

# **THE NILES GATEWAY PROJECT**

## **CEQA Findings**

Introduction On behalf of the City of Fremont (the "City"), and pursuant to the California Environmental Quality Act ("CEQA"), a Final Environmental Impact Report (Final EIR) has been prepared for the Niles Gateway Project and other related approvals described below (collectively, the proposed project).

The City is the lead agency as defined in the CEQA Guidelines. (Public Resource Code §21067).

The "Final EIR" for the proposed project (SCH#2018012041) evaluates the environmental effects associated with implementation of the proposed project. The Final EIR serves as an informational document for public agency decision-makers and the general public regarding the environmental effects of the proposed project and identifies feasible mitigation measures and alternatives that would reduce or eliminate significant impacts of the proposed project.

The Final EIR is the primary reference document for the development and implementation of a mitigation monitoring plan for the proposed project. Environmental impacts cannot always be mitigated to a level that is considered less than significant. In accordance with the CEQA Guidelines (Cal. Code Regs., tit. 14, section 15000 et seq.), if a lead agency approves a project that has significant impacts that are not substantially mitigated (i.e., significant unavoidable impacts), the agency shall state in writing the specific reasons for approving the project based on the final CEQA documents and any other information in the public record for the project. (CEQA Guidelines, section 15093, subd. (b).) This is called a "statement of overriding considerations". (CEQA Guidelines, Section 15093.) All project impacts would be substantially mitigated for this project and thus a statement of overriding considerations is not required.

To support its certification of the Final EIR and approval of the proposed project, the City Council of the City of Fremont (the "City Council") makes the following findings of fact (collectively, the "Findings"). These Findings contain the City Council's written analysis and conclusions regarding the proposed project's environmental effects, mitigation measures, and alternatives to the proposed project. These Findings are based upon the entire record of proceedings for the Final EIR, as described below.

## **The Niles Gateway Project**

The proposed project as described in the FEIR included 95 dwelling units and 7,333 square-foot of non-residential uses. On October 4, 2018, the City of Fremont Historical Architectural Review Board (HARB) considered the of the project and made a recommendation that the project density and massing were not consistent with the Niles Historical Overlay District (HOD).

Following the October 2018 HARB meeting, the applicant met with city staff and members of the Niles neighborhood to revise the project and address concerns related to scale, site design, architecture, massing and transportation. In response to the feedback received, the project sponsor (Valley Oak Partners, LLC) proposes to revise the project to an exclusively residential project of 75 dwelling units (reduced from 95 units analyzed in the FEIR), with no non-residential uses, compared to the 7,333 square feet of retail and restaurant space analyzed in the FEIR. The 75 dwelling units would consist of both flats and attached townhomes in 19 two-story buildings. The six buildings containing flats would have three units each. Eight of the townhome buildings would have five units each, two would have four units, and three buildings would have three units. The project would include a General Plan Amendment to change the land use designation from Service Industrial to Low-Medium Density Residential (compared to Town Center Commercial and Medium Density Residential described in the FEIR) and a Rezoning from I-S (Service Industrial (Special Study Area)) with a Historic Overlay District (HOD) to Multifamily Residential (R-3-14) (HOD) (compared to Preliminary and Precise Planned District P-2014-338 (HOD) described in the FEIR). The project would also include a vesting tentative tract map, private street, tree removal permit and a street vacation of Niles Boulevard.

The previous iteration of the design included a mixed-use "Creative-Retail-Artist-Flex-Tenancy" (CRAFT) building. The revised design has eliminated the mixed-use building and replaced it with residential buildings, as described above, such that the overall footprint of development would be similar to that of the project analyzed in the FEIR.

In overall massing, the revised project would be similar to FEIR Alternative 2, the 75-Unit Reduced Density Alternative, analyzed in the FEIR, in that the revised project, like Alternative 2, would provide 75 residential flats and townhomes in two-story buildings. The revised project would include 19 residential buildings, three more than under Alternative 2, because the revised project would replace the mixed-use CRAFT building included in Alternative 2 (and in the FEIR project) with additional residential buildings. In general, however, the revised project site plan would be similar to that of Alternative 2 and of the FEIR project, with a new private street (Street A) around the perimeter of the site and additional private streets within the site. Like both Alternative 2 and the FEIR project, the revised project would include an open space opposite the point where Niles Boulevard makes a 90-degree turn eastward towards Mission Boulevard. Under the revised project, this open space would occupy more of the Niles Boulevard project frontage than under the FEIR project, as a portion of the area proposed in the FEIR project for that project's commercial component is now proposed to be devoted to open space. Likewise, the revised project would include more open space at the northern end of the project site than the FEIR project. Finally, the revised project would provide 150 resident parking spaces (33 percent more than the 113 required) and 54 guest parking spaces (42 percent more than the 38 required), for a total of 194 off-street parking spaces. However, unlike the FEIR project and Alternative 2, the revised project proposes no angled parking spaces along Niles Boulevard north of the 90-degree turn in Niles Boulevard. These spaces had previously been proposed to accommodate non-residential parking demand, but with no non-residential space, the revised project would not require this parking.

## Project Approvals

The proposed project is considered a discretionary project and will require several approvals by the City:

1. A General Plan Amendment to change the land use designation of the subject property from Service Industrial (Special Study Area) to Low-Medium Density Residential (8.8 to 14.5 units per net acre).
2. A Rezoning of the entire subject property from Service Industrial with Historical Overlay District (IS)(HOD) to Medium Density Residential (R-3-14) (HOD).
3. Approval of Discretionary Design Review Permit PLN2014-00338 to allow 75 attached dwelling units
4. Approval of Vesting Tentative Tract Map No. 8205 and accompanying Private Street.
5. Approval to remove and replace 47 private, protected trees.
6. Finding of General Plan Conformity for a General Street Vacation to initiate conversion of a portion of the Niles Boulevard southeasterly terminus right-of-way fronting the site into a private street in accordance with State law (Government Code Section 65402).

## Procedural Compliance with CEQA

### Environmental Review and Public Participation

The Draft EIR (State Clearinghouse #2018012041) was circulated for public review on May 25, 2018 through July 9, 2018 (45-day public review period). The Final EIR has been prepared for the City in accordance with CEQA and the CEQA Guidelines. As allowed for in CEQA Guidelines § 15084(d) (2), the City retained a consultant to assist with the preparation of the environmental documents. The City, as the lead agency, has directed preparation of the EIR, reviewed all material prepared by the consultant, and such material reflects the City's independent judgment. The key milestones associated with the preparation of the EIR are summarized below. In addition, an extensive public involvement and agency notification effort was conducted to solicit input on the scope and content of the EIR and to solicit comment on the results of the environmental analysis presented in the Draft EIR. In general, the preparation of the EIR included the following key steps and public notification efforts:

- The 2018 Notice of Preparation (NOP). The City formally initiated the environmental process with circulation of an NOP, which was sent to responsible agencies and interested individuals for a 30-day review period from January 22, 2018 to February 22, 2018. An initial study was included as part of the NOP. The NOP was sent to residents within a 1,000 foot radius of the project site, and interested parties. The City also held a Scoping Meeting on February 12, 2018 to take comments regarding the scope of the EIR. The NOP and a summary of the comments received during the 30-day review period are provided in the Draft EIR (see Draft EIR).

- The 2018 Draft EIR. In May 2018, the City published the Draft EIR. The 2018 Draft EIR assessed the environmental implications of implementing the proposed project. The Draft EIR was circulated for public review and comment for 45 days (May 25, 2018 through July 9, 2018).
- The 2018 proposed Final EIR. A total of 28 comment letters were received on the Draft EIR during the public review period; late comments were also accepted through July 13, 2018. Letters received from governmental agencies accounted for two (2) of the comment letters received on the Draft EIR. City staff published a Final EIR on September 21, 2018, which included: a list of persons, organizations, and public agencies commenting on the Draft EIR; the City's written responses to all significant environmental points raised in the comments; changes to the text of the Draft EIR made in response to comments; and other revisions and clarifications.
- 2020 Planning Commission Recommendations. The Final EIR was reviewed by the Planning Commission in a duly noticed public hearing held on July 9, 2020. On July 9, 2020, the Planning Commission (PC) voted on a motion to approve the Project, which resulted in a 3-3 vote (one Commissioner recused). No alternative motion was proposed thereafter. The Planning Commission failed to either recommend or deny the Project, which has the same effect as a denial. On July 17, 2020, the applicant submitted a timely appeal of Planning Commission's inaction and effective denial to the City Council.

## Record of Proceedings

For the purposes of CEQA, and these findings, the administrative record for the proposed project consists of those items listed in Public Resources Code section 21167.6, subdivision (e). The record of proceedings for the Council's decision on the proposed project includes the following documents:

- The City prepared an initial study for the proposed project in May 2018, for the purpose of considering the effects of the project and focused study areas to include in the Draft Environmental Impact Report;
- The NOP (February 2018) and all other public notices issued by the City in conjunction with the proposed project;
- The Draft Environmental Impact Report for the Project (May 25, 2018 through July 9, 2018);
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR (May 25, 2018 through July 9, 2018);
- All comments and correspondence submitted to the City with respect to the proposed project, in addition to timely comments on the Draft EIR; • The Final Environmental Impact Report for the Project, including comments received on the Draft EIR, and responses to those comments;
- The mitigation monitoring plan for the proposed project;

- All findings and resolutions adopted by the City Council in connection with the proposed project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the proposed project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the proposed project;
- All documents submitted to the City (including the Planning Commission and City Council) by other public agencies or members of the public in connection with the proposed project, up through the close of the public hearing on the Final EIR;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the proposed project;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- All resolutions adopted by the City regarding the proposed project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e). The official custodian of the record is the City of Fremont Community Development Department. The documents and other materials, which constitute the record of proceedings for the City's approval of this project, are located at the City of Fremont, Community Development Department, 39550 Liberty Street, Fremont, CA 94538.

## Mitigation Monitoring and Reporting Program

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the proposed project, and has been approved by the City Council by the same resolution that has adopted these findings. (See Pub. Resources Code, § 21081.6, subd. (a)(1); CEQA Guidelines, § 15097.) The City will use the MMRP to track compliance with the proposed project mitigation measures. The MMRP has been published as a stand-alone document.

### Environmental Impacts and Findings

The City Council finds, with respect to the City's preparation, review and consideration of the Final EIR, that:

- The City retained the independent firm of Environmental Science Associates ("ESA") to prepare the Final EIR, and ESA prepared the FEIR under the supervision and at the direction of the City of Fremont Community Development Department.
- The City circulated the Draft EIR for review by responsible agencies and the public and submitted it to the State Clearinghouse for review and comment by state agencies.
- The Final EIR has been completed in compliance with CEQA.

- The proposed project will not have significant, unavoidable impacts as described and discussed in the Final EIR.
- The Final EIR is adequate under CEQA to address the potential environmental impacts of the proposed project.
- The Final EIR has been presented to the City Council, and the City Council has independently reviewed and considered information contained in the Final EIR.
- The Final EIR reflects the independent judgment of the City.

By these findings, the City Council ratifies, adopts and incorporates the analyses, explanations, findings, responses to comments, and conclusions of the Final EIR, except as specifically described in the Findings.

## Findings Regarding Less-Than-Significant Impacts

By these Findings, the City Council ratifies and adopts the Final EIR's conclusions for the following potential environmental impacts which, based on the analyses in the Final EIR, this City Council determines to be less than significant:

### Aesthetics

***Impact 1a: The project would not have a substantial adverse effect on a scenic vista.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 1b: The project would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 1c: The project would not substantially degrade the existing visual character or quality of the site and its surroundings.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 1d: The project would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.***

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No mitigation is required. The impact is considered less-than significant.

### Agricultural and Forest Resources

***Impact 2a: The project would not convert prime farmland, unique farmland, or farmland of statewide importance (Farmland), as shown on the maps prepared***

***pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 2b: The project would not conflict with existing zoning for agricultural use or a Williamson Act contract.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 2c: The project would not conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)).***

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No mitigation is required. The impact is considered less-than significant.

***Impact 2d: The project would not result in the loss of forest land or conversion of forest land to non-forest use.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 2e: The project would not involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use.***

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No mitigation is required. The impact is considered less-than significant.

## **Air Quality**

***Impact 3a: The project would not conflict with or obstruct implementation of the applicable air quality plan.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 3e: The project would not result create objectionable odors affecting a substantial number of people.***

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No mitigation is required. The impact is considered less-than significant.

## **Biological Resources**

***Impact 4a: The project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 4b: The project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 4c: The project would not have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 4d: The project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 4e: The project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 4f: The project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.***

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No mitigation is required. The impact is considered less-than significant.

## **Cultural Resources**

***Impact 5a: The project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 5b: The project would not cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 5c: The project would not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?***

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No mitigation is required. The impact is considered less-than significant.



***Impact 5d: The project would not disturb any human remains, including those interred outside of dedicated cemeteries.***

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No mitigation is required. The impact is considered less-than significant.

## **Geology, Soils and Seismicity**

***Impact 6a: The project would not directly indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:***

- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault. (Refer to California Geological Survey Special Publication 42.)***
- ii) Strong seismic ground shaking.***
- iii) Seismic-related ground failure, including liquefaction.***
- iv) Landslides.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 6b: The project would not result in substantial soil erosion or the loss of topsoil.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 6c: The project would not be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 6d: The project would not be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as updated), creating substantial direct or indirect risks to life or property.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 6e: The project would not have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.***

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No mitigation is required. The impact is considered less-than significant.

## **Greenhouse Gas Emissions**

***Impact 7a: The project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 7b: The project would not conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.***

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No mitigation is required. The impact is considered less-than significant.

## **Hazards and Hazardous Materials**

***Impact 8a: The project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8b: The project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and/or accident conditions involving the release of hazardous materials into the environment.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8c: The project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8e: The project is not located within an airport land use plan and is not within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8f: The project is not within the vicinity of a private airstrip, and the project would not result in a safety hazard for people residing or working in the project area.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8g: The project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 8h: The project would not expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires.***

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No mitigation is required. The impact is considered less-than significant.

## Hydrology and Water Quality

***Impact 9a: The project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9b: The project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9c: The project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9d: The project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9e: The project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9f: The project would not otherwise substantially degrade water quality.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9g: The project would not place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.***

No mitigation is required. The impact is considered less-than significant.

***Impact 9h: The project would not place within a 100-year flood hazard area structures that would impede or redirect flood flows.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9i: The project would not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 9j: The project would not expose people to inundation by seiche, tsunami, or mudflow.***

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No mitigation is required. The impact is considered less-than significant.

## Land Use Planning

***Impact 10a: The project would not physically divide an established community.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 10b: The project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 10c: The project would not conflict with any applicable habitat conservation plan or natural community conservation plan.***

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No mitigation is required. The impact is considered less-than significant.

## Mineral Resources

***Impact 11a: The project would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 11b: The project would not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan.***

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No mitigation is required. The impact is considered less-than significant.

## Noise

***Impact 12b: The project would not result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 12c: The project would not result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 12e: The project would not be located within an airport land use plan or within two miles of a public airport or public use airport and expose people residing or working in the project area to excessive noise levels.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 12f: The project would not result be located in the vicinity of a private airstrip or expose people residing or working in the project area to excessive noise levels.***

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No mitigation is required. The impact is considered less-than significant.

## Population and Housing

***Impact 13a: The project would not induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure).***

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No mitigation is required. The impact is considered less-than significant.

***Impact 13b: The project would not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 13c: The project would not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.***

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No mitigation is required. The impact is considered less-than significant.

## Public Services

***Impact 14a: The project would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:***

- i) Fire protection***
- ii) Police protection***
- iii) Schools***
- iv) Parks***
- v) Other public facilities***

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No mitigation is required. The impact is considered less-than significant.

## **Recreation**

***Impact 15a: The project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 15b: The project would not include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.***

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No mitigation is required. The impact is considered less-than significant.

## **Transportation and Traffic**

***Impact 16a: The project would not conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 16b: The project would not conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 16c: The project would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 16d: The project would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).***

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No mitigation is required. The impact is considered less-than significant.

***Impact 16e: The project would not result in inadequate emergency access.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 16f: The project would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.***

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No mitigation is required. The impact is considered less-than significant.

## **Tribal Cultural Resources**

***Impact 17a: The project would not cause a substantial adverse change in the significance of a tribal cultural resource.***

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No mitigation is required. The impact is considered less-than significant.

## **Utilities and Services Systems**

***Impact 18a: The project would not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18b: The project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18c: The project would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18d: The project would not have sufficient water supplies available to serve the project from existing entitlements and resources or are new or expanded entitlements needed.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18e: The project would not result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18f: The project would not be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.***

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No mitigation is required. The impact is considered less-than significant.

***Impact 18g: The project would not comply with federal, state, and local statutes and regulations related to solid waste.***

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No mitigation is required. The impact is considered less-than significant.

### **Findings Regarding Significant Environmental Impacts**

A detailed analysis of the potential environmental impacts and the proposed mitigation measures for the proposed project is described in Chapter 4 "Environmental Checklist" of the Initial Study and Chapter 4 "Environmental Setting, Impacts and Mitigation Measures" of the Draft EIR, as incorporated into the Final EIR. The Draft EIR evaluated the Project's potential environmental impacts in separate environmental topics, and also evaluated the proposed project's potential cumulative impacts. The City Council concurs with the conclusions in the Draft EIR, as incorporated into the Final EIR, that all of the proposed project's significant and potentially significant impacts will be rendered less than significant by the mitigation measures described and discussed below:

#### Air Quality

***Impact 3b: The project may violate any air quality standard or contribute substantially to an existing or projected air quality violation.***

***Impact 3c: The project may result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors).***

***Impact 3d: Expose sensitive receptors to substantial pollutant concentrations.***

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**Potential Impact:** The impact identified above is identified on page 37 of the Initial Study.



**Mitigation Measure:** Mitigation Measure "AIR-1: Toxic Air Contaminants and PM2.5" (see page 37 of the Initial Study) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and entire record before the City, the City Council finds that: Mitigation Measure AIR-1 "Toxic Air Contaminants and PM2.5" requires the project developer to during construction activities, to 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. These standards shall be included in the project conditions. With implementation of these outdoor lighting conditions, this impact is considered **less than significant**.

## Hazards and Hazardous Materials

**Impact 8d:** *The project may be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment.*

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**Potential Impact:** The impact identified above is identified on page 73 of the Initial Study.

**Mitigation Measure:** Mitigation Measure "HAZ-1: Updated Risk Management Plan" (see page 73 of the Initial Study) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and entire record before the City, the City Council finds that: Mitigation Measure Mitigation Measure HAZ-1 "Updated Risk Management Plan" requires the an updated Risk Management Plan and revised land use conditions for the project site shall to 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. These standards shall be included in the project conditions. With implementation of these outdoor lighting conditions, this impact is considered **less than significant**.

## Noise

**Impact 12a:** *The project may expose persons to or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; and*

***Impact 12d: The project may result in substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.***

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**Potential Impact:** The impact identified above is identified on pages 92-94 of the Initial Study.

**Mitigation Measure:** Mitigation Measure NOI-1 "Building Design Requirements to Reduce Residential Noise Exposure." (see page 92-94 of the Initial Study) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and entire record before the City, the City Council finds that: Mitigation Measure NOI-1: Building Design Requirements to Reduce Residential Noise Exposure requires the following measures shall be included in plans submitted for building permits to reduce the potential for future noise exposure increases on the project site:

- 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.

These standards shall be included in the project conditions. With implementation of these outdoor lighting conditions, this impact is considered **less than significant**.

**Mitigation Measure:** Mitigation Measure NOI-2a "Daytime Noise Reduction Measures." (see page 92-94 of the Initial Study) is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**Findings:** Based on the Final EIR and entire record before the City, the City Council finds that: Mitigation Measure NOI-2a: Daytime Noise Reduction Measures requires construction contractors to implement the following measures to reduce daytime noise impacts due to construction:

- 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.

These standards shall be included in the project conditions. With implementation of noise conditions, this impact is considered **less than significant**.

## Findings Regarding Project Alternatives

### Introduction

As more fully described in Section 5B of the Draft EIR, the alternatives were selected in consideration of one or more of following factors:

- The extent to which the alternative would accomplish most of the basic goals and objectives of the project;
- The extent to which the alternative would avoid or lessen the identified significant and/or unavoidable environmental effects of the project;
- Requests by interested parties and community members at the scoping meeting for information regarding the relative environmental impacts of different number of housing units;
- The feasibility of the alternative, taking into account site suitability, availability of infrastructure, general plan consistency, and consistency with other applicable plans and regulatory limitations;
- The extent to which an alternative contributes to a "reasonable range" of alternatives necessary to permit a reasoned choice; and
- The requirement of the CEQA *Guidelines* to consider a No Project Alternative and to identify an "environmentally superior" alternative in addition to the No Project Alternative (CEQA *Guidelines* Section 15126.6 (e)).

### Project Objectives

The CEQA Guidelines [CEQA Guidelines, Section 15126.6 C] state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects" of the proposed project. Thus, an evaluation of the

proposed project objectives is necessary to determining which alternatives should be assessed in the EIR.

As discussed in Chapter 3 of the EIR, the following are the identified objectives for the project:

- Redevelop 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 (2002)*.
- Consistent with the vision outlined in the Niles Community Plan, convert the vacant, remnant industrial site to a productive use that includes a mix of commercial, residential and/or live-work uses, amenities, and access to Alameda Creek.
- Enhance the character of the adjacent Niles Town Center with a project that is compatible in scale and design with existing development, continuing streetscape and signage improvements, enhancing gateways, and maintaining a comfortable environment for pedestrians.
- Provide a trail connection between the Niles Town Center, Alameda Creek, and the regional park system.
- Provide additional retail space in Niles, leveraging the District's historic character to retain existing businesses and encourage new retail uses for residents, and visitors.
- Develop high quality and well-designed housing which would contribute towards meeting the City's Regional Housing Needs Allocation.
- Promote land use compatibility between the proposed mixed use development and the adjoining neighborhood through the use of site planning techniques.
- Create a continuous and safe walking environment for pedestrians in conformance with the goals and policies of the Mobility Element of the General Plan.

## **Alternatives Analyzed in the FEIR**

The CEQA Guidelines state that the range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects of the Project. The City evaluated the alternatives listed below.

### **No Project Alternative**

**Findings:** The No Project Alternative is described on pages 5-4 and 5-5 of the Draft EIR. The No Project Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the proposed project.

**Explanation:** Under the No Project Alternative, the project site would not be developed in accordance with the proposed project; however, some level of development (Service

Industrial) could occur on the project site under existing land use designations and zoning over the long-term. An industrial development on the site may result in additional environmental impacts. The No Project Alternative would not further the City's project objectives related to redeveloping the former industrial site to a productive use that includes residential land uses, enhancing the character of the Niles Town Center with a compatible project, developing a connection between the Niles Town Center and the Alameda Creek Trailhead, developing high quality and well-designed housing, and creating a safe walking environment for pedestrians.

#### Alternative 1 – 86-Unit Reduced Density Alternative

**Findings:** The Alternative 1 – 86-Unit Reduced Density Alternative is described on pages 5-5 and 5-9 of the Draft EIR. The 86-Unit Reduced Density Alternative is rejected as an alternative, because it would not feasibly achieve the objectives of the proposed project.

**Explanation:** Under the 86-unit Reduced Density Alternative (Alternative 1), the 9 residential units located above the CRAFT building along Niles Boulevard under the proposed project would be excluded. Consequently, there would be no mixed-use development fronting Niles Boulevard under this alternative. Alternative 1 would include 86 residential units in two-to-three-story townhouses that would be developed on the remainder of the site in the same configuration as the proposed project. Alternative 1 would include 1,450 square feet of community center space, which is the same as under the proposed project. Alternative 1 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 Alternative 1 would be in same space and configuration as the proposed project, while retail space would extend to where garages for the excluded 9 residential units located above the CRAFT building would be located under proposed project

This alternative would meet most of the project objectives for the proposed project. The 86-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, Alternative 1 would convert the vacant, remnant industrial site to a productive use that includes a mix of commercial, residential and/or live-work uses, amenities, and access to Alameda Creek. As with the proposed project, Alternative 1 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. Alternative 1 would provide additional retail space in Niles and would contribute housing towards meeting the City's Regional Housing Needs Allocation.

On October 4, 2018, HARB considered the 95-unit mixed use project and made a recommendation that the project density and massing were not consistent with the Niles HOD. Based on the direction from HARB and outreach to the Niles neighborhood, the applicant revised the project to 75 units (all two-stories) without commercial floor area to

achieve compatibility with the neighborhood context and *Niles Design Guidelines and Regulations (2002)*. The 86-unit Reduced Density Alternative would not further the City's project objectives related to enhancing the character of the adjacent Niles Town Center with a project that is consistent with the *Niles Design Guidelines and Regulations (2002)*, compatible in scale and design with existing development as well as promote land use compatibility between the proposed development and the adjoining neighborhood through the use of site planning techniques.

### **Alternative 2 –75-Unit Reduced Density Alternative**

**Findings:** The Alternative 2 –75-Unit Reduced Density Alternative is described on pages 5-10 and 5-14 of the Draft EIR. This alternative is considered the environmentally superior alternative in the Draft EIR (page 5-13). The applicant has elected to propose a modified version of this alternative as the preferred "Project" that includes 75 units and no commercial or other non-residential component. The preferred Project is described and analyzed in an ESA memorandum titled Design Review and Impacts Analysis of the Revised Niles Gateway Residential Project, February 17, 2020. The 75-Unit Reduced Density Alternative is accepted as an alternative, because it would achieve the many of the objectives of the proposed project and would result in fewer environmental impacts as compared to all of the other studied alternatives.

**Explanation:** Under the 75-Unit Reduced Density Alternative (Alternative 2), the 13 CRAFT building under the proposed project would be excluded. Consequently, there would be no mixed-use development fronting Niles Boulevard under this alternative. Alternative 2 would include 75 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 height of approximately 20 feet as opposed to the 30-foot height of the 2.5-story townhouses under the proposed project. Alternative 2 would include 1,450 square feet of community center space, which is the same as under the proposed project. Alternative 2 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 Alternative 2 would be in same space and configuration as the proposed project, while retail space would extend to where garages for the residential units would be located under proposed project.

This alternative would meet most of the project objectives for the proposed project. The 75-Unit Reduced Density Alternative would entail redevelopment of the former industrial site with a residential 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, Alternative 2 would convert the vacant, remnant industrial site to a productive use that includes residential uses, amenities, and access to Alameda Creek. As with the proposed project, Alternative 2 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. Alternative 2 would contribute housing towards meeting the City's Regional Housing Needs Allocation.

75-Unit Reduced Density Alternative was considered the environmental superior alternative in the Draft EIR; however, the proposed the elimination of the commercial space in the referred Project would further reduce adverse impacts relative to all other alternatives studied in the Draft EIR. As documented in the ESA memorandum titled *Design Review and Impacts Analysis of the Revised Niles Gateway Residential Project, February 17, 2020*, the project would result in fewer daily and peak hour vehicle trips thereby further reducing traffic and air quality impacts.

## Alternatives Eliminated From Further Consideration

CEQA Guidelines Section 15126.6(c) requires an EIR to identify and briefly discuss any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process. Alternatives considered but rejected from further consideration included an offsite alternative and a 60 unit development alternative.

**Findings:** Alternatives eliminated from further consideration are described on page 5-14 of the Draft EIR. An alternative off-site location other than the project site has not been identified because the project is location specific.

**Explanation:** The purpose of this project is to redevelop the former industrial site with a mix of commercial, residential and/or live-work uses that is consistent with the *Niles Design Guidelines and Regulations*, provide additional retail space in Niles, and develop housing which would contribute towards meeting the City's Regional Housing Needs Allocation. The project proposes to increase development potential within this City-identified Special Study Area, consistent with the Niles Community Plan Policy to encourage redevelopment of this site with a mix of commercial, residential and/or live-work uses. The Fremont General Plan's designation of Special Study Area reflects current allowable uses, however the General Plan acknowledges that these areas may also transition to new uses in the long-term. As such, the project site was identified as property that may be considered for a future General Plan Amendment to a more intense use with appropriate environmental review. No other Special Study Areas are identified in the Niles Community area or in the City that would achieve the basic objectives of the project.

**Findings:** Alternatives eliminated from further consideration are described on page 5-14 of the Draft EIR. A 60 unit alternative was considered but rejected 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.

**Explanation:** The 60 unit alternative 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 is a minimum of 75 units.

## Findings on Disagreement among Experts and Recirculation

To the extent the comment letters and correspondence submitted by the public or outside agencies or organizations are considered expert opinion, the City Council finds that the assumptions, data, methodology, and analysis included in the Final EIR (not including the comment letters) prepared by the City and its Consultants, is supported by substantial evidence and was the appropriate assumption, data, methodology, and analysis to use to support the impact conclusion reached in the Final EIR.

In a memorandum titled *Design Review and Impacts Analysis of the Revised Niles Gateway Residential Project, February 17, 2020*, ESA analyzed the preferred Niles Gateway Project alternative with 75 units and no commercial or other non-residential component determine as to whether circumstances necessitate recirculation of the *Final Environmental Impact Report for the Niles Gateway Mixed-Use Project* prepared by the City of Fremont in September 2018 (FEIR). The analysis concluded the revised project would have lesser effects related to aesthetics and transportation than would the FEIR project, and would avoid the FEIR project's significant and unavoidable cumulative traffic impact at the intersection of Mission Boulevard (SR-238) / Niles Boulevard - Niles Canyon Road. Effects related to the intensity of development would be less substantial with the revised project than those of the FEIR project, and other effects would be similar with the revised project. There have been no changes in the setting or other changes in circumstances that would result in new or substantially more severe impacts than were identified in the FEIR. Accordingly, no further CEQA review is required beyond that provided in the FEIR, and recirculation of the EIR is not required in accordance with CEQA Guidelines Section 15088.5. Additionally, no new alternative or mitigation measure that would clearly reduce project effects has been identified that is considerably different from others previously analyzed, and that the project's proponent declines to adopt. On the contrary, the 75-unit alternative analyzed here was proposed by the applicant, and is substantially similar to the 75-unit alternative analyzed in the Draft EIR. Finally, there is no evidence that suggests the EIR was fundamentally inadequate and conclusory such that recirculation would be appropriate or required.

The City Council further finds that the following do not change the impact conclusions reached in the Final EIR or otherwise trigger recirculation under CEQA: (1) information submitted and incorporated into the Final EIR; (2) revisions incorporated into the proposed project after release of the Recirculated Draft EIR; (3) all oral and written comments and testimony received by the City.