

## ADAMS BROADWELL JOSEPH &amp; CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

rpurchia@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
MARC D. JOSEPH  
ELIZABETH KLEBANER  
RACHAEL E. KOSS  
ROBYN C. PURCHIAOF COUNSEL  
THOMAS R. ADAMS  
ANN BROADWELL

October 21, 2011

**RECEIVED**

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**CITY OF MILPITAS  
PLANNING DIVISION****BY U.S. MAIL**James Lindsay, Director  
City of Milpitas Planning  
& Neighborhood Services  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Fax: (408) 586-3305**Re: Comments on the City of Milpitas's Consideration of the Site  
Development Permit for the McCandless Mixed Use Project**

Dear Mr. Lindsay:

We are writing on behalf of the Milpitas Coalition for Responsible Development ("Coalition")<sup>1</sup> to comment on the proposed approval of the Site Development Permit for the McCandless Mixed Use Project ("Project"). The Project proposes development of 92,000 square feet of retail space, 1,328 residential units and infrastructure, roadway and open-space improvements.<sup>2</sup> It will either be divided into eight, free-standing buildings<sup>3</sup> or four free-standing buildings and twenty-nine single-family units.<sup>4</sup> Buildings 1-4 encompass Phase I and Buildings 5-8/33 encompass Phase II. As we understand, the Applicant has submitted only a Site Development Permit application for Buildings 1 and 2 of the proposed Project.

<sup>1</sup> The Milpitas Residents for Responsible Development is comprised of residents Ricardo Bauzon, Tot V. Tran and Albert Thompson of the City of Milpitas, Plumbers and Steamfitters, Local 393, the International Brotherhood of Electrical Workers, Local 332, Sheetmetal Workers, Local 104 and their members and their families and other individuals that live and/or work in the City of Milpitas.

<sup>2</sup> City of Milpitas, CEQA Addendum Mitigated Negative Declaration No. EA08-0005 for McCandless Mixed Use Project, May, 26, 2010, p. 2 (hereafter "CEQA Addendum").

<sup>3</sup> City of Milpitas Engineering Division, Improvement Plans for McCandless Tract (Excerpt From Improvement Plan Set For Use In Building 1 & 2 Plan Review (20% Level Plans)).

<sup>4</sup> Ruggeri-Jensen-Azar Engineers Planners Surveyors, Residential Development Plan – Lots 5-33 McCandless, Sheet RDP-1.

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The City is waiting for the Applicant to submit an application for Buildings 3 and 4 before considering Permit approval.

The City's proposed Permit approval fails to comply with the California Environmental Quality Act ("CEQA")<sup>5</sup> and the California Water Code.<sup>6</sup> The Permit decision is a discretionary action subject to CEQA and the City may not rely on the 2008 Programmatic Environmental Impact Report ("PEIR") for the Transit Area Specific Plan, or the 2008 Mitigated Negative Declaration ("MND") prepared to review the Project "in concept only."<sup>7</sup> The City must, therefore, conduct subsequent CEQA review prior to Permit approval. The City's environmental review must consider the "whole" of the Project, which includes both Phases I and II.<sup>8</sup> The City must also prepare a Water Supply Assessment ("WSA") and incorporate it into the environmental review document as required by CEQA, the California Water Code and the City's own Conditions of Approval.<sup>9</sup>

## I. INTRODUCTION

### A. Statement of Interest

The Coalition has a strong interest in enforcing environmental laws such as CEQA. Coalition members reside, recreate and work in the City of Milpitas and may work on the Project itself. Accordingly, these members will be directly affected by the environmental impacts of the Project. Members also live in and use areas that will suffer the impacts related to development, including visual intrusion, destruction of wildlife resources and traffic congestion. In addition, the individual members who work on the Project would be first in line to be exposed to fugitive dust, poor air quality and any other unmitigated safety hazards that may exist onsite.

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<sup>5</sup> Pub. Resources Code, §§ 21000 et seq.

<sup>6</sup> Wat. Code, §§ 10910 et seq.

<sup>7</sup> 14 Cal. Code Regs., tit. 14, § 15152, subd. (f) (hereafter "CEQA Guidelines"); see also Dyett & Bhatia, Draft Environmental Impact Report Milpitas Transit Area Specific Plan, Oct. 2007 (hereafter "Draft PEIR"); Dyett & Bhatia et al., Final Environmental Impact Report Milpitas Transit Area Specific Plan, May 2008 (hereafter "Final PEIR"); City of Milpitas, McCandless Mixed Use Project Initial Study, Nov. 2008, p. 3 (hereafter "MND").

<sup>8</sup> Pub. Resources Code, §§ 21065, 21080, subd. (a); CEQA Guidelines, §§ 15002, subd. (b), 15003, subd. (h), 15165, 15378, Appendix G, No. 8.

<sup>9</sup> Pub. Resources Code, § 21151.9; Wat. Code, §§ 10910, subd. (b), 10912, subd. (a)(1); Conditions of Approval, McCandless Mixed Use Project (MT08-0002, UP08-0046), Project Conditions, No. 7 (hereafter "Conditions of Approval").

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Coalition members support environmentally sound land use and development in the City. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused construction moratoria, eliminated protected species and their habitat, used limited fresh water, and put added stresses on the public service and environmental carrying capacity of the State. This reduces future employment opportunities. Finally, members are concerned about projects that carry serious environmental risks and public service infrastructure demands without providing countervailing employment and economic benefits to local workers and communities.

## **B. Project Background**

The City has conducted environmental review for previous land use actions related to the Project site. A PEIR was adopted in June 2008 for the Transit Area Specific Plan, in which this Project is located. In November 2008, the City released an MND to evaluate the potential impacts of the development of 1,573 residential units and 92,757 square feet of retail in nine free standing buildings. In May 2010, the scope of the Project changed to include only 1,328 dwelling units and 92,000 square feet of commercial space in eight buildings. The City prepared an Addendum to the MND, which concluded, without any analysis or supportive evidence, that no environmental impacts would occur beyond those impacts already identified in the EIR.<sup>10</sup> The City then relied on the MND to approve an Owner Participation Agreement, Tentative Subdivision Map and Conditional Use Permit in July 2010.

In or around July 2011, the Applicant submitted an amended Tentative Map application. The amended Project maintains the high-density residential units proposed for Phase I, but changes Phase II to single-family attached and courtyard units. Because the amended Tentative Map application does not change the Project description for Buildings 1-4, the only entitlement required for that portion of the Project site is a Site Development Permit. Phase II, however, will most likely require at least a new Tentative Map and a Site Development Permit.

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<sup>10</sup> CEQA Addendum, p. 2.

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### C. Summary of Comments

The City must conduct additional environmental review before considering the Site Development Permit. As these comments explain, CEQA review is required because approval of a Permit is a discretionary action. The City may not exclusively rely on the PEIR and MND because the Project may have significant impacts not previously analyzed. In addition, the MND and Conditions of Approval expressly deferred certain analyses to the Site Development Permit approval stage. The City must prepare an environmental document that reviews the Project's potentially significant impacts to aesthetics, public health, biological resources, traffic and transportation, stormwater quality and flooding hazards.

Moreover, the City must analyze impacts related to the whole of the Project. That analysis must include impacts that relate to approval of Phases I *and* II. The City may not piecemeal its analysis of the Project so that impacts related to resources such as air quality and traffic would be minimized.

Finally, the City must prepare a WSA. The Project's Conditions of Approval specifically require the City Council to approve a WSA prior to the issuance of any building permit.<sup>11</sup> Under California law, however, a WSA is necessary to inform the environmental analysis and must be incorporated into the environmental review document.<sup>12</sup> The City must, therefore, prepare a WSA and incorporate it into the Project-specific CEQA review document.

## II. CEQA'S PURPOSE AND GOALS

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>13</sup> Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.<sup>14</sup> If the project has a significant effect on the environment, the agency may approve the project only upon a finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable

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<sup>11</sup> Conditions of Approval, Project Conditions, No. 7.

<sup>12</sup> Pub. Resources Code, § 21151.9; Wat. Code, § 10910, subd. (b).

<sup>13</sup> CEQA Guidelines, § 15002, subd. (a)(1).

<sup>14</sup> CEQA Guidelines, § 15002(a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354.

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significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.<sup>15</sup>

### **III. CEQA REVIEW IS REQUIRED BECAUSE APPROVAL OF A SITE DEVELOPMENT PERMIT IS A DISCRETIONARY ACTION**

The Planning Commission’s approval of the Site Development Permit is a discretionary action and environmental review is required. Under CEQA, if an agency’s consideration of a project requires the exercise of judgment or deliberation, the agency must conduct environmental review.<sup>16</sup> Here, the Planning Commission’s consideration of the Site Development Permit requires the exercise of judgment.

Under the Milpitas Municipal Code “[t]he Site Development Permit process provides for review of physical improvements to a site which due to their scale, proximity to environmentally sensitive resource areas, or unique design features, require consideration.”<sup>17</sup> The Planning Commission has broad discretion to consider and judge whether site design features will impact the environment and/or public safety.<sup>18</sup> Based on its judgment, the Planning Commission will decide whether to approve the Permit, deny it or approve with conditions. To inform this decision the City must comply with CEQA and analyze the environmental impacts of Permit approval.

### **IV. THE PLANNING COMMISSION MAY NOT RELY ON PREVIOUS ENVIRONMENTAL REVIEW FOR SITE DEVELOPMENT PERMIT APPROVAL**

#### **A. The City may not rely on the PEIR or the MND to consider approval of the Site Development Permit**

The City may not rely on the PEIR or the MND, but must prepare an environmental document that analyzes the specific impacts of Permit approval. “Tiering” is appropriate when the sequence of analysis is from an EIR prepared for a program to a site-specific EIR or negative declaration.<sup>19</sup> However, tiering does not

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<sup>15</sup> CEQA Guidelines, § 15092(b)(2)(A)-(B).

<sup>16</sup> CEQA Guidelines, § 15357.

<sup>17</sup> Milpitas Municipal Code, § XI-10-57.03(A)(1).

<sup>18</sup> See *ibid.*

<sup>19</sup> CEQA Guidelines, § 15152, subd. (b).

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excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of a project.<sup>20</sup>

An environmental document is required for a project within the larger program if the project *may* cause significant effects on the environment.<sup>21</sup> “If there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence.”<sup>22</sup>

As discussed below, there is substantial evidence that approval of a Site Development Permit may have a significant impact on the environment. Specifically, approval of the Site Development Permit may cause impacts to aesthetics, public health, biological resources, traffic, stormwater quality and flooding that were not analyzed in the PEIR or MND. The City may not, therefore, exclusively rely on the PEIR or the MND. Instead, the City must prepare a new, tiered environmental document that analyzes the reasonably foreseeable environmental effects associated with approving the Site Development Permit.

**B. The City anticipated later environmental review at the time the Site Development Permit was considered**

The City anticipated that it would conduct environmental review at the Site Development Permit approval stage. Under CEQA, when the development of detailed, site-specific document is not feasible at large-scale planning stage, a lead agency may defer site-specific information to a future environmental document.<sup>23</sup> The City specifically chose to defer an Arborist Report, a focused Traffic Impact Analysis and a Storm Water Control Plan package to the Site Development Permit stage.<sup>24</sup> The City also has required preparation of a raptor study.<sup>25</sup> According to its own requirements, the City must review these reports, studies and plans in a CEQA environmental review document before approving the Site Development Permit.

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<sup>20</sup> *Ibid.*

<sup>21</sup> *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073.

<sup>22</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1319.

<sup>23</sup> CEQA Guidelines, § 15152, subd. (c).

<sup>24</sup> MND, p. 12; Conditions of Approval, General Conditions, Nos. 3, 49(a).

<sup>25</sup> MND, p. 19.

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**V. CEQA REVIEW IS REQUIRED BECAUSE APPROVAL OF A SITE DEVELOPMENT PERMIT MAY RESULT IN ENVIRONMENTAL IMPACTS**

**A. There is substantial evidence that approval of the Site Development Permit may result in significant impacts to aesthetics**

There is substantial evidence in the record that approval of the Site Development Permit may cause significant impacts to aesthetics. The City of Milpitas Municipal Code recognizes the substantial aesthetic importance of trees in the community, and protects trees of significant size, age and/or benefit to the community at large.<sup>26</sup> In addition, the MND finds that removal of protected trees on the Project site could degrade the existing visual character or quality of the site and its surroundings resulting in a significant impact.<sup>27</sup>

The Site Development Permit application proposes to remove protected trees and “[a]ll trees on both sides of McCandless.”<sup>28</sup> According to the Municipal Code and MND, removal of these trees would result in a significant impact. The record thus contains substantial evidence that approval of the Site Development Permit may have significant impacts to aesthetic resources.

In order to comply with mitigation measures contained in the MND and to enable an analysis of the Project’s impacts to trees, the Applicant submitted a Tree Survey with its Site Development Permit application.<sup>29</sup> The Survey includes information on the species, health and structure of trees on the Project site. It also indicates whether the trees will be relocated, replaced or preserved.

An analysis of the Tree Survey must be included in a CEQA document. The Tree Survey provides further evidence that protected trees will be relocated or replaced resulting in potentially significant impacts to aesthetics. There is no evidence that relocating or replacing trees will reduce this impact to a less-than-significant level.

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<sup>26</sup> Milpitas Municipal Code, § X-2-1.02.

<sup>27</sup> MND, p. 11.

<sup>28</sup> McCandless Project – Integral Communities, Responses to First Plan Check City Comments, June 6, 2011, pp. 2, 11 (on file with the City) (hereafter “June 6, 2011 Responses”).

<sup>29</sup> Existing Tree Survey For Lot #1, Parcel #92 (on file with the City); Existing Tree Survey for Lot #2, Parcel #93 (on file with the City).

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Under CEQA, the public and decision makers must be able to assess the significance of a potential impact and the adequacy of proposed mitigation measures. This assessment must be contained in a CEQA document circulated for public review.

**B. There is substantial evidence that approval of the Site Development Permit may result in significant impacts to public health from toxic air contaminant emissions**

There is substantial evidence on the record that the Project may have a significant impact to public health from toxic air contaminants (“TAC”) emissions. Specifically, Permit approval could expose sensitive receptors to harmful TAC emissions from nearby industrial uses, rail lines and vehicle exhaust. CEQA requires agencies to examine whether a proposed Project could expose sensitive receptors to substantial pollutant concentrations.<sup>30</sup>

Although both the Bay Area Air Quality Management District (“BAAQMD”) and the City have recognized that TACs in the Project area may be significant, the City has not conducted Project-specific environmental review. The use of setbacks may be incorporated into the Site Development Permit to mitigate potentially significant TAC emissions. The City must, therefore, analyze this potentially significant impact in a CEQA environmental review document before considering approval of the Permit.

Exposure to TAC emissions can have significant health effects. TACs can cause long-term effects such as cancer, birth defects, neurological damage, asthma, bronchitis or genetic damage.<sup>31</sup> They can also cause short-term acute effects such as eye watering, respiratory irritation, running nose, throat pain and headaches.<sup>32</sup>

To protect against these potentially significant impacts, the BAAQMD recommends that lead agencies identify all TACs and PM2.5 sources located within a 1,000 foot radius of a proposed project site and beyond where appropriate.<sup>33</sup>

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<sup>30</sup> CEQA Guidelines, Appendix G, subd. (III)(d).

<sup>31</sup> BAAQMD, California Environmental Quality Act, Air Quality Guidelines, May 2011, p. 5-1 (hereafter “BAAQMD Guidelines”).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Id.* at p. 5-8.

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The BAAQMD commented on the Draft PEIR stating that the Specific Plan was not sufficient to reduce TAC impacts to a less-than-significant level.<sup>34</sup> In response to the BAAQMD's comments, the City incorporated mitigation measures requiring "all new development under the proposed Plan" to be subject to further CEQA review to evaluate Project-level impacts of TACs.<sup>35</sup> Analysis of the potential impacts would include an identification of receptors locating near toxic sources.<sup>36</sup> Common TACs sources include gasoline stations, dry cleaners, diesel backup generators, on-road motor vehicles and off-road sources such as construction equipment, ships and trains.<sup>37</sup>

Many of these sources exist within 1,000 feet of the Project site. There are several BAAQMD permitted sources surrounding the Project site, which may emit TACs.<sup>38</sup> In addition, the Project is located at the busy intersection of Great Mall Parkway and McCandless Drive and near McCandless Drive and Montague Parkway which operates at LOS F.<sup>39</sup> TACs from the on-road motor vehicles surrounding the Project site may cause significant health impacts to residential users on the Project site.

Because substantial evidence exists that Project development may expose sensitive residential receptors to high TACs emissions, the City must conduct a Health Risk Assessment and include the study in a CEQA document that is circulated for public review. An assessment is required under the City's own mitigation measures that were incorporated into the Transit Area Specific Plan. If an analysis concludes that TACs emissions will exceed CEQA thresholds, the City may incorporate setbacks and other conditions into the Site Development Permit to mitigate the impact.

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<sup>34</sup> See Jean Roggenkamp, Deputy Air Pollution Control Officer, letter to Scott Gregory, Contract Planner to the City of Milpitas, Dec. 20, 2007, p. 1 (on file with the City).

<sup>35</sup> Final PEIR, p. 2-22.

<sup>36</sup> *Ibid.*

<sup>37</sup> BAAQMD Guidelines, p. 5-2.

<sup>38</sup> Google Earth Image, May 1, 2011 (Attachment A).

<sup>39</sup> Draft PEIR, pp. 3.3-18, 3.3-31.

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**C. There is substantial evidence that approval of the Site Development Permit may result in significant impacts to biological resources**

There is substantial evidence that approval of the Site Development Permit may impact raptor species that nest in the trees on the Project site. California law prohibits the taking of any birds-of-prey or their nest or eggs.<sup>40</sup> It is also unlawful to take the nest or eggs of any bird.<sup>41</sup> According to the PEIR, removal of the trees on the Project site may result in significant impacts to raptor species.<sup>42</sup> Because the Site Development Permit proposes to relocate or replant trees on the Project site, approval of the Permit may result in significant impacts to bird and raptor species.

To mitigate this impact, the MND requires the Applicant to prepare a raptor study.<sup>43</sup> However, no raptor study has been prepared and submitted to the City. There is, therefore, no evidence indicating whether raptors nest in any of the trees on the Project site, and whether the nests of any birds would be impacted by tree relocation and/or replanting.

Because substantial evidence exists that raptors may nest on Project site and that trees may be relocated or replanted, the City must conduct an analysis to determine whether bird and raptor species will be impacted. This analysis must be contained in a CEQA document that is circulated for public review.

**D. There is substantial evidence that approval of the Site Development Permit may result in significant impacts to traffic and transportation**

The Applicant submitted a focused Traffic Study to the City along with Permit application materials. This Study contains substantial evidence that Permit approval may impact traffic conditions in the Project area. CEQA is designed to inform decision makers and the public about the potentially significant environmental effects of a project.<sup>44</sup> CEQA also directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation

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<sup>40</sup> Fish & G. Code, § 3503.5.

<sup>41</sup> Fish & G. Code, § 3503.

<sup>42</sup> Draft PEIR, p. 3.8-7.

<sup>43</sup> MND, p. 19.

<sup>44</sup> CEQA Guidelines, § 15002, subd. (a)(1).

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measures.<sup>45</sup> The City must incorporate the findings of the Traffic Study into a CEQA document so that the public and decision makers will be informed of the Project's significant traffic impacts and that those impacts will be avoided or reduced to the maximum extent feasible.

The City has stated numerous times that the Project may introduce a "weaving concern" for traffic entrance into Great Mall Parkway.<sup>46</sup> The City has also stated that both commercial and residential access of Street "A"/McCandless' intersection must be restricted for service entrance vehicles only.<sup>47</sup> To address these and other traffic concerns, the City required the Applicant to prepare a focused Traffic Study.

The Traffic Study addresses these issues and recommends measures to reduce impacts. For example, the Traffic Study finds that the current northbound left turn lane configuration at the Great Mall Parkway/McCandless Drive intersection would experience maximum queue lengths exceeding the current vehicle holding capacity.<sup>48</sup> The authors of the Traffic Study recommend reconfiguring the northbound approach to two left turn lanes and one shared through-right turn lane, plus a modification of the current signal phasing to include northbound-southbound lead-lag left turns.<sup>49</sup> Because this recommendation has not been analyzed and incorporated into an environmental review document, there is only evidence that the Project may have significant impacts.

The Traffic Analysis must be incorporated into a CEQA document that is available for public review. Failure of the City to prepare an environmental document that includes the analysis, findings and recommendations of the Traffic Analysis is a failure to comply with the purposes of CEQA. The public and decision makers must be aware of the environmental effects of a proposed Project before it is approved.

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<sup>45</sup> CEQA Guidelines § 15002(a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354.

<sup>46</sup> June 6, 2011 Responses, p. 2; Engineering Division Comments, Feb. 16, 2011, p. 1 (on file with the City).

<sup>47</sup> June 6, 2011 Responses, p. 2; Engineering Division Comments, Feb. 16, 2011, p. 1.

<sup>48</sup> TJKM Transportation Consultants, Draft Report Traffic Operations Analysis for McCandless Development, July 25, 2011, p. 32.

<sup>49</sup> *Ibid.*

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**E. There is substantial evidence that approval of the Site Development Permit may result in significant impacts to stormwater quality**

The Applicant has failed to submit a Storm Water Control Package (“SWCP”) prior to Site Development Permit approval as required by the National Pollutant Discharge Elimination System (“NPDES”) General Construction Permit and the Project’s Conditions of Approval.<sup>50</sup> Because the Applicant has not submitted a SWCP there is no evidence that the Site Development Permit complies with the NPDES Permit or has incorporated best management practices to mitigate impacts to storm water quality. The City must require the Applicant to submit a SWCP and incorporate the findings and recommendations in a CEQA document.

The Draft PEIR finds that construction activities in the Project area would expose soils to the erosional forces of wind, rain and runoff.<sup>51</sup> The SWCP is designed to minimize the discharge of pollutants, including silt and sediment, during construction.<sup>52</sup> Specifically, it will include best management practices for construction of facilities.<sup>53</sup>

Because the incorporation of best management practices may modify the site-design, it is essential that the SWCP be submitted prior to Site Development Permit approval. The SWCP must be incorporated into a CEQA document because it informs the public and decision makers about the Project’s potentially significant environmental effects.

**F. There is substantial evidence that approval of the Site Development Permit may result in significant impacts during flood events**

There is substantial evidence that Project development may expose residential structures to flooding, as well as place structures in areas that would impede or redirect flood flows. Under CEQA the City must analyze these potentially significant impacts.<sup>54</sup> Specifically, the City must analyze whether the

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<sup>50</sup> See Draft PEIR, pp. 3.5-12, 3.10-7; Conditions of Approval, 49(a).

<sup>51</sup> See Draft PEIR, p. 3.5-12.

<sup>52</sup> See *ibid.*

<sup>53</sup> See *id.* at p. 3.10-7.

<sup>54</sup> CEQA Guidelines, Appendix G, subd. (VIII)(g)-(i).

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structures comply with the Federal Emergency Management Agency (“FEMA”) requirements.

The City acknowledges that the Project is in Flood Zone AO.<sup>55</sup> Flood Zone AO is defined as an area of special flood hazard having shallow water depths and/or unpredictable flow paths between 1 and 3 feet.<sup>56</sup> FEMA requires new construction of residential and nonresidential structures to meet lowest floor elevation requirements.<sup>57</sup> While elevations of building plans have been provided with the Site Development Permit, there is no evidence to support a finding that that these elevations will mitigate any impacts related to flooding.

Under CEQA, the City must prepare a document that analyzes these impacts and make it available for public review. The environmental review document must assess site-specific flood hazards and propose specific mitigation measures. Only with this information may the public and decision makers understand all of the Project’s potentially significant impacts.

## **VI. THE CITY MUST ANALYZE THE IMPACTS OF THE WHOLE OF THE PROJECT IN A CEQA DOCUMENT**

The City must analyze the impacts of developing Phases I and II in a single environmental document. Under CEQA, a project is defined broadly to encompass the whole of an action.<sup>58</sup> This includes, but is not limited to, “later phases of a project, and any secondary, support, or off-site features necessary for implementation.”<sup>59</sup> Because the City is required to review “later phases of a project,” it must incorporate an analysis of the environmental impacts of Phases I and II into one CEQA document. As discussed above, Project development may impact aesthetics, public health, biological resources, traffic, stormwater and hazards related to flooding.

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<sup>55</sup> June 6, 2011 Responses, p. 1; Engineering Division Comments, Feb. 16, 2011, p. 1.

<sup>56</sup> 44 C.F.R. § 64.3 (2010).

<sup>57</sup> 44 C.F.R. § 60.3(c)(7)-(8) (2010).

<sup>58</sup> Pub. Resources Code, §§ 21065, 21080, subd. (a); CEQA Guidelines, §§ 15002, subd. (b), 15003, subd. (h), 15165, 15378, Appendix G, No. 8.

<sup>59</sup> CEQA Guidelines, Appendix G, No. 8.

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## VII. THE CITY MUST PREPARE A WATER SUPPLY ASSESSMENT AND INCORPORATE IT INTO THE CEQA DOCUMENT

The City must incorporate a WSA into its CEQA document. According to the City's Conditions of Approval for the McCandless Mixed Use Project, the City Council must approve a WSA prior to any building permit issuance.<sup>60</sup> However, the City's failure to require preparation of a WSA at the Site Development Permit approval stage violates both the Water Code and CEQA. The City must prepare a WSA and incorporate it into a CEQA document.

The Water Code requires a city or county to include the WSA in any environmental document prepared for a project.<sup>61</sup> In addition, CEQA requires compliance with Water Code provisions.<sup>62</sup> It is essential for cities and counties to incorporate the findings of WSAs into their environmental review documents so that the purposes of the Water Code and CEQA can be realized. A WSA is intended "to assist local governments in deciding whether to approve the projects."<sup>63</sup> Similarly, one of the purposes of CEQA is to inform decision makers and the public about the potential, significant environmental effects of a proposed project.<sup>64</sup> Without compliance with the Water Code and CEQA, it is impossible for the City to determine that water supplies are sufficient to meet water demands and that all of the Project's environmental impacts have been evaluated and mitigated.

Because the City has not required preparation of a WSA, the Project's total potable and nonpotable water demand has not been specified. Thus, it is unclear whether additional facilities may need to be constructed to deliver water. It is, therefore, possible that the City has not reviewed the whole of the Project and its significant impacts on the environment.

The City must ensure that the Project complies with the Water Code and CEQA before it is approved. This includes providing a complete description of the Project's potable and nonpotable water demand, an identification of a public water system and a complete description and analysis of any new facilities that may be needed to deliver water.

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<sup>60</sup> Conditions of Approval, Project Conditions, No. 7.

<sup>61</sup> Wat. Code, § 10910, subd. (b).

<sup>62</sup> Pub. Resources Code, § 21151.9.

<sup>63</sup> *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 576.

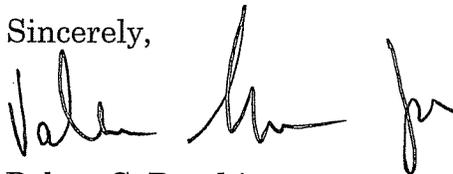
<sup>64</sup> CEQA Guidelines, § 15002, subd. (a)(1).

James Lindsay  
October 21, 2011  
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## VIII. CONCLUSION

For the reasons stated above, the City's proposed approval of the Site Development Permit fails to comply with CEQA and the Water Code. We respectfully request that the City postpone action on the Permit until it has prepared the appropriate environmental review documents. We appreciate the City's consideration of our views.

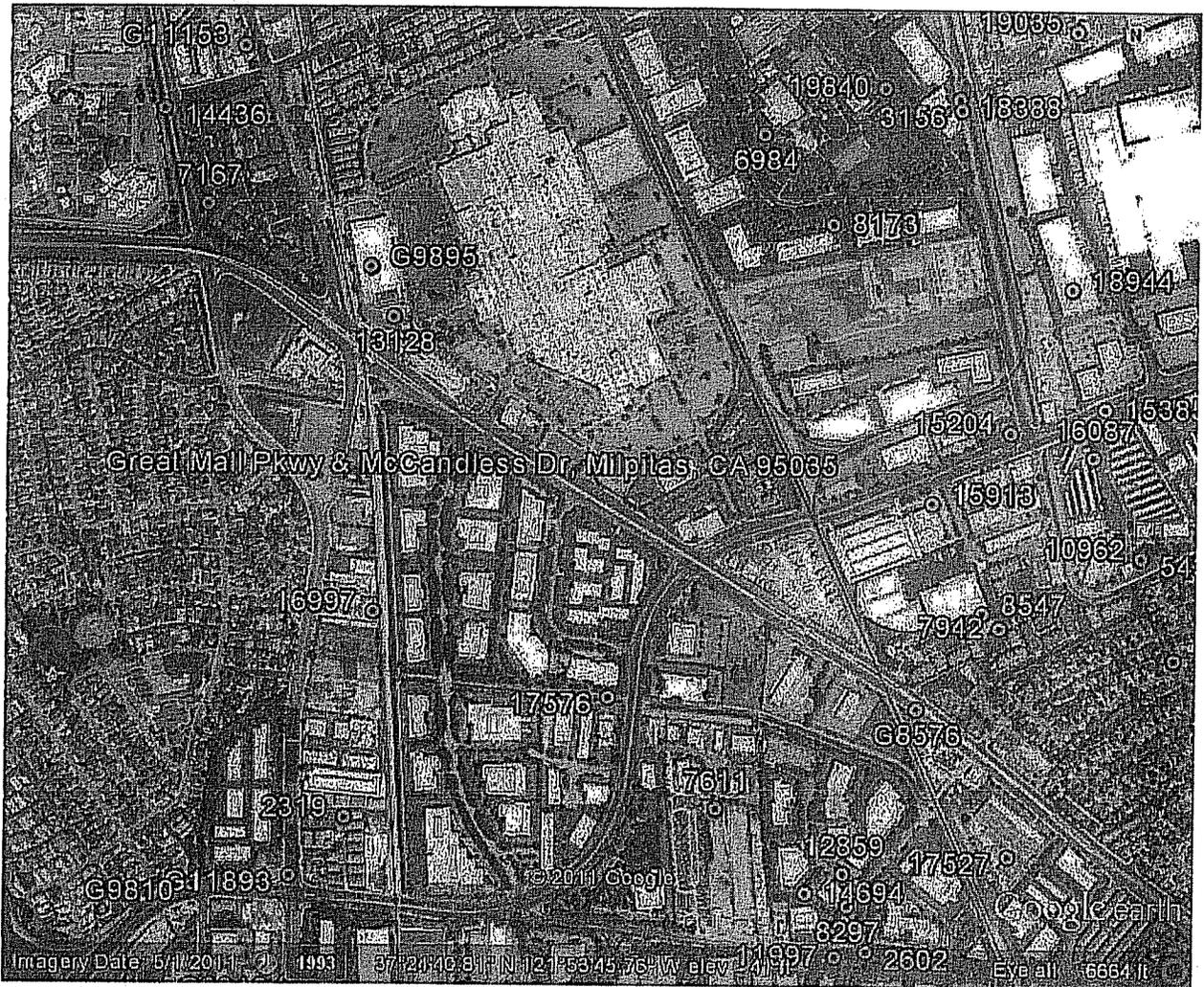
Sincerely,

A handwritten signature in black ink, appearing to read "Robyn C. Purchia". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

Robyn C. Purchia

RCP:vs  
Attachment  
cc: Sheldon Ah Sing, via mail

BAAQMD Permitted Stationary Sources Near the Project Site



Source: Google Earth BAAQMD Stationary Source Screening Tool (Oct. 6, 2011)