

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE 2013 STORM
DRAIN MASTER PLAN AND ADOPTING A MITIGATION MONITORING AND REPORTING
PROGRAM PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND
APPROVING THE 2013 STORM DRAIN MASTER PLAN**

WHEREAS, the City of Milpitas (“City”) proposes to approve and implement the 2013 Storm Drain Master Plan (“Project”) which defines the storm drain system improvements necessary to accommodate the City’s projected build-out based on the City’s General Plan, and other land use changes throughout the City; and

WHEREAS, the Planning Division completed an environmental assessment and prepared an Initial Study (“IS”) for the Project in accordance with the California Environmental Quality Act (“CEQA”) and the Initial Study/Mitigation Negative Declaration concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce the significant effects to less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and

WHEREAS, the City is the lead agency on the Project, and the City Council is the decision-making body for the proposed Project; and

WHEREAS, pursuant to the CEQA, a Notice of Intent (“NOI”) dated September 9, 2013 was circulated (also identified as State Clearing House No 2013092017) for review by public agencies and interested parties; and

WHEREAS, the NOI to adopt an Initial Study/Mitigated Negative Declaration was circulated for the required 30-day public review and comment period, from September 9, 2013 to October 8, 2013; and

WHEREAS, City staff reviewed all comments received on the proposed Initial Study/Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program (“MMRP”) has been prepared to ensure monitoring and implementation of the mitigation measures set forth in Exhibit A; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related MMRP for the Project and intends to take actions on the Project in compliance with CEQA and State and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and the MMRP for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code; and

WHEREAS, on November 5, 2013, the City Council held a properly noticed public hearing to consider adoption of the Initial Study/Mitigated Negative Declaration and approval of the Project.

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 following findings are made and directions given:
 - A. That the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan has been completed in compliance with CEQA and the CEQA Guidelines.
 - B. That the Initial Study/Mitigated Negative Declaration for the 2013 Storm Drain Master Plan was presented to the City Council, which reviewed and considered the information contained therein prior to approving the Project.
 - C. That the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan reflects the City's independent judgment and analysis of 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's Public Works Director, located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.
3. The City Council adopts the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan and the Mitigation Monitoring and Reporting Program. A copy of the Mitigation Monitoring and Reporting Program is attached hereto as Exhibit A.
4. The City Council hereby approves the 2013 Storm Drain Master Plan dated July 2013 on file with the City's Public Works Director, located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035. The 2013 Storm Drain Master Plan is, by this reference, incorporated into this Resolution as if fully set forth herein.

PASSED AND ADOPTED this _____ day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Exhibit A

Mitigation Monitoring and

Reporting Program

for the

City of Milpitas

Milpitas Storm Drain Master Plan

**MITIGATION MONITORING AND REPORTING PROGRAM
CITY OF MILPITAS STORM DRAIN MASTER PLAN**

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
AIR QUALITY			
<p>Standard Measure: Water all active construction areas (i.e., all paved access roads, parking areas, and staging areas) at least twice daily and more often during windy periods to prevent visible dust from leaving the site and being carried onto adjacent public streets. Water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality. Active areas adjacent to existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Notify residents in the vicinity that could be affected by project grading sufficiently prior to construction activities. A construction monitor will be appointed to respond to questions and complaints and will take corrective action within 48 hours.</p>	Prior to construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of freeboard</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites, and inactivate construction areas (previously graded areas inactive for 10 days or more).</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
Standard Measure: Enclose, cover, and/or water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.	During all phases of construction	Contractor	City of Milpitas Department of Public Works
Standard Measure: Install sandbags or other erosion control measures to prevent silt runoff to public roadways.	During all phases of construction	Contractor	City of Milpitas Department of Public Works
Standard Measure: Replant vegetation in disturbed areas as quickly as possible.	After construction	Contractor	City of Milpitas Department of Public Works
BIOLOGICAL RESOURCES			
MM BIO-1.1: The project will be subject to individual biological resource surveys completed by qualified biologists at each debris basin location to determine the presence of special status species and/or habitat and potential impacts. If significant biological resource impacts are identified, the biological resource surveys will include mitigation measures that shall be implemented to reduce these impacts, as necessary.	Prior to construction at debris basin locations	Qualified biologist	City of Milpitas Department of Public Works
MM BIO-2.1: Once the proposed outfall improvements are identified, the project will be subject to individual biological resource surveys completed by qualified biologists at each outfall location to determine the presence of special status species and/or habitat and potential impacts. If significant biological resource impacts are identified, the biological resource surveys will include mitigation measures that shall be implemented to reduce these impacts, as necessary. Mitigation	Prior to construction of outfall improvements	Qualified biologist	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>measures could include at least the following:</p> <ul style="list-style-type: none"> • To minimize impacts to aquatic species, construction within the channels would be restricted to the dry season. • No construction-related or earthen material will be allowed to enter into or be placed where it may be washed by rainfall or runoff into the channels. • To protect water quality in the channels, the project would conform to the California Stormwater Quality Association’s Stormwater Best Management Practice (BMP) Handbook for New and Redevelopment. Implementation of the water quality protection BMPs, including installation of silt fencing between the project and the creek, would prevent adverse impacts to water quality in the creek and minimize potential impacts to aquatic species. • Regulatory agency permits may also be required for projects within the creek channel. Agencies with potential regulatory authority include ACOE, RWQCB, CDFW, and the SCVWD. All of the conditions of the regulatory permits shall be implemented as part of the project. 			
<p>MM BIO-3.1: Construction activities shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>MM BIO-3.2: If it is not possible to schedule construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the CDFW shall be notified of the survey results prior to any ground disturbing activity. Avoidance measures will be developed through consultation with CDFW on a case-by-case basis. These could include construction buffer areas or seasonal avoidance.</p>	<p>Prior to construction</p>	<p>Qualified ornithologist</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: <i>Protect/Preserve Heritage Trees During Construction.</i> The City shall require that a project’s site design reflect every reasonable effort to preserve existing trees, including the development of conditions to protect heritage trees during construction. Heritage trees shall be trimmed, pruned, or removed only when it is demonstrated that preservation of these trees would result in an unreasonable solution for the proposed use or where a condition of hazard or danger of disease exists.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: <i>Inventory any Trees to be Removed prior to Construction.</i> Prior to implementing the improvements, the number of ordinance-size trees that would be removed shall be evaluated on the basis of species, size, condition, location, and heritage tree criteria.</p>	<p>Prior to construction</p>	<p>Arborist or Landscape Architect</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
Condition and location value of trees shall be determined by an arborist or landscape architect.			
Standard Measure: <i>Replace with New Trees.</i> If trees must be removed, they shall be replaced with new trees. The replacement tree size shall be determined in accordance with the City Code Title X Streets and Sidewalks, Chapter 2 Tree Maintenance and Protection, Section 9 Replacement or Compensation.	After construction	Contractor	City of Milpitas Department of Public Works
CULTURAL RESOURCES			
MM CUL 1.1: In the event of the inadvertent exposure of prehistoric or historic cultural resources during construction, all work within 25 feet of the discovery shall be stopped to allow for the identification and evaluation of the significance of the cultural materials by a qualified archaeologist meeting the Secretary of the Interior’s standards (CEQA Guideline 15064.5(f)). If the cultural materials are determined to be significant, a qualified archaeologist shall develop an appropriate treatment plan in consultation with the City’s Environmental Planner to mitigate impacts to materials to a less than significant level. The plan could include avoidance and preservation measures to preserve the materials in place; scientific collection and analysis; preparation of a professional report in accordance with current professional standards; and/or, professional museum curation of collected cultural materials and resource documentation.	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>MM CUL 1.2: The treatment of human remains and associated or unassociated funerary objects discovered during any soil-disturbing activity within the project area shall comply with applicable State laws. Pursuant to Section 7050.5 of the California Health and Safety Code, and California Public Resources Code (PRC) Section 5097.94, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Medical Examiner shall be immediately notified and shall make a determination as to whether the remains are Native American.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>In the event the coroner determines that the human remains are Native American, notification of the Native American Heritage Commission (NAHC) is required, who shall appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. California Public Resources Code allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, the project will follow PRC Section 5097.98(b) which states that ". . . the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
HAZARDS AND HAZARDOUS MATERIALS			
<p>MM HAZ-1: <i>Store, Handle, Use Hazardous Materials in Accordance with Applicable Laws.</i> The City shall ensure that all construction-related hazardous materials and hazardous wastes shall be stored, handled, and used in a manner consistent with relevant and applicable federal, state, and local laws. In addition, construction-related hazardous materials and hazardous wastes shall be staged and stored away from residences, stream channels, and steep banks to keep these materials a safe distance from nearby residents and prevent them from entering surface waters in the event of an accidental release.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM HAZ-2: <i>Properly Dispose of Contaminated Soil and/or Groundwater.</i> If contaminated soil and/or groundwater is encountered, or if suspected contamination is encountered during project construction, work shall be halted in the area, and the type and extent of the contamination shall be identified. A contingency plan to dispose of any contaminated soil or groundwater will be developed through consultation with appropriate regulatory agencies. If dewatering or hydrostatic testing of the pipeline is to occur during project construction, the water will be discharged to the City’s wastewater treatment plant rather than released into any drainage system which would require prior approval from the RWQCB.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM HAZ-3: <i>Develop and Maintain Emergency Access Strategies.</i> In conjunction with the mitigation measure identified in <i>Section 4.16 Transportation</i> (Develop a Traffic Control Plan), comprehensive strategies for maintaining emergency access shall be developed. Strategies shall include, but are not limited to, maintaining steel trench plates at the construction sites to restore access across open trenches and identification</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
of alternate routing around construction zones. Also, police, fire, and other emergency service providers shall be notified of the timing, location, and duration of the construction activities and the location of detours and lane closures.			
WATER QUALITY			
Standard Measure: <i>Implement Construction Best Management Practices.</i> BMPs to reduce erosion and siltation may include the following measures: avoidance of construction activities during inclement weather; limitation of construction access routes and stabilization of access points; stabilization of cleared, excavated areas by providing vegetative buffer strips, providing plastic coverings, and applying ground base on areas to be paved; protection of adjacent properties by installing sediment barriers or filters, or vegetative buffer strips; stabilization and prevention of sediments from surface runoff from discharging into storm drain outlets; and use of sediment controls and filtration to remove sediment from water generated by dewatering.	During all phases of construction	Contractor	City of Milpitas Department of Public Works
NOISE			
Standard Measure: Pile-driving will be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.	During all phases of construction	Contractor	City of Milpitas Department of Public Works
Standard Measure: Equipment will use available noise suppression devices and properly maintained mufflers. Construction noise would be reduced by using quiet or “new technology” equipment, particularly the quieting of exhaust noises by use of improved mufflers. All internal combustion engines used at the project site will be equipped with the type of muffler recommended by the vehicle manufacturer. In addition, all equipment will be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components.	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>Standard Measure: Temporary walls/barriers/enclosures will be erected around stationary construction equipment when such equipment will be operated for an extended period of time (i.e., more than 2-3 days). Noise barrier walls and enclosures will consist of absorptive material in order to prevent impacts upon other land uses due to noise reflection. In addition, complete enclosure structures shall close or secure any openings where pipes, hoses, or cables penetrate the enclosure structure</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>TRANSPORTATION</p>			
<p>MM TRAF-1.1: <i>Prepare and Implement Traffic Control Plan.</i> In conjunction with the mitigation measure identified in <i>Section 4.4.8 Hazards and Hazardous Materials</i> (Develop and Maintain Emergency Access Strategies), the City shall require the contractor to prepare and implement effective traffic control plans to show specific methods for maintaining traffic flows. Examples of traffic control measures to be considered include: 1) use of flaggers to maintain alternating one-way traffic while working on one-half of the street; 2) use of advance construction signs and other public notices to alert drivers of activity in the area; and 3) use of “positive guidance” detour signing on alternate access streets to minimize inconvenience to the driving public.</p>	<p>TCP to be prepared prior to construction and maintained during all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM TRAF-1.2: <i>Return Roads to Pre-construction Condition.</i> Following construction, the City shall ensure that road surfaces that are damaged during construction are returned to their pre-construction condition or better.</p>	<p>After construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>