

RESOLUTION NO. 8340

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING CERTAIN FINDINGS REGARDING ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES, APPROVING CERTAIN MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING CERTAIN FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FOR THE PACIFIC MALL & HOTEL PROJECT

WHEREAS, on January 30, 2013, an application was submitted by TMS McCarthy, Inc. to create a Freeway Corridor Overlay increasing the maximum permitted Floor Area Ratio ("FAR") from 0.50 to 0.52 to allow the demolition of a portion of the McCarthy Ranch Marketplace, and to construct 284,587 square feet of retail space, including a 240 room hotel. The project is located at 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007.). The application was submitted pursuant to Milpitas Municipal Code Section XI-10-57; and

WHEREAS, the City of Milpitas ("City"), as lead agency, has completed and certified that certain Final Environmental Impact Report for the "Pacific Mall and Hotel" Project (the "Final EIR"), which project is more fully described in the Final EIR ("Project"), and the Final EIR has been assigned State Clearinghouse No. 20130220006; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act of 1970, as amended (CEQA) and State and local guidelines implementing CEQA, and determined that an Environmental Impact Report (EIR) would be required for the Project and circulated a Notice of Preparation dated February 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR; and

WHEREAS, the Planning Division circulated the Draft EIR for public review between May 8, 2013 and June 24, 2013; and

WHEREAS, City staff reviewed all comments received on the Draft EIR during the public review period and prepared written responses providing the City's good faith, reasoned analysis on the environmental issues raised by the comments. Revisions to the Draft EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5. The comment letters, written responses to comments and revisions to the Draft EIR are contained in a separately bound Final EIR dated October 2013. The May 2013 Draft EIR and the October 2013 Final EIR both of which are included in the Council packet and available for public review at the Office of the City Clerk, together constitute the final Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, and reflect the City's independent judgment and analysis on the potential environmental impacts of the Project; and

WHEREAS, on January 8, 2014 the Planning Commission held a duly-noticed public hearing on the Project at which time the Planning Commission considered a written staff report, the Draft EIR, written and oral comments on the Draft EIR, the Final EIR, and all other oral and written comments presented to them. Based on the administrative record, the Planning Commission adopted Resolution No. 14-001 and recommended that the City Council certify the Final EIR for the Project and approve the related permits for the Project; and

WHEREAS, the Final EIR identifies the potential for significant effects on the environment from development of the Project, not all of which can be substantially reduced through implementation of mitigation measures; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Exhibit A; and

WHEREAS, some of the significant effects identified in the EIR cannot be lessened to a level of less than significant; therefore, approval of the Project must include a Statement of Overriding Considerations as set forth in Exhibit B; and

WHEREAS, the City has prepared a Mitigation, Monitoring and Reporting Program to ensure monitoring and implementation of the mitigation measures set forth by Exhibit C; and

WHEREAS, on February 4, 2014, the City Council held a duly-noticed public hearing to consider certification of the EIR, and approval of the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

BE IT FURTHER RESOLVED that the Milpitas City Council determines, finds and certifies as follows:

- A. That the Final EIR for the Project has been completed in compliance with CEQA and the State and local guidelines implementing CEQA.
- B. That the Final EIR was presented to the City Council, which reviewed and considered the information contained therein prior to approving the Project.
- C. That the Final EIR reflects the City's independent judgment and analysis on the potential for environmental effects of the Project.
- D. That the custodian of the documents and other materials which constitute the record of proceedings for the Project is the City of Milpitas Planning Division located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.

BE IT FURTHER RESOLVED that the Milpitas City Council adopts the Findings set forth in Exhibit A, the Statement of Overriding Considerations set forth in Exhibit B and the Mitigation, Monitoring and Reporting Program set forth in Exhibit C.

PASSED AND ADOPTED this 4th day of February 2014, by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez, and Montano

NOES: (0) None

ABSENT: (0) None

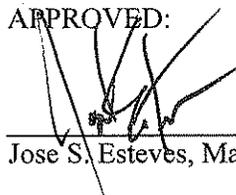
ABSTAIN: (0) None

ATTEST:

APPROVED:

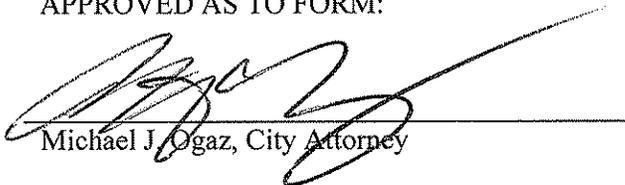


Mary Lavelle, City Clerk



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Michael J. Ogaz, City Attorney

EXHIBIT A

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE PACIFIC MALL & HOTEL PROJECT LOCATED AT 11-111 RANCH DRIVE

SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the Project located at 11-111 Ranch Drive ("Project") and means for mitigating those impacts. The impacts and mitigations included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and mitigations.

Less than Significant Impact with Mitigation

Traffic Impact 1: Implementation of the proposed Project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from C to E+ in the mid-day peak hour under existing plus Project conditions.

Mitigation Measure TR 1: McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of any occupancy permit for the proposed Project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in an improvement in intersection operations in the mid-day Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Traffic Impact 2: Implementation of the proposed Project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from D to E in the PM peak hour under background plus Project conditions.

Mitigation Measure TR 2: McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of any occupancy permit for the proposed Project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS E to LOS C in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Traffic Impact 3: Implementation of the proposed Project would result in an increase in critical delay of 4.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.013 in the PM Peak Hour at the McCarthy Boulevard/Bellew Drive intersection under background plus Project conditions.

Mitigation Measure TR 3: McCarthy Boulevard and Bellew Drive (No. 16): Restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane will be completed prior to issuance of any occupancy permit for the proposed Project. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Traffic Impact 4: Implementation of the proposed Project would result in an increase in critical delay of 15.2 seconds and an increase in the volume to capacity ratio (V/C) of 0.039 in the PM Peak Hour at the McCarthy Boulevard/Alder Drive intersection under background plus Project conditions.

Mitigation Measure TR 4: McCarthy Boulevard and Alder Drive (No. 17): A second southbound left turn lane from McCarthy Boulevard to Alder Drive will be constructed prior to issuance of any occupancy permit for the proposed Project. Right-of-way acquisition from the property on the west side of McCarthy Drive will be required by the applicant. This improvement will result in a lengthening of the crosswalk and/or modification of signal phasing that could increase the crossing distance/time for pedestrians. The traffic engineer determined that this would have no significant impact on pedestrian facilities. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Traffic Impact 5: Implementation of the proposed Project would result in an increase in critical delay of 5.4 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the Tasman Drive/Alder Drive intersection under background plus Project conditions.

Mitigation Measure TR 5: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of any occupancy permit. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the Project.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Traffic Impact 6: Implementation of the proposed Project would result in an increase in critical delay of 6.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the McCarthy Boulevard-O'Toole Avenue/Montague Expressway intersection under background plus Project conditions.

Mitigation Measure TR 6: McCarthy Boulevard/O'Toole Avenue and Montague Expressway (No. 28): Restripe northbound O'Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O'Toole Avenue onto Montague Expressway. Associated traffic signal modification would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the Project to a less than significant level.

Biological Resources Impact 1: Construction activities associated with the proposed Project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

Mitigation Measure BR 1:

1. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.
2. If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during Project construction.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director would reduce the impact of the Project to a less than significant level.

Biological Resources Impact 2: The loss of 226 trees on-site, including 50 ordinance sized trees, would be a significant impact.

Mitigation Measure BR2:

1. In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the Project site. The species and size of the replacement trees will be determined by City's Planning & Neighborhood Services Director.

2. Due to the proposed underground parking structure, it may not be possible to plant all replacement trees on-site. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City as determined by City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director would reduce the impact of the Project to a less than significant level.

Hazards and Hazardous Materials Impact 1: Implementation of the proposed Project could expose construction workers and future on-site maintenance workers to contaminated soil from historic agricultural operations on-site.

Mitigation Measure HHM1:

1. After demolition but prior to the issuance of any grading permit, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of work.

2. Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review and approval.

3. If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City's Director of Planning and Neighborhood Services, and the Milpitas Fire Chief.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director and Fire Chief would reduce the impact of the Project to a less than significant level.

Noise Impact 1: Implementation of the proposed Project could expose future hotel guests to interior noise levels in excess of acceptable City and State standards.

Mitigation Measure NI:

1. A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by

unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permit.

2. All guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests.

3. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed Project.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director and Chief Building Official would reduce the impact of the Project to a less than significant level.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which "would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project". Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project's significant effects. CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines Section 15126.6(a) specify that an EIR identify alternatives which "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project". **Section 6 Alternatives** of this EIR analyzes several alternatives to the proposed Project. A brief summary of these alternatives and their impacts is provided below.

Alternative 1: No Project Alternative

Implementation of the "No Project" alternative would avoid the significant unavoidable freeway impacts as well as the significant intersection impacts and temporary air quality impacts identified in this EIR. The No Project alternative would not, however, allow for the expansion of retail and a new hotel on the Project site. This alternative does not meet any of the objectives of the proposed Project.

Alternative 2: Reduced Density Alternative

In an effort to avoid the significant traffic and construction impacts that would result from the proposed Project but still provide new retail and hotel development on-site, this alternative proposes a reduced density development.

Under the reduced density alternative, the Project would still propose construction of a new retail building and hotel with underground and surface garage parking. The basic building design and orientation would be the same as the proposed Project and the Project would still include all identified sustainable building design measures in an effort to achieve LEED Silver certification. This alternative would, however, reduce the size of the new retail space and hotel as necessary to avoid the significant freeway and LOS impacts that would be caused by the Project. In order to reduce the significant, unmitigatable impact to the SR 237 EB segment from McCarthy Boulevard to I-880, the proposed retail space and the hotel would have to be reduced in size by 25 percent. Specifically, the new retail space would be reduced from 292,186 square feet to 219,139 square feet and the hotel would be reduced from 250 room to 187 rooms. Alternatively, the impact freeway impact could also be avoided by keeping the retail space at 292,186 square feet, but not constructing the hotel. The reduction in the overall size of the Project would reduce the identified LOS impacts as well.

The reduction in square footage would result in a proportionate reduction in water use, wastewater generation, solid waste generation, and electricity use, and would likely have a reduced construction schedule which could reduce the identified air quality impact to less than significant. All other identified impacts would be the same or less than those of the proposed project.

The reduced density alternative would meet eight of the 13 objectives of the proposed project in that it would allow for redevelopment of the existing shopping center in the same business model as is proposed by the project, but on a smaller scale.

The Reduced Density Alternative is the environmentally superior alternative. However, the scale of the project is integral to the success of the "for-sale" tenant spaces and synergy between the hotel and the mall. The Project proponents experience in developing a similar Project although without a hotel elsewhere demonstrates the former point. The preferred project has two unavoidable impacts because of infeasibility to mitigate those impacts as described herein. Therefore, the preferred Project is providing feasible mitigation to all other potentially significant impacts. Further explanation on overriding considerations is explained in this resolution.

EXHIBIT B

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Prior to approving a project for which an EIR is certified and for which findings are made that one or more significant impacts would result because mitigation measures or alternatives identified in the EIR are infeasible, CEQA mandates that the lead agency state in writing the specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment. This must be a written finding stating the agency's specific reasons supporting its action based on the Final EIR and/or other information in the record. The requirements for a Statement of Overriding Considerations are established in Section 15093 of the CEQA Guidelines and in the CEQA provisions set forth in Public Resource Code Section 21081 et seq.

Accordingly, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Project as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the Project whose primary focus is providing a revitalized retail center near a major freeway. Although the City Council believes that the unavoidable environmental effects identified in the EIR will be substantially lessened by mitigation measures and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

Air Quality Impact 1: Construction of the proposed Project will result in NOx emissions in excess of the 54 pounds per day threshold, even with inclusion of Bay Area Air Quality Management District (BAAQMD) dust and exhaust control measures.

There is no additional mitigation measures, other than the aforementioned BAAQMD dust and exhaust control measures. This impact would be temporary but would remain significant.

Traffic Impact 7: Implementation of the proposed Project would result in an increase in traffic volumes of more than one percent on eastbound SR 237 between McCarthy Boulevard and I-880 in the PM Peak Hour under existing plus Project conditions. There is no feasible mitigation to reduce the Project's freeway impacts to a less than significant level.

Traffic Impact 8: Implementation of the proposed Project would cause the LOS of the McCarthy Boulevard/S. Ranch Drive intersection to degrade from D to E in the PM Peak Hour. There are no feasible mitigation measures to reduce the impact to the McCarthy Boulevard and S. Ranch Drive intersection.

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to provide a diverse commercial and hotel project to promote the economic interests of the City and its citizens. The City Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the increase revenue to the City benefiting the City and its residents.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the economic, awareness and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits. The project will capitalize on the opening of the Levi's Football Stadium in nearby Santa Clara for the hotel portion leading to increased transient occupancy tax revenue for the city. The project will provide additional retail sales tax revenue and will provide small business entrepreneurs with ownership opportunities not otherwise available in an indoor mall format. For these reasons, the project as proposed provides substantial benefit to the City and its residents.

EXHIBIT C

MITIGATION MONITORING OR REPORTING PROGRAM

**PACIFIC MALL
PROJECT**

CITY OF MILPITAS

AUGUST 2013

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring or Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring or Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Environmental Impact Report concluded that the impacts from implementation of the project would be less than significant.

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

| Impact | Mitigation | Timeframe for Implementation | Responsibility for Implementation | Oversight of Implementation |
|--|--|---|-----------------------------------|--|
| TRANSPORTATION – Environmental Impact Report | | | | |
| <i>City of Milpitas Intersection Impacts – Existing Plus Project and Background Plus Project</i> | | | | |
| McCarthy Boulevard and SR 237 WB Ramps (No. 9) | <p>McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required.</p> <p align="center">Less Than Significant Impact With Mitigation</p> | Prior to issuance of occupancy permits. | Project Applicant | <p>Planning & Neighborhood Services Director</p> <p>Director of Public Works</p> |
| <i>City of Milpitas Intersection Impacts – Background Plus Project</i> | | | | |
| McCarthy Boulevard and SR 237 WB Ramps (No. 9) | <p>McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS E to LOS C in the PM Peak Hour.</p> <p>McCarthy Boulevard and Bellew Drive (No. 16): Restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane will be completed prior to issuance of occupancy permits for the proposed project. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour.</p> | Prior to issuance of occupancy permits. | Project Applicant | <p>Planning & Neighborhood Services Director</p> <p>Director of Public Works</p> |
| McCarthy Boulevard and Bellew Drive (No. 16) | | | | |

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

| Impact | Mitigation | Timeframe for Implementation | Responsibility for Implementation | Oversight of Implementation |
|--|---|------------------------------|-----------------------------------|-----------------------------|
| TRANSPORTATION – Environmental Impact Report Continued | | | | |
| <i>City of Milpitas Intersection Impacts – Background Plus Project Continued</i> | | | | |
| McCarthy Boulevard and Alder Drive (No. 17) | <p><u>McCarthy Boulevard and Alder Drive (No. 17)</u>: A second southbound left-turn lane from McCarthy Boulevard to Alder Drive will be constructed prior to issuance of occupancy permits for the proposed project. The lane will be added within the existing right-of-way, thereby reducing the width of the travel lanes by approximately one foot. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour.</p> | See previous page | See previous page | See previous page |
| Tasman Drive and Alder Drive (No. 19) | <p><u>Tasman Drive and Alder Drive (No. 19)</u>: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p> | See previous page | See previous page | |
| | <p><u>Tasman Drive and Alder Drive (No. 19)</u>: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p> | | | |

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

| Impact | Mitigation | Timeframe for Implementation | Responsibility for Implementation | Oversight of Implementation |
|---|---|------------------------------|-----------------------------------|--|
| Less Than Significant Impact with Mitigation | | | | |
| TRANSPORTATION – Environmental Impact Report Continued | | | | |
| City of Milpitas Intersection Impacts – Background Plus Project Continued | | | | |
| Tasman Drive and Alder Drive (No. 19) | <p>Tasman Drive and Alder Drive (No. 19): Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p> <p align="center">Less Than Significant Impact with Mitigation</p> | See previous page | See previous page | See previous page |
| Congestion Management Program (CMP) Intersection Impacts – Background Plus Project (and Existing Plus Project) | | | | |
| McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28) | <p><u>McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28)</u>: Restripe northbound O’Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O’Toole Avenue onto Montague Expressway. Associated traffic signal modification would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour. The improvement would, however, reduce the delay below background conditions, thereby improving the functionality of the intersection and reducing the projects impact to less than significant.</p> <p align="center">Less Than Significant Impact with Mitigation</p> | See previous page | See previous page | Planning & Neighborhood Services Director Director of Public Works Santa Clara Valley Transportation Authority |

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

| Impact | Mitigation | Timeframe for Implementation | Responsibility for Implementation | Oversight of Implementation |
|--|--|---|-----------------------------------|--|
| <p>BIOLOGICAL RESOURCES – Initial Study</p> <p>Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.</p> | <p>MM BIO-1.1: Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.</p> <p>MM BIO-1.2: If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p align="center">Less Than Significant Impact with Mitigation</p> | <p>During all phases of construction.</p> | <p>Project Applicant</p> | <p>Planning & Neighborhood Services Director California Department of Fish and Wildlife</p> |

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| <p>HAZARDS AND HAZARDOUS MATERIALS – Initial Study</p> <p>Impact HAZ-1: Implementation of the proposed project could expose construction workers and future on-site maintenance workers to contaminated soil.</p> | <p>MM HAZ-1.1: After demolition but prior to the issuance of grading permits, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of work.</p> <p>MM HAZ-1.2: Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review.</p> <p>MM HAZ-1.3: If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.</p> <p>A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is</p> | <p>Prior to issuance of grading permits.</p> | <p>Project Applicant</p> | <p>Planning & Neighborhood Services Director</p> <p>State Department of Toxic Substances Control</p> |

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| <p>See previous page</p> | <p>HAZARDS AND HAZARDOUS MATERIALS – Initial Study <i>Continued</i></p> <p>encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region’s reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City’s Director of Planning and Neighborhood Services, and the Milpitas Fire Chief.</p> <p align="center">Less Than Significant Impact with Mitigation</p> | <p>See previous page</p> | <p>See previous page</p> | <p>See previous page</p> |
| <p>NOISE – Initial Study</p> <p>Impact NOI-1: Implementation of the proposed project could expose future hotel guests to interior noise levels in excess of acceptable City and State standards.</p> | <p>MM NOI-1.1: A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project-specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits.</p> | <p>Prior to issuance of building permits.</p> | <p>Project Applicant</p> | <p>Planning & Neighborhood Services Director</p> |

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| <p>NOISE – Initial Study <i>Continued</i></p> <p>See Previous Page</p> | <p>MM NOI-1.2: All guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests.</p> <p>MM NOI-1.3: All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project.</p> <p>Less Than Significant Impact with Mitigation</p> | <p>See previous page</p> | <p>See previous page</p> | <p>See previous page</p> |

SOURCE: City of Milpitas, Pacific Mall Final Environmental Impact Report, August 2013.