

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CERTIFYING A FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE MILPITAS MIDTOWN SPECIFIC PLAN TRANSPORTATION UPDATE PROJECT AND ADOPTING RELATED MITIGATION FINDINGS, FINDINGS REGARDING ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, in March 2002, the City of Milpitas (“City”) certified an Environmental Impact Report (“EIR”) for the adoption of the Milpitas Midtown Specific Plan, which created new General Plan and zoning designations that allowed higher density development and called for traffic circulation and utility improvements to support such development for an approximately 1,000-acres segment of land in the City’s core, commonly called the Midtown District; and

**WHEREAS**, the City now wishes to make limited changes and additions to the transportation elements of the Midtown Specific Plan by adopting the Milpitas Midtown Specific Plan Transportation Update (“Project”); and

**WHEREAS**, pursuant to California Environmental Quality Act (“CEQA”) Guidelines §§ 15162 and 15163, a lead agency may choose to prepare a supplement to a previously prepared EIR when only minor additions or changes are necessary to make the previous EIR adequately apply to the project in the changed situation. Such a supplemental EIR need only contain the information necessary to make the previous EIR adequate for the project as revised; and

**WHEREAS**, the proposed Project in this case consists of limited proposed planning changes to the existing and future construction of the roadway system within the Milpitas Midtown District, which were generally described and previously considered in the Midtown Specific Plan EIR as either existing traffic circulation conditions or as proposed mitigations for impacts created by the newer high density uses and other land uses permitted by the Midtown Specific Plan. The planning changes and additions set forth in the Project as compared to the previous transportation plans considered in the EIR for the Milpitas Midtown Specific Plan are therefore minor and, specifically, are:

- 1) Conversion of the eastbound Carlo Street on-ramp at Calaveras Boulevard to an eastbound off-ramp;
- 2) Reduction of the number of lanes on Main Street from Abel Street to Great Mall Parkway from five lanes (two lanes in each directions with a center turn lane) to three lanes (one lane in each direction with a center turn lane);
- 3) Removal of the existing dedicated southbound right turn lane at the intersection of Main Street and Abel Street;
- 4) Elimination of the future construction of a second left turn lane from eastbound Calaveras Boulevard to northbound Abel Street; and
- 5) Modification of the signal phasing at the intersection of Calaveras Boulevard and Abel Street to allow simultaneous southbound right turn and eastbound left turn movements.

**WHEREAS**, based upon the proposed nature of the Project, the City determined that a Supplemental Environmental Impact Report (“SEIR”) would be required and circulated a Notice of Preparation dated January, 24, 2008 to public agencies and interested parties for consultation on the scope of the SEIR; and

**WHEREAS**, based on the responses to the Notice of Preparation, the City prepared a Draft Supplemental Environmental Impact Report (“Draft SEIR”) dated January 2008 (SCH No. 2000092027) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft SEIR was circulated for a 45 day public review and comment period, from June 5, 2008 to July 21, 2008; and

**WHEREAS**, the Project was the subject of public meetings and the Project and Draft SEIR were the subject of a public meeting held on June 18, 2008 and an informational meeting held by the Milpitas Planning Commission on August 27, 2008; and

**WHEREAS**, City staff reviewed all comments received on the Draft SEIR 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 SEIR were identified and incorporated as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft SEIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft SEIR pursuant to CEQA Guidelines § 15088.5. Pursuant to CEQA Guidelines §§ 15089 and 15132, the comment letters, a summary of oral comments received at the June 18, 2008 meeting on the Draft SEIR, the City's written responses to comments and revisions to the Draft SEIR, and a list of persons, organizations, and public agencies that commented on the Draft SEIR were gathered together and included in a separately bound Final SEIR dated September 2008. The Final SEIR reflects the City's independent judgment and analysis on the potential environmental impacts of the Project; and

**WHEREAS**, the Final SEIR identifies the potential for significant effects on the environment from development of the Project, most but not all of which can be substantially reduced through implementation of policies included in the Midtown Specific Plan; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Attachment A; and

**WHEREAS**, the Final SEIR recommends mitigation measures capable of reducing or avoiding certain environmental impacts identified in the EIR and the Final SEIR; therefore a Mitigation Monitoring and Reporting Program is warranted in the form of a Milpitas Citywide Deficiency Plan; and

**WHEREAS**, some of the significant effects identified in the Final SEIR 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 Attachment B; and

**WHEREAS**, on October 7, 2008, the City Council held a noticed public hearing to consider certification of the Final SEIR, and approval of the Project.

**NOW, THEREFORE, BE IT RESOLVED** that the foregoing recitals are true and correct and made a part of this resolution.

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

- A. That the Final SEIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
- B. That the Final SEIR was presented to the City Council who reviewed and considered the information contained therein prior to approving the Milpitas Midtown Specific Plan Transportation Update
- C. That the Final SEIR reflects the City's independent judgment and analysis on the potential for environmental effects of the Project.

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, and Statement of Overriding Considerations set forth in Exhibit B.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Mary Lavelle, City Clerk

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Jose S. Esteves, Mayor

APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney

## EXHIBIT A

### MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE MILPITAS MIDTOWN SPECIFIC PLAN TRANSPORTATION UPDATE

#### 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 Milpitas Midtown Specific Plan Transportation Update Project (“Project”) and means for mitigating those impacts. The impacts and Plan policies 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 policy-based mitigations.

#### Significant and Unavoidable Impacts

##### Traffic - Intersection Impacts

Impacts TR-1: Implementation of the proposed Plan would result in unacceptable operations at Abel Street and Calaveras Boulevard from LOS E to LOS F during the PM peak hour.

(Draft SEIR pp. 22-25)

Mitigation Measure TR-1: The 2030 Valley Transportation Plan (VTP) includes the widening of Calaveras Blvd, between Milpitas Boulevard and I-880. Although this is a high priority project, no current funding for this project has been secured. The following measures would return operation of this intersection to LOS to E during the PM peak hour and would need to be implemented as part of the Calaveras widening project:

- Add one additional westbound left turn lane on Calaveras Boulevard (for a total of 2 left turn lanes), and
- Restripe the northbound approach on Abel Street from two through lanes and one right turn lane to one through lane, one shared right/through lane, and one right turn lane.

Findings: Although the above identified policies would return the LOS to E during the PM peak hour, the addition of the second northbound right turn lane on Abel Street would result in safety issues for pedestrians in the adjacent crosswalk. While removal of the crosswalk would eliminate the safety issue, crosswalk removal would decrease pedestrian mobility in the Midtown area, which is not consistent with the goals for the Midtown Specific Plan. In addition, the second westbound left turn lane on Calaveras Boulevard may result in alignment issues and/or additional right-of-way on the north side of Calaveras Boulevard and widening the Wrigley Creek box culvert. Widening the Wrigley Creek box culvert would result in water quality and riparian habitat impacts. Furthermore, this improvement would require widening the Calaveras Boulevard bridge between Abel Street and Milpitas Boulevard, which may not occur for many years due to lack of full funding. For these reasons, this mitigation is not considered feasible and is not proposed by the project. Because the intersection of Abel Street and Calaveras Boulevard is a designated Congestion Management Program (CMP) intersection, the City of Milpitas will prepare a deficiency plan, as required by the Congestion Management Agency (CMA), the Santa Clara Valley Transportation Authority (VTA), for significant impacts to CMP intersections.

##### Traffic - Cumulative Roadway Segment Operations Impacts

Impact CM-1 to CM-4: Implementation of the proposed Plan would contribute on a cumulative basis toward the degradation and exacerbation of unacceptable operations for 1 roadway segment on Abel Street, during the a.m. peak period, and 2 roadway segments, on Abel Street and Main Street, during the p.m. peak hour (Draft SEIR pp. 30-32).

Mitigations: Significant cumulative transportation impacts on Abel Street occur immediately around the intersection of Calaveras Boulevard at Abel Street. The mitigation measures identified in the above section “Traffic-Intersections Impacts” for the project’s significant unavoidable transportation impact would also mitigate the significant cumulative impacts on Abel Street. However, as previously discussed these mitigation measures are not feasible.

The significant cumulative transportation impacts on Main Street can be mitigated by widening Main Street to provide additional through lanes, thereby increasing roadway capacity. However, widening Main Street is not consistent with the City’s North Main Street Streetscape project, which is intended to create a more pedestrian friendly environment. Therefore, the mitigation is not feasible. As noted in the previous Traffic Impact, the City of Milpitas will prepare a deficiency plan as required by the VTA to address significant and unavoidable impacts.

Finding: No mitigation measures are considered feasible for any of the other roadway segments. For this reason the cumulative transportation impacts are significant and unavoidable. The project will, however, have beneficial cumulative impacts on Main Street between the Calaveras Boulevard ramp and Curtis Avenue.

Specific economic, legal, social, technological and other benefits of the Project outweigh this impact, as further set forth in the Statement of Overriding Considerations for the Project.

## **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. Four project alternatives were identified and analyzed in the Final SEIR:

- No Project Alternative
- No Carlo Street Ramp Conversion Alternative
- Reconstruct Carlo Street Onramp Alternative
- Onramp and off-ramp Alternative

Each alternative was evaluated to determine whether it would feasibly attain most of the basic objectives of the Project, or have the potential to avoid or substantially lessen any of the significant effects of the Project.

### **NO PROJECT ALTERNATIVE**

The CEQA Guidelines require an EIR or SEIR to include a “No Project” alternative, which addresses both “the existing conditions, as well as what will be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services.” Under the No Project alternative, none of the components of the proposed project would be implemented and all of the environmental impacts of the proposed project would be avoided. The No Project alternative would meet none of the project objectives.

The No Project alternative would meet none of the project objectives, but would avoid all of the proposed project’s environmental impacts. For this reason, the No Project alternative is an environmentally superior alternative to the proposed project.

## **NO CARLO STREET RAMP CONVERSION ALTERNATIVE**

The No Carlo Street Ramp Conversion alternative includes implementing all of the components of the proposed project, except for converting the Carlo Street onramp to an off-ramp. The No Carlo Street Ramp Conversion alternative would avoid the significant unavoidable transportation impact and the short-term, construction-related air quality and noise impacts that result from the proposed project. The No Carlo Street Ramp Conversion alternative would meet all of the project objectives, except for avoiding the existing unsafe condition created by the existing Carlo Street onramp.

The No Carlo Street Ramp Conversion alternative would meet most of the project objectives and would avoid all of the proposed project's environmental impacts. For this reason, the No Carlo Street Ramp Conversion alternative is an environmentally superior alternative to the proposed project.

## **RECONSTRUCT CARLO STREET ON-RAMP ALTERNATIVE**

The Reconstruct Carlo Street on-ramp alternative would be a modification of the Carlo Street component of the proposed project wherein, instead of removing the existing Carlo Street on-ramp to eastbound Calaveras Boulevard and building a new off-ramp, the existing onramp would be reconstructed in a manner that would address the current safety issues associated with the short merge distance. Instead of forcing traffic to immediately merge to the left the reconstructed ramp would include a new 1,000-foot receiving lane and a 500-foot receiving lane. In turn, this would require widening the Calaveras Boulevard Bridge because there is no room for another lane on the existing structure.

The Reconstruct Carlo Street on-ramp alternative would avoid the significant transportation impact resulting from the proposed project and would meet all of the objectives of the proposed project, except for improving vehicular access to the Midtown Area.

Based on information contained in the Project Study Report for a separate Calaveras Boulevard Widening Project, the above-described partial widening of the Calaveras Boulevard Bridge would be approximately \$25 million. Further, because the long-term plans call for the replacement of the bridge at a higher profile (i.e., elevation), the \$25 million partial widening would be a "throw-away cost" because the bridge would eventually be demolished. If the City were to choose to replace the entire bridge now to accommodate the new receiving lane, the cost would be in excess of \$50 million.

There is currently no funding to widen the bridge and construct the receiving and merge lanes. Absent funding, it is not known if and when this alternative would be constructed. Therefore, the Reconstruct Carlo Street on-ramp alternative is not feasible, because there is presently no evidence to conclude that it could be constructed within a reasonable period of time.

## **ON-RAMP AND OFF-RAMP ALTERNATIVE**

In addition to all the components of the Reconstruct On-ramp alternative (see above), the On-ramp and off-ramp alternative includes construction of a Carlo Street off-ramp. The off-ramp for this alternative would be similar to the off-ramp proposed by the project; however, modification would be necessary. The on-ramp and off-ramp alternative would achieve all the objectives and would avoid all the impacts of the proposed project.

The on-ramp and off-ramp alternative would be more expensive than the Reconstruct Onramp alternative, because it also includes construction of an off-ramp. As is the case with the Reconstruct on-ramp alternative, there is currently no funding for the on-ramp and off-ramp alternative. Absent funding, it is not known if and when this alternative would be constructed. Therefore, the on-ramp and off-ramp alternative is not feasible, because there is presently no evidence to conclude that it could be constructed within a reasonable period of time.

## EXHIBIT B

### STATEMENT OF OVERRIDING CONSIDERATIONS

#### General

Prior to approving a project for which a Supplemental Environmental Impact Report (SEIR) is certified and for which findings are made that one or more significant impacts would result because mitigation measures or alternatives identified in the SEIR are infeasible, the California Environmental Quality Act (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 SEIR 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.

The City Council has carefully considered each impact in reaching its decision to approve the Milpitas Midtown Specific Plan Transportation Update Project ("Project"). Although the City Council believes that many of the unavoidable environmental effects identified in the SEIR will be substantially lessened by policies and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects. 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 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 SEIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

**Traffic Impact: Unacceptable Intersection Operations.** Conversion of the eastbound Carlo Street on-ramp at Calaveras Boulevard to an eastbound off-ramp as proposed under the Milpitas Midtown Specific Plan Transportation Update could result in unacceptable operation at Abel Street and Calaveras Boulevard (Impacts TR-1 as discussed in the Draft SEIR, pages 22-25). The onramp closure would substantially increase the number of vehicles passing through the intersection of Abel Street and Calaveras Boulevard, which would degrade the PM peak hour operations at this intersection from Level of Service (LOS) E in the Near Term to LOS F. The ramp closure would not substantially affect the other intersections during the PM peak hour. Closing the onramp would not impact any of the intersections during the AM peak hour. Because the intersection of Abel Street and Calaveras Boulevard is designated a CMP intersection, the City of Milpitas will prepare a Citywide Deficiency Plan, as required by the CMA for significant impacts to CMP intersections. The proposed projects would not result in any other transportation impacts.

**Traffic Impact: Cumulatively Unacceptable Roadway Segment Operations.** Added traffic from implementation of the proposed Plan would degrade and exacerbate unacceptable operations for two roadway segments: Abel Street and Main Street (impacts CM-2, CM-3, and CM-4 3.3-17 discussed in the Draft SEIR on pages 31-32). The Plan incorporates policies to reduce impacts at some roadway segments by providing additional through lanes, thereby increasing roadway capacity. However, widening Main Street is not consistent with the City's North Main Street Streetscape project, which is intended to create a more pedestrian friendly environment. Therefore, the mitigation is not feasible. As noted in the previous Traffic Impact, the City of Milpitas will prepare a deficiency plan as required by the VTA to address significant and unavoidable impacts.

## **Overriding Considerations**

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 SEIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in the unavoidable significant impacts described in the SEIR, the City Council hereby determines that such unavoidable impacts are outweighed by the economic, legal, social, technological, or other benefits of the Project, as further set forth below, based upon information considered in the Final SEIR and/or other information in the record.

1. **Encouragement of Higher Intensity Mixed Uses.** The proposed transportation planning update set forth in the Project will increase the desirability of the Midtown District as a place to live, work and recreate and ultimately decrease per person vehicular trips and increase the use of public transportation. Approval of the Project would facilitate the transition of an industrial area to higher intensity mixed uses that will increase the city's tax base, result in desirable neighborhoods and commercial districts, and maximize transit ridership to help meet regional housing/transportation goals.
2. **Improvement of Access to Important Uses.** The Project will result in a substantial public benefit by allowing an alternate route into Milpitas Midtown, including the new library, County Health Medical Center, and housing developments.
3. **Strengthening of the City's Tax Base.** The Project will increase the ability of City residents and visitors to access the new retail and office uses, ownership housing, and high-density employment uses within the Midtown District. The result will be increases in property values and property tax revenues, increased sales tax revenue, and increased business activity. The transportation planning improvements would ultimately encourage additional use of and improve access to the existing light rail stations and a future BART station with transit-oriented residential and commercial uses.
4. **Community Development.** The Project will increase the interconnections within the Midtown District, thereby creating a unique setting within the City that will present a strong sense of place for residents, workers, and visitors and continue to strengthen and improve the reputation of the City as a desirable place to live and work.
5. **Consumer Choice.** The Project will substantially increase the ability of shoppers and service purchasers to access the Midtown District, thereby increasing consumer choice.

Considering all factors, the City Council finds that there are specific economic, legal, social, Technological and other considerations associated with the Project that outweigh the Project's Significant unavoidable effects and the adverse effects are therefore considered acceptable.