent
Santa Rosa, Ca.

Letter 14 Response – Mark Phillips and Monica Vincent

- 14-1 The comment states that the project design appears to disregard the “special character” of Niles and that the project and its materials are “incompatible” with the existing architecture in Niles. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 14-2 The comment raises issues including parking, traffic, and the alleged prior use of the project site as a “dump,” and site soil stability. Regarding parking demand, please refer to response to Comment 3-7. Concerning traffic, please refer to Master Response 2. Regarding the alleged “previous use of the property as a town dump,” please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 15

From: Gloria Gates
To: [David Wage](#)
Cc: [George Gates](#)
Subject: Niles Gateway Mixed Use Project Concern
Date: Wednesday, July 4, 2018 2:57:58 PM

Dear Mr. Gage,

We are sure you have received numerous e-mail messages concerning the flaws in the proposed alternative to the above mentioned matter and we do not want to be redundant and list them at length here again.

However, we would hope you would be thoughtful and consider them. Our unique neighborhood/ community of Niles would be severely impacted by the proposed incompatible design of homes, the lack of adequate traffic flow, lack of parking, and the need for trenching to make sure the buildings will be built on stable ground.

15-1

We, together with our Niles neighbors, thank you for your consideration of these comments and look forward to your incorporating them in the final EIR.

Sincerely,

George and Gloria Gates

Letter 15 Response – Gloria and George Gates

- 15-1 The comment expresses concerns about the proposed project’s “incompatible” design, traffic, lack of parking, and the stability of the soils underlying project site. Please refer to Master Responses 2 and 3 in Section 3.2 of this chapter for a discussion of proposed project compatibility with the Nile Design Guidelines and Regulations and traffic impacts, respectively. Concerning geotechnical issues, please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: historian@nilesfilmmuseum.org
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project
Date: Friday, July 6, 2018 12:14:35 PM
Attachments: [July 5 gateway.docx](#)

David Wage, Associate Planner
City of Fremont, Planning Division
Re: Niles Gateway Mixed-Use Project

Dear Mr. Wage,

I am writing in reference to the Draft EIR for the Niles Gateway Mixed-Use Project of May 25, 2018.

Because the project is located within the Niles Historic Overlay District, it is important to adhere to the Niles Design Guidelines and Regulations approved by the City of Fremont in 2002. Niles is a community formed largely in the late 1800s and early 1900s. The fact that it has survived as such is a tribute to the community that prides itself in its heritage. This is a community with Low Density housing, and the Niles Gateway Mixed-Use project with Medium Density Residential housing, would be at odds with the character, scale and style of the Victorian cottages and Craftsman bungalows within the Overlay, as set forth in the Niles Design Guidelines and Regulations.

16-1

Niles is characterized by small houses with front yards, backyards and driveways. All of this would be ignored in the 82 townhomes proposed by the Niles Gateway project as it wants to eliminate the site's inclusion in the Historic Overlay District and change it to Planned District. The Gateway project would therefore ignore the wishes of the Niles Design Guidelines and Regulations, creating a project totally out of character with the historic nature of the community. The townhouses arranged as a series of "6 Plex" units, again, are totally out of character, style and size with the residential units within the Niles Historic Overlay District. These Gateway units discourage the social interaction between neighbors, as in the rest of Niles, by eliminating yards and driveways and substituting a two-car garage door so that residents are obligated to drive into the house without setting foot outdoors. These units are in effect fortresses by design, barring outside interaction. "Gateway" is an inadvertent description to this design, as it might as well be a gated community, because its fortress appearance discourages interaction with the whole of the Niles community. These townhouses are not an invitation to live in Niles or be part of the community. This Medium Density proposal is instead designed to set it apart from the community, just the opposite of what is directed in the Niles Design Guidelines and Regulations.

16-2

By removing the development out of the Niles Historic Overlay District to Planned District, this project becomes counter to what Niles is all about, an historic district that prides itself in its heritage. Better to keep this 6.07-acre parcel as open space or a park until a better use is decided upon.

One better use would be to divide up the site into lots as originally outlined in the 1888 Southern Pacific plat and infill with historic homes

and commercial building from the rest of Fremont that the city deems “expendable” in their original locations. Cities like San Jose, Oakland and Los Angeles have set aside an area for historic buildings that would otherwise be demolished to create a village of vintage structures. This 6.07-acre parcel could be used for such a location as the City of Fremont condemns other buildings that currently exist, but are threatened by destruction. It would fit in nicely with the Niles Historic Overlay District and be an asset to the community, rather than a liability that the Niles Gateway Mixed-Use Project would bring as designed.

As for the “Creative-Retail-Artist-Flex-Tenancy” (CRAFT) units Valley Oak Partners propose, it bears no relation in design to anything in Niles, and again is at odds with the spirit, size, scale and character of the community. It’s as if an historic, beautifully-preserved 1903 Wright Flyer aircraft was purported to be the same in style, size and character as a SpaceX rocket. Nothing wrong with a SpaceX, just don’t pretend it fits into a community shaped in the early 1900s. It appears that Valley Oak Partners has no desire to create a design that fits our community, but is instead intent on reaping as many millions as it can in the space available. Do it elsewhere. Niles can do better.

16-3

David Kiehn

Niles District resident

Letter 16 Response – David Kiehn

- 16-1 The comment states that the proposed project should be required to comply with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 16-2 The comment states that the proposed project would remove the project site from the Niles Historic Overlay District and would be incompatible with the “historic nature of the community.” The comment also states that the project’s proposed townhouse residential units would “discourage the social interaction between neighbors” by building units whose primary entrance would be through a garage,” thus creating “fortresses by design.” Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the Historic Overlay District. It is also noted that the project would not remove the project site from the Niles Historic Overlay District. However, as explained in Master Response 2, the project site is outside the Niles Commercial Core where the *Niles Design Guidelines and Regulations* are applicable. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comments concerning social interaction of project residents do not address the adequacy or accuracy of the Draft EIR. These comments will be considered by the decision-makers in their deliberations on the proposed project.
- 16-3 The comment states that the project’s proposed CRAFT units would be incompatible with existing buildings in Niles. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 17

From: Pamela Bevans
To: [David Wage](#)
Subject: Concern about the Niles and Centerville Districts of Fremont
Date: Friday, July 6, 2018 9:15:31 AM

Dave Wage,

As a resident of Fremont for 28 years and a resident of Niles for 22 years I have some very serious concerns regarding growth and development in my district more specifically regarding the Niles Mixed Use Plan (PLN2014-00338):

- 1) Ignoring the Niles Design Regulations
- 2) No traffic mediation
- 3) Density plus there is no affordable housing at all.

I 17-1
I 17-2
I 17-3

Please do not help to ruin this historic district with development ignoring the Niles Design Rules and Regulations that I helped develop years ago. Please make changes before it is too late and Niles becomes a sad overdeveloped district like the rest of Fremont, devoid of history and character.

I 17-4

Pamela Bevans
37207 Second Street
Fremont, CA 94536

Letter 17 Response – Pamela Bevans

- 17-1 The comment states that the proposed project would be inconsistent with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 17-2 The comment implies that the EIR should include mitigation measures for traffic impacts. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic-related concerns and the feasibility of mitigation measures. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 17-3 The comment expresses concern about the proposed project’s density. The proposed project’s consistency with land use designations for density is discussed in Section 4.10, *Land Use and Land Use Planning* of the Initial Study, Appendix A of the Draft EIR. As described on page 83 of the Initial Study, the proposed project would be consistent with the proposed Town Center and Medium Density Residential land use designations, including density, prescribed by the housing inventory identified in the General Plan General Plan Housing Element. Please also refer to Master Response 4 in Section 3.2 of this chapter for a discussion of reduced density alternatives.

Additionally, the comment questions the lack of affordable housing included with the proposed project. Please see the response to Comment 12-2.

The comment provided with respect to affordable housing does not alter the conclusions of the Draft EIR, nor does the comment present any additional information on environmental issues that have not been adequately addressed in the Draft EIR. No additional analysis is required.

- 17-4 The comment states that the proposed project should be required to comply with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 18

From: jalisonh@aol.com
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project
Date: Saturday, July 7, 2018 9:01:08 PM

Dear Mr. Wage,

Concerning the Niles Gateway Mixed-Use Project, is the history of the property. Not exactly a park with grass and trees, but a dump and a factory emitting harmful chemicals!!!

If trenching is not completed to determine what remains deep in the soil from the dump, the next big earthquake could conceivably have that area rocking and rolling more than necessary because the land is not stable. Already on earthquake faults, trenching is necessary so as to not create a false positive of the stability of the land.

18-1

The possibility of chemical remains in the soil from the factory use is a major factor. Please watch the 2000 movie Erin Brockovich with Julia Roberts, based on a true story. Will this movie be playing again only this time it takes place in Fremont California? Has **every** test been done to the soil to thoroughly determine that it is a safe to live there for future residents?

18-2

Those are my concerns, I hope the people involved in creating this project will stop, think and do every thing possible to make the development a top quality facility and something not built in haste for economic gain.

Jan Harvey,
Fremont resident for 26 years.

Letter 18 Response – Jan Harvey

- 18-1 The comment states that the site requires additional geotechnical investigation as a result of prior use of the site as a dump. The comment also states that the project site is “on earthquake faults.” Please refer to response to Comment 3-13 concerning the alleged historical use of the project site as a dump. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 18-2 The comment asks whether the project site has been properly remediated with respect to hazardous materials. As explained in the Initial Study, remediation efforts undertaken by the project sponsor since 2015, and approved by the Regional Water Quality Control Board, have rendered the project site suitable for residential use. Therefore, no residual contamination is likely present in quantities or concentrations that could result in adverse health effects. Please refer also to response to Comment 6-3. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

July 7, 2018

Re: Niles Gateway Mixed-Use Project

Dear Mr. Wage-

I am writing to give my thoughts regarding the above project. Alternative 2 is by far the most supportable; however I have some questions/comments regarding this proposed plan.

The traffic issue is still not resolved. A 75-unit development is far better than the 98 homes originally proposed, but the additional vehicles will still cause formidable snarls. Why is the answer just to throw up your hands and say “significant and unavoidable”? A roundabout would make a difference; they put them in all over (the world) for that very reason. Furthermore, diagonal parking on a curve is asking for trouble. It’s already difficult enough to back out of a diagonal space on Niles Blvd. where the street is straight. It seems we have two styles of traffic on Niles Blvd.: speedsters trying to avoid Mission standstills, or a standstill of our own. I guarantee the traffic situation will be worse because of that diagonal parking. Per CrashStat 2.0, “... one of the most common causes of accidents is people backing out of standard angled parking without being able to see on-coming traffic.” This is really common sense; accidents will happen here because of this. Please rethink this ill-conceived design.

19-1

The proposed parking allotment is inadequate. Already, parking is scant in Niles. Many of the homes here have no garage or driveway, necessitating on-street parking for residents. Add to that the many events here and we often have difficulty parking our own vehicles near our houses. When additional homes/stores/restaurants are thrown into the mix and scant parking is planned, the spillover will be prohibitive. Cars are still part of our everyday lives, and will continue to be for a long time. We need sufficient parking to make visiting easy (think tax revenue) and living here safe.

19-2

Although the revised, two-story version is much more in keeping with the Niles profile, that is where any cohesion ceases. Per the HARB determination, excessive use of metal and lack of brick/tile are particularly notable. Repeatedly, it seems that circular reasoning is the buttressing argument—since the project is not in the Commercial Core, it does not have to correspond with Niles Design Guidelines, which were drafted when the Henkel Building was still standing. It was logical that this business wasn’t included at that time in the Commercial Core, being an industrial site and not a magnet for foot traffic. However, the site will now be home to new commercial/retail enterprises and therefore, one would assume that it should now be redefined as Commercial Core. Fremont council members and planners have expressed a desire for one fluid neighborhood where shoppers and sightseers will stroll along the boulevard from Niles Gateway on down. That scenario begs for continuity. On the contrary, the site is described as “distinct and

19-3

separate”, thereby sidestepping the guidelines mentioned above and supported by HARB. Literally one building separates the Commercial Core from this project, and there is nothing on the other side of the project with which it can blend. A little leaguer could throw a ball from the Commercial Core to this “distinct and separate” site with zero effort. Perhaps a different scenario will make more sense. Imagine a farmhouse—turn of the century design, wooden wraparound porch, turned posts, you get the idea. Now imagine that the owners need a shed, so they hire a contractor to build one right next to the house. He looks around and tells them he knows what will work. A couple of weeks later they find the finished product—gleaming steel and glass. They protest—and his argument is that it’s okay because it’s not attached to the house. No matter how much he makes this argument, it doesn’t change the fact that it **should** reflect the character of the house, and looks ridiculous if it doesn’t. We’re not looking for a Disneyland facsimile of vintage Niles architecture, just a cohesive look. Furthermore, what is the advantage to the city in fighting this so vehemently? Niles is a destination for folks from around the Bay and beyond. Doesn’t that benefit the city? Sales here = tax dollars. Standard-issue condo style is nothing special. People like the step back in time they experience when they come here. Look up and around. Once this milieu is destroyed, it’s gone forever.

↑
19-3
cont.

Sincerely,

Victoria Mayer
37421 2nd Street
Fremont CA 94536

Letter 19 Response – Victoria Mayer

- 19-1 The comment suggests that installation of a roundabout could mitigate the project’s significant and unavoidable traffic impacts and states that the project’s proposed diagonal parking would present a safety hazard. Regarding a potential roundabout, please refer to response to Comment 3-5; see also Master Response 3 in Section 3.2 concerning traffic impacts more generally. Concerning diagonal parking, please refer to response to Comment 3-9. As noted there, for vehicles traveling 25 mph on Niles Boulevard, stopping sight distance at any of the diagonal parking spaces would exceed 150 feet, or the minimum stopping sight distance needed, based on Caltrans design standards. Even at 30 mph, when Caltrans identifies a minimum 200-foot stopping distance, the project’s diagonal parking would meet that minimum sight distance, according to the Site Distance Exhibit prepared by the project engineer. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 19-2 The comment states that the project would provide insufficient parking. Concerning parking, please refer to response to Comment 3-6. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 19-3 The comment states that the project should comply with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. As noted on page 4.A-12 of the Draft EIR, the proposed project is not located in the Commercial Core, rather the northernmost tip of the site abuts the southern boundary of the Niles Commercial Core Area. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

Comment Letter 20

From: anil Nair
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project (PLN2014-00338)
Date: Sunday, July 8, 2018 10:15:59 PM

Dear Mr. Wage,

As a Fremont Nile resident, I was very disappointed in your draft EIR for the project in Niles. I hate to see the empty site, but am more disappointed in the proposed project. It ignores the downtown character of Niles and the issues with traffic. I also find it difficult to understand why the city would allow building on what I have read is a toxic waste site.

20-1

I find it difficult that the traffic is so bad and the study says it will get worse, yet the document essentially seems to say that we have to just deal with it. I do not understand why the alternative of 60 units is not feasible as it seems like basic logic that fewer units means fewer cars and trips on the road. Also, I understand that Niles has some very specific regulations for design due to it being a historical district. Why are you not following these requirements? I do not like the roll up doors and the industrial style awnings. I like the downtown design as it is, why do you want to ruin this?

20-2

20-3

20-4

I propose fewer units, 60 or less.

20-5

I propose follow the design regulations for Niles as this is part of Niles history and should be preserved. No stupid glass roll-up doors. I like the way the windows and doorways are, so try to do something like that as I understand that is the requirement. Also, no industrial styling as it look like pacific commons or any other new building in the bay area.

20-6

Traffic needs to be dealt with. You need to do something to mitigate it and not put it on the citizens to deal with. Also, where are all these people supposed to park for these new businesses? There are already so many empty businesses downtown, why would you approve of more vacancies?

20-7

Regards,
A. Nair

Letter 20 Response – Anil Nair

- 20-1 The comment states that the project “ignores the downtown character of Niles,” ignores traffic issues, and would be built on a contaminated site. Please refer to Master Responses 2 and 3 in Section 3.2 of this chapter for a discussion of proposed project capability with the Nile Design Guidelines and Regulations and traffic impacts, respectively. Concerning hazards, as explained in the Initial Study, remediation has rendered the project site suitable for residential use, and no residual contamination is likely present in quantities or concentrations that could result in adverse health effects. Please refer also to response to Comment 6-3. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 20-2 The comment states that the EIR should identify mitigation for project-generated traffic impacts. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic-related issues. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 20-3 The comment asks why a 60-unit alternative is characterized as infeasible. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the purpose of an alternatives analysis and the feasibility of proposed alternatives, including the 60-Unit Reduced Density Alternative, which has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 20-4 The comment ask why the proposed project is not compliant with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 20-5 The comment supports a project with 60 units or less. The comment is noted and will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.
- 20-6 The comment states that the project should follow the *Niles Design Guidelines and Regulations*, and also expresses a negative opinion regarding several aspects of the project design. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

20-7 The comment asks about parking for the proposed project. The comment also states that approving additional retail stores would be inappropriate, given existing retail vacancies in Niles. Regarding parking, please refer to response to Comment 3-6.

Generally, impacts to existing business vacancies is an economic and social effect that is not treated as a significant effect on the environment under CEQA (refer to CEQA Guidelines Section 15131). No evidence has been provided by the commenter relating to the displacement of businesses leading to physical environmental impacts. However, to the extent that a comment regarding retail vacancies could be construed as intimating that the project could result in urban decay impacts, please see the response to Comment 3-4.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

From: Julie Aragon
To: [David Wage](#)
Subject: Niles Gateway Mixed Use Project
Date: Sunday, July 8, 2018 2:03:11 PM

July 7, 2018

Re: Niles Gateway Mixed-Use Project

Dear Mr. Wage,

I am writing in regard to the Alternative 2 of the EIE for the Niles Gateway Project.

As a longtime (34 year) resident of Niles, I appreciate the changes made thus far. I am hoping that the mutual desire of your dept. and our community can address the additional issues in design that remain.

Niles is a jewel in the Fremont landscape primarily because of its historic charm, and our community's commitment to the retention of that historic flavor. The Gateway project, in its current design, is not compatible with the Fremont Historical Review Board's review of which materials and architectural design would be most in keeping with the rest of Niles. Why not design this project to *enhance* what is already deemed to be a significant asset to the whole of Fremont? An historical area that people are attracted to...not a building at the "gateway" to our community that is out of keeping with the rest of the area.

21-1

We continue to be concerned with traffic issues that we have in Niles. Will they be exacerbated with this plan? I think so. That corner where the project is going in is often blocked with snarled traffic during peak hours as it is. What should take ten minutes to get out of Niles is doubled or tripled. A round-about would be a possible solution to this. This traffic issue is a huge concern for our community. This plan does not address the traffic issues effectively, nor does it include enough off-street parking. We have visitors come often and in large numbers to Niles events. That reality needs to be considered in the design of this project.

21-2

I thank you for considering my concerns and those of all my Niles neighbors. Let's keep Niles a place where people want to live and to come visit. Please help us retain what makes Niles different and special.

Sincerely,

Julie and Mark Aragon
346 D Street
Fremont, CA

Letter 21 Response – Julie and Mark Aragon

- 21-1 The comment states that the proposed project would be incompatible, in materials and design, with the rest of Niles. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project, but does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional environmental analysis is not required.
- 21-2 The comment expresses concern about existing traffic in Niles and suggests a roundabout as a potential solution. The comment states that traffic is not adequately addressed and that the proposed project would provide insufficient parking. Please see Master Response 3 in Section 3.2 in regard to traffic impacts. Concerning a potential roundabout, please refer to response to Comment 3-5. With regard to off-street parking supply, please refer to response to Comment 3-6.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: Renee Guild
To: [Vinnie Bacon](#); lilymei@yahoo.com; Rick1jones@fremont.gov; [David Bonaccorsi](#); [Raj Salwan](#); [planinfo](#); [Alice Cavette](#); [Kathryn McDonald](#); [Roman Reed](#); [Reshma Karipineni](#); [Ripple Leung](#); [Craig Steckler](#); [Brannin Dorsey](#); [David Wage](#)
Subject: Comments on Niles Gateway Mixed Use Project
Date: Sunday, July 8, 2018 8:39:17 PM

July 8, 2018

Dear Mr. Wage, Fremont City Council and Planning Commission Members,

I have read the Draft Environmental Impact Report (EIR) in its entirety and feel it is not addressing many of the concerns raised in response to the Initial Study Checklist, which itself failed to address any environmental impacts other than those mentioned in the findings of the Superior Court of Alameda. The Court’s Judgement in no way limited the EIR it ordered to the topics of the potential impacts of the project on aesthetics and transportation, instead mentioning them as examples of impacts the City failed to address. It is also misleading, if not a downright lie, to say that “The City, as lead agency, determined that preparation of an EIR was necessary for the proposed project because there was substantial evidence that the proposed project may have a significant effect on the environment.” (Chapter 1 Section C, Draft EIR) The City fought against an EIR all the way to the Superior Court of Alameda and only ordered this EIR to be conducted when it lost.

22-1

My principle concerns are as follows:

The Draft EIR dismisses the 60-Unit Reduced Density Alternative with a single sentence “because it would not meet the project objective to develop housing at a density consistent with the housing identified in the General Plan Housing Element, which identifies a density of 75 units on the project site.” A more thorough evaluation of this alternative which incorporates the obviously reduced impacts of a 60-Unit density as well as the interrelationship and compounding impacts of this development along with the many other high-density developments that are being built in the surrounding areas should be incorporated in a final EIR.

22-2

The architectural design of the proposed project remains unchanged from the original project’s and is not in conformance with the surrounding community’s predominately Craftsman design. This was noted by the Historical Review Board in its initial rejection of the project. A thoroughly fresh look at the architecture of Niles should be undertaken, and the project redesigned to better fit in with the existing community, particularly as it bills itself (rather presumptuously) as “the Gateway to Niles”.

22-3

The project should be subject to the same Niles Design Guidelines and Regulations, as it is identified in the planning documents as part of the Niles Town Center. It should therefore be required to provide wider sidewalks, more parking and drop-off areas, and the same width of streets and design details as the rest of Niles.

There are numerous traffic issues at the intersection of Niles Blvd. and Niles Canyon Road, where the proposed project’s main entrance would have cars backing on a blind curve into oncoming traffic. A roundabout at that location and other traffic flow improvements are

22-4

Comment Letter 22

sorely needed.

↑ 22-4
| cont.

Sub-soil testing through deep trenching is necessary, as the site was historically used as a dump and evidence of that practice has already been submitted into the record. Geo technical boring is not sufficient to determine the stability and adequacy of the underlying soil structure to support many multi-story buildings as is being proposed.

| 22-5

The stormwater runoff and pumping proposed has a number of issues that must be addressed by the Regional Water Quality Control Board which has the expertise, experience and legal authority required to evaluate and approve such matters.

| 22-6

The development should incorporate a permanent structure such as a playground at the Chase Court exit. While I am happy that the new proposed project's design eliminates the street exit at Chase Court (Figure 5-1) which would have vastly increased traffic through the project to avoid congestion on Niles Blvd., I am concerned that future Fremont City Councils and Planning Departments could open this exit to through traffic if a permanent structure is not built there. In addition, the future residents of this development could really benefit from a playground for the many children that will reside there.

| 22-7

Thank you for your consideration of my concerns. I look forward to your responding and addressing them in your Final EIR for this project.

Sincerely,

Renee H. Guild

37955 2nd St.

Fremont, CA 94536

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Letter 22 Response – Renee Guild

- 22-1 The comment states that the Draft EIR does not address many issues raised in response to the Initial Study. However, the commenter provides no further detail, and therefore, no detailed response is possible. The commenter also disagrees with the Draft EIR’s characterization of the process leading up to preparation of the Draft EIR and makes reference to the lawsuit filed over the prior project approval. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedure and the purpose of an Initial Study. Concerning the EIR requirement and the prior lawsuit, the Draft EIR makes reference to the legal proceedings on page 3-1 of Chapter 3, Project Description. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 22-2 The comment objects to the Draft EIR’s characterization of the 60-unit alternative as infeasible. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the purpose of an alternatives analysis and reduced density alternatives. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 22-3 The comment states that the proposed project is inconsistent with the *Niles Design Guidelines and Regulations* and should be subject to requirements applicable to the Niles Town Center. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. Concerning the Niles Town Center, please refer to Response 3-3. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 22-4 Concerning diagonal parking, please refer to response to Comment 3-9. Regarding a potential roundabout, please refer to response to Comment 3-5.
- The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 22-5 The comment questions the reliability of the project’s geotechnical report in light of the site’s alleged former use as a “dump.” Please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 22-6 The comment states that the Regional Water Quality Control Board, as the relevant expert agency, must review the project’s proposed stormwater plan. The comment is noted. The Regional Water Quality Control Board would have oversight over the proposed project. As described on page 76 of the Initial Study, the proposed project would be required to comply with the NPDES General Permit for Discharges of Storm

Water Runoff Associated with Construction and Land Disturbance Activities (Order 2009-0009-DWQ, NPDES No. CAS000002; as amended by Orders 2010-0014-DWQ and 2012-006-DWQ) (Construction General Permit). The NPDES Program is a federal program which has been delegated to the State of California for implementation through the State Water Resources Control Board and the nine Regional Water Quality Control Boards, including the San Francisco Bay Regional Water Quality Control Board.

In addition, as described on page 77 of the Initial Study, the proposed project would be subject to the NPDES C.3 requirements of the Municipal Regional Stormwater (MRP) NPDES Permit and the Alameda Countywide Clean Water Program. The MRP NPDES Permit was issued by the San Francisco Bay Regional Water Quality Control Board, allowing municipal stormwater systems to discharge to local creeks, San Francisco Bay, and other water bodies.

The comment does not identify any specific concerns regarding stormwater control or treatment, nor does it raise any new environmental issues that have not been adequately addressed in the Draft EIR, and, therefore, additional analysis is not required.

- 22-7 The comment refers to the bioretention area identified as Drainage Management Area (DMA) 25/BR #8 on Figure 3-10 of the Draft EIR. Section 2, *Introduction* of the Draft EIR addressed concerns regarding future throughway to Chase Court. As described on page 2-12 of the Draft EIR, the site plan as proposed, including compliance with stormwater requirements, would preclude future development of a roadway connecting to Chase Court. The bioretention area would be a permanent feature of the project site; therefore, a permanent structure such as a children's playground would not be needed in that area. Furthermore, even if such a change were proposed, it would be considered a "substantive change" and the project sponsor would be required to go through the Planned District Amendment process pursuant to Fremont Municipal Code Section 18.110.110. Such a change, if proposed, would be processed as a rezoning and require consideration by the Planning Commission and City Council and would be subject to additional environmental review.

The comment also recommends adding a playground as part of the proposed project. The comment is noted. The project as proposed does include open space for residents including a passive park space at the north end of the site, outdoor space at the community center, and a resident's picnic park. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: Robert Daulton
To: [David Wage](#)
Subject: Niles Gateway DEIR
Date: Monday, July 9, 2018 3:07:27 PM

Mr. David Wage
Associate Planner
City of Fremont, Planning Division
dwage@fremont.gov

Mr. Wage, please find below my personal comments on the Niles Gateway DEIR.

In general, the Draft EIR for the Niles Gateway project is inadequate. The narrow scope of the DEIR follows the judgement by the Superior Court, and goes no farther. In doing so little, the City seemingly demonstrates a lack of curiosity or concern with regard to the larger issues that will certainly arise from this project in any of the proposed alternatives.

23-1

The drab, featureless aesthetic of this project is seen by much of the community as largely inappropriate and disconnected from the experience of the Niles HOD. What a missed opportunity! This was a chance for the city to encourage architectural excellence, and what we have in its place is a strip-mall look and feel. The EIR ties itself in a knot to disavow the Niles Design Guidelines when it should be embracing them, not to emulate the past, but as an impulse to create a place of lasting significance that could add to the distinctiveness of Niles.

23-2

The project was originally cast as an extension of Main Street down to beyond the train underpass. It is a de facto part of the downtown HOD and commercial core. Why does it have to be so crushingly ugly and undistinctive?

Had the design of this project been of a higher quality, the level of community revulsion to the development would have been correspondingly lower. From the project's inception, it has been a blatant attempt to leverage the charm and history of the Niles HOD and Commercial Core to add value to a bland and charmless undertaking.

The Niles Gateway DEIR does not adequately characterise or mitigate the traffic impacts of the proposed project. The narrow, two-lane access leading from the corner of Mission and Niles Canyon Road, past the corner of Niles Canyon Road and Niles Boulevard will be egregiously impaired by the influx of between one- and two-hundred cars. The DEIR claims mitigation of the traffic issues caused by such a massive addition to daily traffic on a two lane road is "not feasible".

23-3

This impact can be mitigated through a lower density project, ideally one which matches the character and density of the surrounding neighborhood of single family homes. At the very least, a 60-unit proposal such as Alternative 3 ought to be seriously planned, presented,

23-4

Comment Letter 23

and considered, rather than dismissed off-handedly as unfeasible.

↑ 23-4
cont.

The DEIR ignores the proximity of this project to the sensitive areas of the Alameda Creek. The position of the homes on the eastern border of the site along the frontage of the creek infringes on the scenic quality of the creek front, and adds an undesirable run-off hazard into the area of the new fish ladder and additionally into the city's water source. The system for managing the development's run-off is one-half guesswork, and the other half left to the community to deal with, as in the case of the storm drain under the train bridge. That drain is generally clogged and overflows the intersection of Niles Canyon Road and Niles Boulevard during rainy weather. It dumps into the creek above the new fish ladder, and is simply ignored by this plan.

23-5

It's obvious from reading your document that the City wanted to avoid serious consideration of the project's impact at all cost. This document perpetuates the ongoing attempt by the City and the developer to rush through the process required by CEQA. The result of this has been a nearly three year delay in the project, the needless expenditure of time and money by the city and the community, and enough aggravation and dissatisfaction to go around all of Fremont.

- Robert Daulton
2nd Street, Niles District, Fremont

Letter 23 Response – Robert Daulton

- 23-1 The comment states that the Draft EIR is inadequate, apparently because the document is a focused EIR that analyzes a number of environmental topics in the Initial Study. However, the commenter appears to misunderstand the EIR process, as well as the fact that the Initial Study, which is included in the Draft EIR as Appendix A, is considered part of the EIR. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedure and the scope of the Draft EIR. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 23-2 The comment takes issue with the proposed project’s design quality. The comment is noted, but it does not address the adequacy or accuracy of the Draft EIR, and no detailed response is required. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of aesthetics and the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*.
- 23-3 The comment states that the Draft EIR mischaracterizes traffic impacts of the project on Niles Boulevard and fails to identify mitigation measures. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of traffic impacts and the feasibility of mitigation measures. Additionally, the comment is incorrect in its assertion that 100-200 cars would be introduced on the roadways/corners from the project site involving Mission Boulevard and Niles Boulevard/Niles Canyon Road. Project traffic volumes are presented in Figure 4.B-6 of the Draft EIR, which illustrate that the PM peak hour volumes at the intersection of Mission Boulevard and Niles Boulevard/Niles Canyon Road would total 68. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 23-4 The comment states that traffic impacts can be mitigated by adoption of a 60-unit alternative and questions why this alternative is dismissed in the Draft EIR as infeasible. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of feasibility of proposed alternatives and reduced density alternatives. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 23-5 The comment states that the Draft EIR ignores potential impacts on Alameda Creek, including visual impacts and potential adverse effects of the project’s proposed stormwater management system, including potential effects on the fish ladder currently being constructed at Alameda County Water District Rubber Dam #3, adjacent to the project site. As described on page 4.A-44 of the Draft EIR, although development of the project would result in a change in the visual conditions of the project site, the project as

proposed would achieve a high-quality design that would be visually compatible with immediate and broader surrounding land uses. Based on a comparison to the existing visual conditions of the project site, the effect on visual conditions resulting with the project would be beneficial.

The proposed project's stormwater control plan is not guesswork, as stated by the commenter. Rather, as described in the Draft EIR on page 3-17:

The proposed project would install an onsite stormwater drainage system consisting of a network of bioretention areas, inlets, and underground piping (see Figure 3-10). Runoff would be conveyed to the site of an existing outfall located near the southwest corner of the project site and downstream of the Alameda County Water District's Inflatable Rubber Dam #3, which spans Alameda Creek adjacent to the project site. To accommodate the project runoff, the existing 10-inch-diameter outfall pipe would be replaced with a 24-inch-diameter pipe. The proposed project would meet the requirements of the National Pollution Discharge Elimination System (NPDES) permit, Alameda Countywide Clean Water Program, as well as other local, State, and federal requirements for stormwater quantity and quality. Approximately 12 bioretention areas would be located throughout the project site and are proposed to satisfy the stormwater treatment requirements, as described further below. The stormwater outfall would drain from the largest of these bioretention areas.

As explained in the Initial Study (Draft EIR Appendix A, Section 4.9, Hydrology and Water Quality), the proposed project would not result in any significant effects with respect to stormwater runoff or water quality. Specifically, with respect to the existing stormwater outfall at the dead end of Niles Boulevard, to which the commenter apparently refers in discussing flooding during rainstorms, the project would not be connected to this outfall. Rather, as described on Draft EIR page 3-17 and excerpted above, the project would drain to Alameda Creek downstream of this location, at the site of another existing outfall near the southwestern corner of the project site. Therefore, the project would discharge stormwater into Alameda Creek downstream of both Rubber Dam #3 and the new fish passage (fish ladder), which will allow spawning fish to pass Rubber Dam #3 on their way upstream.

Please refer also to response to Comment 3-22.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 24

From: carolsgraphicarts@aol.com
To: DWage@fremont.gov
Subject: Niles Gateway Mixed-Use Project
Date: Monday, July 9, 2018 6:50:20 PM

Hello David Wage,

I am writing to you about my concerns for the Niles Gateway Mixed-Use Project. It is a development of 95 dwellings on a six acre property in Niles.

I would like a full EIR that focuses on more impacts not just traffic and aesthetics.
I would like a full EIR that focuses on population, traffic, schools, fire protection, endangered species,
archeological artifacts, and community beauty.

I 24-1
I 24-2

The site sits right next to the Alameda Creek Trail which is managed by the East Bay Regional Park District. We need to hear their concerns on this project.

I 24-3

Thank you.
Carol Drake
510-358-2805

Letter 24 Response – Carol Drake

- 24-1 The comment requests a “full EIR that focuses on more impacts not just traffic and aesthetics.” Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedures and the scope of the EIR. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 24-2 The comment states that the EIR should assess impacts to population, traffic, schools, fire protection, endangered species, archeological artifacts, and community beauty. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedures and the purpose of an Initial Study, which for this EIR, analyzed the proposed project’s impacts related to population, schools, fire protection, endangered species, and archeological resources. Aesthetics and traffic were analyzed in Sections 4.A and 4.B of the Draft EIR, respectively. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 24-3 The comment states that, because the project site is adjacent to the Alameda Creek Trail that is managed by the East Bay Regional Park District (EBRPD), EBRPD should be consulted regarding the proposed project.

EBRPD was provided an opportunity to comment on the Draft EIR. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Date: July 9, 2018

Re: Niles Gateway Mixed-Use Project

Dear Mr. Wage,

I write to express my support for Alternative 2 of the Draft Environmental Impact Report (EIR). However, there appear to be significant remaining flaws in the proposed alternative, as follows:

1. The architectural design of Alternative 2 is unchanged from the original proposed design. The Fremont Historical Review Board found this design “incompatible” with Niles’ existing, predominately Craftsman design. The HARB cited the excessive use of metal and insufficient use of brick or tile, and that the architecture does not relate to the historical character of the rest of Niles. Perhaps it’s time for a new architect to take a fresh look at the rest of Niles and come up with a new design?
2. The project does not conform to the *Niles Design Guidelines & Regulations*, which were adopted with significant input from the community. The Fremont General Plan specifically states that the Guidelines govern and “remain in effect” (COF General Plan, Community Plans, 11-128). The Niles Gateway Project is identified in the Planning documents as part of the Niles Town Center, and should be subject to the same requirements regarding width of sidewalks (15 feet on Niles Blvd.), width of public streets, and parking requirements. Specifically, the proposed Alternative 2 does not have enough off-street parking for the restaurant and community center, and curb space for drop-off and pick-up of passengers. This will lead to many problems for the surrounding Niles community, especially on event days, when parking is already inadequate.
3. Lack of adequate traffic flow improvements, such as roundabouts and/or other street improvements on Niles Blvd. where there will be diagonal parking with vehicles backing into a blind curve.
4. The EIR makes no mention of the historic use of the project property as a town dump, despite documents submitted to the City in previous Comments dating from 1968 that show this. There is a need for 20 ft. deep trenching (not geotechnical boring, which is designed to identify contaminants in the soil, not underlying deep soil structure) in order to assure that the buildings will not be built on unstable rubble.

25-1

25-2

25-3

25-4

Thank you for considering these comments. We look forward to your incorporating them in a final EIR.

Sincerely,

Corinne Cruz

Letter 25 Response – Corinne Cruz

- 25-1 The comment expresses concern over Alternative 2’s compatibility with the *Niles Design Guidelines and Regulations*. As described on page 5-11 of the Draft EIR, the overall design and aesthetic character of Alternative 2 would be similar to the proposed project. Instances where Alternative 2 would not comply with applicable guidelines (i.e., *the Niles Design Guidelines and Regulations*) would be largely the same as those under the proposed project (e.g., absence of keyhole entries, width of storefront entries, and non-compliant awning design, as described in the discussion of Impact 4.A-1 Section 4.A, *Aesthetics*). Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*, which also applies to Alternative 2. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 25-2 The comment states that the proposed project is inconsistent with the *Niles Design Guidelines and Regulations* and should be subject to requirements applicable to the Niles Town Center. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. Regarding the Niles Town Center, please refer to Response 3-3. Concerning parking and pick-up/drop-off spaces, please refer to response to Comment 3-6.
- 25-3 Regarding a potential roundabout, please refer to response to Comment 3-5. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 25-4 The comment alleges “the historic use of the project property as a town dump,” and questions the reliability of the project’s geotechnical report. Please refer to response to Comment 3-13. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: Dave Jacobs
To: [David Wage](#)
Subject: Niles Gateway Mixed-Use Project DEIR feedback
Date: Monday, July 9, 2018 10:47:43 AM

Hello Mr. Wage,

I know that it was not your fault for the last disaster with this project that got our city in a law suit, but in looking over this draft EIR, I am seeing similarities in mistakes made. The successes in past changes and additions in Niles have largely come from the community input. Things like the Niles Design Regulations and Guidelines themselves were created by a collaboration between the community and the city. Also the downtown plaza, another collaboration.

1) I am not sure why you are ignoring the Niles Design Regulations for this project as it does sit in the HOD and is extending the commercial core to this project. I think the glass roll up doors are completely inappropriate as I said the first time back in 2015. I would like that you get rid of them. The Design Regulations and Guidelines were created for a reason and have a purpose for this project. So just follow them for the design. They followed it with the Fire station with the windows and adornments on the building. Similar things can be done with these buildings.

26-1

2) I am not sure why we are trying to add 13 new vacancies downtown with these new proposed spaces. Niles normally has 5-8 vacancies downtown. With the projected price of these new business spaces, we will most probably have more vacancies as people who own current buildings will want to raise rents. I thought it might have worked, but in talking and working with some of the business owners in the downtown of Niles, I really think that this will be a disaster.

26-2

3) Traffic is already bad enough and it looks like there are no plans to mitigate it. The logical solution would be to build fewer units. I am not sure why the 60 unit option is being written off, the EIR seemed kind of biased which it should not be. If fewer units will help with less traffic, then you have to go with that option. 60 units or less. Also, it was brought up at the meetings in 2015 that a round about may help with traffic flow at the entrance just past the railroad tracks on the sharp turn. I think it is a good idea and would like the city to put that as a traffic control solution for this project.

26-3

4) You need listen to what the community wants to see there. This was the problem the last go-around and is what led to the citizens having no other option but to sue the city. Let's keep Niles as Niles and not try to emulate other places like Livermore or Pleasanton downtown's. I am sorry to sound cynical, but I am getting the sense that this effort of reaching out for comments on the DEIR is just for checkboxes and not actually going to result in anything.

26-4

Regards,
Dave

Letter 26 Response – Dave Jacobs

- 26-1 The comment states that the proposed project should comply with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 26-2 Generally, impacts to existing business vacancies and rental rates is an economic and social effect that is not treated as a significant effect on the environment under CEQA (refer to CEQA Guidelines Section 15131). No evidence has been provided by the commenter relating to the displacement of businesses leading to physical environmental impacts. However, to the extent that a comment regarding retail vacancies could be construed as intimating that the project could result in urban decay impacts, please see the response to Comment 3-4.
- 26-3 The comment states that existing traffic conditions are bad and no mitigation for traffic impacts is proposed. The comment also states that a 60-unit alternative would reduce traffic impacts and should be adopted. Finally, the comment suggests that a roundabout could relieve traffic conditions. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the purpose of an alternatives analysis and the feasibility of proposed alternatives, including the 60-Unit Reduced Density Alternative. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. Regarding a potential roundabout, please refer to response to Comment 3-5. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 26-4 The comment states that the City should “listen to what the community wants to see” at the project site. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedure. As described in Chapter 1, *Introduction* of this Final EIR, the purpose of this response to comments document is to evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response. Many comments express opinions about the merits or specific aspects of the proposed project and these are included in the Final EIR for consideration by the decision-makers. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

From: Julie A Cain
To: [David Wage](#)
Subject: Comments on Niles Gateway DEIR
Date: Monday, July 9, 2018 11:06:16 AM

July 8, 2018

To David Wage, the Planning Commission and City Council:

As everyone knows by this time, the local community group known as Protect Niles was forced to sue the City of Fremont and the Valley Oaks developer, Doug Rich, as the only way to secure a critically-needed EIR to investigate environmental concerns regarding the Niles Gateway Project. HARB denied the project and cited numerous reasons as to why, including the fact that the architectural style was not contextual, which is required of an infill project within the Historic Overlay District. Contextual architecture is THE point, the heart and soul, of the creation of the Niles Design Guidelines, to ensure the integrity of the Niles Historic District. Yet despite this, Doug Rich submitted an identical style project to the one already denied by HARB. He knows HARB did not pass it the first time around and so do the City of Fremont officials and staff. So why did he bother to submit the same style of project, despite Judge Frank Roesch finding for an EIR with Aesthetics specifically called out? The mind boggles and the community remains frustrated with both the lack of transparency and the willingness of the City of Fremont and Doug Rich of Valley Oaks to continually circumvent the process put in place to prevent bad and inappropriate projects. And to do so in Niles, of all places. One of the several historic districts within the City of Fremont that cares deeply about their storied past and has fought hard to protect its integrity, including our iconic views of the hills. We have fought before to preserve our post office and our elementary school, and to have a wonderful plaza that truly reflects our cultural heritage. We could do no less with the Niles Gateway project, especially due to its sensitive location on so many levels.

As for examples of two “new” projects that successfully follow the Niles Design Guidelines, look at either the new Niles fire house or the nearby Pickering Place apartments. A design that reflected the Soft Modern ethic of William Wurster would have been the logical choice, given Wurster’s masterpiece of a factory office that was burned down on the site by vandals. Instead, the DEIR wasted numerous pages both trying to explain why this project DIDN’T need to follow the guidelines and how, in such a limited way as to be invisible, it DID follow the guidelines. The DEIR made a point of which features this project would NOT reference, such as keyhole entries, when it is the use of those very features which makes the architectural style contextual. Not mimicking a false historical style but, like the fire house and Pickering Place, using chief defining characteristics which DO reference the architecture already in place. This is not rocket science; it merely requires a commitment to do right by Niles.

27-1

I was appalled at many of the misstatements made by the opposing attorney at the appeal; one of the worst was his claim that the project followed the Niles Design Guidelines because it was beautiful and was not an adverse significant impact on a blighted site. Well, where he got the idea that the Niles Design Guidelines is all about creating something beautiful rather than contextual means either he has never read the guidelines or did not comprehend what he had read. And we all know beauty is in the eye of the beholder; one of the most common remarks made by the people who live in Niles was that they wanted a project on the site but not THAT project. “It doesn’t look like Niles” was a comment we heard over and over again while talking with the local community at the Niles Farmer’s Market week after week. That observation vied with how bad traffic is and how much worse the new project would make the traffic as the two most oft-heard statements, all made while folks obligingly dropped their coins and dollar bills into the jar to pay an attorney in an effort to gain a project that would actually enhance Niles.

I do want to acknowledge the significant improvements with Alternative 2 of the project: two stories instead of three, 75 units instead of 98, the loss of the linear park and the live/work spaces, the new ring road which completely loops the project, and the loss of the Chase Court entrance, to name the main points. I do question why Alternative 3 at 60 units was not given due consideration and was dismissed out of hand. The loss of those 15 additional units is literally 30 less cars trying to get their kids to school outside of the neighborhood. None of the kids living in this new project will be attending Niles Elementary, with its approximately 125 children already on the waiting list. The improvement in morning traffic now that school is out is proof that kids attending school outside of

27-2
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27-4

the neighborhood seriously adds to the already existing traffic problems, already identified at the E and, at times, F levels.

↑ 27-4
cont.

I also question the wisdom and efficacy of adding a commercial component on to the project. I see that the live/works are gone from Alternative 2 due to Doug Rich no longer being interested in creating such units. But the economy is booming and there are currently at least FIVE empty storefronts along Niles Blvd. So how in the world, and especially with the physical constraints of the site, are 4,050 square feet of retail space and a restaurant expanded by 1,000 square feet going to be an asset? (And where is the additional parking required by a much larger restaurant?) Downtown Niles, for the most part, makes a living catering to antiques and collectibles shoppers. We don't need more of those and the detached location of the Niles Gateway location is hardly conducive to luring pedestrians outside of the central downtown area. That last block gets relatively little foot traffic now and I seriously doubt the commercial component of this project will change that. And empty storefronts are hardly the statement the Niles Gateway project wants to make as folks drive in from Mission Blvd.

27-5

Going back to the improvements seen in Alternative 2, we would not be seeing ANY of them without the DEIR in place, which begs the question: If the EIR had not been limited to aesthetics and traffic, and both findings for those two environmental concerns differed from those in the original negative declaration, why in the world didn't the City of Fremont demand an EIR address the additional issues of land use and planning, air quality, cultural resources, greenhouse gas emissions, noise, geology and soils, hazards and hazardous materials (especially with the various industrial uses of the past century), and hydrology and water quality (especially with immediate location to Alameda Creek)? These areas of environmental concern were all identified as likely candidates with cultural resources, noise and transportation/traffic called out as specific requirements for the Niles Creekside project proposed in 2011. As city project manager Clifford Nguyen noted at the time, the "project site is in an extremely sensitive location with the recharge area of the Niles Cone Groundwater Basin." That hasn't changed between 2011 and 2018. But the administrative process appears to have changed and clearly not for the better. In 2011 the potential developer needed to get all their ducks in a row before project approval, not AFTER the fact as is now in 2018.

27-6

Both the developer and the City of Fremont still have the ability to do right by this project, and to choose to follow the process the City of Fremont has already put in place to ensure good projects. Protect Niles has fought hard in an attempt to earn Niles a great project. The people who live in Niles want a great project. It is not too late for Alternative 3, at 60 units, designed following the Niles Design Guidelines due to being an infill project within the HOD and all of the pertinent City of Fremont standards rather than being granted variances to happen. The approved project should first be passed by HARB, and changes made accordingly if needed, before going before the Planning Commission and the City Council. Niles would then be the recipient of a great project, not a merely good one, and certainly not the truly poor one that was submitted the first time around. Will the people who live in Niles and cherish their neighborhood truly be heard this time around? Please restore our faith in the City of Fremont by listening to the people who live in the City of Fremont rather than the developer. Doug Rich is going to build whatever he is allowed to build and go on his merry way. We will be living with the consequences of this project for decades to come. Please approve Alternative 3, at 60 units, without the commercial component, and do right by your constituents. We are all counting on you.

27-7

27-8

Julie Cain

Niles Resident and Named Petitioner of Protect Niles

Letter 27 Response – Julie Cain

- 27-1 The comment states that the project should be compatible with the *Niles Design Guidelines and Regulations*. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 27-2 The comment notes that Alternative 2 is preferable to the proposed project. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of feasibility of proposed alternatives, including Alternative 2. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 27-3 The comment questions the Draft EIR’s characterization of a 60-unit alternative as infeasible. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of feasibility of proposed alternatives, including a 60-Unit Reduced Density Alternative. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 27-4 The comment raises a concern regarding the proposed project’s impact in relation to school capacity and school-related traffic. Section 2, *Introduction* of the Draft EIR addressed concerns regarding the projected population at the project site, school capacity, and school-related traffic trips. As described on page 2-8 of the Draft EIR, the Fremont Unified School District does not currently guarantee that a child in a certain area will be able to attend the elementary school closest to their home. In such instances, the child is offered a spot at another school that has available space (called overloading), and that school can be close by or across town. There is no way to predict whether a child from the proposed project would be overloaded to another school; it would be dependent on the school attendance figures at the time of enrollment for each student.

In addition, as discussed on page 2-8 of the Draft EIR, transportation analysis took school trips into consideration. It would be speculative to estimate the number of overloaded students that would be living at the proposed project in any given year and the related morning school trips that would be longer than the trip to Niles Elementary School. It may also be possible that longer school trips could be on the same route for a parent’s trip to work and, therefore, would not represent a change in the morning trip pattern.

The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.

- 27-5 Generally, impacts to existing business vacancies and rental rates is an economic and social effect that is not treated as a significant effect on the environment under CEQA (refer to CEQA Guidelines Section 15131). No evidence has been provided by the commenter relating to the displacement of businesses leading to physical environmental impacts. However, to the extent that a comment regarding retail vacancies could be construed as intimating that the project could result in urban decay impacts, please see the response to Comment 3-4.
- 27-6 The comment states that issues in addition to aesthetics and transportation should have been included in the Draft EIR. Please refer to Master Response 1 in Section 3.2 of this chapter for a discussion of general CEQA procedures and the purpose of an Initial Study, which for this analyzed the proposed project's impacts related to land use and planning, air quality, cultural resources, greenhouse gas emissions, noise, geology and soils, hazards and hazardous materials, and hydrology and water quality. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 27-7 The comment expresses support for a 60-unit alternative that is compatible with the *Niles Design Guidelines and Regulations* and also supported by the Historic Architectural Review Board. Please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of feasibility of proposed alternatives, including a 60-Unit Reduced Density Alternative. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 27-8 The comment expresses support for a 60-unit alternative without the commercial component. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

Comment Letter 28

From: sandi grantham
To: [David Wage](#)
Subject: Niles Gateway project
Date: Monday, July 9, 2018 12:53:43 PM

Hi Dave

I have a couple of more issues since I last communicated with you months ago.

1. When I looked at the renderings, I noticed that there have been no changes to the facade even though the EIR stated that it would substantially degrade the existing visual character and its surroundings. By the new fire station using a brick facade, it seamlessly fits the character on Niles. I would like to see more bricks and/or tile and substantially less metal. With the excessive use of metal, the Gateway project reminds me of an industrial park. Since this will be the first view of "Historical" Downtown Niles that people see, I would like it reflect the historical character of Niles.

28-1

2. Less units will help the traffic situation, but there still needs to be more traffic flow improvements.

28-2

Thanks,
Sandi

Letter 28 Response – Sandi Grantham

- 28-1 The comment states that the proposed project would degrade the existing visual character and surroundings, and therefore the project should employ materials and design that would be compatible with the historical character of Niles. Please refer to Master Response 2 in Section 3.2 of this chapter for a discussion of the proposed project’s compatibility with the *Niles Design Guidelines and Regulations*, including building materials. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required.
- 28-2 The comment states that a lesser density alternative would relieve traffic impacts and that traffic improvements should be made. Please refer to Master Response 3 in Section 3.2 of this chapter for a discussion of the feasibility of traffic improvements. Regarding alternatives, please refer to Master Response 4 in Section 3.2 of this chapter for a discussion of the purpose of an alternatives analysis and the feasibility of proposed alternatives, including the 60-Unit Reduced Density Alternative. There, it is explained that the 60-Unit Reduced Density Alternative has been added to the EIR in response to this and other comments. The comment does not raise any new environmental issues that have not been adequately addressed in the Draft EIR, and additional analysis is not required. The comment will be presented to decision-makers as part of this EIR for their consideration when reviewing the proposed project.

CHAPTER 4

Revisions to the Draft EIR

4.1 Introduction

This section summarizes text changes made to the Draft EIR either in response to a comment letter or initiated by City staff or in response to a modification to the proposed project. New text is indicated in underline and text to be deleted is reflected by a ~~strike through~~. Text changes are presented in the page order in which they appear in the Draft EIR. The text revisions provide clarification, amplification, and corrections that have been identified since publication of the Draft EIR. The revisions in this chapter do not constitute “significant new information” and it is therefore not necessary for the Lead Agency to recirculate the EIR for public comment prior to certification of the Final EIR (CEQA *Guidelines* Section 15088.5).

4.2 Staff-Initiated Changes to the Draft EIR

The text changes presented in this section were initiated by Lead Agency staff and consist of corrections or clarification. None of the revisions results in fundamental alterations of the conclusions of the Draft EIR. The following text changes have been made:

Changes to the Draft EIR Chapters and Sections

Table 3-1 on page 3-7 of the Draft EIR is revised as follows (see next page) to correct the square footage based on the applicant’s April 2018 set of plans. The total number of residential units and non-residential square footage remains the same. This does not change the analysis or conclusion in the Draft EIR:

The first sentence of the first paragraph on page 3-8 of the Draft EIR is revised to correct an editorial error concerning building height (height is correctly given in the Aesthetics section on page 4.A-35. This does not change the analysis or conclusion in the Draft EIR):

The CRAFT building would consist of two and 2.5-story elements with a maximum height of approximately 36 feet, with an eave height of 30 feet.

**TABLE 4-1
NILES GATEWAY MIXED-USE PROJECT SUMMARY**

Use	Concept Plan Type	Quantity	Square Feet
CRAFT Units	A1	1	775
	A2	1	709
	B1	2	2,098 <u>2,334</u>
	B1-1	2	2,372 <u>2,334</u>
	B2	1	4,348 <u>1,256</u>
	B3	2	2,338 <u>2,312</u>
	2B	4	8,228 <u>8,220</u>
	<i>Subtotal</i>	13	47,838 <u>17,940</u>
Townhomes	1	28 <u>18</u>	53,536 <u>34,542</u>
	2B	22 <u>28</u>	46,254 <u>57,540</u>
	3	45 <u>6</u>	31,530 <u>12,834</u>
	3X	44 <u>10</u>	22,646 <u>21,150</u>
	4	6 <u>8</u>	9,666 <u>14,264</u>
	<u>5</u>	<u>6</u>	<u>10,716</u>
	<u>6</u>	<u>6</u>	<u>9,402</u>
	<i>Subtotal</i>	82	162,602 <u>160,448</u>
Non-Residential	Retail/Restaurant	-	5,883
	Community Center	-	1,450
	<i>Subtotal</i>		7,333
	TOTAL	95 units	187,773 <u>185,721</u>
Parking	-	281 spaces	

SOURCE: Valley Oak Partners, LLC, 2017

The second sentence of the second paragraph on page 3-8 of the Draft EIR is revised to clarify the trash enclosure materials. This does not change the analysis or conclusion in Section 4.B, Transportation and Traffic, of the Draft EIR:

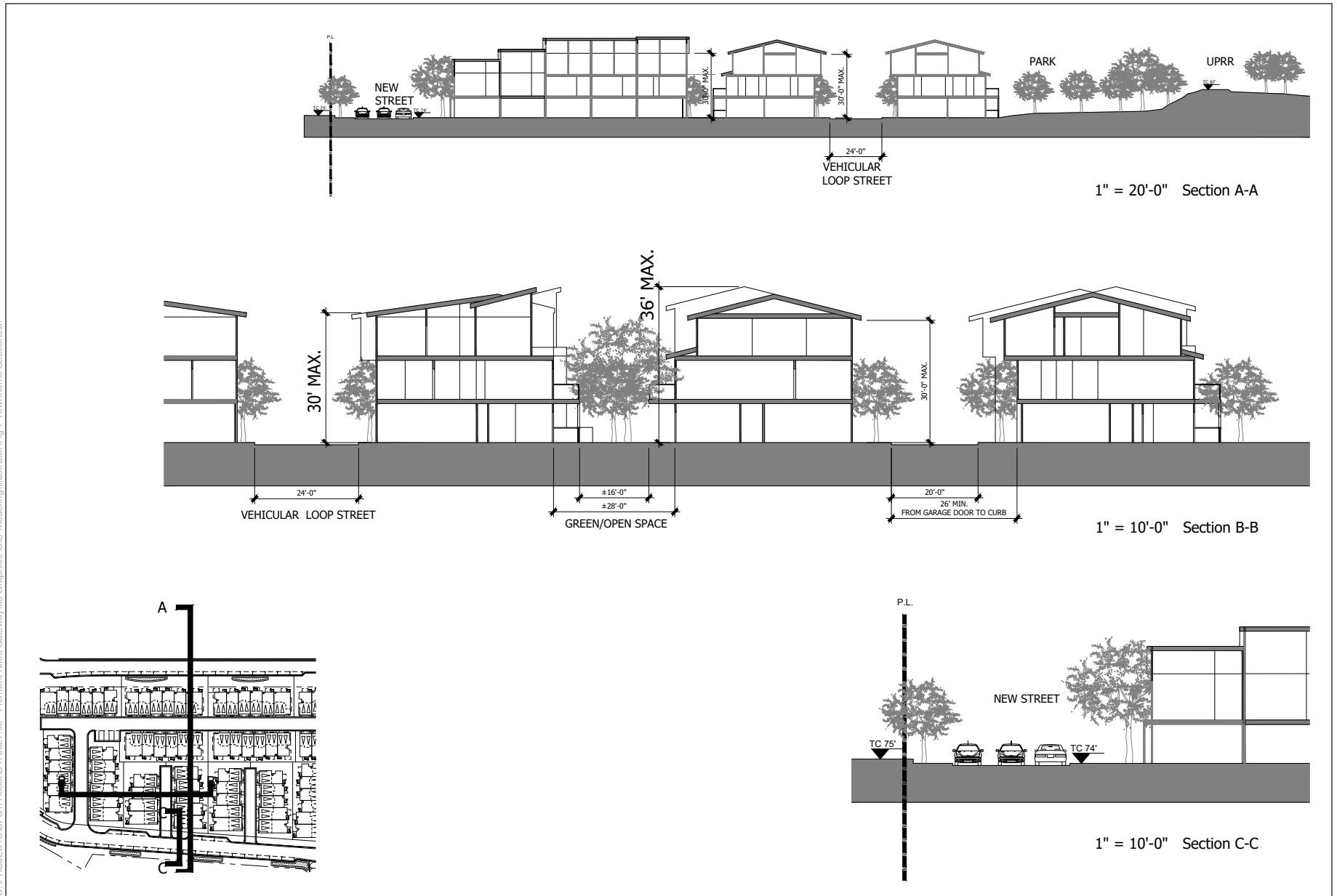
The trash enclosure structure would feature metal, concrete masonry unit wall and wood siding and a corrugated metal roof.

The second and third sentences of the first paragraph on page 3-12 of the Draft EIR, beneath the heading “Townhomes” are revised to reflect the applicant’s April 2018 set of plans and to correct an editorial error concerning building height (height is correctly given in the Aesthetics section on page 4.A-35). This does not change the analysis or conclusion in the Draft EIR:

The floor areas of the two and three-bedroom townhome units would range between ~~1,912~~ 1,919 to ~~2,102~~ 2,139 square feet. Maximum building height would be up to 36 feet, with an eave height of 30 feet.

Figure 3-7 on page 3-13 of the Draft EIR is revised as follows (see next page) to include the maximum building height. This does not change the analysis or conclusion in the Draft EIR:

U:\PROJECTS\SFO\17xxxx\170627.00 - Fremont Niles Gateway\05 Graphics-GIS-Modeling\Illustrator\Fig 7 Townhome Sections.ai



SOURCE: Studio T Square, 2018

Niles Gateway Mixed-Use Project

Figure 3-7 (revised)
Townhome Building Sections



The third sentence of the last paragraph on page 3-12 of the Draft EIR is revised as follows to correct the square footage and parking based on the applicant's April 2018 set of plans. This does not change the analysis or conclusion in the Draft EIR:

Sidewalks would also be provided along Streets A, ~~B, and C~~, and would be approximately five feet wide.

The first two sentences of the first paragraph on Draft EIR page 5-11 is revised as follows. This does not change the analysis or conclusion in the Draft EIR:

While the 13 residential units located above the CRAFT building along Niles Boulevard under the proposed project would be excluded under Alternative ~~1~~ 2, the overall design and aesthetic character of Alternative 2 would be similar to the proposed project. Instances where Alternative ~~1~~ 2 would not comply with applicable guidelines (i.e., the Niles Design Guidelines and Regulations) would be largely the same as those under the proposed project (e.g., absence of keyhole entries, width of storefront entries, and non-compliant awning design, as described in the discussion of Impact 4.A-1 Section 4.A, Aesthetics).

Changes to the Initial Study (Draft EIR Appendix A)

The following two paragraphs on page 2 of the Initial Study (Appendix A of the Draft EIR) are revised for consistency with the Draft EIR Project Description and to correct the square footage and parking based on the applicant's April 2018 set of plans. This does not change the analysis or conclusion in the Draft EIR:

The proposed project includes the development of a vacant 6.07-acre parcel with two types of buildings consisting of 95 dwelling units and 7,333 square feet of non-residential uses. The 95 dwelling units would consist of 82 townhomes and 13 "Creative-Retail-Artist-Flex-Tenancy" (CRAFT) units. The 7,333 square feet of non-residential uses would consist of 5,883 square feet of retail/restaurant uses and 1,450 square feet of community center space. In total, ~~487,773~~ 185,721 square feet of building floor area is proposed to be developed on the site. Northbound Niles Boulevard would be re-striped to accommodate a new left turn pocket lane at a new project driveway. A second new driveway with one inbound and one outbound lane would be constructed at the north end of the site on Niles Boulevard, which would connect to a private street (Street A) which would encircle the project site.

A total of ~~92-93~~ 28-25 new guest surface parking spaces would be established, including ~~28~~ 25 new diagonal parking spaces on Niles Boulevard along the frontage of the CRAFT building, ~~57~~ 64 parallel parking spaces on the west and east side of the project site along Street A, and ~~seven~~ four off-street spaces in a parking lot in the townhome area. Each CRAFT unit and townhome would have two enclosed parking spaces in each unit's garage, with the exception of the two one-bedroom CRAFT units, which would each have a surface parking space. Collectively, ~~274~~ 281 new parking spaces would be

provided throughout the project site and along Niles Boulevard (including the ~~92~~ 93 spaces noted above).

The fourth sentence in the last paragraph on page 7 of the Initial Study (Appendix A of the Draft EIR) and page 3-5 of the Draft EIR is revised as follows to correct the square footage based on the applicant's April 2018 set of plans. This does not change the analysis or conclusion in the Draft EIR:

In total, ~~187,773~~ 185,721 square feet of buildings are proposed to be developed on the site.

Table 2-1 on page 9 of the Initial Study (Appendix A of the Draft EIR) is revised as follows to correct the square footage based on the applicant's April 2018 set of plans. The total number of residential units and non-residential square footage remains the same. This does not change the analysis or conclusion in Section 4.B, Transportation and Traffic of the Draft EIR:

**TABLE 2-1
NILES GATEWAY MIXED-USE PROJECT SUMMARY**

Use	Concept Plan Type	Quantity	Square Feet	
CRAFT Units	A1	1	775	
	A2	1	709	
	B1	2	2,098 <u>2,334</u>	
	B1-1	2	2,372 <u>2,334</u>	
	B2	1	4,348 <u>1,256</u>	
	B3	2	2,338 <u>2,312</u>	
	2B	4	8,228 <u>8,220</u>	
	<i>Subtotal</i>	13	47,838 <u>17,940</u>	
Townhomes	1	28 <u>18</u>	53,536 <u>34,542</u>	
	2B	22 <u>28</u>	45,254 <u>57,540</u>	
	3	45 <u>6</u>	31,530 <u>12,834</u>	
	3X	44	<u>10</u>	22,646 <u>21,150</u>
	4	6 <u>8</u>	9,666 <u>14,264</u>	
	<u>5</u>	<u>6</u>	<u>10,716</u>	
	<u>6</u>	<u>6</u>	<u>9,402</u>	
	<i>Subtotal</i>	82	162,602 <u>160,448</u>	
Non-Residential	Retail/Restaurant	-	5,883	
	Community Center	-	1,450	
	<i>Subtotal</i>		7,333	
TOTAL	95 units	187,773 <u>185,721</u>		
Parking	-	274 <u>281</u> spaces		

SOURCE: Valley Oak Partners, LLC, 2017

The paragraph on page 9 of the Initial Study (Appendix A of the Draft EIR) is revised as follows for consistency with the Draft EIR Project Description, to correct an editorial error concerning

building height, and to clarify the trash enclosure materials. This does not change the analysis or conclusion in the Draft EIR:

An “L”-shaped building totaling approximately 25,171 square feet would be constructed on the northern portion of the site (**Figure 4**). This building would contain retail and restaurant space on the ground floor and residential units above ~~non-residential uses and CRAFT units~~ (CRAFT building). The CRAFT units are intended to function as live-work spaces: retail space with approximately 18-20-foot ~~18-20-foot~~ ceiling heights would front Niles Boulevard and would provide active ground floor space, and open air “shopkeepers” style living space would be located above. The floor areas of the 13 CRAFT units would range between 775 to 2,057 square feet. The building would also contain 5,883 square feet of retail/restaurant and 1,450 square feet of community center space on the ground level along the Niles Boulevard frontage. The CRAFT building would consist of two and 2.5-story elements with a maximum height of approximately 36 feet, with an eave height of 30 feet. Building sections and elevations of the CRAFT building are shown in **Figures 5 and 6**. As shown in Figure 6, the façade of the CRAFT building would generally feature stucco, brick, and metal. The roofs would consist of metal standing seam or corrugated metal. The retail/restaurant storefronts would generally feature roll-up doors, metal, and glass. A trellis/awning would extend over the sidewalk along the retail/restaurant frontage. An approximately 340-square-foot, 10-foot-high stand-alone trash enclosure structure would be located west of the CRAFT building and adjacent to the internal roadway. The trash enclosure structure would feature metal, concrete masonry unit wall and wood siding and a corrugated metal roof.

The second and third sentences of the paragraph under the “Townhomes” heading on page 13 of the Initial Study (Appendix A of the Draft EIR) is revised as follows to correct the square footage based on the applicant’s April 2018 set of plans and to correct an editorial error concerning building height. This does not change the analysis or conclusion in the Draft EIR:

The floor areas of the two and three-bedroom townhome units would range between 1,912 1,919 ~~2,102 2,139~~ square feet. Maximum building height would be up to 36 feet, with an eave height of 30 feet.

The last two paragraphs on page 13 of the Initial Study (Appendix A of the Draft EIR) are revised as follows for consistency with the Draft EIR Project Description and to correct the square footage and parking based on the applicant’s April 2018 set of plans. This does not change the analysis or conclusion in the Draft EIR:

A total of 44 94 ~~44 94~~ new surface parking spaces would be established, including 27 25 ~~27 25~~ new diagonal parking spaces on Niles Boulevard along the frontage of the CRAFT building, 76 65 ~~76 65~~ parallel parking spaces on the west and east side of the project site along Street A, and seven off-street spaces in a parking lot in the townhome area (see **Figure 3**). Two of the CRAFT units would have one surface ~~surface~~ parking space ~~in each unit’s garage~~, while the remaining CRAFT units and townhomes would have two parking spaces each, totaling 188 parking spaces. Collectively, 298 281 ~~298 281~~ new parking spaces would be provided

throughout the project site and along Niles Boulevard (including the ~~110~~ 94 spaces noted above).

As shown in **Figure 9**, a 12-foot-wide sidewalk would be provided along the frontage of the CRAFT building. Sidewalks would also be provided along Streets A, ~~B, and C~~ and would be approximately five feet wide. Pedestrian pathways (residential paseos) would be provided throughout the site such as from Niles Boulevard through the “Gateway Palm Court” and throughout the townhome area.

The second sentence of the second paragraph under the “Utilities and Infrastructure” heading on page 19 of the Initial Study (Appendix A of the Draft EIR) is revised as follows to reflect the change in storm drain extension. This does not change the analysis or conclusion in Section 4.B, Transportation and Traffic of the Draft EIR:

~~Runoff would be conveyed via a new storm drain extension to the City’s existing storm drainage system located east of the project site and adjacent to the UPRR. Runoff would be conveyed to the site of an existing outfall located near the southwest corner of the project site and downstream of the Alameda County Water District’s Inflatable Rubber Dam #3, which spans Alameda Creek adjacent to the project site. To accommodate the project runoff, the existing 10-inch-diameter outfall pipe would be replaced with a 24-inch-diameter pipe.~~

The third sentence of the first paragraph on page 20 of the Initial Study (Appendix A of the Draft EIR) is revised as follows for consistency with the Draft EIR Project Description. This does not change the analysis or conclusion in the Draft EIR:

A total of ~~9,175~~ 9,629 square feet of bioretention areas would be established.

The seventh sentence of the last paragraph on page 25 of the Initial Study, continuing to page 26, is revised to correct an editorial error concerning building height (height is correctly given in the Draft EIR Aesthetics section on page 4.A-35). This does not change the analysis or conclusion in the Draft EIR:

At ~~30~~ a maximum height of 36 feet, the proposed buildings would be approximately ~~40~~ 20 to ~~45~~ 25 feet taller than the adjacent residences to the west and the top of the buildings could be visible from public areas looking east.

4.3 Changes to the Draft EIR in Response to Comments

The text changes presented in this section were initiated by comments on the Draft EIR. None of the revisions results in fundamental alterations of the conclusions of the Draft EIR. The following text changes have been made:

Changes to the Draft EIR Chapters and Sections

On page 1-4 of the Draft EIR, the text following the heading “E. Alternatives” is revised as follows:

Chapter 5 of this EIR analyzes a range of reasonable alternatives to the proposed project. Per CEQA *Guidelines* Section 15126.6, the lead agency identified the following reasonable range of project alternatives to be addressed in this EIR:

- No Project Alternative
- Alternative 1: 86-Unit Reduced Density Alternative
- Alternative 2: 75-Unit Reduced Density Alternative
- Alternative 3: 60-Unit Reduced Density Alternative

The Alternatives discussion of this EIR was prepared in accordance with Section 15126.6 of the CEQA *Guidelines* and identifies alternatives that are capable of eliminating or reducing significant adverse effects associated with the proposed project while feasibly attaining most of the basic objectives. ~~An 60-Unit Reduced Density Alternative and an Off-Site Location Alternative were~~ was also considered, but ultimately rejected. All ~~three~~ four alternatives would reduce the significant and unavoidable cumulative impact related to traffic. This EIR concludes that Alternative ~~2~~ 3 (~~75~~ 60-Unit Reduced Density Alternative) would be the “environmentally superior” alternative because, due to the reduction in residential units in comparison to the proposed project, it would eliminate the significant-and-unavoidable impact related to cumulative intersection operations and would also further reduce less-than-significant impacts on other resource topics while meeting the basic objectives of the project.

The following analysis of “Alternative 3 – 60-Unit Alternative” is added to Draft EIR Chapter 5, following the analysis of Alternative 2 on page 5-12:

Alternative 3 – 60-Unit Reduced Density Alternative

Under the 60-Unit Reduced Density Alternative, the 13 CRAFT building residential units under the proposed project would be excluded. However, the community center, and retail and restaurant space would be provided similar to the proposed project.

Consequently, there would be no mixed-use development fronting Niles Boulevard under this alternative, only commercial use. The 60-Unit Alternative would include 60 residential units in two-story townhouses that would be developed on the remainder of the site south of the 90-degree turn of Niles Boulevard towards Mission Boulevard in generally the same configuration as the proposed project but at a maximum height of approximately 28 feet (eave height of about 20 feet), as opposed to the 36-foot maximum height of the three-story townhouses under the proposed project. This alternative would include 1,450 square feet of community center space, which is the same as under the proposed project. This alternative would include 4,050 square feet of retail space and 2,400

square feet restaurant space, which would be an additional 1,000 square feet of retail/restaurant than under the proposed project. The restaurant area under this alternative would be in same space and configuration as the proposed project, while retail space would extend to where garages for the excluded residential units would be located under proposed project.

Compliance with Project Objectives

This alternative would meet most of the project objectives for the proposed project. The 60-Unit Reduced Density Alternative would entail redevelopment of the former industrial site with a mixed-use project that would serve as a gateway into the Niles Community and would be consistent with the Niles Design Guidelines and Regulations. Consistent with the vision outlined in the Niles Community Plan, this alternative would convert the vacant, remnant industrial site to a productive use that includes a mix of commercial and residential uses, amenities, and access to Alameda Creek. As with the proposed project, this alternative would provide a trail connection between the Niles Town Center, Alameda Creek, and the regional park system, and would create a continuous and safe walking environment for pedestrians in conformance with the goals and policies of the Mobility Element of the General Plan. The 60-Unit Reduced Density Alternative would provide additional retail space in Niles, although it would contribute housing at a lower density than the housing inventory identified in the General Plan Housing Element.

However, because the proposed project would develop market-rate housing, a category of housing affordability for which the City of Fremont exceeded its Regional Housing Needs Allocation (RHNA) total in the most recently completed reporting period (2007-2014),¹ the reduction by 15 units in the assumed Housing Element density on the site would not result in any decrease in below-market-rate housing units and thus would not be anticipated to jeopardize the City's compliance with the current 2015-2023 RHNA.

Impacts

Aesthetics

While the 13 CRAFT building residential units under the proposed project would be excluded, the overall design and aesthetic character of the 60-Unit Reduced Density Alternative would be similar to the proposed project. Instances where the alternative would not comply with applicable guidelines (i.e., *the Niles Design Guidelines and Regulations*) would be largely the same as those under the proposed project (e.g., absence of keyhole entries, width of storefront entries, and non-compliant awning design, as described in the discussion of EIR Impact 4.A-1 Section 4.A, *Aesthetics*). As with the proposed project, minor design variations under this alternative would be appropriate and would not substantially degrade the existing visual character or quality of the project site and its surroundings. In addition, the exclusion of the 13 CRAFT building residential

¹ Association of Bay Area Governments, "San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA)," September 2015; page 2. Available on the internet at: https://www.abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf. Reviewed August 20, 2018.

units and the reduction of townhome heights from three to two stories in comparison to the proposed project could be perceived as more aesthetically pleasing to certain viewers, as the project building heights across the project site would be substantially reduced overall. Notwithstanding this reduction in proposed heights and potential associated reduction of aesthetic impacts, as with the proposed project, aesthetic impacts under this alternative would be less than significant.

Transportation and Traffic

As with the proposed project, it is anticipated that impacts under this alternative related to increased hazards due to a design feature or incompatible uses, inadequate emergency access, and performance of public transit and non-motorized travel modes would be less than significant with no mitigation required.

As described in Section 4.B, *Transportation and Traffic* of the EIR, the proposed project would result in a significant unavoidable impact at Mission Boulevard (SR-238) / Niles Boulevard - Niles Canyon Road during the p.m. peak hour under Cumulative plus Project conditions. W-Trans conducted a sensitivity analysis and determined that this significant unavoidable impact could be avoided by reducing the project size from 95 dwelling units to 93 dwelling units. With 93 dwelling units, the intersection would still operate at LOS F with 151.9 seconds of delay anticipated during the weekday p.m. peak hour, but would not exceed the threshold of significance.

The reduced development of 60 dwelling units under this alternative would result in fewer generated trips. As shown in **Table 3-1**, the 60-Unit Reduced Density Alternative would generate 793 daily trips, compared to the proposed project's 1,027 trips. Therefore, this alternative would reduce the average added delay attributed to the proposed project to less than four seconds. Under the Cumulative plus 60-Unit Reduced Density Alternative conditions, the significant unavoidable impact at Mission Boulevard (SR-238) / Niles Boulevard – Niles Canyon Road would be eliminated.

**TABLE 3-1
60-UNIT REDUCED DENSITY TRIP GENERATION SUMMARY**

Scenario	Units	Daily		AM Peak Hour				PM Peak Hour			
		Rate	Trips	Rate	Trips	In	Out	Rate	Trips	In	Out
Multifamily Housing (Low-Rise)	60 du	7.32	439	0.56	34	9	25	0.67	40	24	16
Quality Restaurant	2.4 ksf	83.84	201	4.47	11	9	2	8.28	20	12	8
Shopping Center	4.05 ksf	37.75	153	3.00	12	7	5	4.21	17	9	8
Internal Trip Reduction				-8%	-3	-1	-2	-15%	-6	-4	-2
Total			793		54	24	30		70	41	30

NOTE: ksf = 1,000 square feet; du = dwelling units

SOURCE: W-Trans, 2017, using ITE, *Trip Generation Manual*, 10th Edition, 2017.

Other Issues

Impacts related to other environmental topic areas that were found to be less than significant or less than significant with mitigation in the Initial Study Checklist completed for the project (see Appendix A of the Draft EIR) and are discussed below in relation to this alternative.

- No agricultural and forestry resources or mineral resources occur on the project site. Therefore, there would be no impact to agricultural and forestry resources or mineral resources under the proposed project or this alternative.
- Similar to the proposed project, the 60-Unit Reduced Density Alternative would have less-than-significant impacts related to land use and planning and population and housing. This alternative would not physically divide an established community. As with the proposed project, a General Plan Amendment and Rezoning of the project site would occur under this alternative to allow a mixed-use development. This alternative would include 35 fewer residential units than the proposed project, thereby further reducing the proposed project's less-than-significant impacts related to inducing substantial population growth in the City of Fremont.
- Similar types of construction activities would occur under this alternative. Therefore, construction-related impacts related to biological resources, cultural resources, tribal cultural resources, and noise would be similar to the proposed project and remain less than significant with mitigation, and the same mitigation measures identified for the proposed project for those impacts would be required for this alternative.
- Operational impacts under this alternative would be considerably less than those under the proposed project because there would be 35 fewer residential units. Consequently, demand for public services (i.e., fire and police protection services, schools, and parks) and utilities (i.e., water supply, wastewater conveyance and treatment, stormwater drainage systems, and solid waste disposal) would be less than the proposed project.
- Traffic-generated air quality impacts, greenhouse gas emissions, and noise under this alternative would be less than those generated by the proposed project, due to the fewer residential units, and impacts would remain less than significant with mitigation. The same or reduced mitigation measures identified for the proposed project for those impacts would be required for the 60-Unit Reduced Density Alternative.

Table 5-3, Draft EIR page 5-13, is revised as follows. This does not change the analysis or conclusion in Section 4.B, Transportation and Traffic of the Draft EIR:

**TABLE 5-3
ALTERNATIVES IMPACT SUMMARY AND COMPARISON**

Impact	Proposed Project	No Project	Alternative 1	Alternative 2	Alternative 3
Aesthetics	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Agricultural and Forestry Resources	NI	NI	NI	NI	<u>NI</u>
Air Quality	LTSM	NI	LTSM ↓	LTSM ↓	<u>LTSM ↓</u>
Biological Resources	LTSM	NI	LTSM	LTSM	<u>LTSM</u>
Cultural Resources	LTSM	NI	LTSM	LTSM	<u>LTSM</u>
Geology, Soils, and Seismicity	LTS	NI	LTS	LTS	<u>LTS</u>
Greenhouse Gas Emissions	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Hazards and Hazardous Materials	LTSM	NI	LTSM	LTSM	<u>LTSM</u>
Hydrology and Water Quality	LTS	NI	LTS	LTS	<u>LTS</u>
Land Use and Planning	LTS	NI	LTS	LTS	<u>LTS</u>
Noise	LTSM	NI	LTSM ↓	LTSM ↓	<u>LTSM ↓</u>
Population and Housing	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Public Services and Utilities	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Recreation	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Transportation and Traffic	SU	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>
Tribal Cultural Resources	LTSM	NI	LTSM	LTSM	<u>LTSM</u>
Utilities and Service Systems	LTS	NI	LTS ↓	LTS ↓	<u>LTS ↓</u>

NOTES: ↑/↓ - The impact is more/less severe than compared to the proposed project.

SOURCE: Compiled by ESA, 2018

The second sentence of the first paragraph on page 5-14 of the Draft EIR is revised as follows to replace Alternative 2 with Alternative 3 as the Environmentally Superior Alternative:

Therefore, Alternative 3 (75 60-Unit Reduced Density Alternative) is the environmentally superior alternative because, due to its substantial reduction in residential units in comparison to the proposed project, it would eliminate the significant-and-unavoidable impact related to cumulative intersection operations and would also further reduce less-than-significant impacts on other resource topics while meeting most of the basic objectives of the project.

The third paragraph on page 5-14 of the Draft EIR, along with the heading “60-Unit Reduced Density Alternative,” is deleted as follows:

~~60-Unit Reduced Density Alternative~~

~~A 60 Unit Reduced Density Alternative was considered but ultimately rejected for further consideration. Under a 60 Unit Reduced Density Alternative, the 13 CRAFT building residential units under the proposed project would be excluded. Consequently, there would be no mixed-use development fronting Niles Boulevard under this alternative.~~

~~This alternative would include 60 residential units in two-story townhouses that would be developed on the remainder of the site. This alternative was rejected from further consideration because it would not meet the project objective to develop housing at a density consistent with the housing inventory identified in the General Plan Housing Element, which identifies a density of 75 units on the project site.~~

Changes to the Initial Study (Draft EIR Appendix A)

The paragraph following the italicized text on page 49 of the Initial Study is revised as follows to provide clarification. This does not change the analysis or conclusion in the Draft EIR:

Compliance with the City's standard development requirements per Chapter 18.218 of the Fremont Municipal Code, Section 3503 of the California Fish and Game Code, and the Migratory Bird Treaty Act would prevent nesting birds from being adversely affected by project construction and impacts would be less than significant.

CHAPTER 5

Mitigation Monitoring and Reporting Program

5.1 Introduction

Where a California Environmental Quality Act (CEQA) document has identified significant environmental effects, Public Resources Code Section 21081.6 requires adoption of a “reporting or monitoring program for the changes to the project which it has adopted or made a condition of a project approval to mitigate or avoid significant effects on the environment.” A public agency is required to ensure that the measures are fully enforceable, through permit conditions, agreements, or other means (Public Resources Code Section 21081.6(b)). The Mitigation Monitoring and Reporting Program (MMRP) must be designed to ensure project compliance with mitigation measures during project implementation. The City of Fremont is the lead agency that must adopt the MMRP for development of the project.

This MMRP has been prepared to provide for the monitoring of mitigation measures required of the proposed project, as set forth in the Final EIR.

5.2 Format

Table 5-1 below lists all mitigation measures for the proposed project identified in the Initial Study. No mitigation measures were identified in the EIR. The components of the MMRP include:

Mitigation Measure: This column presents the mitigation measure identified in the EIR.

Implementation Responsibility: This column identifies the person/group responsible for implementation of the migration measure.

Monitoring Responsibility: This column contains an assignment of responsibility for the monitoring and reporting tasks.

Monitoring and Reporting Action: This column refers to the outcome from implementing the mitigation measure.

Mitigation Schedule: The general schedule for conducting each mitigation task, identifying where appropriate both the timing and the frequency of the action.

Verification of Compliance: This column may be used by the lead agency to document the person who verified the implementation of the mitigation measure and the date on which this verification occurred.

5.3 Roles and Responsibilities

The City of Fremont will oversee monitoring and documenting the implementation of mitigation measures. The project applicant or its construction contractors is responsible for fully understanding and effectively implementing all of the mitigation measures contained within this MMRP.

**TABLE 5-1
NILES GATEWAY MIXED-USE PROJECT MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Verification of Compliance
Mitigation Measures Required by the Initial Study					
Air Quality					
Mitigation Measure AIR-1: Toxic Air Contaminants and PM2.5. During construction activities, the project applicant shall require that all off-road diesel-powered construction equipment greater than 50 horsepower meet United States Environmental Protection Agency Tier 4 Final off-road emissions standards. A copy of each unit's certified tier specification shall be provided to the City of Fremont at the time of grading permit issuance. During all construction activities, off-road diesel-powered equipment may be in the "on" position not more than eight hours per day. There are no time restrictions for non-diesel equipment.	Project sponsor and its contractor(s)	City of Fremont	Pre-construction: Provide each unit's certified tier specification to the City. Verify inclusion of measure in construction plans and contract specifications. During construction: Conduct field inspections	Pre-construction: Prior to grading permit approvals; During Construction: during grading, demolition, and construction activities.	
Hazards and Hazardous Materials					
Mitigation Measure HAZ-1: Updated Risk Management Plan. An updated Risk Management Plan and revised land use conditions for the project site shall be submitted to RWQCB for their review and approval prior to issuance of grading or building permits for site development. Documentation of RWQCB approval of the updated Risk Management Plan and revised land use conditions shall be submitted to the City of Fremont Community Development Department prior to issuance of building permits.	Project sponsor and its contractor(s); RWQCB	City of Fremont	RWQCB to submit documentation of acceptance of Risk Management Plan to City.	Prior to issuance of building permits	
Noise					
Mitigation Measure NOI-2a: Daytime Noise Reduction Measures. To reduce daytime noise impacts due to construction, the applicant shall require construction contractors to implement the following measures: <ul style="list-style-type: none"> Equipment and trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible). 	Project sponsor and its contractor(s)	City of Fremont	Pre-construction: Verify inclusion of measure in construction plans and contract specifications. During construction: Conduct field inspections	Pre-construction: Prior to grading permit approvals; During Construction: Ongoing during grading, demolition, and construction activities.	

**TABLE 5-1 (CONTINUED)
NILES GATEWAY MIXED-USE PROJECT MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Verification of Compliance
Mitigation Measures Required by the Initial Study					
Noise (cont'd.)					
<p>Mitigation Measure NOI-2a (cont'd.)</p> <ul style="list-style-type: none"> Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be used whenever feasible. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. 					
<p>Mitigation Measure NOI-1: Building Design Requirements to Reduce Residential Noise Exposure. To reduce the potential for future noise exposure increases on the project site, the following measures shall be included in plans submitted for building permits:</p> <ul style="list-style-type: none"> Forced-air mechanical ventilation, satisfactory to the local building official, shall be provided for all residential units to allow occupants to keep the windows closed to control noise. All east, north, and south facing facades in the 20 northernmost townhomes nearest the railroad tracks and Niles Boulevard shall achieve an outdoor to indoor noise reduction of at least 37 dBA in bedrooms and 32 dBA in other rooms with an adequate margin of safety. Windows and doors of these building facades shall be sound rated. The specific noise control treatments shall be determined during final design and approved by the City prior to issuance of a building permit. 	Project sponsor and its contractor(s)	City of Fremont	Verify inclusion of measure in construction plans and contract specifications. Determine specific noise control treatments.	Prior to issuance of building permit.	

**TABLE 5-1 (CONTINUED)
NILES GATEWAY MIXED-USE PROJECT MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Monitoring and Reporting Action	Mitigation Schedule	Verification of Compliance
Mitigation Measures Required by the Initial Study					
Noise (cont'd.)					
<p>Mitigation Measure NOI-2a: Daytime Noise Reduction Measures. To reduce daytime noise impacts due to construction, the applicant shall require construction contractors to implement the following measures:</p> <ul style="list-style-type: none"> Equipment and trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible). Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be used whenever feasible. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. 	Project sponsor and its contractor(s)	City of Fremont	<p>Pre-construction: Verify inclusion of measure in construction plans and contract specifications.</p> <p>During construction: Conduct field inspections</p>	<p>Pre-construction: Prior to grading permit approvals; During Construction: Ongoing during grading, demolition, and construction activities.</p>	