

November 2, 2011

Writer's Direct Contact
415.268.7246
CCarr@mofocom

Via Email (sahsing@ci.milpitas.ca.gov)

Sheldon S. Ah Sing, Senior Planner
City of Milpitas
Sheldon S. Ah Sing, Senior Planner
455 East Calaveras Boulevard
Milpitas, California 95035

Re: Harmony Development & Trade Zone Boulevard Rezone Project (APN's: 086-41-022, 086-41-016, 017, 086-41-020, 201, and 022)

Dear Mr. Ah Sing:

I am writing on behalf of DR Horton, applicant for the Harmony Development & Trade Zone Boulevard Rezone Project (APN's: 086-41-022, 086-41-016, 017, 086-41-020, 201, and 022) (collectively the "Harmony Project"), in response to letters sent by Richard Drury, counsel to Carpenters Local Union Number 405 (the "Carpenters Union") on September 27, 2011, and October 25, 2011, commenting on the City's compliance with the California Environmental Quality Act ("CEQA") for the Harmony Project.

The Union mischaracterizes the City's compliance with CEQA. The Union claims that the City proposes to "exempt the Project entirely from all CEQA review." That is simply incorrect. The City is not proposing to circumvent environmental review for this Project, but rather is merely acknowledging that the extensive analysis conducted for the Transit Area Specific Plan EIR ("TASP EIR") already covers the Project. Indeed, this is not an "exemption" at all, but rather a finding that prior environmental analysis adequately describes the activity for purposes of CEQA, as expressly provided in CEQA Guideline section 15168.

In an effort to balance the goals of full disclosure and efficiency, CEQA includes several mechanisms for streamlining environmental review, particularly in situations such as the present one where a project implements a previously reviewed program. A Program EIR is one such mechanism, and under the CEQA Guidelines a Program EIR may render unnecessary the preparation of subsequent environmental documents. Cal. Code Regs. tit. 14, § 15168(c)(5). Our October 19, 2011 letter fully documented the propriety of the Program EIR approach and the ways it can be used for specific projects that implement a

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broader program. In general, if the lead agency determines that a project is within the scope of a Program EIR and the project will have no new effects, “no new environmental document would be required.” *Id.* § 15168(b)(2). This procedure does not undermine public participation or disclosure of environmental impacts. To the contrary, it ensures that all projects receive comprehensive environmental review.

The Union’s contention that the City’s years of planning and environmental analysis should be ignored is without merit and should be rejected. The City has implemented CEQA precisely as it was designed and the Union’s assertions to the contrary ignore relevant provisions of the statute, Guidelines, and case law. CEQA’s goal of informed decision-making would not be furthered by simply generating more paper and redundant studies that fail to provide any new meaningful information on the Project.

The Specific Plan is the Result of Years of Planning and Extensive Public Input

The Harmony Project is but one piece of the program of development contemplated by the Transit Area Specific Plan. Arriving at that approval of the Specific Plan was the result of numerous of public hearings, extensive public comments, and hundreds of pages of environmental analysis. As those documents demonstrate, approval of the Specific Plan by the City Council occurred only after an exhaustive dialogue with the community and disclosure and mitigation of environmental impacts. The Staff Report for the Specific Plan summarized this process as follows:

The TASP was created in two phases. Conceptual Visioning Plans were completed in Phase 1 after a series of interviews with property owners and developers (the stakeholders), a design workshop and charrette, and a community meeting. The Planning Commission reviewed the concepts at both meetings in March 2005 and recommended the City Council initiate Phase II to start work on the specific plan to further study two of the concepts. The Council approved those recommendations in April 2005.

The two concepts were further refined after another series of stakeholder interviews and detailed land use plans, fiscal impact analysis, and other background studies were prepared. The concepts had evolved into two alternatives that were presented to the City Council in May 2006:

1. Draft Preferred Plan which included 7,185 residential units, 813,343 square feet of office space, 520,026 square feet of retail space, and 175,500 square feet of hotel space.
2. Draft Preferred Plan – Reduced Residential Alternative which included 5,601 residential units, 762,732 square feet of office

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space, 470,795 square feet of retail space, and 175,500 square feet of hotel space.

The Council selected the Draft Preferred Plan with the higher density to support the existing and planned transit facilities in the area and to support further retail growth.

A number of issues surfaced after further economic analysis and additional feedback from the stakeholder group which lead to a reduction in the number of residential units from 7,185 to 7,109, a reduction in the amount of retail space from 520,026 to 287,075 square feet, and an increase in the amount of office space from 813,343 to 993,843 square feet. The City Council approved these changes at their December 19, 2006 meeting. The Draft Environmental Impact Report and draft Specific Plan were released for public review in November 2007.

The Harmony Project is consistent with and implements the Specific Plan. In fact, not only is the Harmony Project consistent with the overall vision in the Specific Plan, but by reducing the density and intensity of use, its environmental impacts are less than those assumed in the TASP EIR. Because the City has already exhaustively reviewed the environmental impacts associated with the Specific Plan, it is at best disingenuous, and certainly misleading, for the Union to assert that the City is attempting to short circuit the environmental review process. The City's proposed course of action is exactly how CEQA is intended to function.

The TASP EIR was Prepared as a Program EIR

Recognizing the significant benefits of the Program EIR approach, the City certified the Transit Area Specific Plan Environmental Impact Report ("TASP EIR") as a "Program" EIR pursuant to CEQA Guideline 15168. The TASP EIR expressly contemplated that the City could rely on the TASP EIR for individual projects in certain circumstances:

As a program EIR, this document focuses on the overall effects of the proposed Transit Area Plan. When specific development proposals for the Transit Area are submitted to the City, the City will determine whether the environmental effects of the proposed projects are addressed by this EIR. **If the City finds that the proposals would not result in any additional environmental impacts beyond those considered in this EIR, no new environmental analysis would be required.** If the City determines that a project would create potential environmental impacts not studied in this EIR, or that

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environmental conditions have changed substantially since the EIR was prepared, the City could require further environmental review to determine appropriate revisions to the project, conditions of approval, or mitigation measures.

TASP EIR at E-1 (emphasis added). Accordingly, it is appropriate to use the TASP EIR for projects contemplated, described and analyzed in the TASP EIR. Indeed, given the City's investment of time and resources in developing the TASP EIR as a programmatic document, the public interest commends using it as a Program EIR for projects falling within its scope.

The Harmony Project Falls Within the Scope of the TASP EIR

In our letter submitted to the City on October 19, 2011, we provided a brief analysis demonstrating that the Harmony Project is within the scope of the TASP EIR and will have no new significant effects and that, as a result, it is proper for the City to rely on the TASP EIR when approving the Harmony Project. For the City's consideration, we respectfully submit further analysis more fully documenting that the impacts associated with the Harmony Project have been properly analyzed. This analysis clearly demonstrates that the standards under CEQA Guideline 15168(c) allowing a program EIR to be used for a subsequent activity are present here and the City should proceed with finding that the Harmony Project is covered by the TASP EIR.

The Harmony Project's Greenhouse Gas Emissions Are Below Significance Thresholds

Although the attached checklist confirms that no further analysis is required, ENVIRON conducted an analysis of the Harmony Project's greenhouse gas emissions and confirmed that its emissions are below the threshold recently adopted by the Bay Area Air Quality Management District ("BAAQMD") in its latest CEQA Guidance. Using the latest methodologies and models, ENVIRON found that the Harmony Project's operational greenhouse gas emissions will be 3.5 metric tons (MT) of CO₂e per service person (SP) per year, below the Bay Area Air Quality Management District's threshold of 4.6 MT per SP per year. ENVIRON's report is enclosed with this letter. Therefore, independent of the TASP EIR, and though not it is not necessary to demonstrate, the analysis shows that the Harmony Project will not have a significant climate change related impact.

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We appreciate your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher J. Carr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher J. Carr

Enclosures