

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, APPROVING  
CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0002, SITE DEVELOPMENT  
PERMIT NO. SA09-0003, WALMART EXPANSION PROJECT, A REQUEST TO ALLOW FOR  
AN 18,457 SQUARE FOOT BUILDING EXPANSION TO ACCOMMODATE GROCERY AND  
ALCOHOL SALES AND FOR THE INSTALLATION OF RELATED BUILDING AND SITE  
IMPROVEMENTS FOR THE PROPERTY LOCATED AT 301 RANCH DRIVE (APN 22-29-016),  
MILPITAS, CA 95035**

**WHEREAS**, on January 26, 2009, Walmart Stores, Inc., submitted an application to the City of Milpitas for an amendment to its current site development permit to allow for an 18,457 square foot building expansion, remodel of the exterior building façade, installation of associated site improvements, replacement of existing signage with Walmart’s new corporate branding, and an amendment to its current conditional use permit to allow for grocery and alcohol sales. The property is located within the General Commercial Zoning District and Site and Architectural Overlay (C2-S); and

**WHEREAS**, on March 24, 2010, the Milpitas Planning Commission held a duly noticed public hearing on the Project’s development application and approved the application, subject to conditions of approval; and

**WHEREAS**, on April 1, 2010, the Milpitas Coalition for a Better Community filed an appeal of the Planning Commission approval; and

**WHEREAS**, the City Council reviewed the application for hearing de novo and held a duly noticed public hearing on the matter on June 1, 2010 and considered public testimony and reviewed various written submissions and materials and the underlying record and reviewed an Environmental Impact Report prepared for the project in accordance with the California Environmental Quality Act (“CEQA”) (“Walmart EIR”), which identifies the potential for significant effects on the environment from development of the Project. The City Council, after review of the submitted materials, found by separate resolution that the Walmart EIR was completed in compliance with CEQA and the CEQA Guidelines.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. 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.
2. The Project is consistent with the following General Plan’s Guiding Principles and Implementing Policies:
  - a. Policy 2.a-G-1: The project maintains a land use program that balances Milpitas regional and local roles in that the location is suitable and appropriate for this land use. The project is located within the McCarthy Ranch Marketplace Shopping Center, which serves as a regional shopping destination given its proximity to freeway (I-880 and SR-237), affords a pleasant and secure shopping environment, provides a public convenience to daily necessities and products of residents and visitors, and is compatible with the neighboring commercial and office uses.

- b. Policy 2.a-I-3: The project encourages economic pursuits which will strengthen and promote development through stability and balance by a diverse retail facility.
  - c. Policy 2.a-I-6: The project maintains a balanced economic base that can resist downturns in any one economic sector in that it offers a “one-stop” shopping experience by adding grocery sales to other services already provided such as optometry services, general merchandise sales, pharmacy, and photo center.
  - d. Policy 2.a-I-7: The project provides opportunities to expand employment in Milpitas by providing opportunities for temporary and permanent jobs within the construction and service industries.
  - e. Policy 2.a-I-10: The project fosters community pride and growth through beautification of an existing development by renovating the site with façade and associated site improvements that provide architectural continuity with the adjacent McCarthy Ranch Marketplace retail buildings with the use of decorative elements such as new metal trellises, bicycle racks, and seating areas.
  - f. Policy 3.a-G-2, 3.a-I-1, 3.b-I-2, and 3.d-G-1: The project strives to maintain acceptable level of service standards for major streets and intersections, CMP LOS standards and goals for the CMP Roadway System in Milpitas, and enhance pedestrian connections. As conditioned, the project would implement all feasible mitigation for its traffic impacts, which include payment of its fair share contribution towards traffic improvements, the installation of necessary improvements related to the pedestrian crosswalks and Santa Clara Valley Transit Authority (“VTA”) bus shelter pad upgrades.
3. The project conforms to the Milpitas Zoning Ordinance in that:
- a. The expansion leading to the proposed grocery and alcohol sales are conditionally permitted in the General Commercial Zoning Districts with the approval of a conditional use permit.
  - b. The land use is also consistent with the purpose and intent of the General Commercial Zoning district in that the project affords a pleasant shopping environment that provides a range of retail and services necessary to support the daily needs of residents and visitors to Milpitas.
4. With respect to the Site Development Permit, the layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the façade improvements and site modification will provide architectural continuity with the adjacent shopping center and nearby office buildings; maintain the existing landscaping theme; enhances pedestrian circulation; and contributes toward traffic improvements on adjacent roadway system.
5. The project conforms to General Commercial and Parking Ordinance development standards and regulations in that the proposed building expansion and associated improvements are within the development envelope stipulated by required setbacks and

limitations for height and floor area ratio. The parking requirements are satisfied with on-site parking spaces.

- 6. The project will not be injurious or detrimental to property, improvements, or to public health and safety, and general welfare in that the project is suitable and appropriate at this location given that the existing Walmart store is located in a regional shopping center near employment centers, freeways and future residential development planned on Murphy Ranch Road, as well as the greater Milpitas residential areas.
- 7. The City Council of the City of Milpitas hereby approves, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **EXHIBIT 1**

### **CONDITIONS OF APPROVAL**

#### **(Conditional Use Permit Amendment UA09-0002 & Site Development Permit Amendment SA09-0003)**

An 18,457 square foot building expansion, remodel of the exterior building façade, installation of associated site improvements, replacement of existing signage with Walmart's new corporate branding, and an amendment to the existing conditional use permit to allow for grocery and alcohol sales.

#### **General**

1. The previous conditions of approval for the project (UP 1163) shall remain in full force and effect except as modified here. (P)
2. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on March 24, 2010, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

3. Conditional Use Permit Amendment No. UA09-0003 and Site Development Permit Amendment No. SA09-0002 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.06(2) of the Zoning Ordinance of the City of Milpitas. If the project requires the issuance of a building permit, the project shall be deemed to have commenced when the date of the building permit is issued and/or a foundation is completed, if a foundation is a part of the project. If the project does not require the issuance of a building permit, the project shall be deemed to have commenced when dedication of any land or easement is required or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. (P)

Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA09-0003 and Site Development Permit Amendment No. SA09-0002 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)

4. The project shall be operated in accordance with all local, state and federal regulations. (P)

5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. The applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void or annul, an approval of the city, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including action approved by voters of the City, concerning the project and the approvals granted herein. Furthermore, applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, against any and all claims, actions, suit, proceeding, or judgments against any governmental entity in which applicant is subject to that other governmental entity's approval and a condition of such approval is that city indemnify and defend such governmental entity. City shall promptly notify the applicant of any claim, action or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the city, any agency, or instrumentality thereof, or any of its officers, officials, employees, or agents. (P)

### **Site Development Permit**

7. Prior to issuance of building permit, a detailed landscape plan shall be submitted and approved by the Planning Director or designee that includes the following the following:
  - a. Locations and screening of all transformers and utility devices including backflow preventers.
  - b. Location and type of trees, shrubs and ground cover, including sizes and quantities. The legend shall also show tree canopy diameter at planting, five years and 10 years.
  - c. Plan details for all fence and wall structures. These shall be compatible in style and material with the proposed buildings. (P)
8. Prior to issuance of an occupancy permit, the required landscaping shall be planted in place. (P)
9. All planter areas shall be serviced by a sprinkler head or drip system. (P)
10. All approved landscaping shall be permanently maintained and replaced in kind as necessary to provide a permanent, attractive and effective appearance. (P)
11. Prior to the issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or

allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)

12. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The subject study shall recommend adequate drainage facilities to properly accept and convey drainage flows. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to building permit issuance. (E)
13. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Ranch Drive, including but not limited to the, installation of new pedestrian crosswalk and ped-flashing warning signals, new mid block ramp, signage and striping, and installation of new median, as shown on the Engineering Services Exhibit "S" dated 2/10/2009. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. All public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance. (E)
14. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
  - Storm water connection fee of **\$44,000** ((14.56 acres @ \$21,562 per acre) \* (18457sf proposed / 131725sf existing)).
  - Sewer Needs Questionnaire and/or Industrial Waste Questionnaire to be submitted with the building permit application; and the Treatment Plant Fee to be paid for prior to building permit issuance.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
15. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
16. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City

easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)

17. At the time of building plan check submittal, the developer shall incorporate the changes shown on Engineering Services Exhibit "S"(dated 2/10/2009) in the design plans and submit three sets of civil engineering drawings showing all public improvements to the Land Development Engineer for plan check. (E)
18. The applicant shall obtain necessary approvals for the installation of VTA bus stop improvements consisting of retention of the bus stop in its existing location, and installation a 7-foot by 20-foot Portland cement concrete shelter pad behind the sidewalk/passenger waiting pad with retaining wall prior to building occupancy.
19. The applicant/developer shall comply with and mitigate for all conditions and mitigation measure set by the approved EIR for the project.
20. The applicant shall work with and negotiate in good faith with the adjacent property owner to obtain permission for the design and construction of striped pedestrian crossing and associated median and/or ramp modifications at the shared driveway for McCarthy Ranch Marketplace and Walmart entrances.

### **Conditional Use Permit**

21. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)
22. Prior to issuance of a certificate of occupancy, the business owner shall post signs (in English, Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage. (P)
23. The preparation and storage of food is not permitted outside of the establishment. (P)
24. Business owner shall comply with best management practices for the handling and disposal of solid and food wastes, as permitted by and in compliance with local and state solid waste disposal regulations. (P)
25. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. (P) (PD)

26. Comply with all Department of Alcoholic Beverage Control licensing requirements pertaining to the sale of beer, wine and distilled spirits. (P) (PD)
27. The applicant shall incorporate practices and procedures to prohibit consumption of alcohol in the parking lot by having associates regularly patrol the parking lot areas while collecting shopping carts, and report any inappropriate activity to the store manager. (P) (PD)
28. Applicant shall conduct a crime survey of the area to evaluate the security needs for the store and implement a security plan based on this analysis to the approval of the Milpitas Police Department. (P) (PD)
29. The applicant shall establish a parking lot patrol that assists customers, ensures safety, and takes action to identify and prevent any suspicious activity (such as loitering and vandalism) both during the day and nighttime hours, and a plainclothes patrol inside the store to ensure safety and security. (P) (PD)
30. The applicant shall install and maintain in good repair a closed-circuit camera surveillance system for inside and outside of the store. (P) (PD)
31. After receiving a Certificate of Occupancy, the project is subject to a six, twelve, and eighteen month review by the Planning Commission. The review shall be a public hearing to review conformance with conditions of approval. (P)

### **Mitigation Measures**

32. MM AES-1a: Prior to issuance of building permits, the project applicant shall prepare and submit a sign program to the City of Milpitas for review and approval. The sign program shall demonstrate compliance with the applicable requirements with Milpitas Municipal Code Title XI, Chapter 30. The approved sign program shall be implemented into the proposed project. (P)
33. MM AES-1b: Prior to issuance of grading or building permits, whichever comes first, the project applicant shall obtain a tree removal permit from the City of Milpitas for any trees slated for removal with a trunk circumference of 37 inches or more measured at 4.5 feet above ground level. Replacement of such trees shall be performed in accordance with the requirements of the Tree Maintenance and Protection Ordinance. Removed trees that are not covered by the Tree Maintenance and Protection Ordinance (i.e., less than 37 inches in circumference at 4.5 feet above ground level) shall be replaced onsite with a similar tree species at no less than a 1:1 ratio. All replacement trees shall be planted prior to the issuance of the final certificate of occupancy. (P) (PW)
34. MM AES-1c: Prior to issuance of the final certificate of occupancy, the project applicant shall do one of the following: 1) permanently remove all shipping containers from the project site; or 2) obtain a minor Site Development Permit Approval and install screening measures in accordance with Zoning Ordinance requirements. If the second option is

pursued, outdoor storage of containers shall occur in a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum 6 feet in height and outside any front or street side yard setback area. (P)

35. MM AES-2: Prior issuance building permits, the project applicant shall ensure that all exterior lighting fixtures associated with the Walmart store (building-mounted and freestanding) are shielded, recessed, or directed downward to prevent unwanted illumination of neighboring properties. (P)

36. MM AIR-3: The following measures shall be implemented during all construction activities:

- Water all active construction areas and exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least two times per day.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweep streets daily (with water sweepers) visible soil material is carried onto adjacent public streets.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the City of Milpitas regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number of the Bay Area Air Quality Management District shall also be visible to ensure compliance with applicable regulations. (P) (B)

37. MM AIR-7a: The project applicant shall use paving materials with increased solar reflectivity in areas where pavement is replaced. Such materials shall use light-colored aggregate or other appropriate methods to achieve high solar reflectivity. The applicant shall provide construction details and specifications that shall be submitted with construction drawings and installed with improvements. (P)

38. MM AIR-7b: Prior to issuance of the final certificate of occupancy, the project applicant shall post signs in the Walmart loading docks mandating truck drivers to turn off engines when not in use and advising truck drivers of state law prohibiting diesel idling of more than five (5) minutes. (P)
39. MM AIR-7c: Prior to issuance of the final certificate of occupancy, the applicant shall do the following:
- Prior to building permit issuance, a secondary closed loop system shall be evaluated and implemented, if found to be technically and economically feasible. Details and specifications shall be included with the construction drawings.
  - The project applicant shall maintain the refrigeration system at least once per year to ensure that refrigerant leaks remain minimal. The maintenance records shall be kept onsite for review by the City of Milpitas.
  - During installation of the new refrigerators and freezers, effort shall be made to reuse the existing refrigerants in the new system, unless the old refrigerant is not the same type as is proposed in the new system or more leakage would occur if the refrigerants are reused. (P) (B)
40. MM AIR-7d: Prior to issuance of the final certificate of occupancy, the project applicant shall provide the following Transportation Demand Management measures:
- Public transit information in the employee breakroom. Store management shall post information such as Santa Clara Valley Transportation Authority bus and light rail schedules, maps, and fares.
  - Ride sharing information in the employee breakroom. Store management shall facilitate ride sharing by providing sign-up sheets or other measures to allow interested employees to identify carpooling opportunities.
  - Bicycling information. Store management shall post information such as bicycle route maps and information about taking bikes on public transportation. (P)
41. MM AIR-7e: To reduce construction related greenhouse gas impacts, the following measures are required:  
At least 15 percent of the construction vehicles/equipment shall be fueled by an alternative source such as biodiesel and/or electric. (P)
42. MM BIO-1: If vegetation removal associated with development of the property is to occur during the nesting bird season (February 15 through August 31), a qualified biologist shall conduct a pre-construction survey for nesting birds to identify any potential nesting activity. The pre-construction surveys for nesting birds shall be conducted within 14 days prior to any construction-related activities (grading, ground clearing, etc.). If nesting birds are identified on the site, a 100-foot buffer shall be maintained around the nests; no construction-related activities shall be permitted within the 100-foot buffer. A qualified biologist shall monitor the nests, and construction activities may commence within the buffer area at the discretion and presence of the biological monitor. The pre-construction survey for nesting birds shall not be required

if construction activities occur outside of the nesting bird season (September 1 through February 14). (P)

43. MM GEO-1a: Prior to issuance of building permits, the project applicant shall submit a seismic hazards technical study prepared by a qualified geotechnical engineer to the City of Milpitas for review and approval. The report shall be prepared in accordance with the requirements of the Seismic Hazards Mapping Act and shall identify necessary design measures to reduce potential seismic ground shaking impacts to acceptable levels. The project applicant shall incorporate the approved design measures into the project plans. (B)
44. MM GEO-1b: Prior to issuance of building permits, the project applicant shall submit a design-level geotechnical investigation to the City of Milpitas for review and approval. The design level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the project design. (B)
45. MM GEO-1c: Prior to issuance of building permits, the project applicant shall submit plans to the City of Milpitas for review and approval that demonstrate that the proposed project is designed in accordance with all state and local seismic safety requirements. Such requirements shall include the California Building Standards Code and Milpitas Municipal Code, Title II. The approved plans shall be incorporated into the project design. (B)
46. MM GEO-4: During grading and construction, the project applicant shall adhere to all applicable recommendations for abating expansive soil conditions contained in the Geotechnical Engineering Investigation or comparable geotechnical study. This includes the excavation of expansive soils and the subsequent replacement of such soils with non-expansive engineered fill. (B)
47. MM HYD-1: Prior to the issuance of grading permits for the proposed project, the applicant shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Milpitas that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation and maintenance, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:
  - Temporary erosion control measures shall be employed for disturbed areas.
  - No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
  - Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

- The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.
- BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the RWQCB to determine adequacy of the measure.
- In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season. (P) (B) (E)

48. MM HYD-2: Prior to the issuance of building permits for the proposed project, the project applicant shall submit a stormwater management plan to the City of Milpitas for review and approval. The stormwater management plan shall comply with the requirements of Milpitas Municipal Code Title XI, Chapter 16 and identify pollution prevention measures and practices to prevent polluted runoff from leaving the project site. Examples of stormwater pollution prevention measures and practices to be contained in the plan include, but are not limited to:

- Strategically placed bio-swales and landscaped areas that promote percolation of runoff
- Pervious pavement
- Roof drains that discharge to landscaped areas
- Trash enclosures with screen walls
- Stenciling on storm drains
- Curb cuts in parking areas to allow runoff to enter landscaped areas
- Rock-lined areas along landscaped areas in parking lots, Catch basins, Oil/water separators
- Regular sweeping of parking areas and cleaning of storm drainage facilities
- Employee training to inform store personnel of stormwater pollution prevention measures
- The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations. (P) (E)

49. MM PSU-3: Prior to building permit issuance, the project applicant shall include details and specification in the construction drawings and install the following indoor water conservation measures:

- Low-flow or ultra-low-flow toilets and urinals
- Sensor-activated faucets in restrooms (P) (B)

50. MM PSU-6a: Prior to the commencement of construction activities, the project applicant shall retain a qualified contractor to perform construction and demolition debris

recycling. The project applicant shall provide documentation to the satisfaction of the City of Milpitas demonstrating that construction and demolition debris was recycled. (E)

51. MM PSU-6b: Prior to building permit issuance, the project applicant shall show onsite facilities necessary to collect and store recyclable materials. The facilities shall include receptacles in public spaces that are of high-quality design and identify accepted materials. (E)
52. MM TRANS-1a: Prior to the issuance of building permits, the project applicant shall provide fair-share fees to the City of Milpitas for improvements to the Dixon Landing Road/N.Milpitas Boulevard intersection and the widening of Dixon Landing Road in the amount of \$31,960 (\$3,000 for the intersection improvement and \$28,960 for the roadway widening). The fees will go towards the following intersection improvements: 1) modifying the signal operation to include a southbound right-turn overlap and subsequent signal timing optimization or 2) adding a northbound left turn lane, a southbound right-turn lane, and eastbound left-turn and right turn lanes. The widening shall consist of adding an additional lane in each direction between I-880 and N. Milpitas Boulevard. Both improvements are identified in the Valley Transportation Plan 2035. (P) (E)
53. MM TRANS-1b: Prior to the issuance of final certificate of occupancy, the project applicant shall provide the City of Milpitas the full cost of signal timing modifications at the N. McCarthy Boulevard/Ranch Drive (south) intersection in the estimated amount of \$2,500 dollars. The modifications shall consist of re-timing the signal to increase the current cycle length. This mitigation measure shall not apply if the signal timing is modified prior to the applicant seeking the final certificate of occupancy. (P) (E)
54. MM TRANS-3: Prior to issuance of building permits, the project applicant shall provide a traffic management fee in the amount of \$180,000 to the City of Milpitas. The fees shall be used for circulation and traffic operation improvements within the City of Milpitas, including signal coordination and intersection improvements. Specific improvements that shall be fully funded by funds collected shall include:
  - McCarthy Boulevard/Technology Drive: The eastbound approach shall be restriped to provide two left-turn lanes and one shared through/right lane.
  - McCarthy Boulevard/SR-237 Westbound Ramps: An additional westbound right-turn lane shall be constructed to provide two left-turn lanes, two through lanes, and two right turn lanes for the westbound approach.
  - Ranch Drive: The roadway shall be restriped to extend the existing two-way left-turn lane from the northern Walmart driveway to the end of the existing westbound left-turn lane at the McCarthy Boulevard/Ranch Drive (North) intersection. (P) (E)
55. MM TRANS-5: Prior to issuance of building permits, the project applicant shall prepare and submit a site plan to the City of Milpitas that demonstrates that off-street parking is provided on-site complies with the Milpitas Municipal Code Parking Regulations and Development Standards. The approved site plan shall be incorporated into the proposed project. (P)

56. MM TRANS-8: Prior to building permit issuance, the project applicant shall provide details and specifications for bicycle storage facilities on the construction drawings and install prior to occupancy. Bicycle storage facilities shall consist of at least one rack located in a visible and convenient location (e.g., near the store entrance) and that provides storage equivalent to 2 percent of the proposed project's minimum parking requirement. (P)
57. MM TRANS-9: Prior to commencement of construction activities, the project applicant shall submit a Construction Traffic Control Plan to the City of Milpitas for review and approval. The plan shall identify the timing and routing of all major construction equipment and materials deliveries to avoid potential traffic congestion and delays on the local street network and the McCarthy Ranch Marketplace, and to encourage the use of I-880 and SR-237. If necessary, construction equipment and materials deliveries shall be limited to off-peak hours (e.g. mornings or evenings) to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking. (P) (E)

**Key:**

- (P) – Planning Division
- (E) – Engineering Division
- (F) – Fire Prevention Division
- (PW) – Public Works Department
- (PD) – Police Department
- (B) – Building & Safety Division

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
CERTIFYING AN ENVIRONMENTAL IMPACT REPORT FOR THE WALMART EXPANSION  
PROJECT AND ADOPTING RELATED MITIGATION FINDINGS, FINDINGS REGARDING  
ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS PURSUANT TO THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, an application has been submitted to expand and alter the existing 131,725 square-foot Walmart store in the McCarthy Ranch Marketplace in Milpitas, California, by a maximum of 19,000 additional square feet, thereby allowing amongst other actions the addition of a new grocery sales area and grocery stockroom space, the reduction of the total number of vehicular parking from 835 spaces to 779 spaces, and 24 hours-a-day, 7 days-a-week operation. These actions are collectively referred to as the “Project”; and

**WHEREAS**, the City determined that an Environmental Impact Report (“EIR”) would be required for the Project and circulated a Notice of Preparation dated March 4, 2009 to public agencies and interested parties for consultation on the scope of the EIR; and

**WHEREAS**, the City prepared and circulated a Draft Environmental Impact Report (“Draft EIR”) dated November 5, 2009 and a Final EIR (SCH No. 2009032018), dated February 18, 2010; 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 § 15088.5. The comment letters, written responses to comments and revisions to the Draft EIR were included in the Final EIR; and

**WHEREAS**, on March 23, 2010, the Milpitas Planning Commission certified the Final EIR, subject to related mitigation findings, findings regarding alternatives, and a Statement of Overriding Considerations with regards to significant unavoidable adverse roadway operations (traffic) impacts; and

**WHEREAS**, on April 1, 2010, the Milpitas Coalition for a Better Community filed an appeal of the Planning Commission approval of the EIR certification and the Project entitlements; and

**WHEREAS**, the City Council reviewed the application for hearing de novo and held a duly noticed public hearing on the matter on June 1, 2010 and considered public testimony and reviewed various written submissions and materials and the underlying record; and

**WHEREAS**, the November 5, 2009 Draft EIR and the February 18, 2010 Final EIR were made available for public review at the Office of the City Clerk and 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**, the EIR 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 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.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. 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.
2. The City Council certifies the Final EIR for the Walmart Expansion Project based on the following findings:
  - A. That the Final EIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
  - B. That the Final EIR was presented to the Planning Commission, 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.
3. The 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**EXHIBIT A****MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR  
THE PROJECT LOCATED AT 301 RANCH DRIVE Milpitas, CA 95035  
(APN 22-29-016)****I. STATEMENT OF FINDINGS**

The findings and determinations contained herein are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Project and the EIR. The findings and determinations constitute the independent findings and determinations by this Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

Although the findings below identify specific pages within the Draft and Final EIRs in support of various conclusions reached below, the Commission has no quarrel with, and thus incorporates by reference and adopts as its own, the reasoning set forth in both environmental documents, and thus relies on that reasoning, even where not specifically mentioned or cited below, in reaching the conclusions set forth below, except where additional evidence is specifically mentioned. This is especially true with respect to the Commission's approval of all mitigation measures recommended in the Final EIR, and the reasoning set forth in responses to comments in the Final EIR. The Planning Commission further intends that if these findings fail to cross-reference or incorporate by reference any other part of these findings, any finding required or permitted to be made by this Planning Commission with respect to any particular subject matter of the Project must be deemed made if it appears in any portion of these findings or findings elsewhere in the record.

**A. Introduction**

The EIR prepared for the Project addresses the environmental impacts associated with the expansion of the existing 131,725 square foot Walmart store in the McCarthy Ranch Marketplace within the City of Milpitas, California by a maximum of 19,000 square feet. These findings, as well as the accompanying Statement of Overriding Considerations in Exhibit B of the resolution, have been prepared to comply with the requirements of CEQA (Pub. Resources Code § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.).

**B. Project Objectives and Description****1. Project Objectives**

The following are the Project objectives:

- Positively contribute to the local economy.
- Enhance commercial retail opportunities available in the City of Milpitas.
- Create new job opportunities for local residents.
- Expand the existing Walmart store to provide the market area with an affordable shopping alternative that offers a wide variety of products to the City of Milpitas as well as the surrounding communities.
- Provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment.
- Promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan.
- Generate tax revenues to accrue to the various agencies within the Project area.
- Minimize travel lengths and utilize existing infrastructure to the maximum extent possible by expanding an existing Walmart store.

(Draft EIR, pp. 2-1 to 2-2.)

## 2. Project Description

The approximately 14.56-acre Project site is located at 301 Ranch Drive within the incorporated City of Milpitas, on Santa Clara County Assessor's Parcel Number 022-29-016. Walmart proposes to expand the existing 131,725 square foot Walmart store by 18,457 square feet. For purposes of providing a conservative evaluation of Project impacts, the EIR analyzed the additional square footage at 19,000 square feet. The building expansion would mainly consist of the enlargement of the existing store to the south. This would include the addition of a new grocery sales area and grocery stockroom space. The existing store has 835 vehicular parking spaces. The store expansion would eliminate a number of existing spaces on the south side of the building and reduce the total number of vehicular spaces to 779. (Draft EIR, pp. 3-1 to 3-12.)

### C. Record of the Proceedings

The record of proceedings for the Planning Commission's decision on the Project includes, but is not limited to, the following documents:

- The Notice of Preparation and all other public notices issued by the City in conjunction with the Project;
- All applications for approvals and development entitlements related to the Project and submitted to the City;

EXHIBIT A

- The Draft EIR for the Project (November 5, 2009) and technical appendices;
- All comments submitted by agencies or members of the public during the public comment period on the Draft EIR;
- The Final EIR for the Project, including comments received on the Draft EIR, responses to those comments, and the Draft EIR and technical appendices (February 19, 2010);
- The Mitigation Monitoring and Reporting Program for the Project;
- All reports, studies, memoranda, maps, staff reports, or other planning documents related to the Project prepared by the City, or consultants to the City with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- All reports, studies, memoranda, maps, staff reports, or other planning documents related to the Project cited or referenced in the preparation of the Draft EIR or Final EIR;
- The City of Milpitas General Plan, Zoning Code, and any other relevant City planning documents;
- All documents submitted to the City (including to the Planning Commission) by other public agencies or members of the public in connection with the Project, up through the close of the public hearing on March 24, 2010;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project; and
- Any other materials required for the record of proceedings by Public Resources Code Section 21167.6, subdivision (e).

The official custodian of the record is the City of Milpitas City Clerk, 455 E. Calaveras Boulevard, Milpitas, California 95035.

The Planning Commission has relied on all of the documents listed above in reaching its decision on the Project, even if not every document was formally presented to the Commission or City staff as part of the City files generated in connection with the Project. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions with which the Planning Commission was aware in approving the Project. (See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-392; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6.) Other documents influenced the expert advice provided to City staff or consultants, who then provided advice to the Planning Commission. For that reason, such documents form part of the underlying factual basis for the Commission's decisions relating to the adoption of the Project. (See Pub. Resources Code, §

21167.6, subd. (e)(10); *Browning-Ferris Industries v. Planning Commission of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.)

#### D. Findings Required Under CEQA

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to state that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a).) For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) The second permissible finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.” (CEQA Guidelines, § 15091, subd. (a)(2).) The third potential conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*)).

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility” under CEQA encompasses “desirability” to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. The City must therefore glean the meaning of these terms from the other contexts in which the terms are

used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such Projects.” (Pub. Resources Code, § 21002.)

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less-than-significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less-than-significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. Planning Commission* (1978) 83 Cal.App.3d 515, 519-521, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less-than-significant level, or has simply been substantially lessened but remains significant.

Moreover, although section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these findings will nevertheless fully account for all such effects identified in the Final EIR.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the Project lies with some other agency. (CEQA Guidelines, § 15091, subd. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II, supra*, 52 Cal.3d at p. 576.)

These findings constitute the Planning Commission members’ best efforts to set forth the evidentiary and policy bases for its decision to approve the Project in a manner

consistent with the requirements of CEQA. To the extent that these findings conclude that various proposed mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, the City hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the Commission adopts a resolution approving the Project.

E. Mitigation Monitoring and Reporting Program

A Mitigation Monitoring and Reporting Program (MMRP) was prepared for the Project and was approved by the Planning Commission by the same resolution that has adopted these findings. (See Pub. Resources Code, § 21081.6, subd. (a)(1); CEQA Guidelines, § 15097.) The City will use the MMRP to track compliance with Project mitigation measures. The MMRP will remain available for public review during the compliance period.

F. Effects Found Not to Be Significant

Based on the discussion in Section 7 of the Draft EIR, and other supporting information in the record, the Planning Commission finds that the Project would have no impact associated with the specific issues identified below.

1. Aesthetics, Light, and Glare

The Project would not adversely affect views of any scenic features.

The Project would not adversely affect views from a state scenic highway or a Scenic Corridor. (Draft EIR, p. 7-1.)

2. Agricultural Resources

The Project would not result in the loss of Important Farmland or the conversion of Important Farmland to non-agricultural uses.

The Project would not conflict with existing zoning for agricultural use nor is the Project site eligible for a Williamson Act contract.

The Project would not include other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural uses. (Draft EIR, p. 7-2.)

3. Biological Resources

The Project would not cause adverse impacts to sensitive natural communities or riparian habitat.

The Project would not cause adverse impacts to wetlands or jurisdictional features.

The Project would not cause adverse impacts to wildlife or fish movement or nursery sites.

The Project would not conflict with a habitat conservation plan or natural community conservation plan. (Draft EIR, pp. 7-2 to 7-3.)

4. Cultural and Historic Resources

The Project would not adversely affect historic resources.

The Project would not adversely affect archaeological resources.

The Project would not adversely affect paleontological resources.

The Project would not adversely affect human remains or burial sites. (Draft EIR, pp. 7-3 to 7-4.)

5. Geology, Soils, and Seismicity

No septic or alternative wastewater disposal systems would be installed as part of the Project. (Draft EIR, p. 7-4.)

6. Hazards and Hazardous Materials

The Project would not expose schools within a 0.25-mile radius of the Project site to hazardous materials.

The Project would not expose persons residing or working in the Project vicinity to aviation hazards.

The Project would not expose persons residing or working in the Project area to aviation hazards associated with private airstrips.

The Project would not expose persons or structures to wildland fire hazards. (Draft EIR, pp. 7-4 to 7-5.)

7. Hydrology and Water Quality

The Project would not be exposed to 100-year flood hazards and would not locate structures within such a flood hazard area.

The Project site would not be inundated by floodwaters as a result of levee or dam failure.

The Project site would not be inundated by seiches, tsunamis, or mudflow. (Draft EIR, pp. 7-5 to 7-6.)

8. Land Use

The Project would not divide an established community.

The Project would not conflict with the provisions of a habitat conservation plan or natural community conservation plan. (Draft EIR, p. 7-6.)

9. Mineral Resources

The Project would not result in the loss of a mineral resource of statewide or local importance. (Draft EIR, p. 7-6.)

10. Noise

The Project would not expose persons residing or working in the Project vicinity to excessive aviation noise. (Draft EIR, p. 7-6.)

11. Population and Housing

The Project would not induce substantial population growth.

The Project would not result in the displacement of persons or housing. (Draft EIR, p. 7-7.)

12. Public Services and Utilities

The Project would not cause school enrollment growth to occur.

The Project would not create a need for new or expanded park facilities.

The Project would not create a need for new or expanded libraries or other public facilities. (Draft EIR, p. 7-7.)

13. Recreation

The Project would not result in the need for new or expanded recreational facilities.

The Project would not cause physical deterioration of existing recreational facilities from increased usage. (Draft EIR, p. 7-8.)

14. Transportation

The Project would not alter air traffic patterns. (Draft EIR, p. 7-8.)

G. Less Than Significant Impacts Without Mitigation

Based on the Final EIR and the record, the Planning Commission finds that the Project would have less than significant environmental impacts associated with the specific issues identified below, as addressed in the EIR.

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1. Air Quality

a. Impacts

*Impact AIR-2: Carbon Monoxide Hotspots:* The Project would not significantly contribute to a carbon monoxide hotspot that would exceed federal or state air quality standards. The Project's local carbon monoxide concentrations were estimated for peak hour traffic at roadway segments most affected by the Project. The estimated 1-hour and 8-hour average carbon monoxide concentrations at buildout in combination with background concentrations are below the state and national ambient air quality standards. No carbon monoxide hotspots are anticipated as a result of traffic-generated emissions by the Project in combination with other anticipated development in the area. Therefore, the impact is less than significant. (Draft EIR, pp. 4.2-31 to 4.2-33; see also Draft EIR, Appendix B.)

*Impact AIR-4: Toxic Air Contaminants:* The Project would not expose sensitive receptors to substantial levels of toxic air pollutant concentrations. The Health Risk Assessment prepared for the Project concluded that the Project (specifically, the operation of diesel trucks associated with the Project) would not expose sensitive receptors or the general public to diesel emissions or toxic air contaminant concentrations that exceed the Bay Area Air Quality Management District ("BAAQMD") thresholds of 10 cancers per million or 1.0 on the Hazard Index. Also, the Project would not conflict with the guidance established in the California Air Resources Board ("CARB") "Air Quality and Land Use Handbook: A Community Health Perspective" because the Project does not involve the siting of sensitive receptors nor does the Project include a source of toxic air contaminants identified in the handbook. Furthermore, the health effects to the nearby sensitive receptors from the Project's emissions of diesel particulate matter ("DPM") would be less than significant because of the distance between the Project and the sensitive receptors, the quantities of the emissions would be minimal, and the emissions of DPM during construction would be short-term in duration. Therefore, the impact is less than significant. (Draft EIR, pp. 4.2-42 to 4.2-45; see also Draft EIR, Appendix B.)

*Impact AIR-5: Odors:* The Project would not create objectionable odors affecting a substantial number of people. The Project would not contain any uses that would create objectionable odors. Diesel exhaust and volatile organic compounds ("VOCs"), which are objectionable to some, would be emitted during Project construction, however, emissions would disperse rapidly and, therefore, should not be at a level to induce a negative response. There are several land uses associated with odor near the Project site including: (1) the San Jose/Santa Clara Water Pollution Control Plant, a wastewater treatment plant, which has implemented a Best Management practices plan to control generation of odors; (2) the Zanker Road Landfill/Compost Facility, which is required to implement Best Available Control Technology for emissions of odorous substances; and (3) the Calpine Los Esteros Critical Energy Facility, a natural gas power plant. Because there were no odor complaints for the Zanker Road Facility or the Energy Facility over the most recent 3-year period available, and because there were less than 3 unconfirmed complaints per year averaged over the most recent three-year period for the Water Pollution Control Plant, the impact is less than significant. (Draft EIR, pp. 4.2-45 to 4.2-50; see also Draft EIR, Appendix B.)

*Impact AIR-6: Naturally Occurring Asbestos:* The Project would not significantly impact receptors by disturbing naturally occurring asbestos. Based upon a review of a map

showing areas more likely to have rock formations containing naturally occurring asbestos in California, the Project site is not in an area that is likely to contain naturally occurring asbestos. Furthermore, soils underlying the Project site predominantly consist of engineered fill and other non-native materials. This condition would preclude the potential for any naturally occurring asbestos to be present onsite. Therefore, the impact is less than significant. (Draft EIR, pp. 4.2-50 to 4.2-51; see also Draft EIR, Appendices B and D.)

*Impact AIR-8: Climate Change Effects:* The Project would not be subject to significant adverse effects as a result of global climate change. Public health effects that higher temperatures may cause would not significantly impact the Project since the Project would include high-efficiency HVAC units that would maintain a comfortable interior temperature for customers and employees. The Project would also not be susceptible to flooding from sea level rise given its elevation or to wildfires given its location in a built urban environment. Finally, the City, which obtains its water from the Santa Clara Valley Water District, supplies the existing store with potable water and has indicated that it has enough water supplies to serve the Project and that this connection would be maintained by the Project. Furthermore, the Project consists of a commercial retail project, a type of land use that is not considered water-intensive. For these reasons, the Project would not be adversely affected by potential changes in water supply attributable to climate change. Therefore, the impact is less than significant. (Draft EIR, pp. 4.2-68 to 4.2-73; see also Draft EIR, Appendix B.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to air quality related to carbon monoxide hotspots, toxic air contaminants, odors, naturally occurring asbestos and climate change effects.

2. Geology, Soils, and Seismicity

a. Impacts

*Impact GEO-3: Unstable Geological Units or Soils:* The development of the Project would not expose persons or structures to hazards associated with unstable geologic units or soils. The deep-surface soils beneath the Project site consist of approximately 300 feet of alluvium, a very stable geologic unit. Near the surface, the sub-surface soil profile consists of materials that are suitable to support the Project. Moreover, the Project site is in a developed state consisting of a paved parking area and was previously graded and soil engineered as part of the development of the existing Walmart store in the early 1990s. Accordingly, the development of the Project would not expose persons or structures to hazards associated with unstable geologic units or soils and impacts would be less than significant. (Draft EIR, pp. 4.4-12 to 4.4-13; see also Draft EIR, Appendix D.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to geology, soils, and seismicity related to unstable geologic units or soils.

### 3. Hazards and Hazardous Materials

#### a. Impacts

*Impact HAZ-1: Past and Present Site Usage:* The development of the Project would not result in the exposure of persons or the environment to hazardous materials associated with past and current uses of the Project site. There are no recognized environmental conditions (including known contamination from spills or leaks of hazardous materials; the presence of asbestos, lead, PCBs, mercury, or CFCs in materials or equipment; or naturally occurring radon in the soil) on the Project site that would affect the development of the Project and the Project site is not located on a list of hazardous waste materials sites compiled pursuant to Government Code Section 65962.5. Therefore, the Project would not be susceptible to hazardous materials or contamination associated with the past or present uses of the Project site. Furthermore, there are no recognized environmental conditions in the Project vicinity (including leaking underground storage tanks and pesticides) that would affect the development of the Project. Although the nearby San Jose/Santa Clara Water Pollution Control Plant treatment uses 19 percent aqueous ammonia (a hazardous material) in its treatment process, even under the worst-case offsite release scenario the Project site would not be within the zone of vulnerability for such a release. Accordingly, the Project would not be susceptible to an accidental release of aqueous ammonia from the San Jose/Santa Clara Water Pollution Control Plant. Therefore, the Project would not be susceptible to hazardous materials or contamination associated with the past or present uses of surrounding land uses and impacts would be less than significant. (Draft EIR, pp. 4.5-13 to 4.5-14; see also Draft EIR, Appendix E.)

*Impact HAZ-2: Risk of Upset/Routine Transport, Use, or Disposal of Hazardous Materials:* The Project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or through reasonably foreseeable upset or accident conditions. Transportation, storage, use, and disposal of hazardous materials during construction activities would be required to comply with applicable federal, state, and local statutes and regulations. Compliance would ensure that human health and the environment are not exposed to hazardous materials. In addition, Mitigation Measure HYD-1 requires the applicant to implement a Stormwater Pollution Prevention Plan ("SWPPP") during construction activities to prevent contaminated runoff from leaving the Project site. Therefore, no significant impacts would occur during construction activities. Small quantities of hazardous materials would be used onsite and the transport of these materials would be performed by commercial vendors that would be required to comply with various federal and state laws regarding hazardous materials transportation. Therefore, the impact is less than significant. (Draft EIR, pp. 4.5-14 to 4.5-15.)

*Impact HAZ-3: Emergency Response and Evacuation:* The Project site is located on a commercial corridor in an area where existing emergency response times for fire protection, emergency medical services, and police protection meet adopted standards. Moreover, both the Milpitas police and fire departments have indicated that the Project would not impair their ability to respond to emergencies at the Project site or in other parts of the community. In addition, the Project does not include any characteristics that would physically impair or otherwise interfere with emergency response or evacuation in the project vicinity. Therefore, the Project would not impair or obstruct emergency response or evacuation and impacts would be less than significant. (Draft EIR, p. 4.5-15.)

## b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to hazards and hazardous materials related to past and present site usage, the risk of upset/routine transport, use, or disposal of hazardous materials and emergency response and evacuation.

4. Hydrology and Water Quality

## a. Impacts

*Impact HYD-2: Groundwater:* The Project does not have any characteristics that would contribute to groundwater overdraft or contamination. The Project would not contribute to groundwater overdraft because the City potable water system would serve the Project and the Public Works Department has indicated that it can serve the Project from existing supplies. In addition, the Project would not involve activities that could potentially contaminate groundwater – including the installation of underground storage tanks or the handling of bulk quantities of hazardous liquid materials. Also, the Project will not affect groundwater recharge because the Project site is not used for such activities. Therefore, impacts on groundwater would be less than significant. (Draft EIR, p. 4.6-11.)

*Impact HYD-3: Drainage:* The Project would not increase impervious surface coverage and, therefore, would not have the potential to contribute to downstream flooding. The footprint of the Project is located on a parking lot that is drained by the existing storm drainage system serving the Project site. The existing drainage infrastructure would be modified to accommodate the expansion; however, the system itself would not need to be upsized to provide additional capacity because the store expansion would not increase the amount of impervious surface coverage onsite. Accordingly, the Project would not increase the amount of runoff leaving the Project site and, therefore, it would not have the potential to contribute to downstream flooding conditions. Impacts would be less than significant. (Draft EIR, p. 4.6-11.)

## b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to hydrology and water quality related to groundwater and drainage.

5. Land Use

## a. Impacts

*Impact LU-1: General Plan Consistency:* The Project would be consistent with all applicable General Plan principles and policies, including the requirements of the applicable land use designation. The Milpitas General Plan designates the Project site as General Commercial, which is intended for retail uses. The Project would serve as a general retail store with groceries, and would serve the surrounding population both within and outside the City and thus would be consistent with allowed uses of the General Commercial land use designation. The expanded store would total 150,725 square feet, which would be within the General Plan's maximum floor

area ratio of 0.50. Therefore, the impacts would be less than significant. (Draft EIR, pp. 4.7-10 to 4.7-23.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to land use related to General Plan consistency.

6. Noise

a. Impacts

*Impact NOI-1: Construction Noise:* Construction activities associated with the Project would not expose nearby land uses to excessive noise levels. Construction noise and vibration represent a short-term increase in ambient noise and vibration levels created by the transport of workers and movement of construction materials to and from the Project site, or from the noise generated onsite during ground clearing/excavation, grading, and building construction activities. The closest noise-sensitive land uses are office buildings and single-family residences as close as 460-feet east of the Project site. Although these nearby sensitive receptors may be impacted somewhat by construction noise and vibration, the impacts would not exceed either the City standards of a noise increase of 3.0 dB or more or a maximum noise level of 65 dB. In addition, construction activities are subject to the requirements of the Milpitas Municipal Code, which limits the hours of construction activities. Furthermore, while a school is located approximately 0.3 mile to the east of the Project site, because of this distance, no noise impacts are anticipated. Therefore, construction noise impacts to nearby sensitive receptors would be less than significant. (Draft EIR, pp. 4.8-30 to 4.8-32; see also Draft EIR, Appendix F.)

*Impact NOI-2: Construction and Operational Vibration:* Nearby sensitive receptors would not be exposed to substantial vibration. The primary sources of vibration during Project construction would be from bulldozers and excavators. Project construction activities would cause vibration levels below the 0.2-inch-per-second significance threshold at the nearest sensitive receptors. Project operations (primarily from delivery truck operations) would also result in vibration levels below the 0.2-inch-per-second significance threshold at the nearest sensitive receptors. Therefore, the impacts are less than significant. (Draft EIR, pp. 4.8-32 to 4.8-33; see also Draft EIR, Appendix E.)

*Impact NOI-3: Roadway Noise:* The Project's vehicular trips would not cause a substantial permanent increase in ambient noise levels. The Project would generate additional vehicular trips on roadways in the Project vicinity which would result in motor vehicle noise generated by engine vibrations, the interaction between tires and the road, and the exhaust system. However, the noise analysis concluded that the noise associated with traffic from the Project would not exceed the thresholds of significance; therefore, no significant, long-term offsite noise impacts from Project-related vehicle noise would occur along the study area roadways segments under both baseline and future conditions. Therefore, the impact is less than significant. (Draft EIR, pp. 4.8-33 to 4.8-41; see also Draft EIR, Appendix F.)

*Impact NOI-4: Stationary Noise:* The Project would not generate stationary noise levels that cause significant impacts at nearby receptors. The Project would have potential stationary noise impacts on the nearby residences from the proposed rooftop HVAC units, the trash compactor, the truck loading area, parking lot areas, and onsite vehicular traffic. However, the noise analysis concluded that there would be no increase over the existing noise levels at any of the nearby sensitive receptors and that the Project noise levels at nearby rural residential areas would actually decrease by 0.4 dBA over existing noise levels because of additional noise shielding provided by the Project from Interstate 880, which is the primary noise source in the Project vicinity. Therefore, no significant stationary noise impact would be anticipated to occur at any of the nearby sensitive receptors, even taking into account the 24-hour operations that would result from the Project. Moreover, other sound events on the Project site (primarily caused by delivery truck and car doors slamming, landscaping equipment usage, parking lot sweepers, and shopping cart movements) would be infrequent, intermittent, and localized, and would not represent a substantial contribution to ambient noise levels. Accordingly, it can be reasonably concluded that these types of noise sources associated with the Project would not expose nearby receptors to excessive noise levels. Therefore, impacts would be less than significant. (Draft EIR, pp. 4.8-41 to 4.8-42; see also Draft EIR, Appendix F.)

*Impact NOI-5: Combined Stationary and Transportation Noise:* The Project would not generate combined stationary and transportation noise levels that cause significant impacts at nearby receptors. The Project's combined transportation and stationary noise impacts would not create a noise increase, even taking into account the 24-hour operations that would result from the Project. Moreover, noise levels at nearby rural residential areas would actually decrease by 0.3 dBA over existing noise levels because of additional noise shielding provided by the Project from Interstate 880, which is the primary noise source in the Project vicinity. Therefore, no significant combined stationary and transportation-related offsite noise impact would occur. (Draft EIR, pp. 4.8-43 to 4.8-44; see also Draft EIR, Appendix F.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to noise related to construction noise and vibration, construction and operational vibration, roadway noise, stationary noise and combined stationary and transportation noise.

7. Public Services and Utilities

a. Impacts

*Impact PSU-1: Fire Protection and Emergency Medical Services:* The Project would not adversely impact fire protection and emergency medical services. The Milpitas Fire Department indicated that the Project would not present any significant challenges to providing emergency medical services or fire protection to its service area. This includes impacts to response times, staffing, apparatus, or other resources. Therefore, no new or expanded fire protection facilities would be necessary to serve the Project. Impacts would be less than significant. (Draft EIR, pp. 4.9-12 to 4.9-13; see also Draft EIR, Appendix G.)

*Impact PSU-2: Police Protection:* The Project would not adversely impact police protection. The Milpitas Police Department indicated that the Project, which would operate 24 hours a day, would not generate any calls for service other than the annual average of 252 calls from the past 4 years. In addition, the Police Department stated that it does not have any other concerns about providing police protection to the Project. This includes impacts to response times, staffing, or other resources. Furthermore, the existing store has a video surveillance system that monitors all interior and exterior areas and is staffed by security personnel who monitor cameras and patrol parking lots. The existing store's parking areas are currently illuminated by freestanding lights and the Project would modify lighting to ensure adequate illumination. Therefore, no new or expanded police protection facilities would be necessary to serve the Project and impacts would be less than significant. (Draft EIR, pp. 4.9-13 to 4.9-14; see also Draft EIR, Appendix G.)

*Impact PSU-4: Wastewater:* The Project would not result in the need for additional wastewater treatment facilities or offsite conveyance facilities. The Project is expected to result in a 2,340-gallon-per-day increase in wastewater generation, which would continue to be collected by the City of Milpitas via existing sewer lines and directed to the San Jose/Santa Clara Water Pollution Control Plant. Because the Project would not exceed the allowable floor area ratio for the Project site, the increased effluent generation attributable to the store expansion would not adversely impact the sewer system or treatment plan capacity. As such, no additional wastewater treatment or offsite conveyance facilities would be needed as a result of the Project and impacts would be less than significant. (Draft EIR, pp. 4.9-15 to 4.9-16.)

*Impact PSU-5: Storm Drainage:* The Project would provide adequate onsite storm drainage facilities and would not require the construction of offsite facilities. The footprint of the Project contains a parking lot that is drained by the existing storm drainage system serving the Project site. The existing drainage infrastructure would be modified to accommodate the Project; however, the system itself would not need to be upsized to provide additional capacity because the Project would not increase the amount of impervious surface coverage onsite. Accordingly, the Project would not increase the amount of runoff leaving the Project site; therefore, it would not require new or expanded offsite storm drainage facilities. Impacts would be less than significant. (Draft EIR, pp. 4.9-16 to 4.9-17.)

*Impact PSU-7: Energy:* The Project would not cause the need for additional natural gas or electrical energy-producing facilities. PG&E currently serves the existing Walmart store with electricity and natural gas and would continue to serve the expanded store. The Project is anticipated to increase electricity usage by 310,000 kilowatt hours annually and increase natural gas usage by 1.11 million cubic feet annually. PG&E indicated that it had available electricity and natural gas supplies with appropriate transmission capacity to serve the Project.

Neither the construction or operation of the Project, nor the building itself would result in the inefficient, unnecessary, or wasteful consumption of energy. The Project would not necessitate the use of a large construction fleet or non-standard equipment and construction fuel assumptions associated with the Project would be similar to those of other, comparable construction sites in the region. In addition, the Project would provide a one-stop shopping destination within an existing regional shopping center node and nearby regional employment

centers. Accordingly, the construction and vehicular fuel consumption associated with the Project would not result in inefficient, unnecessary or wasteful consumption of energy.

Moreover, the Project would be designed in accordance with Title 24, California's Energy Efficiency Standards for Residential and Nonresidential Buildings, which include minimum energy efficiency requirements related to building envelope, mechanical systems (e.g., HVAC and water heating systems), indoor and outdoor lighting, and illuminated signs. The incorporation of the 2005 Title 24 standards into the Project would ensure that the Project would not result in the inefficient, unnecessary, or wasteful consumption of energy. The Project is anticipated to contain additional energy conservation features (e.g., central energy management system, white roofs and LED signage illumination), that would further ensure that the Project would not result in the inefficient, unnecessary, or wasteful consumption of energy.

For these reasons, impacts to energy resources would be less than significant. (Draft EIR, pp. 4.9-19 to 4.9-20 and 6-14 to 6-24; see also Draft EIR, Appendix G.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to public services and utilities related to fire protection and emergency medical services, police protection, wastewater, storm drainage and energy.

8. Transportation

a. Impacts

*Impact TRANS-2: Near-Term Freeway Ramp Junction Analysis:* The Project would not contribute a substantial number of trips to freeway ramp junctions directly causing unacceptable levels of service under near-term conditions. The Project would contribute up to twelve AM and five PM weekday peak-hour trips to the SR-237 westbound ramp merge, which would account for less than 0.9 percent of the total peak-hour trips on the ramp during the AM and PM weekday peak hours. The Project would contribute up to two weekday PM peak-hour trips to the SR-237 eastbound ramp diverge, which would account for less than 0.2 percent of the total peak-hour trips on the ramp during the weekday PM peak hour. Furthermore, during the weekday PM peak hour, this diverge would perform at an unacceptable level of service, with or without the Project. The trip increases that would be contributed by the Project are considered nominal increases in ramp volume and, therefore, would not be considered a worsening of the measure of effectiveness. As a result, this impact is less than significant. (Draft EIR, pp. 4.10-64 to 4.10-66; see also Draft EIR, Appendix H.)

*Impact TRANS-6: Roadway Safety:* The Project's design features would not create any roadway hazards. The Project would maintain the three existing access points to Ranch Drive, all of which have clear lines of sight and are considered safe. Moreover, the Project site provides ample circulation aisles and layout that is generally consistent with driver expectations. While the Project would result in an increase in large delivery trucks (e.g., 18-wheelers) of approximately three trucks per day, the Project's parking and circulation layout provides convenient access to the loading docks and allows the trucks to avoid traversing the parking lot

where there is potential for conflicts with most Walmart patrons. In summary, current site access and internal site circulation are appropriate for their intended uses and would not be altered or impacted by expansion of the existing store. The addition of two marked crossing areas and two internal pedestrian walkways would increase existing safety. As such, impacts would be less than significant. (Draft EIR, pp. 4.10-85 to 4.10-86; see also Draft EIR, Appendix H.)

*Impact TRANS-7: Emergency Access:* The Project would not result in inadequate emergency access to the Project site or its surroundings. The Project would maintain the three existing Ranch Drive access points and two internal access points to the McCarthy Ranch Marketplace. All access points are capable of accommodating large emergency vehicles such as fire engines and ladder trucks and do not contain any potential obstructions to emergency vehicle ingress, such as roundabouts. No changes resulting from Project implementation would obstruct emergency vehicle access. Therefore, the Project would not result in inadequate emergency access to the Project site or surroundings and impacts would be less than significant. (Draft EIR, p. 4.10-86; see also Draft EIR, Appendix H.)

b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to transportation related to near-term freeway ramp junction analysis, roadway safety and emergency access.

9. Urban Decay

a. Impacts

*Impact UD-1: Project-Level Urban Decay Impacts:* The Project would not divert enough sales from competing businesses to cause store closures and, therefore, would not have the potential to create urban decay conditions. The Project itself is not anticipated to cause closure of any competing grocery stores, either within the market area or outside of the market area. This is primarily attributable to the lack of discount grocery stores within the market area or within a reasonable distance of the market area. Conventional grocery stores in the market area (such as Save Mart in Calaveras Plaza) would likely experience negative sales impacts from the Project; however, the sales diversions attributable to the Project are not anticipated to be significant enough to cause store closure. Other grocery stores cater to market niches that have minimal to no overlap with the discount orientation of Walmart (upscale or ethnic) or are sufficiently far enough from the Project site to be negligibly impacted by the Project. Therefore, project-level urban decay impacts would be less than significant. (Draft EIR, pp. 4.11-32 to 4.11-52; see also Draft EIR, Appendix I.)

*Impact UD-2: Cumulative Urban Decay Impacts:* The market area contains many conventional food stores, a few upscale food stores, and an ample supply of ethnic food stores. The one niche missing is discount food stores. Despite the different orientations, all of the food stores in the market area likely serve as neighborhood markets attracting most of their customers from the typical 3-mile radius. The Project would be most competitive with discount grocery stores, of which there are none. However, given the number of cumulative grocery stores planned, sales diversions experienced by the food stores may be high enough to result in one or more store closures. The store most likely to experience the highest impacts because of its

proximity and similarity to the Project is the Save Mart in Calaveras Plaza and sales diverted away from the store may be enough to lead to its closure.

Stores in the home furnishings and appliances, apparel, building materials, and “other retail” categories may also experience closures because the cumulative projects planned within and nearby the Project may lead to an oversupply of these categories of retail in the market. The Project will only contribute to impacts in the food stores category. Given the current economic climate, however, it is possible that some of the cumulative projects, especially the those that have not been approved, may not go forward. It is also possible that projects that are developed will take longer to lease up and longer for stores that are leased to reach a level of stabilized sales. This will lessen the impacts and likelihood of store closures in all categories.

Moreover, the economic study conducted for the Project indicated that the retail markets in the Milpitas region are very healthy. When tenants vacate prior to lease expiration, they continue to be responsible for rent and their share of building operating expenses. While not all tenants will have the wherewithal to continue these payments, national retailers (such as Save Mart) are more likely to have this capability. This is an important consideration because landlords will continue to receive income on these vacated spaces, which means they would have available financial resources to continue to maintain their properties. More importantly, city ordinances, such as the City of Milpitas Municipal Code Chapters 202, 203, and 500, require property owners to maintain their properties so as not to create a nuisance by creating a health and safety problem. Enforcement of these ordinances can help prevent physical deterioration due to any long-term closures of retail spaces, which can ultimately lead to urban decay. Also, existing property owners, or buyers, might decide to redevelop empty grocery and retail spaces with other uses, thereby preventing physical deterioration and the threat of urban decay. While the poor economic conditions may limit the rate of growth of these alternate uses, nonetheless the potential will exist, with properties positioned for alternate use when market demands pick up concurrent with the return of economic growth.

Based upon these facts, the Project combined with other projects will not contribute to urban decay in the market area. Therefore, impacts would be less than significant. (Draft EIR, pp. 4.11-32 to 4.11-69; see also Draft EIR, Appendix I.)

#### b. Finding

The Planning Commission finds, based on the Final EIR and the whole record, that the Project will result in less than significant impacts to urban decay related to project-level and cumulative impacts.

#### H. Less Than Significant Impacts With Mitigation Incorporated

The Final EIR determined that the Project has potentially significant environmental impacts in the areas discussed below. The Final EIR identified feasible mitigation measures to avoid or substantially reduce some or all of the environmental impacts in these areas. Based on the information and analyses set forth in the Final EIR, the Project impacts will be less than significant with identified feasible mitigation measures and design standards incorporated into the Project.

1. Aesthetics, Light, and Glare

a. Impact AES-1: *Visual Character: Impact and Mitigation*

Implementation of the Project may substantially degrade the visual character of the Project site or its surroundings. Mitigation Measure AES-1 addresses this potential impact and is as follows:

*MM AES-1a:* Prior to issuance of building permits, the Project applicant shall prepare and submit a sign program to the City of Milpitas for review and approval. The sign program shall demonstrate compliance with the applicable requirements with Milpitas Municipal Code Title XI, Chapter 30. The approved sign program shall be implemented into the proposed Project.

*MM AES-1b:* Prior to issuance of grading or building permits, whichever comes first, the Project applicant shall obtain a tree removal permit from the City of Milpitas for any trees slated for removal with a trunk circumference of 37 inches or more measured at 4.5 feet above ground level. Replacement of such trees shall be performed in accordance with the requirements of the Tree Maintenance and Protection Ordinance. Removed trees that are not covered by the Tree Maintenance and Protection Ordinance (i.e., less than 37 inches in circumference at 4.5 feet above ground level) shall be replaced onsite with a similar tree species at no less than a 1:1 ratio. All replacement trees shall be planted within 30 days of issuance of the final certificate of occupancy.

*MM AES-1c:* Prior to issuance of the final certificate of occupancy, the Project applicant shall do one of the following: 1) permanently remove all shipping containers from the project site; or 2) install screening measures in accordance with Zoning Ordinance requirements. If the second option is pursued, outdoor storage of containers shall occur in a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum 6 feet in height and outside any front or street side yard setback area. (Draft EIR, pp. 4.1-13.)

b. Impact AES-1: *Visual Character: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AES-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. Impact AES-1: *Visual Character: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would upgrade the store's elevations. The elevations would incorporate design features to reflect the "California ranch" design theme of the McCarthy Ranch Marketplace. The upgraded and enhanced elevations would be consistent with the objectives of

the Site and Architectural Review Overlay District. The roofline of the Project would range from approximately 18-feet to 35-feet above grade level. Since the Milpitas Zoning Ordinance does not establish any height limitations for the General Commercial zoning district, the Project's height would be consistent with the Ordinance. Building coverage would fall below the maximum floor area ratio in the General Plan and Zoning Ordinance.

MM AES-1a requires the applicant to prepare and submit plans to the City demonstrating that the signage complies with Municipal Code requirements. The implementation of this mitigation measure would ensure that the visual impacts of signage are reduced to a level of less than significant.

The Project would maintain and enhance the existing landscaping onsite. However, the Project would remove several ornamental trees located within the store expansion footprint. Several of these trees may be eligible for protection under the Tree Maintenance and Protection Ordinance. Accordingly, Mitigation Measure AES-1b is proposed requiring compliance with the tree removal and replacement requirements. For trees not eligible for protection under the ordinance, the mitigation measure stipulates that they shall be replaced onsite at no less than a 1:1 ratio with a similar trees species. The implementation of this mitigation measure would ensure that the visual impacts of tree removal are reduced to a level of less than significant.

Finally, shipping containers are currently stored in outdoor areas of the Project site during various times of the year. The Milpitas Zoning Ordinance requires that outdoor storage of materials (e.g., shipping containers) be completely enclosed within a building or behind a visually obscure wall or fence a minimum of 6 feet in height. To bring the Project into conformance with this Zoning Ordinance requirement, Mitigation Measure AES-1c is proposed requiring the Project applicant to either permanently remove shipping containers from the Project site or install screening measures around areas where such containers would be stored. The implementation of this mitigation measure would ensure that the visual impacts of outdoor storage of shipping containers are reduced to a level of less than significant. These facts support the City's finding. (Draft EIR, pp. 4.1-1 to 4.1-14.)

d. *Impact AES-2: Light and Glare: Impact and Mitigation*

Implementation of the Project may result in the addition of new sources of substantial light and glare that would adversely affect daytime or nighttime views. Mitigation Measure AES-2 addresses this potential impact and is as follows:

*MM AES-2:* Prior to issuance of building permits, the Project applicant shall ensure that all exterior lighting fixtures associated with the Walmart store (building-mounted and freestanding) are shielded, recessed, or directed downward to prevent unwanted illumination of neighboring properties. (Draft EIR, p. 4.1-14.)

e. *Impact AES-2: Light and Glare: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final

EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AES-2, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. *Impact AES-2: Light and Glare: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would largely maintain the locations of the existing light fixtures on the Project site, albeit with the elimination of parking lot lighting in the expansion footprint and the addition of new building-mounted lighting on the store expansion. Although the Project will expand the Walmart store’s hours of operation to 24 hours a day, this would not introduce significant new sources of nighttime lighting, because the existing store already employs parking lot lighting and building-mounted lighting that is illuminated during the nighttime, even when the store is closed to the public. Therefore, the Project would not represent the introduction of new sources of nighttime lighting to the Project site.

The Project would upgrade parking lot lighting with fixtures that have the potential to create unwanted spillover effects on surrounding properties. Mitigation is proposed that would require the Project applicant to ensure that all exterior light fixtures are shielded, recessed, or directed downward to prevent light spillage onto adjoining properties. The implementation of this mitigation measure would minimize the amount of light and glare to the ambient environment and, therefore, would ensure that impacts are reduced to a level of less than significant. These facts support the City’s finding. (Draft EIR, p. 4.1-14.)

2. Air Quality

a. *Impact AIR-1: Air Quality Plan Consistency: Impact and Mitigation*

Implementation of the Project may conflict with or obstruct implementation of the applicable air quality plan. A mitigation measure addresses this potential impact and is as follows:

See MM AIR-3. (Draft EIR, pp. 4.2-31.)

b. *Impact AIR-1: Air Quality Plan Consistency: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AIR-3, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. *Impact AIR-1: Air Quality Plan Consistency: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would be consistent with the allowed uses and development intensity of the General Commercial land use designation. Accordingly, it can be concluded that the Project's uses are consistent with the growth and vehicle miles traveled projections contained in the 2005 Ozone Strategy. Impacts would be less than significant according to this criterion.

As shown in Impact AIR-3, the Project's emissions during construction and operation would not exceed the BAAQMD significance thresholds for ambient air quality standards. However, Mitigation Measure AIR-3 is required to ensure that Project emissions during construction do not cause an exceedance of PM<sub>10</sub> or PM<sub>2.5</sub> at a nearby monitoring station. These facts support the City's finding. (Draft EIR, pp. 4.2-30 to 4.2-31.)

d. *Impact AIR-3: Cumulative Increase of Criteria Pollutants: Impact and Mitigation*

Implementation of the Project may result in a cumulatively considerable net increase of a criteria pollutant for which the Project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors). Mitigation Measure AIR-3 addresses this potential impact and is as follows:

*MM AIR-3:* The following measures shall be implemented during all construction activities:

- Water all active construction areas and exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least two times per day.
- Cover all trucks hauling soil, sand, and other loose materials.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the City of Milpitas regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number of the Bay Area Air Quality Management District shall also be visible to ensure compliance with applicable regulations.

(Draft EIR, pp. 4.2-41 to 4.2-42.)

e. *Impact AIR-3: Cumulative Increase of Criteria Pollutants: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AIR-3, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. *Impact AIR-3: Cumulative Increase of Criteria Pollutants: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Five phases of construction for the Project are anticipated, including demolition, fine site grading, building construction, architectural coating, and paving. Demolition will consist of removing the portions of the building that will be expanded and rebuilt: approximately 241,465 cubic feet and no more than a maximum of 25,530 cubic feet in one day. Fine site grading will consist of grading the building pad after demolition: approximately 147,445 square feet, or 3.4 acres of disturbed area. It is assumed that building construction, architectural coating and paving would be completed before paving of the entire 5-acre parking lot.

During construction, lead would not be emitted and only minor amounts of sulfur dioxide would be emitted. CO emissions would not be significant during construction because the background concentration of CO is low in the Project area and CO would disperse rapidly by the wind and would not reach a concentration to evoke negative health effects to the nearby residences. Emissions of ROG and NO<sub>x</sub> would be below the regional significance thresholds and, therefore, it can be assumed that ozone formed as a result of Project ozone precursor emissions would also be less than significant. Other pollutants regulated by the State of California, including hydrogen sulfide, sulfates, and vinyl chloride, would not be emitted during construction. Visibility-reducing particles would be generated through emissions of fugitive dust; however, they are assessed through the analysis of PM<sub>10</sub> and PM<sub>2.5</sub>, as standards for those pollutants are more stringent than for visibility-reducing particles.

While the daily construction emissions for these pollutants do not exceed the daily significance thresholds, as recommended by the BAAQMD, basic measures should be incorporated to ensure that construction emissions remain less than significant; therefore, mitigation measures are required.

Once the Project is completed, the net new Project emissions would not exceed the BAAQMD daily or annual significance thresholds. During operation, lead would not be emitted and only minor amounts of sulfur dioxide would be emitted. Emissions of NO<sub>x</sub> would not exceed the regional significance thresholds and are therefore less than significant. Ozone precursor emissions of ROG and NO<sub>x</sub> would be below the regional significance thresholds so it can be assumed that ozone formed as a result of the Project would also be less than significant. Other pollutants regulated by the State of California, including hydrogen sulfide, sulfates, and vinyl chloride, would not be emitted. Visibility-reducing particles would be generated through emissions of PM<sub>10</sub> and PM<sub>2.5</sub>; however, they are assessed through the analysis of PM<sub>10</sub> and PM<sub>2.5</sub>, as standards for those pollutants are more stringent than for visibility-reducing particles. It follows that the impact from visibility-reducing particles would be less than significant as well. Potential impacts to adjacent air districts were not analyzed because the majority of the emissions would be emitted within the Bay Area. There could be minor emissions from the Walmart delivery trucks generated in adjacent air districts; however, the quantity would be minimal. In addition, as shown in Impact AIR-1, the project is consistent with the applicable Clean Air Plan (i.e., the 2005 Ozone Strategy). Therefore, the project would have a less than significant cumulative increase of criteria pollutants. These facts support the City's finding. (Draft EIR, pp. 4.2-33 to 4.2-41; see also Draft EIR, Appendix H.)

g. *Impact AIR-7: Greenhouse Gas Emissions: Impact and Mitigation*

Implementation of the Project may emit significant amounts of greenhouse gases or conflict with an applicable plan, policy or regulation concerning greenhouse gas reduction. Mitigation Measure AIR-7 addresses this potential impact and is as follows:

*MM AIR-7a:* The Project applicant shall use paving materials with increased solar reflectivity in areas at the back of the store where pavement is replaced. Such materials shall use light-colored aggregate or other appropriate methods to achieve high solar reflectivity.

## EXHIBIT A

*MM AIR-7b:* Prior to issuance of the final certificate of occupancy, the Project applicant shall post signs in the Walmart loading docks advising truck drivers to turn off engines when not in use and advising truck drivers of state law prohibiting diesel idling of more than 5 minutes.

*MM AIR-7c:* To reduce fugitive emissions from refrigerants, the applicant shall:

- Maintain the refrigeration system at least once per year to ensure that refrigerant leaks remain minimal. The maintenance records shall be kept onsite for review by the City of Milpitas.
- During installation of the new refrigerators and freezers, effort shall be made to reuse the existing refrigerants in the new system, unless the old refrigerant is not the same type as is proposed in the new system or more leakage would occur if the refrigerants are reused.
- Evaluate and implement a secondary closed loop system, if found to be technically and economically feasible.

*MM AIR-7d:* Prior to issuance of the final certificate of occupancy, the Project applicant shall provide the following Transportation Demand Management measures:

- Public transit information in the employee breakroom. Store management shall post information such as Santa Clara Valley Transportation Authority bus and light rail schedules, maps, and fares.
- Ride sharing information in the employee breakroom. Store management shall facilitate ride sharing by providing sign-up sheets or other measures to allow interested employees to identify carpooling opportunities.
- Bicycling information. Store management shall post information such as bicycle route maps and information about taking bikes on public transportation.

*MM AIR-7e:* To reduce construction related greenhouse gas impacts, the following measures are required:

- At least 15 percent of the construction vehicles/equipment shall be fueled by an alternative source such as biodiesel and/or electric.
- At least 10 percent of all building materials shall be local (within 100 miles); and
- At least 50 percent of construction and demolition materials shall be recycled. This latter provision shall be coordinated with Mitigation Measure PSU-6a.

h. (Draft EIR, pp. 4.2-66 to 4.2-67.) *Impact AIR-7: Greenhouse Gas Emissions: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AIR-7, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

i. *Impact AIR-7: Greenhouse Gas Emissions: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The EIR used the 2009 BAAQMD Draft CEQA Guidelines to determine the level of significance for greenhouse gas emissions. Because the City of Milpitas does not have an applicable plan, policy or regulation to reduce greenhouse gas emissions, the EIR analyzed the Project's construction and operational greenhouse gas emissions and compared them to the CARB Scoping Plan.

The Project will generate greenhouse gas emissions from short-term construction activity as well as from operational activities. During construction, the Project would emit greenhouse gases from combustion of fuels in worker vehicles accessing the site as well as from construction equipment. The EIR calculated net new emissions from Project operations and concluded that the unmitigated net new emissions estimates from operation of the Project would be approximately 710 MTCO<sub>2</sub>e per year, which is below the BAAQMD threshold as published in its Draft CEQA Guidelines. In addition, the Project would incorporate a variety of features that would further reduce its energy and water demand, promote waste reduction, and create opportunities for reductions in vehicle miles traveled, which will have the effect of helping reduce greenhouse gases either directly onsite, indirectly by reducing the need for electricity generation, or offsite in materials production and materials disposal. (See Draft EIR, Table 4.2-18 for a discussion of Project features that would reduce greenhouse gas emissions.)

The EIR analyzed the Project's consistency with the CARB Scoping Plan's greenhouse gas reduction measures in Table 4.2-19. The table shows that the Project would be consistent with all applicable reduction measures set forth in the Scoping Plan. Furthermore, the Project would implement feasible greenhouse gas emissions strategies and therefore be consistent with the one applicable CARB Early Action Measure, which is a voluntary program with guidelines to foster the establishment or transition to cool communities. The Office of the Attorney General also maintains a list of CEQA Mitigation for Global Warming Impacts. The Office of the Attorney General states that the list includes examples only and suggests that the lead agency use its own informed judgment in deciding which measures it should analyze and require for a given project. The Project would implement all feasible greenhouse gas emissions strategies identified by the Attorney General's office since it would: (1) incorporate design features and mitigation measures that would conserve energy and water, promote recycling and waste reduction, and make the store accessible to public transit, bicycles, and pedestrians; (2)

possibly reduce vehicle miles traveled for nearby residents who would now be close to a store that sells groceries; and (3) obtain energy from PG&E, which is increasing its share of energy generated by renewable sources. The Project would also implement and be consistent with all feasible greenhouse gas mitigation strategies set forth in the January 2008 CAPCOA white paper.

The Project would expand an existing Walmart store located within the McCarthy Ranch Marketplace – a developed regional commercial center. The existing store is adjacent to existing retail and office uses and is within a relatively short distance of established residential areas. The Project would retail general merchandise and groceries 24 hours a day, 7 days a week and, therefore, would be convenient to nearby residents and employees. The Project site is designated for commercial uses by the City of Milpitas General Plan and Zoning Ordinance, and the Project would be consistent with all applicable provisions of these land use policy documents. The existing store is served by public transit and accessible to bicycles and pedestrians. Collectively, these characteristics indicate that the Project is planned growth within the urban footprint of Milpitas and is well positioned to reduce travel lengths. The Project would implement a number of mitigation measures that either would directly or indirectly reduce emissions of greenhouse gases. The Project's net new operational emissions are below the BAAQMD significance thresholds in the 2009 Draft CEQA Guidelines. In addition, pursuant to the 2009 Draft CEQA Guidelines, the Project's construction emissions are less than significant after implementation of Mitigation Measure AIR-7e. The Project's features and mitigation measures reduce greenhouse gas emissions to the maximum extent practicable. These features and mitigation measures are consistent with all project-level strategies identified by the CARB Early Action Measures and Scoping Plan, the Attorney General's Office, and the CAPCOA White Paper. Therefore, impacts would be less than significant. These facts support the City's finding. (Draft EIR, pp. 4.2-51 to 4.2-67; see also Draft EIR, Appendix B.)

### 3. Biological Resources

#### a. Impact BIO-1: *Special-Status Species: Impact and Mitigation*

Implementation of the Project may adversely affect special-status species. Mitigation Measure BIO-1 addresses this potential impact and is as follows:

*MM BIO-1:* If vegetation removal associated with development of the property is to occur during the nesting bird season (February 15 through August 31), a qualified biologist shall conduct a pre-construction survey for nesting birds to identify any potential nesting activity. The pre-construction surveys for nesting birds shall be conducted within 14 days prior to any construction-related activities (grading, ground clearing, etc.). If nesting birds are identified on the site, a 100-foot buffer shall be maintained around the nests; no construction-related activities shall be permitted within the 100-foot buffer. A qualified biologist shall monitor the nests, and construction activities may commence within the buffer area at the discretion and presence of the biological monitor. The pre-construction survey for nesting birds shall not be required if construction activities occur outside of the nesting bird season (September 1 through February 14). (Draft EIR, pp. 4.3-12; see also Draft EIR, Appendix C.)

b. Impact BIO-1: *Special-Status Species: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure BIO-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. Impact BIO-1: *Special-Status Species: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project site is within an area with recorded occurrences of Congdon’s tarplant and alkali milk vetch. However, the Project site is in an urban, built-up condition and does not contain suitable habitat for either of these special-status plant species. Furthermore, neither species was observed during the site visit conducted by the biologist. As such, the Project would not impact special-status plant species. Impacts would be less than significant.

The Project site is not located within an area where special-status wildlife species have been recorded. However, the Project site does contain ornamental trees and shrubs that are suitable for use as nesting habitat for migratory songbirds protected under the Migratory Bird Treaty Act and California Fish and Game Code. Construction activities that may result in nest abandonment or destruction would be considered significant under CEQA. Therefore, standard construction mitigation is proposed for nesting birds that would ensure that no occupied trees are removed until the birds have fledged. With the implementation of this mitigation measure, impacts would be reduced to a level of less than significant. These facts support the City’s finding. (Draft EIR, p. 4.3-12; see also Draft EIR, Appendix C.)

d. Impact BIO-2: *Local Biological Ordinances and Policies: Impact and Mitigation*

Implementation of the Project may conflict with the City of Milpitas tree maintenance and protection ordinance. A mitigation measure addresses this potential impact and is as follows:

See Mitigation Measure AES-1b. (Draft EIR, pp. 4.3-13; see also Draft EIR, Appendix C.)

e. Impact BIO-2: *Local Biological Ordinances and Policies: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure AES-1b, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. *Impact BIO-2: Local Biological Ordinances and Policies: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The EIR analyzed the Project's consistency with the General Plan and Municipal Code requirements associated with protection of biological resources. The Project is consistent with all applicable General Plan policies associated with biological resources. Construction activities associated with the Project would result in the removal of mature trees located along the southern portion of the expansion pad and in landscaped planters in the parking area. Because tree removal may occur, the Project would be required to comply with the City's Tree Maintenance and Protection Ordinance (Municipal Code Chapter 2). Mitigation Measure AES-1b requires compliance with the tree removal and replacement requirements of the Municipal Code. For trees not eligible for protection under the Municipal Code, the mitigation measure stipulates that they shall be replaced onsite at no less than a 1:1 ratio with a similar trees species. With the implementation of this mitigation measure, impacts would be reduced to a level of less than significant. These facts support the City's finding. (Draft EIR, p. 4.3-13; see also Draft EIR, Appendix C.)

4. Geology, Soils, and Seismicity

a. *Impact GEO-1: Seismic Hazards: Impact and Mitigation*

Implementation of the Project may expose persons or structures to seismic hazards. Mitigation Measure GEO-1 addresses this potential impact and is as follows:

*MM GEO-1a:* Prior to issuance of building permits, the Project applicant shall submit a seismic hazards technical study prepared by a qualified geotechnical engineer to the City of Milpitas for review and approval. The report shall be prepared in accordance with the requirements of the Seismic Hazards Mapping Act and shall identify necessary design measures to reduce potential seismic ground shaking impacts to acceptable levels. The Project applicant shall incorporate the approved design measures into the Project plans.

*MM GEO-1b:* Prior to issuance of building permits, the Project applicant shall submit a design-level geotechnical investigation to the City of Milpitas for review and approval. The design-level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the Project design.

*MM GEO-1c:* Prior to issuance of building permits, the Project applicant shall submit plans to the City of Milpitas for review and approval that demonstrate that the Project is designed in accordance with all state and local seismic safety requirements. Such requirements shall include the California Building Standards Code and Milpitas Municipal Code, Title II. The approved plans shall be incorporated into the Project design.

(Draft EIR, pp. 4.4-11 to 4.4-12; see also Draft EIR, Appendix D.)

b. Impact GEO-1: *Seismic Hazards: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure GEO-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. Impact GEO-1: *Seismic Hazards: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Potential seismic hazards include fault rupture, strong ground shaking, ground failure, and landsliding. The conditions within the Project boundaries preclude the possibility of fault rupture from occurring on the Project site and thus, no impacts would occur. The Project site may be exposed to moderate to severe ground shaking during an earthquake, particularly one that occurs on either the Hayward fault or the Calaveras fault. If unabated, structures may be at risk of failure during a seismic event. Mitigation is proposed requiring the Project applicant to submit a seismic hazards technical report prepared by a qualified geotechnical engineer to the City of Milpitas for review and approval. This report would identify potential ground shaking impacts and identify structural design measures necessary to reduce the risks of strong seismic ground shaking to acceptable levels. Following the City’s approval of the report, the structural design measures would be incorporated into the proposed Project’s plans. The implementation of this mitigation measure would ensure that potential ground shaking impacts are reduced to a level of less than significant. The Liquefaction Susceptibility Map for the San Francisco Bay Area indicates that the Project site is located within a moderate liquefaction susceptibility zone. If unabated, ground failure may occur during a seismic event, causing structures to fail. Mitigation is proposed that would require the Project applicant to conduct a design-level geotechnical investigation of potential ground failure hazards and implement those recommendations into the Project design. Additionally, a second mitigation measure requires the applicant to submit plans demonstrating that the Project complies with all applicable state and local seismic safety requirements. With the implementation of mitigation, impacts would be reduced to a level of less than significant. The Project site is characterized by flat relief and is not located within an area identified as being susceptible to landslides. This condition precludes the possibility of earthquake-induced landslides inundating the Project site and thus, no impacts would occur. These facts support the City’s finding. (Draft EIR, pp. 4.4-10 to 4.4-11; see also Draft EIR, Appendix D.)

d. Impact GEO-2: *Erosion Hazards: Impact and Mitigation*

Implementation of the Project may result in substantial soil erosion or the loss of topsoil. A mitigation measure addresses this potential impact and is as follows:

See Mitigation Measure HYD-1. (Draft EIR, p. 4.4-12; see also Draft EIR, Appendix D.)

e. Impact GEO-2: *Erosion Hazards: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure HYD-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. Impact GEO-2: *Erosion Hazards: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Construction activities associated with the Project would involve grading and excavation activities that could expose barren soils to sources of wind or water, resulting in the potential for erosion and sedimentation on and off the Project site. National Pollutant Discharge Elimination System ("NPDES") stormwater permitting programs regulate stormwater quality from construction sites, which includes erosion and sedimentation. Under the NPDES permitting program, the preparation and implementation of a SWPPP is required for construction activities that would disturb an area of 1 acre or more. The SWPPP must identify potential sources of erosion or sedimentation that may be reasonably expected to affect the quality of stormwater discharges as well as identify and implement Best Management Practices ("BMPs") that ensure the reduction of these pollutants during stormwater discharges. Typical BMPs intended to control erosion include sand bags, detention basins, silt fencing, storm drain inlet protection, street sweeping, and monitoring of water bodies. These requirements have been incorporated into the proposed Project as mitigation. The implementation of a SWPPP and its associated BMPs would reduce potential erosion impacts to a level of less than significant. These facts support the City's finding. (Draft EIR, p. 4.4-12; see also Draft EIR, Appendix D.)

g. Impact GEO-4: *Expansion Soils: Impact and Mitigation*

Implementation of the Project may expose persons or structures to hazards associated with expansive soils. Mitigation Measure GEO-4 addresses this potential impact and is as follows:

*MM GEO-4:* During grading and construction, the Project applicant shall adhere to all applicable recommendations for abating expansive soil conditions contained in the Geotechnical Engineering Investigation or comparable geotechnical study. This includes the excavation of expansive soils and the subsequent replacement of such soils with non-expansive engineered fill. (Draft EIR, p. 4.4-13.; see also Draft EIR, Appendix D.)

h. Impact GEO-4: *Expansion Soils: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure GEO-4, which has been

required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

i. Impact GEO-4: *Expansion Soils: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Geotechnical Engineering Investigation prepared by Krazan & Associates indicated that expansive clay soils are located within the Project area. The investigation provided recommendations for abatement of expansive soil conditions, including excavation and replacement with non-expansive engineered fill. These recommendations have been incorporated as mitigation. With the implementation of the recommendations, the impacts would be reduced to a level of less than significant. These facts support the City's finding. (Draft EIR, p. 4.4-13; see also Draft EIR, Appendix D.)

5. Hydrology and Water Quality

a. Impact HYD-1: *Short-Term Water Quality: Impact and Mitigation*

Implementation of the Project may have the potential to degrade water quality in downstream water bodies. Mitigation Measure HYD-1 addresses this potential impact and is as follows:

*MM HYD-1:* Prior to the issuance of grading permits for the Project, the applicant shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Milpitas that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation and maintenance, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:

- Temporary erosion control measures shall be employed for disturbed areas.
- No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
- Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.
- The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.
- BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment

release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the RWQCB to determine adequacy of the measure.

- In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.

(Draft EIR, p. 4.6-8 to 4.6-9.)

b. *Impact HYD-1: Short-Term Water Quality: Expansion Soils: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure HYD-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. *Impact HYD-1: Short-Term Water Quality: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Development of the Project would require extensive grading and construction activities that could easily disturb more than one acre. During these activities, there would be the potential for surface water to carry sediment from onsite erosion and small quantities of pollutants into the stormwater system and local waterways. Soil erosion may occur along Project boundaries during construction in areas where temporary soil storage is required. Small quantities of pollutants have the potential for entering the storm drainage system, thereby potentially degrading water quality. Construction of the Project would also require the use of gasoline- and diesel-powered heavy equipment, such as bulldozers, backhoes, water pumps, and air compressors. Chemicals such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents, glues, and other substances would likely be utilized during construction. An accidental release of any of these substances could degrade the water quality of the surface water runoff and add additional sources of pollution into the drainage system. Mitigation is proposed that would require the Project applicant to prepare and implement a SWPPP. The implementation of the mitigation measure would ensure that potential, short-term, construction water quality impacts are reduced to a level of less than significant. These facts support the City’s finding. (Draft EIR, pp. 4.6-8 to 4.6-9.)

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d. Impact HYD-2: *Long-Term Water Quality: Impact and Mitigation*

Implementation of the Project may have the potential to degrade water quality in downstream water bodies. Mitigation Measure HYD-2 addresses this potential impact and is as follows:

*MM HYD-2:* Prior to the issuance of building permits for the Project, the Project applicant shall submit a stormwater management plan to the City of Milpitas for review and approval. The stormwater management plan shall comply with the requirements of Milpitas Municipal Code Title XI, Chapter 16 and identify pollution prevention measures and practices to prevent polluted runoff from leaving the project site. Examples of stormwater pollution prevention measures and practices to be contained in the plan include, but are not limited to:

- Strategically placed bioswales and landscaped areas that promote percolation of runoff
- Pervious pavement
- Roof drains that discharge to landscaped areas
- Trash enclosures with screen walls
- Stenciling on storm drains
- Curb cuts in parking areas to allow runoff to enter landscaped areas
- Rock-lined areas along landscaped areas in parking lots
- Catch basins
- Oil/water separators
- Regular sweeping of parking areas and cleaning of storm drainage facilities
- Employee training to inform store personnel of stormwater pollution prevention measures
- The Project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.

(Draft EIR, p. 4.6-9 to 4.6-11.)

e. Impact HYD-2: *Long-Term Water Quality: Expansion Soils: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final

EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure HYD-2, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. *Impact HYD-2: Long-Term Water Quality: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would not result in a net increase in impervious surface coverage of the Project site. Currently, the Project site contains mostly impervious surfaces, with landscaped areas accounting for the only pervious surfaces. The proposed Project would maintain the existing impervious surface coverage and uses of the Project site. Such characteristics would create the potential for additional discharge of urban pollutants into downstream waterways. Leaks of fuel or lubricants, tire wear, and fallout from exhaust contribute petroleum hydrocarbons, heavy metals, and sediment to the pollutant load in runoff being transported to receiving waters. Runoff from the landscaped areas may contain residual pesticides and nutrients. Mitigation is proposed that would require the Project applicant to prepare and submit a stormwater quality management plan to the City of Milpitas for review and approval. The plan would require the Project applicant to document various stormwater quality control measures that would be in effect during Project operations to ensure that water quality in downstream water bodies is not degraded. The implementation of this mitigation measure would ensure that potential, long-term, operational water quality impacts are reduced to a level of less than significant. These facts support the City’s finding. (Draft EIR, pp. 4.6-9 to 4.6-11.)

6. Land Use

a. *Impact LU-2: Municipal Code Consistency: Impact and Mitigation*

Implementation of the Project may conflict with the applicable ordinances of the City of Milpitas Municipal Code. Mitigation measures address this potential impact and are as follows:

See Mitigation Measure AES-1a, Mitigation Measure AES-1b, Mitigation Measure AES-1c, and Mitigation Measure TRANS-5. (Draft EIR, pp. 4.7-23 to 4.7-26.)

b. *Impact LU-2: Municipal Code Consistency: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measures AES-1a, AES-1b, AES-1c, and TRANS-5, which have been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

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c. *Impact LU-2: Municipal Code Consistency: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would be consistent with the intended uses of the General Commercial (C2) zoning district, would be within the Zoning Ordinance's maximum floor area ratio and, because the C2 zoning district does not establish a height limit for buildings within the district, the Project would not conflict with any height restrictions. As part of the Project, the store elevations would be upgraded and enhanced to incorporate the "California ranch" design theme of the McCarthy Ranch Marketplace and are intended to provide a high-quality, visually appealing design. In addition, the Project would maintain the existing pedestrian facilities and vehicular access points. Accordingly, the Project would be consistent with the objectives of the Site and Architectural Review Overlay District (S). The Project is seeking approval of conditional use permits for grocery sales within 1,000 feet of residential uses and for alcohol sales. Should these permits be approved by the City of Milpitas, these activities would be in compliance with Municipal Code requirements.

The Project would provide 779 off-street parking spaces, of which 751 would be available for vehicular parking. This number represents a parking ratio of exactly 5.0 spaces per 1,000 square feet, based on the actual square footage of the expanded store. However, the square footage analyzed in the EIR was slightly higher and translated to a minimum parking requirement of 754 spaces. As such, Mitigation Measure TRANS-5 requires that off-street parking be provided at no less than 5.0 spaces per 1,000 square feet to satisfy Municipal Code requirements. With the implementation of this mitigation measure, impacts would be reduced to a level of less than significant.

MM AES-1a requires the applicant to prepare and submit plans to the City demonstrating that the signage complies with Municipal Code requirements. The implementation of this mitigation measure would ensure that the visual impacts of signage are reduced to a level of less than significant.

The Project would remove several ornamental trees, which may be eligible for protection under the Tree Maintenance and Protection Ordinance. Mitigation Measure AES-1b requires compliance with the Municipal Code tree removal and replacement requirements. For trees not eligible for protection under the ordinance, the mitigation measure stipulates that they shall be replaced onsite at no less than a 1:1 ratio with a similar trees species. With the implementation of this mitigation measure, impacts would be reduced to a level of less than significant.

Shipping containers are currently stored in outdoor areas of the Project site during various times of the year. The Zoning Ordinance requires that outdoor storage of materials (e.g., shipping containers) be completely enclosed within a building or behind a visually obscure wall or fence a minimum of 6 feet in height. To bring the Project into conformance with this Zoning Ordinance requirement, Mitigation Measure AES-1c is proposed requiring the Project applicant to either permanently remove shipping containers from the Project site or install screening

measures around areas where such containers would be stored. The implementation of this mitigation measure would ensure that the visual impacts of outdoor storage of shipping containers is reduced to a level of less than significant.

With the implementation of the aforementioned mitigation measures, the proposed Project would be consistent with the applicable requirements of the Municipal Code. Therefore, impacts would be less than significant. These facts support the City's finding. (Draft EIR, pp. 4.7-23 to 4.7-26.)

7. Public Services and Utilities

a. *Impact PSU-3: Water: Impact and Mitigation*

The Project may not be served with adequate long-term water supplies. Mitigation Measure PSU-3 addresses this potential impact and is as follows:

*MM PSU-3:* Prior to issuance of the final certificate of occupancy, the Project applicant shall install the following indoor water conservation measures:

- Low-flow or ultra-low-flow toilets and urinals
- Sensor-activated faucets in restrooms

(Draft EIR, pp. 4.9-14 to 4.9-15; see also Draft EIR, Appendix G.)

b. *Impact PSU-3: Water: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure PSU-3, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. *Impact PSU-3: Water: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would increase potable water demand, which represents domestic consumption, by 2,600 gallons per day, while recycled water demand would remain unchanged. Because the Project would not exceed the allowable floor area ratio for the Project site, the increased potable water demand attributable to the store expansion would not adversely impact the water system. Nonetheless, because the Project would result in a net increase in potable water consumption, indoor water conservation measures are proposed as mitigation. These measures would reduce overall Project demand for potable water. Given the relatively small increase in potable water demand, these measures would be considered adequate to mitigate the Project's impacts on long-term water supply. Note that no increase in irrigation water demand is expected, as the Project would result in only minimal changes to landscaping onsite and,

therefore, no outdoor water conservation measures are proposed. As such, impacts on water would be reduced to a level of less than significant. These facts support the City's finding. (Draft EIR, pp. 4.9-14 to 4.9-15; see also Draft EIR, Appendix G.)

d. Impact PSU-6: *Solid Waste: Impact and Mitigation*

Implementation of the Project may generate substantial amounts of solid waste during both construction and operations. Mitigation Measure PSU-6 addresses this potential impact and is as follows:

*MM PSU-6a:* Prior to issuance of building permits, the Project applicant shall retain a qualified contractor to perform construction and demolition debris recycling. The Project applicant shall provide documentation to the satisfaction of the City of Milpitas demonstrating that construction and demolition debris was recycled.

*MM PSU-6b:* Prior to issuance of occupancy permits, the Project applicant shall provide onsite facilities necessary to collect and store recyclable materials. The facilities shall include receptacles in public spaces that are of high-quality design and identify accepted materials.

(Draft EIR, pp. 4.9-17 to 4.9-18; see also Draft EIR, Appendix G.)

e. Impact PSU-6: *Solid Waste: Finding*

"Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR." (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure PSU-6, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. Impact PSU-6: *Solid Waste: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project is anticipated to generate 5,737 tons of solid waste during the construction phase. Given the amount of construction waste tonnage, mitigation is proposed that would require the Project applicant to retain a contractor to recycle construction and demolition debris. The implementation of this mitigation measure would reduce potential impacts to a level of less than significant.

During the operation phase, the Project is estimated to generate 362 tons of solid waste annually, which would represent a net increase of 45.6 tons over the existing store's estimated solid waste generation. Mitigation is proposed that would require the Project applicant to provide onsite recycling facilities prior to issuance of occupancy permits. The implementation of this mitigation measure would reduce solid waste generation and reduce demand for landfill capacity. Therefore, solid waste impacts would be reduced to a level of less than significant.

These facts support the City’s finding. (Draft EIR, pp. 4.9-17 to 4.9-18; see also Draft EIR, Appendix G.)

8. Transportation

a. *Impact TRANS-1: Near-Term Intersection Operations: Impact and Mitigation*

Implementation of the Project would contribute trips to intersections that would operate at unacceptable levels of service under near-term conditions. Mitigation Measure TRANS-1 addresses this potential impact and is as follows:

*MM TRANS-1a:* Prior to the issuance of building permits, the Project applicant shall provide fair-share fees to the City of Milpitas for improvements to the Dixon Landing Road/N. Milpitas Boulevard intersection and the widening of Dixon Landing Road. The intersection improvements shall consist of 1) modifying the signal operation to include a southbound right-turn overlap and subsequent signal timing optimization or 2) adding a northbound left turn lane, a southbound right-turn lane, and eastbound left-turn and right-turn lanes. The widening shall consist of adding an additional lane in each direction between I-880 and N. Milpitas Boulevard. Both improvements are identified in the Valley Transportation Plan 2035. The applicant is responsible for fair-share amounts of \$3,000 for the intersection improvements and \$28,960 for the roadway widening.

*MM TRANS-1b:* Prior to the issuance of final certificate of occupancy, the Project applicant shall provide the City of Milpitas the full cost of signal timing modifications at the N. McCarthy Boulevard/Ranch Drive (south) intersection. The modifications shall consist of re-timing the signal to increase the current cycle length. This mitigation measure shall not apply if the signal timing is modified prior to the applicant seeking the final certificate of occupancy.

(Draft EIR, pp. 4.10-60 to 4.10-64; see also Draft EIR, Appendix H.)

b. *Impact TRANS-1: Near-Term Intersection Operations: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure TRANS-1, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

c. *Impact TRANS-1: Near-Term Intersection Operations: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would not cause any intersections that are performing at acceptable levels without the Project to drop below acceptable levels. Some intersections previously operating below acceptable thresholds are nominally affected by Project traffic; however, only

two intersections are expected to experience an increase in critical delay and critical volume to capacity above the allowable thresholds with the addition of the Project. The addition of the Project trips would result in an increase in critical delay during the AM peak hours at the Dixon Landing Road/Milpitas Boulevard intersection; and during the AM peak, midday peak and PM peak hours at the N. McCarthy Boulevard/Ranch Drive (South) intersection. As a result, these two intersections would operate above the allowable thresholds and, therefore, results in a significant impact. The impact at the Dixon Landing Road/N. Milpitas Boulevard intersection can be mitigated by modifying the signal phasing, which would result in this intersection operating at improved levels compared to the Project conditions during the weekday AM peak hour, thus reducing the impact to a less than significant level. The impact at N. McCarthy Boulevard/Ranch Drive (South) can be mitigated by re-timing the signal to increase the current cycle length, which would result in this intersection operating at improved levels during the weekday AM and midday peak hours and during the weekday PM peak hour, thus reducing the impact to a less than significant level.

As discussed above, the Project would contribute significantly to unacceptable intersection operations at two intersections. However, the Project can fully mitigate its impacts through fair share payments for improvements to the Dixon Landing Road/N. Milpitas Boulevard intersection and Dixon Landing Road and through payments to provide the full cost of signal timing improvements at N. McCarthy Boulevard/Ranch Drive (South). Because the Dixon Landing Road improvements are contained in an “actual plan for mitigation” (i.e., Valley Transportation Plan 2035) and the applicant would provide the full cost of the N. McCarthy Boulevard/Ranch Drive (South) intersection improvements, there is a reasonable degree of certainty that the improvements would be fully funded and implemented as contemplated. Because this impact would also occur under the “Baseline Without Project” scenario, the applicant would only be required to contribute fair-share payments for the installation of the signals. It would not be lawful for the City to require the Project to fund the full cost of the traffic signals, which are necessitated by other projects as well as the Project. (CEQA Guidelines § 15126.4(a)(4) (requiring mitigation measures to be consistent with applicable constitutional principles and mandates that the mitigation measure must be "roughly proportional" to the project's impact).) In this case, installation of the two traffic signals for the Project's traffic impacts at intersections already operating at unacceptable levels cannot be considered roughly proportional and cannot be legally imposed. Accordingly, Mitigation Measure TRANS-1 requires the Project to pay its fair share. Once mitigation occurs, the residual significance of this impact is less than significant. These facts support the City's finding. (Draft EIR, pp. 4.10-60 to 4.10-64; see also Draft EIR, Appendix H.)

d. Impact TRANS-4: *Queuing: Impact and Mitigation*

Implementation of the Project would contribute to deficient queuing. A mitigation measure addresses this potential impact and is as follows:

See Mitigation Measure TRANS-3. (Draft EIR, pp. 4.10-74 to 4.10-84; see also Draft EIR, Appendix H.)

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e. Impact TRANS-4: *Queuing: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure TRANS-3, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

f. Impact TRANS-4: *Queuing: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would have significant impacts on queuing at five turning movements: (1) McCarthy Boulevard/Technology Drive – Eastbound Left and Southbound Left; (2) N. McCarthy Boulevard/SR-237 Westbound Ramps – Westbound Right and Northbound Left; and (3) N. McCarthy Boulevard/Ranch Drive (North) – Westbound Left. However, impacts at all five turning movements can be fully mitigated with the implementation of traffic improvements, the full cost of which would be provided by the Project applicant. Because the improvements would be fully funded, there is certainty that the improvements would be implemented as contemplated and, therefore, the residual significance would be less than significant. These facts support the City’s finding. (Draft EIR, pp. 4.10-74 to 4.10-84; see also Draft EIR, Appendix H.)

g. Impact TRANS-5: *Parking: Impact and Mitigation*

The Project may not provide adequate off-street parking. Mitigation Measure TRANS-5 addresses this potential impact and is as follows:

*MM TRANS-5:* Prior to issuance of building permits, the Project applicant shall prepare and submit a site plan to the City of Milpitas that demonstrates that off-street parking is provided onsite at no less than 5.0 spaces per 1,000 gross square feet of building coverage. The approved site plan shall be incorporated into the Project. (Draft EIR, pp. 4.10-84 to 4.10-85; see also Draft EIR, Appendix H.)

h. Impact TRANS-5: *Parking: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure TRANS-5, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

i. Impact TRANS-5: *Parking: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would reduce the number of parking spaces to 779, with 751 available for vehicles and the balance occupied by shopping cart corrals. The City of Milpitas Municipal Code requires that off-street parking for retail land uses be provided at a ratio of 5.0 spaces per 1,000 gross square feet. The Project as proposed would comply with the Municipal Code requirements, while the store square footage used in this EIR would not. As such, mitigation is proposed that requires off-street parking be provided at no less than 5.0 spaces per 1,000 square feet to satisfy Municipal Code requirements. With the implementation of this mitigation measure, impacts would be reduced to a level of less than significant. These facts support the City's finding. (Draft EIR, pp. 4.10-84 to 4.10-85; see also Draft EIR, Appendix H.)

j. *Impact TRANS-8: Public Transit, Bicycles, and Pedestrians:  
Impact and Mitigation*

Implementation of the Project may not provide adequate public transit, bicycle, and pedestrian access. Mitigation Measure TRANS-8 addresses this potential impact and is as follows:

*MM TRANS-8:* Prior to issuance of the final certificate of occupancy, the Project applicant shall install bicycle storage facilities. Bicycle storage facilities shall consist of at least one rack located in a visible and convenient location (e.g., near the store entrance) and that provides storage equivalent to 2 percent of the proposed project's minimum parking requirement. (Draft EIR, pp. 4.10-87 to 4.10-88; see also Draft EIR, Appendix H.)

k. *Impact TRANS-8: Public Transit, Bicycles, and Pedestrians:  
Finding*

"Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR." (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure TRANS-8, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

l. *Impact TRANS-8: Public Transit, Bicycles, and Pedestrians:  
Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

The Project would not impair access to VTA bus operations in the Project vicinity and impacts would be less than significant. It is anticipated that the number of customers and employees who use bicycles to travel to the expanded store would increase. To facilitate bicycle access, mitigation is proposed that would require bicycle storage to be provided in front of the store. The provision of these bicycle storage facilities would ensure that adequate storage is available. Therefore, impacts would be less than significant. The Project would provide safe and convenient accessibility for pedestrians and impacts would be less than significant. These facts support the City's finding. (Draft EIR, pp. 4.10-87 to 4.10-88; see also Draft EIR, Appendix H.)

m. *Impact TRANS-9: Construction Traffic and Parking: Impact and Mitigation*

Implementation of the Project may adversely affect traffic and circulation in the project vicinity. Mitigation Measure TRANS-9 addresses this potential impact and is as follows:

*MM TRANS-9:* Prior to commencement of construction activities, the Project applicant shall submit a Construction Traffic Control Plan to the City of Milpitas for review and approval. The plan shall identify the timing and routing of all major construction equipment and materials deliveries to avoid potential traffic congestion and delays on the local street network and the McCarthy Ranch Marketplace, and to encourage the use of I-880 and SR-237. If necessary, construction equipment and materials deliveries shall be limited to off-peak hours (e.g., mornings or evenings) to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking. (Draft EIR, pp. 4.10-88 to 4.10-89; see also Draft EIR, Appendix H.)

n. *Impact TRANS-9: Construction Traffic and Parking: Finding*

“Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) Mitigation Measure TRANS-9, which has been required in or incorporated into the Project, will reduce the significant environmental impact to a less-than-significant level.

o. *Impact TRANS-9: Construction Traffic and Parking: Facts in Support of Finding*

The following facts indicate that the identified impact will be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Construction activities (delivery of equipment and materials and daily trips to the site by construction workers) have the potential to create congestion and parking problems on nearby roadways, as well as within the McCarthy Ranch Marketplace. Much of the construction traffic, especially trucks and equipment delivery vehicles, would avoid residential areas and would minimize potential congestion on the local street system. Construction activities may cause congestion and impair circulation within the Walmart parking lot. Furthermore, the delivery of construction equipment and materials during the afternoon period may cause increased site congestion during peak shopping hours. Accordingly, mitigation is proposed requiring the Project applicant to implement a Construction Traffic Control Plan during construction activities to minimize impacts on surrounding roadways and nearby parking areas. The implementation of this mitigation measure would reduce potential impacts to a level of less than significant. These facts support the City’s finding. (Draft EIR, pp. 4.10-88 to 4.10-89; see also Draft EIR, Appendix H.)

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I. Significant Environmental Impact That Cannot be Mitigated to a Less-than-significant Level

The following significant impact would not be mitigated to a less-than-significant level, even with the implementation of the identified mitigation measures set forth below. No mitigation is feasible that would mitigate this impact to a less-than-significant level. The City has determined that the impact identified below is acceptable because of overriding economic, social or other considerations, as described in the Statement of Overriding Considerations. As required by CEQA, a Statement of Overriding Considerations is presented in Section III below in addition to these findings.

1. Transportation

a. *Impact TRANS-3: Roadway Operations: Impact and Mitigation*

Implementation of the Project may substantially contribute to unacceptable roadway operations. Mitigation Measure TRANS-3 addresses this potential impact and is as follows:

*MM TRANS-3:* Prior to issuance of building permits, the Project applicant shall provide a traffic management fee in the amount of \$180,000 to the City of Milpitas. The fees shall be used for circulation and traffic operation improvements within the City of Milpitas, including signal coordination and intersection improvements. Specific improvements that shall be fully funded by funds collected shall include:

- McCarthy Boulevard/Technology Drive: The eastbound approach shall be re-striped to provide two left-turn lanes and one shared through/right lane.
- McCarthy Boulevard/SR-237 Westbound Ramps: An additional westbound right-turn lane shall be constructed to provide two left-turn lanes, two through lanes, and two right-turn lanes for the westbound approach.
- Ranch Drive: The roadway shall be restriped to extend the existing two-way left-turn lane from the northern Walmart driveway to the end of the existing westbound left-turn lane at the McCarthy Boulevard/Ranch Drive (North) intersection.

(Draft EIR, pp. 4.10-66 to 4.10-74; see also Draft EIR, Appendix H.)

b. *Impact TRANS-3: Roadway Operations: Finding*

Mitigation Measure TRANS-3, which has been required in or incorporated into the Project, will substantially lessen the severity of a significant effect, but will not reduce that effect to a less-than-significant level. Therefore, the impact would remain significant and unavoidable.

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c. *Impact TRANS-3: Roadway Operations: Facts in Support of Finding*

The following facts indicate that the identified impact will not be reduced to a less-than-significant level. These facts are a summary of the facts contained in the administrative record as a whole and are not an exclusive recitation of the facts supporting the finding.

Under long-term conditions, the addition of the Project would not cause a roadway segment that is performing at acceptable levels without the Project to drop below acceptable levels. However, 13 of the 20 roadway segments studied do not function within acceptable standards under long-term conditions without the Project. For four of these 13 roadway segments (McCarthy Boulevard Southbound – between Ranch Drive [North] and Ranch Drive [South] [AM peak]; McCarthy Boulevard Northbound – between Ranch Drive [South] and SR-237 Westbound Ramps [AM peak]; McCarthy Boulevard Southbound – between Ranch Drive [South] and SR-237 Westbound Ramps [AM peak, PM peak]; and McCarthy Boulevard Southbound – between SR-237 Westbound Ramps and Technology Drive [AM peak]), the addition of the Project's trips causes an increase in traffic greater than 1 percent of the roadway's capacity, which results in a significant impact. The Project can mitigate its impacts through payment of a traffic management fee in the amount of \$180,000 that would fund intersection and traffic operations improvements on Milpitas roadways, including McCarthy Boulevard. However, these improvements may not be able to fully mitigate the impacts to the same degree as widening the roadway, which is infeasible. As such, the residual significance of this impact is significant and unavoidable.

These facts support the City's finding. (Draft EIR, pp. 4.10-66 to 4.10-74; see also Draft EIR, Appendix H.)

d. *Impact TRANS-3: Roadway Operations: Statement of Overriding Considerations*

The Planning Commission has found that the Project benefits outweigh the significant unavoidable impact of the Project. The full discussion can be found in the "Statement of Overriding Considerations" (Section III).

Under long-term conditions the addition of the Project does not cause a study roadway segment that is performing at acceptable levels without the Project to drop below acceptable levels. However, 13 of the 20 study roadway segments do not function within acceptable standards under long-term conditions, even without the Project. For four of these 13 roadway segments, the addition of the Project's trips causes an increase in traffic greater than 1 percent of the roadway's capacity, which results in a significant impact.

The significant impact at these roadway segments could be mitigated with increased capacity (i.e., with additional lanes), however, these improvements are infeasible. There is insufficient right-of-way to accommodate an additional lane and obtaining additional right-of-way may be difficult because adjacent properties are under multiple ownership and are already developed with existing improvements. Moreover, widening the road would also affect the existing landscaping theme and would render the streetscape non-conforming with the

McCarthy Ranch Design Guidelines. In addition, the widening of McCarthy Boulevard would not provide an efficient and orderly transition, which would result in the need for a reconfiguration or reconstruction of the McCarthy Boulevard overcrossing over SR-237. Similarly, reducing the existing medians at the McCarthy Boulevard/Westbound and Eastbound SR-237 ramps would not provide the additional capacity needed for the desired lane configuration to mitigate the impact. The Project can mitigate its impacts through payment of a traffic management fee in the amount of \$180,000 that would fund intersection and traffic operations improvements on Milpitas roadways, including McCarthy Boulevard. However, these improvements may not be able to fully mitigate the impacts to the same degree as widening the roadway. As such, the residual significance of this impact is significant and unavoidable. These facts support the City's finding. (Draft EIR, pp. 4.10-66 to 4.10-74; see also Draft EIR, Appendix H; Final EIR, p. 2-9.)

J. Feasibility of Mitigation Measures Proposed in Comments on the Draft EIR

During the public comment period, the City received comments suggesting additional mitigation measures. As explained in the Final EIR (Responses to Comments), none of these suggestions were found in the Final EIR to be inappropriate because they were duplicative, did not address the impact, or were infeasible. The Planning Commission commends its staff for their careful consideration of all of the lengthy public comments received and particularly its careful evaluation of the proposed mitigation measures. The Commission agrees with staff's analysis in all respects.

Throughout this entire process, the Commission and staff have remained cognizant of the legal obligation under CEQA to substantially lessen or avoid significant environmental effects to the extent feasible. The City recognizes, moreover, that comments frequently offer thoughtful suggestions regarding how a commenter believes that a particular mitigation measure can be modified, changed significantly, or added, in order to more effectively, in the commenter's eyes, reduce the severity of environmental effects. The City is also cognizant, however, that, with the exception of new language included in the Errata, the mitigation measures in the Draft EIR intended to avoid, minimize, rectify, reduce, compensate for, or substantially lessen significant environmental effects of the Project represents the fruit of extensive staff and consultant experience in countless projects. Thus, in considering proposed changes to mitigation measures, the City, in determining whether to accept such language, either in whole or in part, has considered the following factors, among others: (i) whether the proposed language relates to a significant and unavoidable environmental effect of the Project, or instead relates to an effect that can already be mitigated to less-than-significant levels; (ii) whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace; (iii) whether the proposed language would essentially duplicate language already in place elsewhere within the mitigation measures identified for the Project; (iv) whether the proposed language appears to be feasible from an economic, technical, legal, or other standpoint; (v) whether the proposed language is consistent with the Project objectives.

As is often evident from the specific responses given to specific suggestions, City staff and consultants spent large amounts of time carefully considering and weighing proposed mitigation measures. In no instance did the City fail to take seriously a suggestion made by a commenter or fail to appreciate the effort that went into the formulation of suggestions.

For instance, one commenter stated that the Draft EIR should study the issue of installing solar panels on the expanded Walmart store and that the City of Milpitas should require the Project to incorporate the panels. (Final EIR, p. 3-273.) The CARB Scoping Plan, the CAPCOA white paper, and the Attorney General's Office do not mandate that new projects install photovoltaic systems, but rather allow the lead agencies to determine which strategies are most appropriate on a case-by-case basis. As explained in the Draft EIR, solar technology can only provide a small percentage of the store's electrical needs and is only economically feasible in the short term. As demonstrated in the Final EIR, requiring solar panels would be inconsistent with CEQA's requirement that mitigation measures be roughly proportional to the impacts of the project. Moreover, there are more effective ways to promote non-carbon energy. For instance, PG&E, which is the existing energy provider to the Walmart store, is subject to the terms of AB 32's Renewable Portfolio Standards and, therefore, must obtain 33% of its energy from renewable resources. By staying on the grid and implementing energy efficiency measures, the Project may achieve as much, if not more, greenhouse gas reductions than through installation of solar panels. (Final EIR, pp. 3-273 to 3-275.)

#### K. Growth-Inducing Effects

A project may be growth-inducing if it directly or indirectly fosters economic or population growth or additional housing, removes obstacles to growth, taxes community service facilities, or encourages or facilitates other activities that cause significant environmental effects. (CEQA Guidelines Section 15126(g).)

Under CEQA, induced growth is not considered necessarily detrimental or beneficial. Induced growth is considered a significant impact only if it directly or indirectly affects the ability of agencies to provide needed public services, or if it can be demonstrated that the potential growth could significantly affect the environment in some other way.

The Planning Commission finds that the Project would not significantly induce further growth or remove obstacles to future growth. The Project site contains an existing Walmart store and associated parking areas. The Project does not contain any residential uses and, therefore, would not directly induce population growth through the provision of new dwelling units. The existing Walmart store employs 330 workers. The expanded store would be expected to increase store employment to 415 positions, a net increase of 85 jobs. Most of the new employment opportunities created by the Project would be entry-level, both full-time and part-time. The California Employment Development Department indicates that, as of September 2009, there were 3,900 unemployed persons in Milpitas and 104,400 unemployed persons in Santa Clara County. Given the nature of the job opportunities and the availability of labor, it would be expected that the new employment opportunities could be readily filled from the local labor force. For these reasons, the Project would not induce substantial population growth. No impacts would occur. Moreover, the Project would not require the extension or upsizing of utility connections, thus, the development of the Project would not remove an obstacle to growth. (Draft EIR, p. 6-2; see also Final EIR, p. 4-1.)

#### L. Cumulative Impacts

Although a project may cause an individually limited incremental impact that, by itself is not significant, the increment may be cumulatively considerable, and thus significant,

when viewed in connection with the environmental effects of other projects. (CEQA Guidelines, §§ 15064(h)(1), 15065(a)(3) and 15355(b).)

For the reasons stated below, the Planning Commission finds that the Project would not result in cumulatively considerable impacts to aesthetics, light and glare; air quality; biological resources; geology, soils and seismicity; hazards and hazardous materials, hydrology and water quality; land use; noise; public services and utilities; transportation; and urban decay.

#### 1. Aesthetics, Light and Glare

There are a number of other projects in the Project vicinity, all of which have the potential to alter the visual character of the area. These other projects would be subject to design and landscaping requirements to ensure that they do not degrade visual character. The Project consists of the expansion and alteration of the existing Walmart, including the addition of 19,000 square-feet of retail space. The expansion would occur on the south side of the store, within a paved parking area. The expansion area contains asphalt, concrete, and several trees. The Walmart store's elevations would be upgraded as part of the store expansion. The elevations would incorporate design features to reflect the design theme of the McCarthy Ranch Marketplace, including metal roofs and canopies, corrugated metal cladding, and the use of colors such as Colonnade Gray, Cool Old Zinc Gray, and Countrylane Red. The height of the expanded store would range from 18 feet, 6 inches to 35 feet, 6 inches above grade. The Milpitas Zoning Ordinance does not have a height limit for the General Commercial (C2) zoning district. Furthermore, the building height would be similar to other building heights in the McCarthy Ranch Marketplace. The expanded Walmart store would have a Floor Area Ratio (FAR) of 0.24 (150,725 square feet/14.56 acres [634,233.6 square feet]), which would be consistent with both the General Plan's and the Zoning Ordinance's maximum allowable FAR of 0.5 for the General Commercial designation and the C2 zoning district, respectively. Mitigation is proposed requiring the Project to replace removed trees in accordance with Municipal Code requirements and also comply with code requirements pertaining to outdoor storage. Therefore, the Project, in conjunction with other projects, would not have cumulatively considerable aesthetic impacts.

Other development projects in the Project vicinity have the potential to introduce new sources of light and glare. It is reasonable to assume that other projects would be required to reduce spillover light pursuant to City standards. The Project would largely maintain the existing exterior light fixtures on the Project site and, therefore, would not have the potential to have a cumulative contribution to light and glare. (Draft EIR, pp. 6-4 to 6-5.)

#### 2. Air Quality

The Project would be consistent with the land use and vehicle miles traveled assumptions contained in the BAAQMD 2005 Ozone Strategy. While other development projects may or may not be consistent with these assumptions, because the Project would be consistent, it would not cumulatively contribute to inconsistency with the 2005 Ozone Strategy.

The Project's construction emissions would not exceed the BAAQMD daily emissions thresholds. Moreover, construction activities associated with other development projects would make a minimal contribution to cumulative emissions because the timing of those

activities would overlap minimally, if at all, with the Project. Therefore, construction emissions from the Project would not combine with emissions from other development projects to cause cumulatively considerable air quality impacts.

The Project's operational emissions would not exceed the BAAQMD significance thresholds for criteria pollutants, would not create any carbon monoxide hotspots on surrounding roadways, and would not expose sensitive receptors to unhealthy levels of toxic air contaminants. Operational activities associated with other projects would emit air pollutants, which, depending on the nature of the project, may or may not exceed BAAQMD thresholds. However, because the Project's operational emissions would not exceed BAAQMD thresholds, its air emissions would be within the regional air emissions budget and, therefore, can be assumed not to be cumulatively considerable.

The Project would not expose sensitive receptors to harmful concentrations of toxic air contaminants (such as DPM) because of its distance from sensitive receptors and prevailing wind patterns. While other development projects located within 0.5 mile of the Project site may also receive diesel truck deliveries, thereby emitting toxic air contaminants (such as DPM), DPM exposure is highly localized because of wind dispersion patterns, and it is unlikely that the Project's DPM emissions would combine with DPM emissions from other projects. Furthermore, adverse health effects from DPM exposure require sustained exposure for decades by nearby sensitive receptors. No sensitive receptors are close enough to the Project site or the surrounding cumulative projects to be adversely affected by DPM. Therefore, the Project, in conjunction with other projects that receive diesel truck deliveries, would not create cumulatively considerable health risks.

The Project would result in a net increase of greenhouse gas emissions. Mitigation is proposed that would require implementation of greenhouse gas reduction measures that are consistent with applicable emissions reduction strategies issued by the Climate Action Team, CARB (Early Action Measures), the Attorney General's Office, and the California Air Pollution Control Officers Association ("CAPCOA") white paper. Other projects would emit greenhouse gases, and it is reasonable to assume that such projects would implement greenhouse gas emission reduction measures. With the implementation of these measures, the Project and other projects would not emit cumulatively considerable amounts of greenhouse gas emissions. (Draft EIR, pp. 6-5 to 6-6.)

### 3. Biological Resources

The Project would have the potential to adversely affect special-status species (nesting birds) but mitigation is proposed to reduce potential impacts to a less than significant level. Other development projects in the Project's vicinity may have the potential to impact special-status species but would also be required to mitigate for impacts. Because mitigation is proposed, the Project, in conjunction with other projects, would not have cumulatively considerable special-status species impacts. The Project would result in tree removal activities but mitigation is proposed to ensure the replacement (at a ratio of no less than 1:1) or proper landscaping of the Project as specified by the City of Milpitas tree preservation ordinance. Other development projects in the Project's vicinity may result in tree removal activities that would also be required to comply with the City of Milpitas tree preservation ordinance. Therefore, the

Project, in conjunction with other projects, would not have cumulatively considerable conflicts with local biological ordinances and policies. (Draft EIR, pp. 6-6 to 6-7.)

#### 4. Geology, Soils and, Seismicity

Development projects in the Project's vicinity may have the potential to be exposed to seismic hazards. These projects would be required to mitigate for impacts through compliance with applicable laws and geotechnical study recommendations. The Project site may be exposed to strong ground shaking during an earthquake. Mitigation is proposed requiring the Project to comply with the California Building Standards Code seismic design criteria. Moreover, Project construction activities would implement standard stormwater pollution prevention mitigation measures to ensure that earthwork activities do not result in substantial erosion offsite and, therefore, would not contribute to area-wide erosion problems. It is reasonable to assume that other development projects would implement mitigation measures for erosion that would reduce project-level impacts to a less than significant level. Therefore, the Project, in conjunction with other projects, would not have cumulatively considerable geologic, seismic, or soil impacts. (Draft EIR, p. 6-7.)

#### 5. Hazards and Hazardous Materials

There are no recognized environmental constraints within the Project site or surrounding sites. Construction activities associated with other development projects would make a minimal contribution to cumulative hazards from past and present uses, because such effects are highly localized and, therefore, would have no possibility to overlap with the Project. Accordingly, it is reasonable to conclude that any potential contamination present on other sites would not have the potential to cause cumulatively considerable impacts. The Project would not result in the use of substantial quantities of hazardous materials or impair emergency response or evacuation; therefore, the Project would not have considerable effects on these issue areas. It is reasonable to assume that other projects would implement mitigation that would require proper abatement of potential hazards; therefore, cumulative impacts are anticipated to be less than significant, and the Project, in conjunction with other projects, would not have considerable hazards and hazardous materials impacts, including from other projects. (Draft EIR, pp. 6-7 to 6-8.)

#### 6. Hydrology and Water Quality

Development projects in the Project vicinity may have the potential to create sources of short-term and long-term water pollution. These projects would be required to mitigate for impacts by providing stormwater pollution prevention measures. The Project would involve short-term construction and long-term operational activities that would have the potential to degrade water quality in downstream water bodies. Mitigation is proposed that would require implementation of various construction and operational water quality control measures that would prevent the release of pollutants into downstream waterways. Development projects in the Project vicinity may have the potential to increase impervious surface coverage and, therefore, result in increased runoff volumes in downstream waterways. These projects would be required to provide drainage facilities that collect and detain runoff such that offsite releases are controlled and do not create flooding. The Project would largely maintain the existing impervious surface coverage of the site and, therefore, would not create the potential for

additional discharge of urban pollutants into downstream waterways. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on hydrology and water quality. (Draft EIR, p. 6-8.)

#### 7. Land Use

Development projects would be required to demonstrate consistency with all applicable General Plan and Zoning Ordinance requirements. The Project would be consistent with applicable provisions of both the City of Milpitas General Plan, Zoning Ordinance and other applicable provisions of the City's Municipal Code. Moreover, mitigation is proposed requiring compliance with Municipal Code requirements for tree removal, outdoor storage, and parking to ensure that impacts are reduced to a level of less than significant. As such, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on land use. (Draft EIR, pp. 6.8-6.9.)

#### 8. Noise

Construction activities associated with the Project would not result in substantial sources of noise at nearby receptors. Other projects would be required to evaluate construction noise impacts and implement mitigation, if necessary, to minimize noise impacts. In addition, the timing of construction activities associated with other development projects would overlap minimally, if at all, with the Project. Furthermore, because noise is a highly localized phenomenon, even if construction activities did overlap in time with the Project, distance would diminish any additive effects. Finally, construction noise would generally be limited to daytime hours and would be short-term in duration. Therefore, it is reasonable to conclude that construction noise from the Project would not combine with noise from other development projects to cause cumulatively considerable noise impacts.

The Project's construction and operational vibration levels would not exceed annoyance thresholds. Vibration is a highly localized phenomenon and, therefore, there would be no possibility for cumulative vibration associated with the Project to combine with vibration from other development projects because of their distances from the Project site. Accordingly, the Project would not contribute to a cumulatively considerable vibration impact.

The Project's vehicular trips would not make a substantial incremental contribution to ambient noise levels. Other projects would be required to evaluate offsite roadway noise and, if necessary, mitigate for such impacts. The Project's contribution to vehicular noise levels would not exceed any applicable thresholds of significance, which take into account the existing noise levels. Thus, the Project would not combine with other projects to cause a cumulatively considerable increase in ambient roadway noise.

Combined stationary and transportation noise levels under near-term with Project conditions would not result in significant noise increases at nearby sensitive receptors. Other projects would be required to mitigate for stationary- and transportation-related noise impacts at nearby sensitive receptors. Moreover, stationary noise and transportation noise are localized phenomena, and there is very limited potential for cumulative noise impacts to occur. As such, the Project, in conjunction with other projects, would not have a cumulatively considerable, permanent increase in ambient noise levels in the Project vicinity. (Draft EIR, pp. 6-9 to 6-10.)

9. Public Services and Utilities

- *Fire Protection and Emergency Medical Services:* The Project would not create a need for new or expanded fire protection facilities, and, therefore, would not result in a physical impact on the environment. Other development projects in Milpitas would be reviewed for impacts on fire protection and emergency medical services and would be required to address any potential impacts with mitigation. It is unlikely that there would be substantial overlap in demand that would result in a cumulatively considerable impact. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on fire protection and emergency medical services.
- *Police Protection:* The Project would not create a need for new or expanded police protection facilities and would not result in a physical impact on the environment. Other development projects in Milpitas would be reviewed for impacts on police protection and would be required to address any potential impacts with mitigation. It is unlikely that there would be substantial overlap in demand that would result in a cumulatively considerable impact. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on police protection.
- *Potable Water:* All development projects within Milpitas would be required to demonstrate that potable water supply sources are available and these projects may be required to implement water conservation measures. The Project is anticipated to result in a net increase of 2,600 gallons-per-day in water consumption. To minimize the Project's potential cumulative impacts on long-term water supply, indoor water conservation measures would be implemented. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on potable water supply.
- *Wastewater:* All projects would be required to demonstrate that sewer service is available to ensure that adequate sanitation can be provided. Although the Project is estimated to generate an increased amount of wastewater, the wastewater treatment plant could readily accommodate the Project's wastewater flows without a need for new or expanded facilities. Furthermore, the sewer system servicing the existing Walmart was designed with the store expansion in mind and has adequate capacity to accommodate the additional effluent on a daily basis. Accordingly, the Project would be served by adequate wastewater treatment and conveyance. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on wastewater.

- *Storm Drainage:* All development projects in the Project's vicinity would be required to provide drainage facilities that collect and detain runoff such that offsite releases are controlled and do not create flooding. The Walmart expansion area currently contains a parking area that is drained by existing storm drainage facilities. Accordingly, the Project would not increase impervious surface coverage and would not increase the volume of runoff entering downstream waterways; therefore, no incremental contribution to potential cumulative impacts would occur. Moreover, the Project would implement standard pollution prevention measures during construction to ensure that downstream water quality impacts are minimized to the greatest extent possible and provide water quality measures to prevent pollution during store operations. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on storm drainage.
- *Solid Waste:* Development projects would generate construction and operational solid waste and, depending on the volumes and end uses, would be required to implement recycling and waste reduction measures. The Project includes mitigation that would divert substantial quantities of materials from the solid waste stream and contribute to conserving landfill capacity, thereby extending the operational life of such facilities. Accordingly, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on solid waste.
- *Energy:* Development projects in the PG&E service area would be required to comply with Title 24 energy efficiency standards. The incorporation of the Title 24 standards and other energy conservation measures into the Project would ensure that the Project would not result in the inefficient, unnecessary, or wasteful consumption of energy. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable impact on energy consumption.

(Draft EIR, pp. 6-10 to 6-13.)

#### 10. Transportation

The Project would provide adequate off-street parking. Other projects would be required to provide adequate off-street parking facilities. Therefore, the Project, in conjunction with other projects, would not have a cumulatively considerable effect on parking. The Project would also provide adequate emergency access, not create any roadway hazards, and provide sufficient access for delivery trucks and emergency response vehicles such as fire trucks. In addition, the Project would maintain the existing Santa Clara Valley Transportation Authority bus stop and provide new onsite bicycle storage facilities, thereby maintaining and improving accessibility to alternative transportation. Other projects would also be required to demonstrate that adequate emergency access is available; roadway safety hazards are not created; and public

transit, bicycle, and pedestrian access are provided. Therefore, the Project, in conjunction with other projects, would not have any cumulatively considerable impacts on these transportation-related areas. Other development projects would generate new vehicle trips that may trigger or contribute to unacceptable intersection operations, roadway operations, freeway operations, or queuing. All such projects would be required to mitigate for their fair share of impacts. The Project would result in a net increase of daily trips and trips to intersections, roadways, and queues that would operate at unacceptable levels. Mitigation is proposed that would lessen these impacts. The intersection operations and queuing impacts would be fully mitigated to a level of less than significant and, therefore, the Project's cumulative contribution would also be less than significant. (Draft EIR, pp. 6-13 to 6-14.)

*(Note that the Project's roadway operations impacts may not be fully mitigated to a level of less than significant and, as such, the Project, in conjunction with other projects, would have a cumulatively considerable contribution in this regard. [See Section I(1)(a) above for a complete discussion of this impact].)*

#### 11. Urban Decay

Other development projects in the Project vicinity would introduce new food sales and general merchandise sales to the market area. The Project is expected to generate a \$13.8-million increase in grocery sales and experience a \$5.9-million decrease in general merchandise sales, for a net increase of \$7.1 million. The Project, in conjunction other projects, may divert enough sales from the Save Mart located in Calaveras Plaza to cause the store's closure. However, urban decay is not a foreseeable consequence of store closure because of low commercial retail vacancy rates in the market area (indicating strong re-tenanting potential) and the overall lack of physical deterioration at retail centers in the market area (indicating active maintenance and upkeep by property owners and enforcement of anti-bligh ordinances by local government). It is reasonable to expect that these market conditions and enforcement of ordinances would continue, which would prevent urban decay from occurring in the future even if the combined effects of the Project and other projects lead to future store closures. Accordingly, the Project would not have any cumulatively considerable impacts on urban decay. (Draft EIR, p. 6-14.)

#### M. Findings Concerning Project Alternatives

Public Resources Code section 21002, a key provision of CEQA, provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.”

Where a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as mitigated, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of

CEQA. Although an EIR must evaluate this range of *potentially* feasible alternatives, an alternative may ultimately be deemed by the lead agency to be “infeasible” if it fails to fully promote the lead agency’s underlying goals and objectives with respect to the project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Thus, even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible.

The Draft EIR discussed several alternatives to the Project in order to present a reasonable range of options. The alternatives evaluated included:

- The No Project Alternative: The existing Walmart store would remain in its existing condition and no expansion would occur.
- The 50-Percent Reduction Alternative: The Walmart store would be expanded by 9,500 square feet, which represents a 50-percent reduction in expansion square footage relative to the Project. The store would retail groceries and operate 24 hours a day under this alternative.
- The Inline Retail/Restaurant Alternative: The existing Walmart store would remain unchanged and 15,000 square feet of inline retail and restaurant uses would be developed on the south side of the existing Walmart store.

The Planning Commission finds that that a good faith effort was made to evaluate all feasible alternatives in the EIR that are reasonable alternatives to the Project and could feasibly obtain the basic objectives of the Project, even when the alternatives might impede the attainment of the Project objectives and might be more costly. As a result, the scope of alternatives analyzed in the EIR is not unduly limited or narrow. The Planning Commission also finds that all reasonable alternatives were reviewed, analyzed and discussed in the review process of the EIR and the ultimate decision on the Project. (See, e.g., Draft EIR, pp. 5-1 to 5-18.)

#### 1. Significant and Unavoidable Impacts of the Proposed Project

Draft EIR section 5.1.1 summarized the significant and unavoidable impact of the Project. One significant effect related to transportation that cannot be avoided would occur. The significant unavoidable impact is discussed below.

- Roadway Operations: The Project would contribute trips to four roadway segments that would operate at unacceptable levels. Although all four segments would operate at unacceptable levels without the Project, the Project would increase traffic volumes by more than 1 percent of the roadway’s capacity, which is considered a significant impact. Mitigation is proposed that would require the Project applicant to provide fees for roadway

improvements. However, the proposed improvements may not fully mitigate the impact to a level of less than significant and, therefore, the residual significance is significant and unavoidable

(Draft EIR, p. 5-1.)

## 2. Project Objectives

The Project objectives are as follows:

- Positively contribute to the local economy.
- Enhance commercial retail opportunities available in the City of Milpitas.
- Create new job opportunities for local residents.
- Expand the existing Walmart store to provide the market area with an affordable shopping alternative that offers a wide variety of products to the City of Milpitas as well as the surrounding communities.
- Provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment.
- Promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan.
- Generate tax revenues to accrue to the various agencies within the Project area.
- Minimize travel lengths and utilize existing infrastructure to the maximum extent possible by expanding an existing Walmart store.

(Draft EIR, p. 5-2.)

## 3. Analysis of Alternatives

### a. The No Project Alternative: *Description of Alternative*

The No Project Alternative was analyzed in Section 5.3 of the Draft EIR. Under the No Project Alternative, the existing Walmart store would remain unchanged and no expansion would occur. The existing store would maintain its current configuration and hours of operation (7 a.m. to 11 p.m., every day), and it would not retail groceries. (Draft EIR, p. 5-2.)

### b. The No Project Alternative: *Comparison to Project*

The No Project Alternative would eliminate the one significant and unavoidable impact of the Project. (Draft EIR, pp. 5-3.)

c. The No Project Alternative: *Finding*

While the No Project Alternative would result in fewer environmental impacts than the Project, the City finds this alternative infeasible and less desirable than the Project and rejects this alternative for the following “[s]pecific economic, legal, social, technological, or other considerations” which include project benefits such as the “provision of employment opportunities for highly trained workers” or other benefits of the Project that “make infeasible the ... project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).)

First, as explained below, the No Project Alternative would not meet the Project objectives to the same degree as the Project.

*Fiscal objectives.* Importantly, the No Project Alternative would not meet the fiscal goals of the Project to the same degree as the Project.

- It would not positively contribute to the local economy to the same degree as the Project.
- It would not create new job opportunities for local residents.
- It would not promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan.
- It would not generate increased tax revenues to accrue to the various agencies within the Project area.

As explained in the economic analysis performed for the Project, the Project is estimated to generate new store sales (in 2007 dollars) of \$8 million. These net new sales would allow the Walmart store to capture some of the sales leakages in the general merchandise and food store categories. (Draft EIR, pp. 4.11-28 to 4.11-30; see also Draft EIR, Appendix I.) This alternative would result in no increase in sales tax revenues for the City.

In addition, the No Project Alternative would result in no new job opportunities. The Project would be expected to increase store employment by 85 new jobs. The California Employment Development Department indicates that, as of September 2009, there were 3,900 unemployed persons in Milpitas and 104,400 unemployed persons in Santa Clara County. Given the nature of the job opportunities and the availability of labor, it would be expected that the new employment opportunities could be readily filled from the local labor force. (Draft EIR, p. 6.2; see also Final EIR, p. 4-1.)

*Land use objective.* The No Project Alternative would fail to meet the land use goal of the Project.

- It would not minimize travel lengths and utilize existing infrastructure to the maximum extent possible by expanding an existing Walmart store.

By adding a grocery component to the existing store and by extending the hours of operation, the Project may minimize travel lengths for customers that seek these services. Furthermore, the Project proposes to upgrade the existing store's elevations. The No Project Alternative fails to further these objectives.

*Retail need objectives.* The No Project Alternative would fail to meet some of the retail needs of the residents and would fail to achieve the Project objectives of meeting those needs.

- It would not enhance commercial retail opportunities available in the City of Milpitas to the same degree as the Project since it would not include a grocery component or 24-hour sales.
- It would not provide the market area with an affordable shopping alternative to bring a wide variety of products to the City of Milpitas as well as the surrounding communities to the same degree as the Project since it would not expand the store to include grocery sales.
- It would not provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment to the same degree as the Project since it would not include a grocery component or 24-hour sales.

The Project would offer 24-hour shopping opportunities for a variety of goods within the City. Not only would this meet an unmet demand, add to the convenience of the City's shoppers, and potentially reduce travel lengths for those shoppers, but it also would result in substantial additional sales taxes for the City. The No Project Alternative would fail to achieve these goals.

Moreover, the No Project Alternative would require the City to forego Project benefits. (See generally Section III.D below for a discussion of Project benefits.) Under the No Project Alternative, the City would not receive the substantial additional tax revenue from the Project and the public improvements associated with the Project would not be constructed.

For these reasons, the Planning Commission rejects this alternative as infeasible within the meaning of CEQA.

d. The 50-Percent Reduction Alternative: *Description of Alternative*

Under the 50-Percent Reduction Alternative, the Walmart store would be expanded by 9,500 square feet, which represents a 50% reduction in expansion square footage relative to the Project. The expanded store would total 141,225 square feet. Similar to the Project, the expanded store would retail groceries and general merchandise and operate 24 hours a day, 7 days a week. This alternative would reconfigure the parking lot to provide 706 off-street parking spaces, for a ratio of 5 spaces per 1,000 square feet. This represents a reduction of 45 spaces relative to the Project and a reduction of 129 spaces relative to existing conditions. The removed parking spaces would be replaced with additional landscaping and pedestrian facilities.

This alternative would maintain all of the Project’s vehicular access points and utility connections. (Draft EIR, p. 5-3.)

e. The 50-Percent Reduction Alternative: *Comparison to Project*

The 50-Percent Reduction Alternative was analyzed in Section 5.4 of the Draft EIR. (Draft EIR, pp. 5-4 to 5-9.) The 50-Percent Reduction Alternative would have the potential to generate fewer overall impacts on aesthetics, light and glare; air quality; noise; public services and utilities; and transportation relative to the Project. All other impacts would be similar to the Project. (Draft EIR, pp. 5-4 to 5-9.) However, the significant and unavoidable impact of the Project on transportation would persist, although the severity of the impacts would be less because it would generate fewer trips.

The following is a comparison of the Project and alternative, focusing on the significant and unavoidable impact of the Project. This alternative would generate 505 fewer daily trips relative to the Project, including 16 fewer weekday AM peak-hour trips and 61 fewer weekday PM peak-hour trips. While peak-hour trips would be reduced under this alternative, significant intersection operations, roadway operations, and queuing impacts would still occur, and the Project applicant would be required to mitigate for this impact by installing necessary improvements or providing impact fees. Although the mitigation would be similar, if not identical, to that of the Project, this alternative would be considered less severe because it would contribute fewer vehicular trips to intersections, roadways, and queues operating at unacceptable levels. (Draft EIR, p. 5-7.)

In sum, the 50-Percent Reduction Alternative would lessen the severity of impacts associated with aesthetics, light, and glare; air quality, noise; public services and utilities; and transportation, and would reduce the severity of the Project’s significant and unavoidable impact to transportation, but would not eliminate this impact. This alternative would have similar impacts on all other areas as the Project. (Draft EIR, pp. 5-8.)

f. The 50-Percent Reduction Alternative: *Finding*

While the 50-Percent Reduction Alternative would result in fewer environmental impacts than the Project, the City finds this alternative infeasible and less desirable than the proposed Project and rejects this alternative for the following “[s]pecific economic, legal, social, technological, or other considerations” which include Project benefits such as the “provision of employment opportunities for highly trained workers” or other benefits of the project that “make infeasible the ... project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).)

First, as explained below, the 50-Percent Reduction Alternative would not further the Project objectives to the same degree as the Project.

*Fiscal objectives.* The 50-Percent Reduction Alternative would not meet the fiscal objectives as well as the Project.

- It would not positively contribute to the local economy as much as the Project.

- It would not create as many new job opportunities for local residents.
- It would not promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan to the same extent as the Project.
- It would not generate as many tax revenues as the Project to accrue to the various agencies within the Project area.

This alternative would not meet the fiscal Project objectives as well as the Project. The economic analysis prepared for the Project indicates that this alternative would have \$6.9 million fewer sales relative to the Project. (Draft EIR, p. 5-8.) Thus, this alternative would provide a much smaller sales tax base than the Project. This alternative, therefore, would provide less money to the City's general fund, which is used to provide basic services such as police and fire protection.

*Land use objective.* The 50-Percent Reduction Alternative would not meet the land use objective as well as the Project. In particular, it would potentially create new impacts such as underutilization of land and inefficient use of existing infrastructure because the commercial opportunities of the site would be reduced. This would ultimately mean that commercial needs within the City would continue to go unmet to some extent, or that commercial uses that could be accommodated with a more dense development on site would be pushed elsewhere in the City. This could mean that many of the environmental impacts avoided by this alternative in the short term could occur under those development scenarios in the long term.

*Retail need objectives.* Given its smaller size, the 50-Percent Reduction Alternative would not enhance the retail opportunities in the region to the same degree as the Project.

- It would not enhance commercial retail opportunities available in the City of Milpitas to the same degree as the Project given its smaller size.
- It would not provide the market area with an affordable shopping alternative to bring a wide variety of products to the City of Milpitas as well as the surrounding communities to the same degree as the Project given its smaller size.
- It would not provide a retail establishment that serves local residents and visitors with essential goods and services to the same degree as the Project given its smaller size.

Given its smaller size, this alternative would not enhance the retail opportunities in the region to the same degree as the Project. This alternative would not provide the market area with as wide a variety of goods as the Project. It would also not add to the convenience of the City's shoppers and reduce travel lengths for those shoppers to the same degree as the Project.

Moreover, the 50-Percent Reduction Alternative would not provide the Project benefits to the same degree as the Project given its smaller size. (See generally Section III.D below for a discussion of Project benefits.) Under the 50-Percent Reduction Alternative, the City would not receive as much of the substantial tax revenue as from the Project and the public improvements associated with the Project would not be constructed to the same degree because of a loss of some development impact fees needed to fund traffic improvements. Additionally, the smaller alternative would result in fewer employment opportunities than the Project.

Finally, the 50-Percent Reduction Alternative is not supported by an actual application and therefore, would translate into the Project not moving forward. Also, it would likely result in underutilization of the site for a substantial period of time into the future. Under such a scenario, the City would not receive any additional tax revenue from the commercially zoned site for the foreseeable future. The alternative, then, is undesirable and infeasible from a policy standpoint.

For all of these reasons, the Planning Commission rejects this alternative as infeasible within the meaning of CEQA.

g. The Inline Retail/Restaurant Alternative: *Description of Alternative*

The Inline Retail/Restaurant Alternative consists of the development of 15,000 square feet of inline retail and restaurant uses in one building on the Walmart expansion pad. Retail (e.g., apparel, electronics, novelties, telecommunications) would occupy half the space and restaurant uses (e.g., quick-serve and sit-down) would occupy the other half. No food retailer tenants (e.g., grocery) would occupy the structure. The building would be attached to the south side of Walmart structure, but the tenants would operate independently of the Walmart. The Walmart store would remain unchanged and maintain its current hours of operation (7 a.m. to 11 p.m.). In total, there would be 146,725 square feet of developed uses on the Project site. Retail and restaurant uses are allowed under the current General Plan designation of General Commercial and zoning designation of General Commercial (C2); therefore, no land use designation changes would be necessary. This alternative would reconfigure the parking lot to provide 734 off-street parking spaces, for a ratio of 5 spaces per 1,000 square feet. This represents a reduction of 17 spaces relative to the Project and a reduction of 101 spaces relative to existing conditions. The removed parking spaces would be replaced with additional landscaping and pedestrian facilities. The main parking area would serve both the Walmart and the inline retail/restaurant uses. Two loading docks would be provided in the rear of the structure for the common use of all building tenants. (Draft EIR, pp. 5-8 to 5-9.)

h. The Inline Retail/Restaurant Alternative: *Comparison to Project*

The Inline Retail/Restaurant Alternative would have fewer impacts on aesthetics, light, and glare; public services and utilities; but greater impacts on air quality, noise, and transportation. The significant and unavoidable impacts on transportation would persist, although the severity of the impacts would be greater because the alternative would generate more PM peak hour trips. (Draft EIR, pp. 5-8 to 5-14.)

This alternative would generate 789 more daily trips relative to the Project, 15 fewer trips during the weekday AM peak hour, and 74 more trips during the weekday PM peak hour. Overall, there would be a substantial increase in traffic under the Inline Retail/Restaurant Alternative relative to the Project and, therefore, this alternative would create greater intersection, roadway segment, and queuing impacts. Although the mitigation would likely be similar, if not identical, to that of the Project, this alternative would have more severe impacts because it would contribute more vehicular trips to congested intersections and roadways during the PM peak hour. (Draft EIR, p. 5-12.)

In sum, the Inline Retail/Restaurant Alternative would create fewer impacts in some areas relative to the Project, but it would have greater impacts in others and would exacerbate the Project's significant and unavoidable impact, which would remain significant and unavoidable.

i. The Inline Retail/Restaurant Alternative: *Finding*

The Inline Retail/Restaurant Alternative would not result in fewer environmental impacts than the Project. In addition, the City finds this alternative infeasible and less desirable than the Project and rejects this alternative for the following “[s]pecific economic, legal, social, technological, or other considerations” which include Project benefits such as the “provision of employment opportunities for highly trained workers” or other benefits of the project that “make infeasible the ... project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).)

First, the Inline Retail/Restaurant Alternative would not meet the Project objectives to the same extent as the Project.

*Fiscal objectives.* The Inline Retail/Restaurant Alternative would not meet the fiscal objectives as well as the Project.

- It would not positively contribute to the local economy to the same degree as the Project because it would have \$3 million in fewer sales than the Project.
- It would not promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan to the same degree as the Project because it would have \$3 million in fewer sales than the Project.
- It would not generate as much tax revenue to accrue to the various agencies within the Project area because it would have \$3 million in fewer sales than the Project.

In addition, because the economic analysis prepared for the Project indicates that this alternative would have \$3 million fewer sales relative to the Project (Draft EIR, p. 5-14), this alternative would provide a smaller sales tax base than the Project.

*Land use objective.* The Inline Retail/Restaurant Alternative would not meet the land use objective as well as the Project. In particular, it would not minimize travel lengths and utilize existing infrastructure to the maximum extent possible because it would not include a

grocery component and 24-hour operations, which provide a one-stop shopping opportunity. It would also not result in an upgrade of the existing store's elevations, which would provide a high-quality architectural design that complements the existing design characteristics of the surrounding commercial uses and improves the aesthetics of the existing store.

*Retail need objectives.* Given its lack of a grocery component and 24-hour operations, the Inline Retail/Restaurant Alternative would not enhance the retail opportunities in the region to the same degree as the Project.

- It would not enhance commercial retail opportunities available in the City of Milpitas to the same degree as the Project given its lack of 24-hour operations.
- It would not provide the market area with an affordable shopping alternative to bring a wide variety of products to the City of Milpitas as well as the surrounding communities to the same degree as the Project given its lack of a grocery component and 24-hour operations.
- It would not provide a retail establishment that serves local residents and visitors with essential goods and services, in a safe and secure, 24-hour shopping environment to the same degree as the Project given its lack of a grocery component and 24-hour operations.

Further, given its lack of a grocery component and 24-hour operations, this alternative would not add to the convenience of the City's shoppers or reduce travel lengths for those shoppers to the same degree as the Project.

Moreover, the Inline Retail/Restaurant Alternative would not provide the Project benefits to the same degree as the Project given that it would generate fewer sales than the Project. (See generally Section III.D below for a discussion of Project benefits.) Under the Inline Retail/Restaurant Alternative, the City would not receive as much of the substantial tax revenue as from the Project.

Finally, the Inline Retail/Restaurant Alternative is not supported by an actual application and therefore, would translate into the Project not moving forward. Also, it would likely result in underutilization of the site for a substantial period of time into the future since there are no developers interested in the additional retail. Under such a scenario, the City would not receive any additional tax revenue from the commercially zoned site for the foreseeable future. The alternative, then, is undesirable and infeasible from a policy standpoint.

For all of these reasons, the Planning Commission rejects this alternative as infeasible within the meaning of CEQA.

#### 4. Environmentally Superior Alternative

CEQA requires the identification of the environmentally superior alternative in the EIR. The No Project Alternative would have the fewest environmental impacts. CEQA requires that if the No Project Alternative is the environmentally superior alternative, then the EIR must also identify another environmentally superior alternative among the remaining

alternatives. Because the 50-Percent Reduction Alternative achieves the greatest reductions in trip generation during both the AM and PM peak hour, it would be considered environmentally superior, as these are the periods when significant traffic impacts occur. Furthermore, the 50-Percent Reduction Alternative also lessens the severity of air quality and noise impacts, while the Inline Retail/Restaurant Alternative increases the severity of these impacts and, therefore, may result in new significant impacts. Therefore, the 50-Percent Reduction Alternative is the Environmentally Superior Alternative.

As discussed above, there are no feasible alternatives to the Project that would avoid or substantially lessen the significant and unavoidable impacts associated with the proposed Project.

N. Absence of Significant New Information Requiring Recirculation of Draft EIR

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

The Planning Commission recognizes that the Final EIR incorporates information obtained by the City since the Draft EIR was completed, and contains additions, clarifications, modifications, and other changes. Some comments on the Draft EIR either expressly or impliedly sought changes to proposed mitigation measures identified in the Draft EIR as well as additional mitigation measures. As explained in the Final EIR (Responses to Comments and

Errata), none of the suggestions were found to be appropriate and feasible and, thus, were not adopted in the Final EIR or included in the MMRP. (See, generally, Final EIR.)

Notably, CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) “CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.’ [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process.” (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.)

In sum, because none of the suggestions made in the Final EIR were found to be appropriate or feasible and therefore not adopted into the document, the Draft EIR does not need to be recirculated.

**EXHIBIT B****STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, the Planning Commission has balanced the economic, legal, social, technological, and other benefits of the proposed Milpitas Walmart Expansion Project against the significant and unavoidable impact associated with the proposed Project, and has adopted all feasible mitigation measures. The Planning Commission has also examined potentially feasible alternatives to the Project, none of which are feasible. The Planning Commission hereby adopts and makes the following Statement of Overriding Considerations regarding the significant and unavoidable impact of the Project and the anticipated economic, legal, social, technological, and other benefits of the Project.

A. Significant and Unavoidable Impact

Based on information contained in the Record and in the EIR, the Planning Commission has determined that the Project would result in a significant and unavoidable impact to transportation due to roadway operations. (Draft EIR, p. 4.10-74.)

B. Finding

The Planning Commission has considered all potentially feasible mitigation measures to substantially lessen or avoid the Project's significant and unavoidable impact. Where feasible, mitigation measures have been adopted as part of the Project. The imposition of these measures will reduce the identified impact, but not to a less-than-significant level. The Commission finds that it is not feasible to fully mitigate this Project impact.

The Planning Commission has also considered all potentially feasible alternatives to the Project. The Planning Commission finds that there are no feasible alternatives that would reduce the above significant and unavoidable impact to a less-than-significant level.

The Project's impact discussed above therefore remains significant and unavoidable.

C. Overriding Considerations

After review of the entire administrative record, including, but not limited to, the Final EIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the Planning Commission finds that specific economic, legal, social, technological and other anticipated benefits of the Project outweigh the significant and unavoidable impact, and therefore justify the approval of this Project notwithstanding the identified significant and unavoidable impact. (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093.) The benefits are addressed in detail in Section III.D below.

The Planning Commission specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible (including the incorporation of feasible mitigation measures), and finds that the remaining significant unavoidable impact of the Project, which is described above in Section III.A., are acceptable because the benefits of the Project set forth below in Section III.D. outweigh it. The Planning Commission finds that each of the overriding considerations expressed as benefits and set forth below in Section III.D. constitutes a separate and independent ground for such a finding. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Planning Commission will stand by its determination that each individual reason is sufficient by itself. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this Section (III), and in the documents found in the Record of Proceedings, as defined in Section II(C).

#### D. Benefits of the Project

The Planning Commission has considered the EIR, the public record of proceedings on the proposed Project and other written materials presented to and prepared by the City, as well as oral and written testimony received, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

##### 1. *The Project Would Strengthen the City's Tax Base.*

The Project would provide additional grocery and general retail opportunities. This will result in increased property values, property tax revenues, retail activity, and additional sales tax revenue from non-grocery transactions that would not otherwise take place on the site without the expansion. Sales tax revenues would go to the City's General Fund, which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, and public works.

##### 2. *The Project Would Create Diverse Employment Opportunities For City Residents.*

The Project would generate additional employment opportunities, including temporary construction jobs as well approximately 85 new permanent full-time and part-time jobs. The majority of the permanent jobs could be filled by existing local residents. Consequently, it is reasonably expected that the City and its residents would enjoy the economic and social benefits from added employment opportunities offered by the Project.

##### 3. *The Project Would Provide a High-Quality Development Design.*

The Project would provide high-quality architectural features and design elements that will enable the existing building and addition to better blend with the surrounding area and enhance the overall aesthetic quality of the area. The existing store's elevations will be upgraded to better reflect the California Ranch design theme of the surrounding commercial center.

4. *The Project Would Provide a Wide Variety of Goods and Services Desired By City Residents.*

The Project would provide a wide variety of grocery goods and services in one location. Although Walmart is a national retailer, it specifically tailors the merchandising mix of its individual stores in order to meet the demands and needs of the surrounding area.

5. *The Project Would Increase Retail Activity in an Area Designated for Commercial Growth*

The Project is located in an area designated for commercial growth in the Milpitas General Plan and the existing zoning, where economic viability can be sustained. The Project's convenient location next to Interstate 880 will utilize existing freeway infrastructure to the extent possible. Furthermore, the proposed grocery activities in the Project will complement existing smaller scale retail activities, thereby increasing overall retail activity in the Project area. The addition of groceries to a Walmart store tends to attract smaller retailers providing their own special services and goods. These smaller retailers see the benefit of locating near a Walmart store with a grocery component due to the increased customer activity in the area. This could benefit the overall shopping center and surrounding area.

6. *The Project Would Contribute to and Fund Needed Infrastructure Improvements.*

The Project would contribute to needed transportation infrastructure improvements by paying its fair share towards infrastructure improvements as well as by paying development impact fees. Amongst other things, the Project would contribute funds to the widening of the Dixon Landing Road, a need transportation improvement.

E. Determination and Adoption of Statement of Overriding Considerations

The Planning Commission has weighed the economic, legal, social, technological, and other benefits of the proposed Project, as set forth above in Section III.D, against the significant unavoidable impacts of the Project identified in the EIR (and discussed above in Section III.A).

The Planning Commission hereby determines that those benefits outweigh the risks and adverse environmental impacts of the Project, and further determines that the Project's significant unavoidable impacts are acceptable.

Accordingly, the Planning Commission adopts the Statement of Overriding Considerations, recognizing that significant unavoidable impacts will result from implementation of the Project. Having (i) adopted all feasible mitigation measures, as discussed in the Environmental Impact Report; (ii) rejected alternatives to the Project, as discussed in the Environmental Impact Report; and (iii) recognized the significant unavoidable impacts of the Project, the Planning Commission hereby finds that each of the separate benefits of the proposed Project, as stated herein, is determined to be unto itself an overriding consideration, independent of other benefits, that warrants approval of the Project and outweighs and overrides its

significant unavoidable impacts, and thereby justifies the approval of the Milpitas Walmart Expansion Project.

## **Exhibit C**

# **MITIGATION MONITORING AND REPORTING PROGRAM**

**Mitigation Monitoring and Reporting Program  
for the  
Milpitas Walmart Expansion Project  
City of Milpitas, Santa Clara County, California**

**State Clearinghouse No. 2009032018**

Prepared for:



**City of Milpitas**

Planning and Neighborhood Services Department  
455 E. Calaveras Boulevard  
Milpitas, CA 95035  
Phone: 408.586.3279

Contact: Cindy Hom, Assistant Planner

Prepared by:

**Michael Brandman Associates**

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2633 Camino Ramon, Suite 460  
San Ramon, CA 94583  
925.830.2733

Contact: Jason Brandman, Project Director



Michael Brandman Associates

February 18, 2010



**Table 1: Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<b>1. Aesthetics, Light, and Glare</b>					
<b>MM AES-1a:</b> Prior to issuance of building permits, the project applicant shall prepare and submit a sign program to the City of Milpitas for review and approval. The sign program shall demonstrate compliance with the applicable requirements with Milpitas Municipal Code Title XI, Chapter 30. The approved sign program shall be implemented into the proposed project.	Approval of plans	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
<b>MM AES-1b:</b> Prior to issuance of grading or building permits, whichever comes first, the project applicant shall obtain a tree removal permit from the City of Milpitas for any trees slated for removal with a trunk circumference of 37 inches or more measured at 4.5 feet above ground level. Replacement of such trees shall be performed in accordance with the requirements of the Tree Maintenance and Protection Ordinance. Removed trees that are not covered by the Tree Maintenance and Protection Ordinance (i.e., less than 37 inches in circumference at 4.5 feet above ground level) shall be replaced onsite with a similar tree species at no less than a 1:1 ratio. All replacement trees shall be planted prior to the issuance of the final certificate of occupancy.	Issuance of permit; Site inspection	Prior to issuance of grading or building permits (whichever comes first); Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department and Public Works Department		
<b>MM AES-1c:</b> Prior to issuance of the final certificate of occupancy, the project applicant shall do one of the following: 1) permanently remove all shipping containers from the project site; or 2) obtain a minor Site Development Permit Approval and install screening measures in accordance with Zoning Ordinance requirements. If the second option is pursued, outdoor storage of containers shall occur in a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum 6 feet in height and outside any front or street side yard setback area.	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<p><b>MM AES-2:</b> Prior issuance building permits, the project applicant shall ensure that all exterior lighting fixtures associated with the Walmart store (building-mounted and freestanding) are shielded, recessed, or directed downward to prevent unwanted illumination of neighboring properties.</p>	Approval of plans	Prior issuance building permits	City of Milpitas Planning and Neighborhood Services Department		
<p><b>2. Air Quality</b></p>					
<p><b>MM AIR-3:</b> The following measures shall be implemented during all construction activities:</p> <ul style="list-style-type: none"> <li>• Water all active construction areas and exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least two times per day.</li> <li>• Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.</li> <li>• Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</li> <li>• Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.</li> <li>• Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li> <li>• All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.</li> <li>• All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of</li> </ul>	Site inspection	During construction activities	City of Milpitas Building and Safety Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<p>Regulations). Clear signage shall be provided for construction workers at all access points.</p> <ul style="list-style-type: none"> <li>All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</li> <li>Post a publicly visible sign with the telephone number and person to contact at the City of Milpitas regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number of the Bay Area Air Quality Management District shall also be visible to ensure compliance with applicable regulations.</li> </ul>					
<p><b>MM AIR-7a:</b> The project applicant shall use paving materials with increased solar reflectivity in areas where pavement is replaced. Such materials shall use light-colored aggregate or other appropriate methods to achieve high solar reflectivity. The applicant shall provide construction details and specifications that shall be submitted with construction drawings and installed with improvements.</p>	Approval of plans and site inspection	Prior to issuance of Building Permit	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM AIR-7b:</b> Prior to issuance of the final certificate of occupancy, the project applicant shall post signs in the Walmart loading docks advising truck drivers to turn off engines when not in use and advising truck drivers of state law prohibiting diesel idling of more than 5 minutes.</p>	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM AIR-7c:</b> Prior to issuance of the final certificate of occupancy, the applicant shall do the following:</p> <ul style="list-style-type: none"> <li>Prior to building permit issuance, a secondary closed loop system shall be evaluated and implemented, if found to be technically and economically feasible. Details and</li> </ul>	Approval of plans; Site inspection; ongoing	Prior to issuance of the building permit; ongoing.	City of Milpitas Planning and Neighborhood Services Department and		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<p>specifications shall be included with the construction drawings.</p> <ul style="list-style-type: none"> <li>The project applicant shall maintain the refrigeration system at least once per year to ensure that refrigerant leaks remain minimal. The maintenance records shall be kept onsite for review by the City of Milpitas.</li> <li>During installation of the new refrigerators and freezers, effort shall be made to reuse the existing refrigerants in the new system, unless the old refrigerant is not the same type as is proposed in the new system or more leakage would occur if the refrigerants are reused.</li> </ul>			Building and Safety Department		
<p><b>MM AIR-7d:</b> Prior to issuance of the final certificate of occupancy, the project applicant shall provide the following Transportation Demand Management measures:</p> <ul style="list-style-type: none"> <li>Public transit information in the employee breakroom. Store management shall post information such as Santa Clara Valley Transportation Authority bus and light rail schedules, maps, and fares.</li> <li>Ride sharing information in the employee breakroom. Store management shall facilitate ride sharing by providing sign-up sheets or other measures to allow interested employees to identify carpooling opportunities.</li> <li>Bicycling information. Store management shall post information such as bicycle route maps and information about taking bikes on public transportation.</li> </ul>	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM AIR-7e:</b> To reduce construction related greenhouse gas impacts, the following measures are required:</p> <ul style="list-style-type: none"> <li>At least 15 percent of the construction vehicles/equipment shall be fueled by an alternative source such as biodiesel and/or electric.</li> </ul>	Submittal of documentation	During construction activities	City of Milpitas Planning and Neighborhood Services Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<ul style="list-style-type: none"> <li>At least 10 percent of all building materials shall be local (within 100 miles); and</li> <li>At least 50 percent of construction and demolition materials shall be recycled. This latter provision shall be coordinated with Mitigation Measure PSU-6a.</li> </ul>					
<b>3. Biological Resources</b>					
<p><b>MM BIO-1:</b> If vegetation removal associated with development of the property is to occur during the nesting bird season (February 15 through August 31), a qualified biologist shall conduct a pre-construction survey for nesting birds to identify any potential nesting activity. The pre-construction surveys for nesting birds shall be conducted within 14 days prior to any construction-related activities (grading, ground clearing, etc.). If nesting birds are identified on the site, a 100-foot buffer shall be maintained around the nests; no construction-related activities shall be permitted within the 100-foot buffer. A qualified biologist shall monitor the nests, and construction activities may commence within the buffer area at the discretion and presence of the biological monitor. The pre-construction survey for nesting birds shall not be required if construction activities occur outside of the nesting bird season (September 1 through February 14).</p>	Submittal of documentation; Site inspection	Within 14 days prior to any construction-related activities during the nesting bird season (February 15 through August 31)	City of Milpitas Planning and Neighborhood Services Department		
<b>4. Geology, Soils, and Seismicity</b>					
<p><b>MM GEO-1a:</b> Prior to issuance of building permits, the project applicant shall submit a seismic hazards technical study prepared by a qualified geotechnical engineer to the City of Milpitas for review and approval. The report shall be prepared in accordance with the requirements of the Seismic Hazards Mapping Act and shall identify necessary design measures to reduce potential seismic ground shaking impacts to acceptable levels. The</p>	Approval of plans	Prior to issuance of building permits	City of Milpitas Building and Safety Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
project applicant shall incorporate the approved design measures into the project plans.					
<b>MM GEO-1b:</b> Prior to issuance of building permits, the project applicant shall submit a design-level geotechnical investigation to the City of Milpitas for review and approval. The design-level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the project design.	Approval of plans	Prior to issuance of building permits	City of Milpitas Building and Safety Department		
<b>MM GEO-1c:</b> Prior to issuance of building permits, the project applicant shall submit plans to the City of Milpitas for review and approval that demonstrate that the proposed project is designed in accordance with all state and local seismic safety requirements. Such requirements shall include the California Building Standards Code and Milpitas Municipal Code, Title II. The approved plans shall be incorporated into the project design.	Approval of plans	Prior to issuance of building permits	City of Milpitas Building and Safety Department		
<b>MM GEO-4:</b> During grading and construction, the project applicant shall adhere to all applicable recommendations for abating expansive soil conditions contained in the Geotechnical Engineering Investigation or comparable geotechnical study. This includes the excavation of expansive soils and the subsequent replacement of such soils with non-expansive engineered fill.	Site inspection	During grading and construction	City of Milpitas Building and Safety Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<b>6. Hydrology and Water Quality</b>					
<p><b>MM HYD-1:</b> Prior to the issuance of grading permits for the proposed project, the applicant shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Milpitas that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation and maintenance, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Temporary erosion control measures shall be employed for disturbed areas.</li> <li>• No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.</li> <li>• Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.</li> <li>• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.</li> <li>• BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the RWQCB to determine adequacy of the measure.</li> <li>• In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.</li> </ul>	Approval of plan	Prior to the issuance of grading permits	City of Milpitas Planning and Neighborhood Services Department and Engineering Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<p><b>MM HYD-2:</b> Prior to the issuance of building permits for the proposed project, the project applicant shall submit a stormwater management plan to the City of Milpitas for review and approval. The stormwater management plan shall comply with the requirements of Milpitas Municipal Code Title XI, Chapter 16 and identify pollution prevention measures and practices to prevent polluted runoff from leaving the project site. Examples of stormwater pollution prevention measures and practices to be contained in the plan include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Strategically placed bioswales and landscaped areas that promote percolation of runoff</li> <li>• Pervious pavement</li> <li>• Roof drains that discharge to landscaped areas</li> <li>• Trash enclosures with screen walls</li> <li>• Stenciling on storm drains</li> <li>• Curb cuts in parking areas to allow runoff to enter landscaped areas</li> <li>• Rock-lined areas along landscaped areas in parking lots</li> <li>• Catch basins</li> <li>• Oil/water separators</li> <li>• Regular sweeping of parking areas and cleaning of storm drainage facilities</li> <li>• Employee training to inform store personnel of stormwater pollution prevention measures</li> </ul> <p>The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.</p>	Approval of plan	Prior to the issuance of building permits	City of Milpitas Planning and Neighborhood Services Department and Engineering Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<b>9. Public Services and Utilities</b>					
<p><b>MM PSU-3:</b> Prior to building permit issuance, the project applicant shall include details and specification in the construction drawings and install the following indoor water conservation measures:</p> <ul style="list-style-type: none"> <li>• Low-flow or ultra-low-flow toilets and urinals</li> <li>• Sensor-activated faucets in restrooms</li> </ul>	Approval of plans	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department, Building and Safety Department and Engineering Department		
<p><b>MM PSU-6a:</b> Prior to the commencement of construction activities, the project applicant shall retain a qualified contractor to perform construction and demolition debris recycling. The project applicant shall provide documentation to the satisfaction of the City of Milpitas demonstrating that construction and demolition debris was recycled.</p>	Submittal of documentation	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM PSU-6b:</b> Prior to building permit issuance, the project applicant shall show onsite facilities necessary to collect and store recyclable materials. The facilities shall include receptacles in public spaces that are of high-quality design and identify accepted materials.</p>	Approval of plans; Site inspection	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<b>10. Transportation</b>					
<p><b>MM TRANS-1a:</b> Prior to the issuance of building permits, the project applicant shall provide fair-share fees to the City of Milpitas for improvements to the Dixon Landing Road/N. Milpitas Boulevard intersection and the widening of Dixon Landing Road in the amount of \$31,960 (\$3,000 for the intersection improvement and \$28,960 for the roadway widening). The fees will go towards the following intersection improvements: 1) modifying the signal operation to include a southbound right-turn overlap and subsequent signal timing optimization or 2) adding a northbound left turn lane, a southbound right-turn lane, and eastbound left-turn and right-turn lanes. The widening shall consist of adding an additional lane in each direction between I-880 and N. Milpitas Boulevard. Both improvements are identified in the Valley Transportation Plan 2035.</p>	Receipt of fees	Prior to the issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM TRANS-1b:</b> Prior to the issuance of final certificate of occupancy, the project applicant shall provide the City of Milpitas the full cost of signal timing modifications at the N. McCarthy Boulevard/Ranch Drive (south) intersection in the estimated amount of \$2,500 dollars. The modifications shall consist of re-timing the signal to increase the current cycle length. This mitigation measure shall not apply if the signal timing is modified prior to the applicant seeking the final certificate of occupancy.</p>	Receipt of fees	Prior to the issuance of final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		
<p><b>MM TRANS-3:</b> Prior to issuance of building permits, the project applicant shall provide a traffic management fee in the amount of \$180,000 to the City of Milpitas. The fees shall be used for circulation and traffic operation improvements within the City of Milpitas, including signal coordination and intersection improvements. Specific improvements that shall be</p>	Receipt of fees	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
<p>fully funded by funds collected shall include:</p> <ul style="list-style-type: none"> <li>• McCarthy Boulevard/Technology Drive: The eastbound approach shall be re-striped to provide two left-turn lanes and one shared through/right lane.</li> <li>• McCarthy Boulevard/SR-237 Westbound Ramps: An additional westbound right-turn lane shall be constructed to provide two left-turn lanes, two through lanes, and two right-turn lanes for the westbound approach.</li> <li>• Ranch Drive: The roadway shall be restriped to extend the existing two-way left-turn lane from the northern Walmart driveway to the end of the existing westbound left-turn lane at the McCarthy Boulevard/Ranch Drive (North) intersection.</li> </ul>					
<p><b>MM TRANS-5:</b> Prior to issuance of building permits, the project applicant shall prepare and submit a site plan to the City of Milpitas that demonstrates that off-street parking is provided onsite complies with the Milpitas Municipal Code Parking Regulations and Development Standards. The approved site plan shall be incorporated into the proposed project.</p>	<p>Approval of plan (Note: Project plans submitted comply with the City’s off-street parking requirements)</p>	<p>Prior to issuance of building permits</p>	<p>City of Milpitas Planning and Neighborhood Services Department</p>		
<p><b>MM TRANS-8:</b> Prior to building permit issuance, the project applicant shall provide details and specifications for bicycle storage facilities on the construction drawings and install prior to occupancy. Bicycle storage facilities shall consist of at least one rack located in a visible and convenient location (e.g., near the store entrance) and that provides storage equivalent to 2 percent of the proposed project’s minimum parking requirement.</p>	<p>Approval of plans; Site inspection</p>	<p>Prior to issuance of the final certificate of occupancy</p>	<p>City of Milpitas Planning and Neighborhood Services Department</p>		
<p><b>MM TRANS-9:</b> Prior to commencement of construction activities, the project applicant shall submit a Construction Traffic Control Plan to the City of Milpitas for review and approval. The plan shall identify the timing and routing of all major construction equipment and materials deliveries to avoid</p>	<p>Approval of plan</p>	<p>Prior to commencement of construction activities</p>	<p>City of Milpitas Planning and Neighborhood Services Department</p>		

**Table 1 (cont.): Milpitas Walmart Expansion Project Mitigation Monitoring and Reporting Program**

Mitigation Measures	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
potential traffic congestion and delays on the local street network and the McCarthy Ranch Marketplace, and to encourage the use of I-880 and SR-237. If necessary, construction equipment and materials deliveries shall be limited to off-peak hours (e.g., mornings or evenings) to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.					

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DENYING  
CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0002, SITE DEVELOPMENT  
PERMIT AMENDMENT NO. SA09-0003, WALMART EXPANSION PROJECT, A REQUEST  
TO ALLOW FOR AN 18,457 SQUARE FOOT BUILDING EXPANSION TO ACCOMMODATE  
GROCERY AND ALCOHOL SALES AND FOR THE INSTALLATION OF RELATED  
BUILDING AND SITE IMPROVEMENTS FOR THE PROPERTY LOCATED AT 301 RANCH  
DRIVE (APN 22-29-016), MILPITAS, CA 95035.**

**WHEREAS**, on January 26, 2009, Walmart Stores, Inc., submitted an application to the City of Milpitas for an amendment to its current site development permit to allow for an 18,457 square foot building expansion, remodel of the exterior building façade, installation of associated site improvements, replacement of existing signage with Walmart’s new corporate branding, and an amendment to its current conditional use permit to allow for grocery and alcohol sales. The property is located within the General Commercial Zoning District and Site and Architectural Overlay (C2-S); and

**WHEREAS**, on March 24, 2010, the Milpitas Planning Commission held a duly noticed public hearing on the Project’s development application and approved the application, subject to conditions of approval; and

**WHEREAS**, on April 1, 2010, the Milpitas Coalition for a Better Community filed an appeal of the Planning Commission approval. The City Council reviewed the application for hearing de novo and held a duly noticed public hearing on the matter on June 1, 2010 and considered public testimony and reviewed various written submissions and materials and the underlying record.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. 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.
2. The project is inconsistent with the Milpitas General Plan as follows:
  - a. The project does not encourage stable and balanced economic pursuits which strengthen and promote development, contrary to Policy 2.a-I-3.
  - b. The project does not promote a strong economy which provides economic opportunities for all Milpitas residents within the existing environmental, social fiscal and land use constraints, contrary to Policy 2.a-I-5.
  - c. The project does not promote the creation of a balanced economic base that can resist downturns in any one economic sector, contrary to Policy 2.a-I-6.
  - d. The project does not provide opportunities to expand total employment in Milpitas and promote business retention, contrary to Policy 2.a-I-7.
  - e. The project does not foster community pride and growth through sufficient beautification of existing development, contrary to Policy 2.a-I-10.
  - f. The project would draw community, economic and business focus away from Town Center and Midtown, contrary to General Plan.

3. The proposed location of the project will be injurious or detrimental to property, improvements, and/or the public health, safety, and general welfare. The project would cause urban decay and neighborhood deterioration impacts that cannot be adequately mitigated through conditions of approval.
4. Based on the foregoing findings and the evidence in the record, the City Council hereby denies the application for Conditional Use Permit Amendment No. UA09-0002 and Site Development Permit Amendment No. SA09-0003.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
DENYING CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE  
WALMART EXPANSION PROJECT AND THE ADOPTION OF OVERRIDING  
CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, an application has been submitted to expand and alter the existing 131,725 square-foot Walmart store in the McCarthy Ranch Marketplace in Milpitas, California, by a maximum of 19,000 additional square feet, thereby allowing amongst other actions the addition of a new grocery sales area and grocery stockroom space, the reduction of the total number of vehicular parking from 835 spaces to 779 spaces, and 24 hours-a-day, 7 days-a-week operation. These actions are collectively referred to as the “Project”; and

**WHEREAS**, the City determined that an Environmental Impact Report (“EIR”) would be required for the Project and circulated a Notice of Preparation dated March 4, 2009 to public agencies and interested parties for consultation on the scope of the EIR; and

**WHEREAS**, the City prepared and circulated a Draft Environmental Impact Report (“Draft EIR”) dated November 5, 2009 and a Final EIR (SCH No. 2009032018), dated February 18, 2010; and

**WHEREAS**, on March 23, 2010, the Milpitas Planning Commission certified the Final EIR, subject to related mitigation findings, findings regarding alternatives, and a Statement of Overriding Considerations with regards to significant unavoidable adverse roadway operations (traffic) impacts; and

**WHEREAS**, on April 1, 2010, the Milpitas Coalition for a Better Community filed an appeal of the Planning Commission approval of the EIR certification and the Project entitlements; and

**WHEREAS**, the City Council reviewed the application for hearing de novo and held a duly noticed public hearing on the matter on June 1, 2010 and considered public testimony and reviewed various written submissions and materials and the underlying record.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. 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.
2. The EIR for the Walmart Expansion Project has not been completed in accordance with CEQA and the state CEQA Guidelines and does not adequately describe the environmental impacts of the proposed project in the following areas and ways:
  - a. An EIR must disclose and analyze the direct and the reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (CEQA Guidelines §§ 15126.2, 15064(d)(3).) The EIR presented to the City Council is incomplete and does not adequately disclose and analyze the urban decay impacts of the Project.

3. There are insufficient anticipated economic, legal, social, technological, or other benefits from this Project that would justify an override of the roadway operations (traffic) impacts of the Project that cannot be reduced to a level of less than significant. This finding is based in part, but is not limited to, consideration of the specific project location and setting, project characteristics, surrounding uses and/or the community setting. Amongst other things, the City Council finds that the need for additional and expanded grocery sales at the project location, in view of existing and planned residential and commercial development in the area, is limited and does not override the negative environmental traffic impacts of the project.
4. The request for certification of the EIR as complete and adequate is hereby DENIED by the City Council.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney