



November 18, 2008

SUBJECT: **2006-0712 – Trumark Companies** [Applicant] **Ray Street Office, LLC.** [Owner]: Application for related proposals on a 6.63 acre site located at **1275 and 1287 Lawrence Station Road** (near Elko Drive) in an M-S (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044)

Resolution Certify the Environmental Impact Report

REPORT IN BRIEF

Existing Site Conditions Industrial and office buildings

Surrounding Land Uses

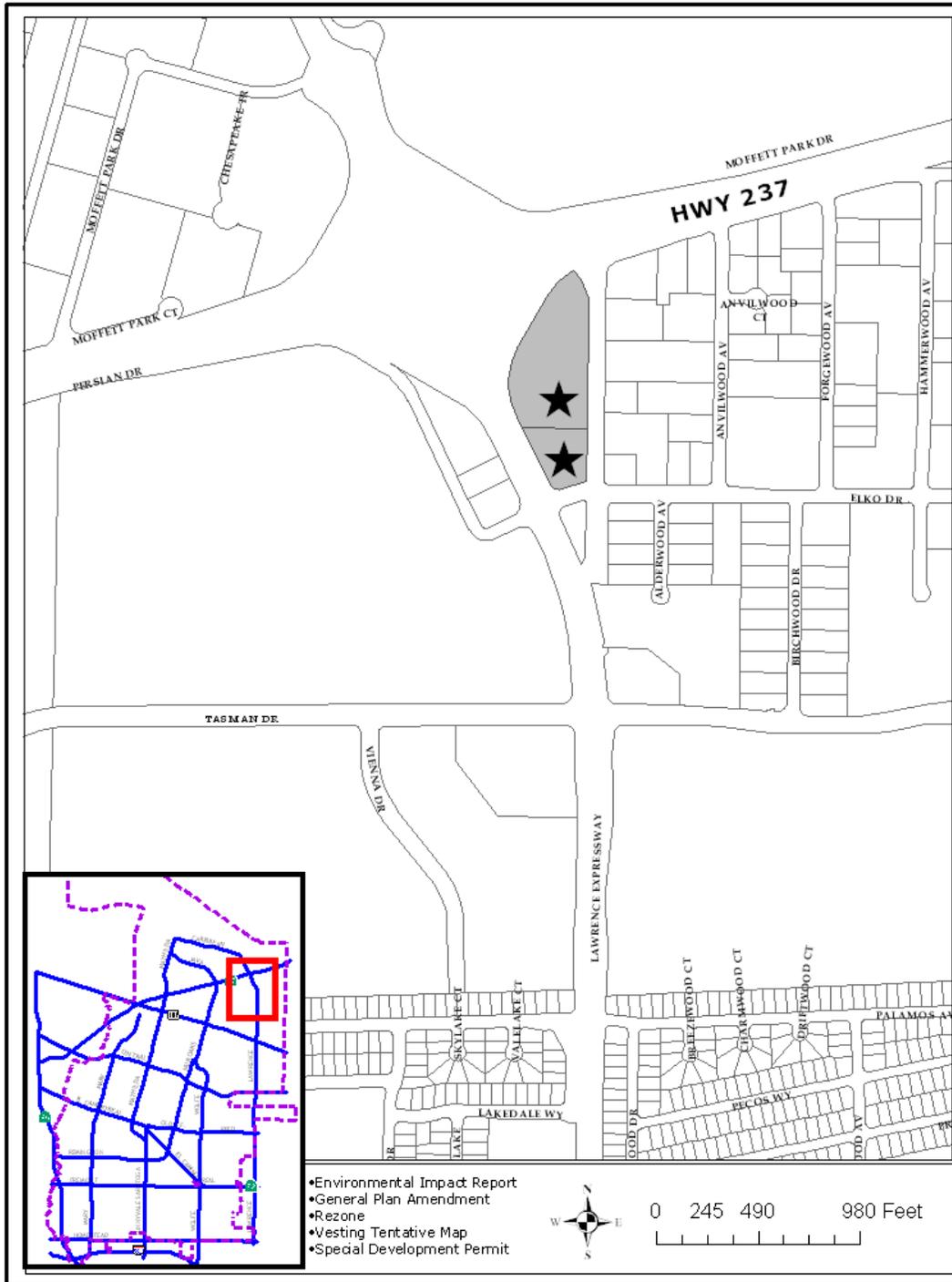
North Highway 237/Baylands Park
South Gas Station
East Industrial and Fire Station
West Lawrence Expressway/Industrial POA/Hotel

Issues Significant Unavoidable impacts associated with air quality.

Environmental Status An Environmental Impact Report has been prepared in compliance with California Environmental Quality Act provisions for the Luminaire/Lawrence Station Road Industrial to Residential/Mixed Use General Plan Amendment and Rezoning.

Planning Commission Recommendation Certify the EIR and Adopt the Mitigation Monitoring and Reporting Program

Staff Recommendation Certify the EIR and Adopt the Mitigation Monitoring and Reporting Program.



ANALYSIS

Description of Proposed Project This report focuses on the environmental analysis associated with the Trumark/Luminaire project. The proposed project consists of six components: 1) an Environmental Impact Report (EIR) for the project; 2) an amendment to Title 19 of the Sunnyvale Municipal Code (Zoning) to create a new Mixed Use Zoning Combining District (MU); 3) a General Plan Amendment to change the land use on the site from Industrial to Very High Density Residential; 4) a Rezone of this site from M-S (Industrial and Service) to R-5/MU (High Density Residential and Office/Mixed Use); 5) a Special Development Permit application; and 6) a Vesting Tentative Map.

At the time the applicants made the General Plan Initiation request to the City in 2006, it was determined that significant environmental impacts might result from the proposed General Plan Amendment and that an EIR should be prepared with this project. The services of David J. Powers and Associates, Inc. were secured for the preparation of this EIR. On April 6, 2007, a Notice of Preparation for the EIR was prepared and mailed to neighboring property owners, neighboring cities, the state, and other public agencies, requesting their input on the scoping of the EIR. The Notice of Preparation and letters responding to the Notice of Preparation are found in Appendix A of the Draft EIR.

Areas of potential impact analyzed in the EIR include the following:

- Land Use
- Visual and Aesthetics
- Transportation
- Air Quality
- Noise
- Biological Resources
- Geology and Soils
- Hydrology and Water Quality
- Hazardous Materials
- Cultural Resources
- Utilities and Service Systems
- Energy
- Availability of Public Services
- Growth Inducing Impacts
- Cumulative Impacts including
- Significant, Unavoidable

The Draft EIR (DEIR) was issued for public review and comment on May 21, 2008. The EIR document was mailed to appropriate agencies. Copies were placed at the Sunnyvale Library, the One-Stop Permit Center and the Community Center. Notices of availability were mailed to property owners within 300 feet of the project area. A separate public hearing was conducted to receive comments on the DEIR. The DEIR was available for public review for 55 days, although a minimum of 45 days is required. During that time public

agencies and the applicant submitted written comments on the DEIR. The public review period and comment period closed on July 15, 2008.

Nine response letters were received during the review period and comments were received at the Planning Commission meeting on July 14, 2008. The Environmental Impact Report under consideration at this public hearing includes the DEIR document and responses to written comments and comments at the Planning Commission meeting received during the public review period. Combined, the DEIR and the Response to Comments are referred to as the Final EIR.

A Planning Commission hearing regarding the EIR was held on October 13, 2008. The Commission took public testimony. Minutes from that hearing are attached. The Commission discussed the air quality impacts and related mitigations. The Commission recommended 7-0 to certify the EIR and adopt the Mitigation Monitoring and Reporting Program.

Description of Project Analyzed for the EIR: The “project” analyzed in the EIR refers to the entirety of all of the actions to be taken in association with considering the Trumark proposal. The EIR “project” was developed early in the review process in order to analyze the highest possible impacts that could be associated with a development at the site. The EIR “project” may not exactly match the development under review at this time, because the project has evolved over the last year. The latest project does not require change or additional environmental review not already assessed in the EIR. The EIR provides analysis for the following project:

- 1) Developing a new Mixed Use Combining District zoning designation for the City;
- 2) General Plan Amendment on approximately 6.91 acres from Industrial to Very High Density Residential (45-65 dwellings per acre), which includes a new General Plan policy statement limiting the use of the northern 0.28 acres of the project site near SR 237 to open space only;
- 3) Rezoning the site from Industrial and Service (M-S) to High Density Residential and Office with a Mixed Use Combining District (R-5/MU);
- 4) Demolition of two industrial buildings; and,
- 5) Construction of up to 430 residential units and between 14,400 and 72,200 square feet of commercial and/or office uses on site.

Purpose of EIR: The California Environmental Quality Act (CEQA) requires that all state and local government agencies consider the environmental consequences of projects for which they have discretionary authority. The purpose of the EIR is to assess the environmental impacts of the proposed General Plan Amendment and residential projects pursuant to CEQA (Public

Resources Code 21000) as amended and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15000) as amended. This EIR is an informational document that describes the significant environmental effect of the project, identifies possible ways to minimize the significance of the effects and discusses reasonable alternatives to the project to avoid, reduce or minimize environmental impacts. The purpose of this review is to determine if the analysis in the EIR is adequate. It is not the purpose of the FEIR to recommend either approval or denial of the project.

Environmental Impacts and Mitigation: The EIR is designed to identify all environmental impacts and recommend mitigation for impacts that are considered significant. Mitigation measures are discussed in detail in the EIR.

The EIR identifies those impacts that are expected to be significant and corresponding mitigation measures warranted to eliminate or reduce those impacts to less than significant levels. If a particular impact cannot be mitigated to a less-than-significant level, the EIR identifies that impact as "unavoidable." The unavoidable impacts found in this EIR were impacts to air quality.

The mitigations must render the project impacts less than significant. The EIR for the proposed project has determined that no significant environmental impacts remain in any areas after application of mitigation measures except for impacts to regional air quality and local diesel particulate exposure to future residents. All other impacts have been determined to have either no impact or impacts that are less than significant with mitigation measures incorporated. The only unavoidable impacts found in this EIR were impacts to air quality.

Significant Environmental Impact Criteria: As noted in the EIR, an impact can either be categorized as:

- Significant/Potentially Significant Impact
- Significant Cumulative Impact
- Less than Significant Impact
- Less than Significant Impact with Mitigation

The criteria used in the EIR to determine whether an impact is or is not "significant" are based on:

- CEQA-stipulated "mandatory findings of significance": i.e., where any of the specific conditions have been determined to constitute a potentially significant effect on the environment, which are listed in the CEQA Guidelines section 15065.
- The relationship of the project effect to the adopted policies, ordinances and standards of the City of Sunnyvale and of responsible agencies.

The summary section located at the front of the EIR document contains a table which lists all impacts, mitigation measures and the responsibilities for overseeing the mitigation is stated in the Mitigation Monitoring and Reporting Plan (MMRP).

Significant Impacts Identified in the EIR: As shown in the previous table, the EIR evaluated 16 areas for environmental impacts. In the case of Cultural Resources, the impacts are temporary impacts due to construction and demolition related activities. The EIR found that seven other areas were found to be significant but would become less than significant with the implementation of mitigation measures. Air Quality impacts associated with potential impacts to residents from diesel particulate matter and cumulative project generated impacts to regional air quality were found to be significant and unavoidable, meaning these impacts cannot be mitigated. Refer to the Summary of impacts and mitigation measures on page 7 in the front of the EIR document and the attached Mitigation Monitoring and Reporting Plan (MMRP) for brief outlines of the proposed mitigation measures.

Significant Unavoidable Impacts

If impacts cannot be mitigated to a less than significant level, **statements of overriding consideration** must be made in order to take an action to approve any part of the project. To adopt a statement of overriding consideration, the City Council may balance economic, legal, social, technological or other benefits of the proposed project against its unavoidable environmental risks when determining to approve a project, such that the adverse environmental effects may be considered “acceptable.”

Cumulative Impacts

Regarding cumulative regional air quality impacts, for large Sunnyvale projects that require EIRs, the Council has in the past made findings to support the statement of overriding consideration as this is a regional issue that cannot be mitigated on a local, site-by-site basis. In order to approve a development on the project site, the City Council would need to make statements of overriding consideration for cumulative air quality.

Project Impacts regarding Diesel Particulate Matter

The EIR states in **Impact AIR - 4:** The proposed project would result in significant exposure to diesel particulate matter at units located closest to Lawrence Expressway and the on-ramp to eastbound SR 237 until approximately the year 2015 (i.e., excess cancer risks above 10 people in one million). The California Air Resources Board (CARB - administers the federal Clean Air Act) has adopted a diesel reduction plan in 2000. The plan includes cleaner standards for new diesel engines, retrofitting older diesel engines, and incentive programs. As a result, impacts from diesel particulate matter on Trumark project residents are expected to decrease, assuming major components of the CARB plan are implemented in a timely manner. The

Trumark project's diesel particulate matter impact to future residents is significant and unavoidable. In order to approve a development on the project site, the City Council would need to make statements of overriding consideration for cumulative air quality.

The implementation of the following mitigation measures would reduce diesel particulate matter exposure impacts, but **not** to a less than significant level. The BAAQMD standard used to determine acceptable thresholds is an outdoor standard. Although the Trumark project may incorporate mechanical ventilation systems and recommend that windows on sensitive dwelling units remain closed, these mitigations will only provide some assurance that the indoor air quality is not affected by the outdoor diesel particulate matter. No indoor ventilation or filtration system, regardless of the applicant or City's ability to assure proper maintenance, will mitigate the outdoor air quality to meet BAAQMD standards. The outdoor air quality impacts from diesel particulate matter will remain significant and unavoidable.

- **Mitigation Measure AIR – 4.1:** The applicant shall provide centralized forced air mechanical ventilation systems with appropriate filter systems in units where significant health risks are projected (i.e., excess cancer risks above 10 people in one million) and discourage the occupants from opening their windows.

A properly designed and installed heating, ventilation, and air conditioning (HVAC) system with filtration would adequately reduce exposure to particulate matter. This HVAC system shall maintain positive pressure in all living areas and include high efficiency filters for particulates. Air intakes for the HVAC systems shall be placed at positions that minimize roadway air pollution sources. A licensed mechanical engineer shall certify that the designed HVAC system offers the best available technology to minimize outdoor to indoor transmission of air pollution.

The developer shall ensure an ongoing maintenance plan for the HVAC and filtration systems.

Residences shall be equipped with low-air infiltration windows and sealed doors to prevent air contamination. Opening of windows by occupants would reduce the effectiveness of this measure. Instructions regarding the proper use of any installed air filtration systems shall be provided to future occupants.

- **Mitigation Measure AIR – 4.2:** The project sponsor shall provide notification (e.g., in the form of a fact sheet) to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter generated by Lawrence Expressway and SR 237 truck traffic. This notification shall describe the harmful effects of diesel particulate matter, sources of this contaminant,

potential level of exposure and planning/regulatory efforts being taken to reduce harmful effects.

The following additional mitigation measure could also be required to further reduce diesel particulate matter exposure impacts:

The following mitigation measure (in place of **MM AIR - 4.1**, but in combination with **MM AIR - 4.2**), would reduce project impacts from diesel particulate matter exposure to a less than significant impact, if required as a condition of project approval. Note that the staff believes this measure, while likely effective, is difficult to enforce and implement.

- Delay occupancy of the portions of the site where significant health risks (i.e., excess cancer risks above 10 people in one million) for at least five years (until 2015). At that time, the developer shall have a qualified professional complete a site-specific DPM cancer risk analysis to confirm that excess cancer risks at the site are below the 10 excess cases per million threshold prior to occupancy of the portions of the site where significant health risks are currently identified. The analysis shall be submitted to the Director of Community Development for review and approval prior to issuing occupancy permits.

The applicant has submitted three letters in response to the findings of the EIR on Diesel Particulate Matter – one directly from the Trumark group discussing what they consider short falls of the modeling method required by the Bay Area Air Quality Management District (BAAQMD) and discussing the resulting conclusions, and two from Risicaire regarding the effectiveness of and therefore adequacy of the filtration system mitigation contending there is no need for a conclusion of significant unavoidable impacts. Staff has reviewed these letters and concurs with the City's environmental consultant that they do not rise to the level of providing substantial evidence that this measure, if implemented, would reduce the impacts to a less than significant level. Staff does not find that either letter conclusively provides expert opinion that the methodology and assumptions required by the BAAQMD are incorrect or that substantial evidence supports the conclusion that required ventilation system would reduce impacts to below the excess cancer risks above 10 people in one million threshold established by the BAAQMD.

The BAAQMD threshold are based on measured exterior air quality, and regardless of providing well designed, maintained and managed ventilation for indoor air quality, these mitigations do not mitigate the possibility of excessive exposure to poor exterior air quality conditions.

The City Council's potential actions regarding the impact of exposure to diesel particulate matter include the following:

- EIR Mitigation Measures

Adopt the two mitigations of MM-4.1 and 4.2 as currently included in the EIR, to require installation and maintenance of specialized ventilation systems and specially designed windows and doors and to require notification to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter. This action does not reduce the impacts to less than significant. If the City Council decides on this course of action a Statement of Overriding Consideration would be needed to approve the project as designed.

- Alternative 1:

Alternatively, Council could require MM 4.2 requiring notification and require that affected dwelling units be reserved and unrented until at least 2015 as outlined. This action reduces the impact to less than significant.

- Alternative 2:

Consider the Trumark response letters in the Final EIR and other information provided by the applicant (at the hearing) to be expert opinion constituting substantial evidence in support of modifying the EIR findings and declare that the project impacts are rendered less than significant with interior ventilation mitigation. Staff does not recommend this action. If substantive information is submitted at the hearing, the certification of the FEIR should be deferred to allow for staff and consultant analysis.

- Alternative 3:

Council can delete, modify or add mitigations as it deems appropriate based on opinions and testimony provided in the EIR.

EIR Project Alternatives: CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines specify that an EIR identify alternatives which "would feasibly attain the most basic objectives of the project but avoid or substantially lessen many of the significant environmental effects of the project," or in the case of the proposed project, would further reduce impacts that are considered less than significant with the incorporation of identified mitigation. Section 8.0 (beginning on p. 213) of the DEIR considers the following five alternatives:

No Project Alternative: No project (status quo) - assumes industrial and service uses reoccupy and continue to operate at the site as allowed under the M-S Zoning District.

Alternative Site Design: This alternative assumes development of non-sensitive land uses near the on-ramp and major roadways. The project would be redesigned with commercial/office uses along the western boundaries and residential uses would be set back from Lawrence Expressway and Hwy. 237 and be buffered by the commercial uses. This alternative would reduce the impacts from diesel particulate matter and from noise associated with the location near major roadways. Cumulative air quality impacts would remain significant and unavoidable.

Reduced Project Site and Development Alternative: This alternative assumes development only on the eastern portion of the site and not on the more sensitive western portion of the site. Dwelling units would be reduced to 215 or less and commercial development would be 7,200 to 36,100 square feet. This alternative would reduce impacts from DPM and noise, because development would be located further from the sources of these impacts. Cumulative air quality impacts would remain significant and unavoidable.

Alternative Land Use: This alternative would only allow commercial uses on the site and would eliminate development of residential uses. This alternative would reduce the impacts from DPM and noise because sensitive receptors (residents) would not be on site. Cumulative air quality impacts would remain significant and unavoidable.

Alternative Location: The CEQA Guidelines require that an EIR identify an alternative location that “would avoid or substantially lessen any of the significant effects of the project. For comparison, the EIR looked at a 5.22 acre site located at 737 Sunnyvale-Saratoga Road. This location would not have significant impacts in regards to Diesel Particulate Matter exposure, because Sunnyvale Saratoga Road does not have the same volume of truck trips as the project site near Hwy. 237. The cumulative air quality impacts would be the same as for the project.

Environmentally Superior Alternative: The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. The document identified the Alternative Location as the environmentally superior project.

Significant New Information for the EIR: Testimony is sometimes received during the public hearing process relating to "significant new information." For the purpose of an EIR, new information is considered "significant" when the following would apply:

- A substantial environmental impact resulting from the project is identified;
- A substantial increase in the severity of an environmental impact is identified;
- A new feasible project alternative or mitigation measure is identified but that the project proponent refuses to adopt;
- The Draft EIR is so fundamentally and basically inadequate and conclusory in nature that the public comment of the draft was, in effect, meaningless.

Mitigation Monitoring and Reporting Program: Attached to this report is the Mitigation Monitoring and Reporting Program (MMRP). The purpose of the MMRP is to determine when mitigation will occur, who is responsible for conducting mitigation and who is responsible for verifying that mitigation has occurred. The MMRP is required as part of the environmental review under CEQA. Staff recommends adoption of the MMRP.

Determination of EIR Adequacy: The "rule of reason standard" is applied to judicial review and EIR contents. The courts do not hold an agency to a standard of absolute perfection, but rather require only that an EIR show that an agency has made an objective, good-faith attempt at full disclosure. The scope of judicial review does not extend to correctness of an EIR's conclusion, but only the EIR's sufficiency as an informative document for decision-makers and the public. Legal adequacy is characterized by:

- All required contents must be included;
- Objective, good-faith effort at full disclosure;
- Perfection is not required;
- Exhaustive treatment of issues is not required;
- Minor technical defects are not necessarily fatal;
- Disagreement among experts is acceptable.

Environmental Review Staff Comments: Staff believes that the proposed Final EIR (FEIR), consisting of the Draft EIR, comments received on the Draft EIR, response to comments received on the Draft EIR, and a list of persons and public agencies commenting on the Draft EIR, meets the requirements of CEQA both in content and format and is considered adequate. Should it be

determined that the EIR is not adequate, the City Council may state those areas of discussion where the document is deficient and recommend or direct that additional analysis be prepared prior to certification.

Any changes to the mitigation measures in the EIR may affect the accompanying determination of significance. The deletion or alteration of a mitigation measure may result in a determination of a significant unavoidable impact where a less than significant impact was determined as originally mitigated. Should there be an action to certify the document with changes to mitigation measures proposed by the EIR, then a revised Statement of Overriding Considerations may need to be prepared and a new hearing conducted.

The City Council may proceed with recommendations (but no final actions) on other project aspects even if the Council determines that additional work on the EIR is needed. No project related actions shall be taken (by the Council) until the EIR is certified. As noted earlier, certification of the EIR does not approve or deny any element of the project or related development proposals.

Statements of Overriding Consideration are not required to certify the EIR. A resolution is required to certify. Statements of Overriding Consideration are not required with the action to create a new Mixed Use combining district classification. Statements of Overriding Consideration for cumulative air quality and project-specific Diesel Particulate Matter impacts are required if any part of the proposed development is approved (General Plan Amendment, Rezoning, Special Development Permit, Tentative Map).

Fiscal Impact

In regards to consideration of the EIR, there are no fiscal impacts associated with certification of the document. Fiscal impacts may be associated with approval of the proposed project

Public Contact

All public notification procedures for the EIR were followed. The Notice of Preparation (NOP) of the EIR, responses to the NOP and the notice for the public scoping meeting and EIR comment hearing are included in Appendix A.

On April 6, 2007, a Notice of Preparation for the Draft Environmental Impact Report was sent to required agencies, adjacent cities and property owners within 300 feet of the project. A scoping meeting was held on April 20, 2007.

The EIR was distributed to the State Clearinghouse and other required and adjacent agencies on May 21, 2008 for a required public review period. A Notice of Availability of the EIR was sent to property owners within 300 feet of the project site.

A Planning Commission study session was held on June 9, 2008, to outline the CEQA review process and discuss the findings of the EIR. Members of the Planning Commission expressed concern over impacts associated with air quality and Diesel Particulate Matter.

A hearing to take comments on the EIR was conducted by the Planning Commission on July 14, 2008.

A Planning Commission hearing regarding the EIR was held on October 13, 2008. The Commission took public testimony. Minutes from that hearing are attached. The Commission discussed the air quality impacts and related mitigations. The Commission recommended 7-0 to certify the EIR and adopt the Mitigation Monitoring and Reporting Program.

Notice of the Environmental Impact Report and Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • 990 notices mailed to the property owners, tenants and residents within 300 ft. of the project site • Notices and documents mailed to required agencies and adjacent cities. • Document made available at the City of Sunnyvale's Public Library, One-Stop Permit Center and Senior Center. • Final EIR was made available a minimum of 10 days prior to the hearing to parties who responded in writing to the DEIR. Copies were also made available at the City of Sunnyvale Public Library, the One-Stop Permit Center and the Senior Center. 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website

Conclusion

Staff concludes that the EIR is adequate and was completed in accordance with the requirements of the California Environmental Quality Act (CEQA) of 1970, as amended and state and local guidelines.

Alternatives

1. Adopt a resolution certifying the EIR and adopting the Mitigation Monitoring and Reporting Program.
2. Do not certify the EIR and direct staff as to where additional environmental analysis is required.

Recommendation

Staff recommends Alternative 1.

Reviewed by:

Hanson Hom, Director Community Development
Prepared by Gerri Caruso, Principal Planner
Reviewed by Trudi Ryan, Planning Officer

Approved by:

Amy Chan
City Manager

Attachments:

- A. Draft Resolution with Findings.
- B. Mitigation Monitoring and Reporting Program
- C. Draft Environmental Impact Report and Technical Appendix (transmitted separately to Planning Commission, available at the Sunnyvale Public Library, One-Stop Permit Center and Senior Center)
- D. Final Environmental Impact Report and Response to Comments (transmitted separately to Planning Commission, available at the Sunnyvale Public Library, One-Stop Permit Center and Senior Center)
- E. Minutes from the Planning Commission hearing of October 13, 2008

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES FOR THE MIXED USE (MU) COMBINING DISTRICT AND LUMINAIRE/LAWRENCE STATION ROAD PROJECT, FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the Luminaire/Lawrence Station Road Project ("Project") requires the City of Sunnyvale ("City") to CREATE A Mixed Use (MU) Coming District zoning designation and to approve an amendment to the City of Sunnyvale General Plan and Zoning Ordinance (file no. _____, SCH no. 2007042068); and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of Sunnyvale has recommended that the Final Environmental Impact Report ("FEIR") be certified, for the Luminaire/Lawrence Station Road Project which was completed in accordance with the requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended, and state and local guidelines; and

WHEREAS, the project analyzed under the FEIR consisted of: 1) developing a new *Mixed Use (MU) Combining District* zoning designation for the City; 2) amending the General Plan Land use designation on an approximately 6.91-acre site from *Industrial* to *Very High Density Residential* (45-60 dwelling units per acre), which includes a new General Plan policy statement limiting the use of the northern 0.28 acres of the project site near State Route (SR) 237 to open space only (i.e., the northern 0.28 acres of the project site cannot be utilized to increase the maximum allowable number of dwelling units or commercial development); and 3) rezoning the project site from *Industrial and Service (M-S)* to *High Density Residential and Office with a Mixed Use Combining District (R-5/MU)*; and

WHEREAS, the City Council of the City of Sunnyvale is the decision-making body for the Luminaire/Lawrence Station Road Project; and

WHEREAS, the City Council of the City of Sunnyvale intends to approve actions related to the Project; and

WHEREAS, CEQA requires that in connection with the approval of a project for which a FEIR has been prepared which identifies one or more significant environmental effects, the decision-making body of a responsible agency must make certain findings regarding those significant effects on the environment identified in the FEIR, and if the City Council approves the development Project, must also adopt a Statement of Overriding Considerations which is the subject of a separate Resolution; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE that:

THE CITY COUNCIL hereby finds that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein including the written and oral comments received at the public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment and analysis of the City of Sunnyvale as Lead Agency for the Project, and designates the Planning Officer at the Community Development Department office at 456 West Olive Street, Sunnyvale, California 94088, as the custodian of documents and records of proceedings on which this decision is based; and

THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project.

I. FINDINGS CONCERNING CREATING A NEW MIXED USE (MU) COMBINING DISTRICT ZONING DESIGNATION.

A. Mixed Use Combining District

The purpose of the MU zoning district would be to require the development of commercial and/or office uses on appropriately situated residential sites. Reasons for mixed use development include activating the streetscape and providing retail and office uses in proximity to residents. In order to provide more retail or office on some specific sites, the MU zoning district may allow for deviations such as greater building height or reduced open space requirements.

The Mixed Use (MU) Combining zoning district could be appropriate for other parcels throughout the City. Appropriate sites could include those near the light rail station. Creation of the proposed Mixed Use Combining zoning district by itself would not result in physical environmental impacts. Rather, the future implementation of the Mixed Use Combining District on sites throughout the City, could result in physical environmental impacts, requiring analysis under CEQA. There is no information available at this time, however, regarding which properties throughout the City might be proposed for rezoning to the Mixed Use Combining District designation in the future, and there is no information regarding the specifics of any possible future Mixed Use proposals. For these reasons, the identification and evaluation of specific environmental impacts on other properties resulting from the creation of the Mixed Use Combining District would be speculative and would not be meaningful under CEQA (CEQA Guidelines Section 15145). Therefore, detailed analysis of the implementation of the proposed zoning district on sites (other than the project site) cannot be completed at this time. If the proposed MU zoning district is approved, applicants wanting to rezone other sites in the City to this MU zoning district would be required to complete separate project-specific environmental review at the time of proposal.

The City's proposed requirements being considered for the MU zoning district are as follows:

- **Process:** requires the legislative (City Council) action to rezone the site. Once the combining district is established, subsequent developments under that district would only require Planning Commission approval.

- **Restricted Applications:** This designation may only be combined with the *Medium, High, or Very High Density* (R-3, R-4 or R-5) zoning districts. (Does not include use on commercial or industrial zoned sites.)
- **Minimum Commercial (Retail/Office):** The site shall include a minimum of retail or office development equal to at least five percent of the lot area and up to a maximum of 25 percent of the lot area.
- **Permitted Uses:** The permitted commercial uses shall be consistent with the *C-1 Neighborhood Business* zoning district, including all permitted uses, prohibited uses, and those that require a Use Permit. All commercial uses shall be considered through a Special Development Permit. Other considerations include:
 - Places of assembly
 - Office on the ground floor
 - Live/work units
- **Density:** the site shall meet the established density (at least 75 percent) of the underlying residential zoning district.
- **Proximity to Major Streets:** the site must be located on a Class I or Class II Arterial street. A Class I Arterial is a major street that provides through service to industrial and commercial areas and between cities. A Class II Arterial is a major street that also carries through traffic, but generally carries shorter trips than Class 1 Arterials.
- **Proximity to Public Transit:** the site shall be within 1,700 feet (or 1/3 mile) of a major transit stop, including all light rail, Caltrains, “high activity bus stops” (i.e., 2006 VTA bus ridership data with 100+ average weekday riders).
- **Minimum Lot Size:** the site must be a minimum of two acres in size.
- **Development Requirements – consistency with underlying zoning:** the addition of the MU zoning district shall not reduce or eliminate any requirements established by the underlying zoning district regulations or other requirements, such as those listed below, unless otherwise approved as a deviation through a Special Development Permit (19.90).
 - Floor area ratio (FAR) / lot coverage
 - Frontage
 - Lot width
 - Setbacks
 - Height
 - Distance between buildings
 - Landscaping / usable open space
 - Special requirements – lockable storage
 - Buffer between different zoning districts
- **Circulation/Access:** Separate vehicle access (including driveways, deliveries, and waste management) shall be provided for the residential and non-residential components unless approved through a Special Development Permit.
- **Parking:** The required parking for commercial/retail/office uses may be shared with the residential parking if sufficient parking is demonstrated.
- **Performance Issues:**
 - Projects shall have sufficient separation of incompatible uses.
 - Projects shall meet specific aesthetic and appearance requirements.
- **Deviations:** In order to provide more retail or office on certain sites, the designation may allow for deviations such as greater building height or reduced building setbacks. Use of only one deviation is recommended.

Creation of the proposed Mixed Use Combining zoning district by itself would not result in physical environmental impacts. Rather, the future implementation of the Mixed Use Combining District on sites throughout the City, could result in physical environmental impacts, requiring analysis under CEQA. There is no information available at this time, however, regarding which properties throughout the City might be proposed for rezoning to the Mixed Use Combining District designation in the future, and there is no information regarding the specifics of any possible future Mixed Use proposals. For these reasons, the identification and evaluation of specific environmental impacts on other properties resulting from the creation of the Mixed Use Combining District would be speculative and would not be meaningful under CEQA (CEQA Guidelines Section 15145). Therefore, detailed analysis of the implementation of the proposed zoning district on sites (other than the project site) cannot be completed at this time. If the proposed MU zoning district is approved, applicants wanting to rezone other sites in the City to this MU zoning district would be required to complete separate project-specific environmental review at the time of proposal. Individualized project evaluation, determinations of site-specific mitigations and cumulative impacts will be required to be analyzed, including whether the proposed project has the capability of reducing impacts based on proximity to transit, shared parking, and retail convenience that may reduce vehicle trips, depending on the size and location of the project, as well as the future project's overall consistency with the City's General Plan.

II. FINDINGS CONCERNING THE DEVELOPMENT PROJECT'S SIGNIFICANT ENVIRONMENTAL IMPACTS

A. Environmental Impacts

1. Land Use

- 1.1 *Impact.* The proposed project would result in a significant land use compatibility impact in terms of diesel particulate matter exposure.

Mitigation. The implementation of the mitigation measures identified in Section 3. Air Quality below would reduce diesel particulate matter exposure impacts.

Finding. Although implementation of the FEIR air quality mitigation measures below would reduce the land use compatibility impact related to diesel particulate matter exposure, the impact would remain **significant and unavoidable**.

2. Transportation

- 2.1 *Impact.* Development under the Maximum Scenario, Zoning Scenario, or Development Scenario in the near- and far-term would result in significant congestion at the intersections of Lawrence Station Road/Elko Drive and Lawrence Expressway/Elko Drive.

Mitigation. As a condition of approval, Elko Drive westbound curb lane shall be widened five feet between Lawrence Expressway and Lawrence Station Road. The project proponent shall be responsible for completing and funding this improvement. This would create a 22-foot wide curb lane and allow right turning vehicles to bypass through queues. This improvement would require traffic signal modifications at Elko Drive/Lawrence Station Road. Right-of-way (ROW) could be required from the project site.

Finding. The implementation of the above FEIR mitigation measure will reduce this significant impact to a **less than significant** level.

2.2 *Impact.* Based on the project's pedestrian demand and the general lack of sidewalks in the project area, the proposed project would result in significant pedestrian impacts.

Mitigation. As a condition of approval, the project applicant shall take steps to separate pedestrian traffic and vehicle traffic to increase pedestrian safety. The project proponent shall work with the City to evaluate the project vicinity to determine where additional sidewalks shall be installed.

Finding. The implementation of the above FEIR mitigation measure will reduce this significant impact to a **less than significant** level.

2.3 *Impact.* If the proposed project includes commercial uses other than general retail or personal service, the project would result in inadequate parking capacity.

Mitigation. As a condition of approval, the project shall implement the following mitigation measures to reduce parking impacts:

- When a restaurant use is proposed on the project site, the proposed restaurant use's tenancy shall be reviewed by the City as follows:
 - Up to 10 percent of the approved commercial square footage shall be permitted for restaurant use without City planning staff review.
 - Ten to 20 percent of the approved commercial square footage for restaurant use shall require City planning staff review (through a Miscellaneous Plan Permit) to verify that the proposed use meets the City's parking requirements.
 - Above 20 percent of the approved commercial square footage for restaurant use shall require Planning Commission review.
- If the review process indicates that the proposed commercial use exceeds the minimum parking required by the City's Municipal Code, a Parking Management Plan (PMP) shall be required. Components of the PMP may include, but are not limited to, the following:
 - Provision of valet parking (either on- or off-site);
 - Provision of off-site employee parking with a shuttle;
 - Provision of off-site shared use with nearby property owners (e.g., industrial uses to the east of the site) during evening and weekend periods. (This option would require recording an agreement that would restrict future use on the shared site.)

A condition of approval of the PMP may include conducting a parking study at some defined date (e.g., six months after full occupancy of the commercial uses on the project site), which would include recording the number of parked vehicles during peak time periods. Results of the study may trigger additional conditions (e.g., TDM program) be met to continue the commercial uses [i.e., restaurant use(s)] on-site.

Finding. The implementation of the above FEIR mitigation measure will reduce this significant impact to a **less than significant** level.

3. Air Quality

3.1 *Impact.* The proposed project would result in significant exposure to diesel particulate matter at units located closest to Lawrence Expressway and the on-ramp to eastbound SR 237 until approximately the year 2015.

Mitigation. As a condition of approval, the project shall implement the following mitigation measures to reduce impacts related to diesel particulate matter exposure:

- The applicant shall provide centralized forced air mechanical ventilation systems with appropriate filter systems in units where significant health risks (i.e., excess cancer risks above 10 people in one million) and discourage the occupants from opening their windows.

A properly designed and installed heating, ventilation, and air conditioning (HVAC) system with filtration would adequately reduce exposure to particulate matter. This HVAC system shall maintain positive pressure in all living areas and include high efficiency filters for particulates. Air intakes for the HVAC systems shall be placed at positions that minimize roadway air pollution sources. A licensed mechanical engineer shall certify that the designed HVAC system offers the best available technology to minimize outdoor to indoor transmission of air pollution.

The developer shall ensure an ongoing maintenance plan for the HVAC and filtration systems.

Residences shall be equipped with low-air infiltration windows and sealed doors to prevent air contamination. Opening of windows by occupants would reduce the effectiveness of this measure. Instructions regarding the proper use of any installed air filtration systems shall be provided to future occupants.

- The project sponsor shall provide notification (e.g., in the form of a fact sheet) to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter generated by Lawrence Expressway and SR 237 truck traffic. This notification shall describe the harmful effects of diesel particulate matter, sources of this contaminant, potential level of exposure and planning/regulatory efforts being taken to reduce harmful effects.

Finding. BAAQMD is the regulatory agency responsible for assuring that the national and state ambient air quality standards are attained and maintained in the Bay Area. BAAQMD is also responsible for adopting and enforcing rules and regulations concerning air pollutant sources, issuing permits for stationary sources of air pollutants, inspecting stationary sources of air pollutants, responding to citizen complaints, monitoring ambient air quality and meteorological conditions, awarding grants to reduce motor vehicle emissions, conducting public education campaigns, as well as many other activities.

BAAQMD relies on the CARB EMFAC2007 model and the BAAQMD Risk Management policy thresholds, which state that 10 excess cancer cases per million people over a 70-year exposure period is considered a significant impact, to analyze and determine diesel particulate matter impacts. Because BAAQMD is the agency tasked with monitoring air quality in the Bay Area, and because no other published and accepted methodology currently exists for evaluating DPM exposure impacts under CEQA, the City has relied on this methodology for the analysis and conclusions in the EIR.

An air quality analysis was completed for the project using the CARB EMFAC2007 model and BAAQMD's risk threshold to analyze the impacts of diesel particulate matter (DPM) on the proposed residents. The analysis concluded that the proposed residential units located closest to Lawrence

Expressway and the on-ramp to eastbound SR 237 would be exposed to significant levels of DPM.

The air quality analysis in the EIR acknowledges that the implementation of the above FEIR mitigation measures of providing centralized force air mechanical ventilation systems with appropriate filter systems and notifying affected residents would reduce exposure of future residences along Lawrence Expressway to diesel particulate matter. However, based on consultation with BAAQMD staff and as stated in the EIR, due to the uncertainty and inability of the City to guarantee that properly designed mechanical systems and appropriate filters would be correctly installed and maintained during the required years, this impact is concluded to be **significant and unavoidable**.

3.2 *Impact.* The proposed project would result in short-term demolition and construction related air quality impacts from dust (PM₁₀) and diesel exhaust. *Mitigation.* As a condition of approval, the project shall implement the following mitigation measures to reduce short-term demolition and construction-related air quality impacts from dust and diesel exhaust:

- Water all active construction areas at least twice daily and more often during windy periods.
- Cover all hauling trucks or maintain at least two feet of freeboard.
- Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- Limit traffic speeds on any unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend construction activities that cause visible dust plumes to extend beyond the construction site.
- Meet BAAQMD rules and regulations by prohibiting use of equipment that has visibly high emission rates. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour by using a Ringelmann Chart. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- Diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they are on-site.
- Properly tune and maintain equipment for low emissions.

Finding. The implementation of the above FEIR mitigation measures will reduce this significant impact to a **less than significant level**.

4. Noise

4.1 *Impact.* Future residential units and common use areas would be exposed to conditionally acceptable noise levels (greater than 60 dBA L_{dn}) near SR 237 and Lawrence Expressway.

Mitigation. As a condition of approval, when refining the project site plan, the project applicant shall continue to locate noise-sensitive outdoor use areas away from adjacent noise sources (e.g., SR 237 and Lawrence Expressway). Noise-sensitive spaces shall be shielded with the proposed residential and/or commercial buildings or noise barriers (i.e., soundwalls) whenever possible to reduce exterior noise levels. The final detailed design of the heights and limits of proposed noise barriers shall be completed by a professional acoustical consultant at the time that the final site and grading plans are submitted, and be reviewed and approved by the Community Development Director.

Based on the conceptual site plan, preliminary calculations indicate that a 10-foot tall noise barrier along the perimeter of the project site that fronts SR 237 and Lawrence Expressway would reduce exterior noise levels to 65 dBA L_{dn} or less at the proposed residential units on the first floor, outdoor common use areas along SR 237 and Lawrence Expressway, courtyard areas located between the residential buildings, and the outdoor retail plaza.

Finding. The implementation of the above FEIR mitigation measure will reduce this significant impact to a **less than significant** level.

4.2 *Impact.* Future residential units (especially near SR 237 and Lawrence Expressway) would be subject to interior noise levels above the City and state standard of 45 dBA L_{dn} .

Mitigation. As a condition of approval, the interior average noise levels shall be reduced to 45 dBA L_{dn} or lower to meet City and state standards. Building sound insulation requirements shall include the provision of forced-air mechanical ventilation for all new units exposed to exterior noise levels greater than 60 dBA L_{dn} . Special building construction techniques (e.g., sound-rated windows and building facade treatments) shall be required for new residential uses adjacent to SR 237 and Lawrence Expressway. These treatments include, but are not limited to, sound rated windows and doors, sound rated wall constructions, and acoustical caulking.

Preliminary estimates indicate that windows and doors with Sound Transmission Class (STC) ratings between 26 and 28 would be required to reduce interior noise levels at first-floor units that are shielded by the proposed 10-foot tall soundwall. STC ratings of between 30 and 37 would be sufficient to reduce interior noise levels to 45 dBA L_{dn} in units that do not benefit from the proposed 10-foot tall soundwall (e.g., units on the second, third, and fourth floors) adjacent to SR 237 and Lawrence Expressway. The specific determination of what treatments are necessary shall be completed on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit.

Finding. The implementation of the above FEIR mitigation measure will reduce this significant impact to a **less than significant** level.

5. Biological Resources

5.1 *Impact.* The project would result in significant impacts to burrowing owls, if they are present on-site at the time of construction.

Mitigation. As a condition of approval, in conformance with federal and state regulations against direct "take," pre-construction surveys for burrowing owls shall be completed by a qualified ornithologist prior to any soil-altering activity or development occurring within the project area. The preconstruction surveys shall be completed per California Department of Fish and Game (CDFG) guidelines (currently no more than 30 days prior to the start of site grading), regardless of the time of year in which grading occurs.

- If no burrowing owls are found, then no further mitigation would be warranted. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone around the active burrow must be established as determined by the ornithologist in consultation with CDFG. In order to effectively avoid habitat utilized by burrowing owls, a buffer distance of 75 meters shall be required during the nesting season (February 1 through August 31). During the non-nesting season, this distance could be reduced to 50 meters. Avoidance would allow the use of areas currently occupied by burrowing owls to continue uninterrupted. No activities that may disturb breeding owls, including grading or other construction work or evictions of owls, shall proceed.
- If burrowing owls are found, and avoiding development of owl occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the CDFG. The CDFG typically only allows eviction of owls outside of the breeding season (non-breeding season is September 1 through January 31) by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands.

Finding. The implementation of the above FEIR mitigation measure will reduce the significant impact to a **less than significant** level.

5.2 *Impact.* The project would result in significant impacts to nesting raptors, if they are present on-site at the time of construction.

Mitigation. As a condition of approval, in conformance with federal and state regulations regarding protection of raptors, the following California Department of Fish and Game protocols shall be completed prior to any development on the site to ensure that development does not result in the disturbance of nesting raptors:

- *Avoidance.* Construction should be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds in the project area extends from January through August.
- *Preconstruction/Pre-disturbance Surveys.* If demolition and/or construction are to occur between January and August, 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 demolition/construction activities during the early part of the breeding season (January 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 shall inspect all trees and other potential habitats (e.g., buildings) within and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist, in consultation with the California Department of Fish and Game, shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that no nests of species protected by the Migratory Bird Treaty Act or state code will be disturbed during project implementation.

- *Inhibit Nesting.* If vegetation is to be removed by the project and all necessary approvals have been obtained, potential nesting substrate (e.g., bushes, trees, grass, burrows) that would be removed by the project shall be removed before the start of the nesting season (February), if feasible, to help preclude nesting. Removal of vegetation or structures to be removed by the project shall be completed outside of the nesting season, which extends from January to August.

A final report of nesting birds, including any protection measures, shall be submitted to the Director of Community Development prior to start of grading.

Finding. The implementation of the above FEIR mitigation measure will reduce the significant impact to a **less than significant** level.

- 5.3 *Impact.* Implementation of the proposed project could result in the removal of up to a total of 136 trees, including 78 significant size trees (five of which are located adjacent to the site).

Mitigation. As a condition of approval, the project shall implement the following mitigation measures to reduce impacts to trees:

- The project proponent shall work with City staff to preserve the maximum number of trees to maximum extent feasible.
- The project shall conform to the City's Tree Preservation Ordinance (Municipal Code, Chapter 19.94). At the discretion of the Director of Community Development, trees that are to be removed shall be replaced, replanted, or relocated based on measures set forth in Municipal Code Sections 19.94.080, 19.94.090, and 19.94.100.
- In the event trees on-site are proposed for preservation, a tree protection plan shall be completed. The plan shall demonstrate how tree protection shall be provided during and after construction. The key elements of a tree protection plan would include retaining selective trees with good or moderate suitability for preservation based on the proximity and type of the proposed improvement(s); establishing Tree Protection Zones (TPZs) for each tree to be preserved; and providing supplemental irrigation during the demolition and construction phases of the project. The tree preservation plan shall include the following measures and any of the protective measures set forth in SMC Section 19.94.120:

Design Measures

- Any development plan affecting trees shall be reviewed by a qualified consulting arborist with regard to tree impacts. These include, but are not limited to, improvement plans, utility and drainage plans, grading plans, and landscape and irrigation plans.
- The truck location and elevations of trees proposed to be preserved shall be surveyed and plotted to assist in evaluating impacts to trees.

- In consultation with the qualified consulting arborist, TPZs shall be identified in which no construction, grading, and underground services including utilities, subdrains, water or sewer shall be located. For design purposes, the TPZ shall be the dripline of the trees.
- Tree preservation guidelines (to be prepared by the consulting arborist) shall be printed on all plans.
- Ensure that any herbicides placed under paving materials are safe for use around trees and labeled for that use.
- The irrigation system shall be designed so that no trenching would occur within the TPZs.
- Soil within 50 feet of any tree designated for preservation shall not be treated with lime. Lime is toxic to tree roots.

Pre-construction Treatments

- The construction superintendent shall meet with the consulting arborist before being work to discuss work procedures and tree protection.
- All trees to be preserved shall be fenced and completely enclose the TPZ prior to demolition, grubbing, or grading. Fences shall be six-foot chain-link or equivalent as approved by the City. Fences shall remain in place until all grading and construction is completed.
- All trees to be preserved shall be pruned to clean the crown and to provide clearance. All pruning shall be completed by a certified arborist or tree worker and adhere to the *Tree Pruning Guidelines* of the International Society of Arboriculture. Brush shall be chipped and spread beneath the trees within the TPZ.

Tree Protection During Construction

- Grading, construction, demolition, or other work within the TPZ is prohibited. Any modifications shall be approved and monitored by the qualified consulting arborist.
- Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the Consulting Arborist.
- A four- to six-inch wood chip mulch shall be applied and maintained within the TPZ. Mulch shall be kept two-inches from the base of the trunk.
- Any injury to a tree shall be evaluated. The consulting arborist shall be notified so that appropriate treatments can be applied.
- The dumping and/or storage of excess soil, chemicals, debris, equipment or other materials within the TPZ shall be prohibited.
- Any tree pruning needed for clearance during construction shall be performed by a certified arborist and not by construction personnel.

Finding. The implementation of the above FEIR mitigation measures will reduce the significant impact to a **less than significant** level.

6. Hydrology and Water Quality

6.1 *Impact.* The proposed project could result in water quality impacts both during and after construction.

Mitigation. As a condition of approval, the project shall implement the following mitigation measures to reduce water quality impacts:

- Prior to construction of any phase of the project, the City of Sunnyvale requires that the applicant(s) submit a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to the State of California Water Resource Quality Control Board to control the discharge of stormwater pollutants including sediments associated with construction activities. Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities. The SWPPP shall include control measures during the construction period for:
 - Soil stabilization practices
 - Sediment control practices
 - Sediment tracking control practices
 - Wind erosion control practices; and
 - Non-storm water management and waste management and disposal control practices.
- Prior to issuance of a grading permit, the applicant shall submit copies of the NOI and Erosion Control Plan (if required) to the City Department of Public Works Project Engineer. The applicant shall maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand.
- Prior to issuance of a Special Development Permit, the project shall include provisions for post-construction structural controls in the project design in compliance with the NPDES C.3 permit provisions, and shall include BMPs for reducing contamination in stormwater runoff. Post-construction BMPs and design features could include, but are not limited to, infiltration basins, infiltration trenches, permeable pavements, vegetated filter strips, vegetated swales, flow-through planter boxes, hydrodynamic separators, media filtration devices, green roofs, and wet vaults.
- The project shall comply with Provision C.3 of NPDES Permit Number CAS029718, Order #01-119, which provides enhanced performance standards for the management of stormwater for new development.
- The applicant, their arborist, and landscape architects shall work with the City to select pest resistant plants to minimize pesticide use, as appropriate using the guidance provided by the SCVURPPP. This may include the use of integrated pest management techniques, site design measures to reduce pest infestations, and the use of pest-resistant plants or landscape management methods to reduce the need for pesticide applications.
- The project shall comply with the City Storm Water Management Ordinance (SMC 12.60).

Finding. The implementation of the above FEIR mitigation measures will reduce the significant impact to a **less than significant** level.

7. Cultural Resources

7.1 *Impact.* The development of the proposed project would result in significant impacts to buried cultural resources (including Muwekma Ohlone Indian ancestral resources), if they are encountered on the site.

Mitigation. As a condition of approval, if any unanticipated prehistoric or significant historic era cultural materials including Native American burials are exposed during construction grading and/or excavation, operations shall stop within a minimum of 10 feet of the find to avoid altering the cultural materials and their context and a qualified professional archaeologist retained for identification, evaluation, and further recommendations. The Community Development Director of the City of Sunnyvale shall be notified of the discovery. Construction work shall not begin again within the find area until the archaeologist has been allowed to examine the cultural materials, assess their significance, and offer proposals for any additional exploratory measures deemed necessary for the further evaluation of, and/or mitigation of adverse impacts to, any potential historical resources or unique archaeological resources that have been exposed.

If the discovery is determined to be a unique archaeological or historical resource under the criteria of the California Register of Historic Resources after review and evaluation by a professional archaeologist, and if avoidance of the resource is not possible, the professional archaeologist shall develop plans for treatment of the find(s) and mitigation of impacts acceptable to the City of Sunnyvale. The treatment plan shall be designed to result in the extraction of sufficient non-redundant archaeological data to address important regional research considerations. The project proponent shall make every effort to insure that the treatment program is completed. The work shall be performed by the archaeologist, and shall result in a detailed technical report that shall be filed with the California Historical Resources Information System, Northwest Information Center. Construction in the immediate vicinity of the find shall not recommence until treatment has been completed.

If human remains are discovered, they shall be handled in accordance with state law including immediate notification of the Santa Clara County Medical Examiner.

Finding. The implementation of the above FEIR mitigation measures will reduce the significant impact to a **less than significant** level.

8. Utilities and Service Systems

8.1 *Impact.* The demolition and construction under any of the project scenarios would generate significant quantities of waste with associated resource, pollution, and infrastructure impacts, which would negatively affect the City's state mandated waste diversion level and Solid Waste Goal 3.2B.

Mitigation. As a condition of approval, the project shall implement the following measures to reduce waste:

- The proposed project shall include waste and recycling receptacles around the project site. The proposed Homeowners Association, Apartment Operator, and/or property managers shall hire staff to keep the site clean.
- The project shall implement the City approved Waste Management Plan to be prepared for the project, which shall include recommendations regarding facility design for on-going waste and recycling management systems.

The Waste Management Plan shall also include recommendations for recycling demolition wastes and reusing or recycling unused construction materials. The Plan shall describe the projected quantities of waste generated during demolition and construction, how much of those materials will be

reused, recycled, or otherwise diverted from landfills, and where unrecycled materials will be disposed. Upon completion, the project shall provide the City with a report summarizing the waste type, quantity, disposition (e.g., recycled or landfilled) and facility used, to document execution of the plan.

Finding. The implementation of the above FEIR mitigation measures will reduce the significant impact to a **less than significant** level.

9. Cumulative Impacts

9.1 *Impact.* The cumulative projects would result in cumulatively significant impacts on regional air quality. The proposed project would result in a considerable contribution to this cumulative regional air quality impact.

Mitigation. Each cumulative project would be required to include and implement measures identified in the City's General Plan to reduce vehicle use and vehicle miles traveled. The following measures shall be implemented by the project:

- Provide bicycle amenities, such as residential and employee bicycle parking, bicycle racks for retail customers and visitors, and bike lane connections;
- Include easy access and signage to bus stops and roadways that serve the site uses from pedestrian facilities;
- Create and implement a landscape plan that includes shade trees along sidewalks and pedestrian pathways;
- Include traffic calming measures in traffic circulation and roadway connection designs;
- Require project site employers to promote transit use by providing transit information and incentives to employees; and
- Consider requirements for unbundling a portion of the residential parking spaces.

Finding. Although implementation of the above identified FEIR measures would reduce the cumulative regional air quality impacts of the project, these impacts would remain significant and unavoidable.

B. Alternatives to the Proposed Project

An EIR must describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly obtain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant environmental effects of the project. The project's objectives are as follows:

1. Provide desirable houses at a density that is obtainable for people who work or live in the City of Sunnyvale;
2. Develop distinctive and attractive building(s) and landscaping that are appropriate in scale and design for this prominent gateway to and from a freeway;
3. Provide amenities that are compatible with the proposed density of the residential development;
4. Incorporate non-residential uses that would serve the onsite residents and the surrounding neighborhood;
5. Obtain entitlements with flexibility to allow for rental or owner-occupied homes in the future;
6. Provide utilities and other infrastructure systems that are adequate for the proposed development;
7. Encourage alternative forms of transportation (such as walking and public transportation); and

8. Ensure the new development is economically viable.

The decision-makers may reject the alternative if it is determined that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the FEIR are described below.

1. No Project Alternative

a. *Description.* Since the project site is currently developed with two existing industrial office buildings, the "No Project" Alternative would likely include the re-occupation of these buildings or their continued vacancy. Based on the current General Plan and zoning designation, the site could also be redeveloped with a building or buildings that total up to approximately 106,000 square feet, with a maximum building height of 75 feet (or eight stories).

b. *Comparison to the Proposed Project.* The No Project Alternative would avoid the project's significant cumulative impact on regional air quality and exposure of sensitive land uses (e.g., residential) to diesel particulate matter (DPM). If the existing buildings remain vacant or become re-occupied, the No Project Alternative would avoid the less than significant with mitigation incorporated noise, biological resources, and water quality impacts of the proposed project. If the site were redeveloped with new industrial buildings, the No Project Alternative would avoid the interior noise impacts of the proposed project, but would result in greater visual impacts if built to the maximum allowable height of 75 feet (or eight stories).

c. *Finding.* While the No Project Alternative would avoid the project's significant and unavoidable cumulative air quality impact and would avoid some of the proposed project's less than significant impacts with mitigation, it could result in a more substantial visual impact (if new industrial buildings were constructed to the maximum allowable height under the current designation) than the proposed project. The No Project Alternative would meet three to four (objectives B, F, G, and H) of the project's eight objectives. The No Project Alternative would not meet the project objectives related to providing residential uses on-site.

2. Alternative Site Design

a. *Description.* An Alternative Site Design to the project would involve development of non-sensitive land uses, including the commercial/office uses and parking structures along the western boundary of the project site, fronting Lawrence Expressway and SR 237. The proposed residential uses would be further setback and buffered from Lawrence Expressway and SR 237 by proposed commercial/office uses and parking structures. Note that the feasibility of this Alternative Site Design in terms of site design and layout was not considered. However, it is likely that this design would result in the loss of some of the proposed residential units.

b. *Comparison to the Proposed Project.* Overall, the Alternative Site Design would be environmentally superior to the proposed project because it would reduce the project's air quality impacts related to DPM exposure and exterior and interior noise impacts. The Alternative Site Design would have similar air quality (e.g., demolition and construction, and cumulative regional air quality), biological resources, water quality, and cultural resources impacts as the proposed project.

- c. *Finding.* The Alternative Site Design may not allow as many units on the project site as compared to the proposed project; however, this alternative could meet all of the project's objectives.
3. **Reduced Project Site and Development Alternative**
- a. *Description.* The Reduced Project Site and Development Alternative assumes that the only the eastern half of the project site and half of the proposed development (between approximately 215 and 174 residential units and between 7,200 and 36,100 square feet of commercial/office uses) would be developed on-site. The western half of the project site would not be redeveloped.
- b. *Comparison to the Proposed Project.* Overall, the Reduced Project Site and Development Alternative would be environmentally superior to the proposed project because it would reduce the project's air quality impacts related to exposure to DPM, noise impacts, and impacts to trees. The Alternative Site Design would have similar demolition and construction air quality impacts; impacts to burrowing owls and nesting raptors; water quality impacts; cultural resources impacts; and cumulative regional air quality impacts as the proposed project.
- c. *Finding.* The Reduced Site and Development Alternative would not allow as much residential or commercial development on the site as under the proposed project; however, this Alternative could meet all of the project's objectives.
4. **Alternative Land Use**
- a. *Description.* Another alternative to the proposed project would be to develop the project site with an alternative land use, such as a commercial use. While the project proposes residential and commercial uses on the site, the Alternative Land Use would allow only commercial uses on-site such as retail commercial shopping, service facilities, tourist accommodations, repair shops, crafts shops, contractors' offices, and materials suppliers.
- b. *Comparison to the Proposed Project.* Overall, the Alternative Land Use would be environmentally superior to the proposed project because it would reduce the project's air quality impacts related to diesel particulate matter exposure and exterior and interior noise impacts. The Alternative Land Use would have similar air quality impacts related to vehicle use and miles traveled, demolition and construction, and cumulative regional air quality; biological resources impacts; water quality impacts; and cultural resources impacts.
- c. *Finding.* This Alternative is consistent with most of the project's objectives. The Alternative Land Use could meet project objectives B, F, G, and H. This Alternative could also meet part of objective D by providing non-residential uses that would serve the surrounding neighborhood. However, The Alternative Land Use would not meet project objectives A, C, or E because it would not allow residential uses on-site.
5. **Alternative Location**
- a. *Description.* A 5.22-acre property located at 737 Sunnyvale-Saratoga Road is the alternative location identified by the City for the proposed project. The alternative location is currently zoned for and developed with commercial uses.
- b. *Comparison to the Proposed Project.* Overall, the Alternative Location would be environmentally superior to the proposed project because it would reduce the project's air quality impacts related to diesel particulate matter exposure and noise exposure impacts. The Alternative Location would have

similar air quality (in regards to project demolition and construction, and cumulative regional air quality), biological resources, water quality, and cultural resources impacts as the proposed project. Since the Alternative Location is adjacent to a three transmission lines, as prudent avoidance, setbacks from the transmission line may be required. The setback required may impact the feasibility of this alternative.

c. *Finding.* The Alternative Location would meet all of the project objectives, except for objective B which is to develop a prominent gateway to and from a freeway. The Alternative Location is not located adjacent to a freeway. It is not known whether the applicant could feasibly acquire or gain control of this alternative location site.

Adopted by the City Council at a regular meeting held on _____, 2008, by the following vote:

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

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David Kahn, City Attorney

MITIGATION MONITORING AND REPORTING PROGRAM

**LUMINAIRE/
LAWRENCE STATION ROAD PROJECT**



CITY OF SUNNYVALE
SEPTEMBER 2008

P R E F A C E

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

On November 18, 2008, the City Council certified the Environmental Impact Report (EIR) for the Luminaire/Lawrence Station Road Project. The Final EIR concluded that the implementation of the proposed project could result in significant impacts on the environment, and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
Land Use				
<p>Impact LU – 6: The proposed project would result in a significant land use compatibility impact in terms of diesel particulate matter exposure.</p> <p>Significant Unavoidable Impact</p>	<p>Refer to Air Quality below, specifically MM AIR – 4.1 and 4.2.</p>	<p>Refer to Air Quality below, specifically MM AIR – 4.1 and 4.2.</p>	<p>Refer to Air Quality below, specifically MM AIR – 4.1 and 4.2.</p>	<p>Refer to Air Quality below, specifically MM AIR – 4.1 and 4.2.</p>
Transportation				
<p>Impact TRAN – 5: Development of the project (under all scenarios) would result in significant congestion at the intersections of Lawrence Station Road/Elko Drive and Lawrence Expressway/Elko Drive in the near- and far-term.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM TRAN – 5.1: The Elko Drive westbound curb lane shall be widened five feet between Lawrence Expressway and Lawrence Station Road. The project proponent shall be responsible for completing and funding this improvement. This would create a 22-foot wide curb lane and allow right turning vehicles to bypass through queues. This improvement would require traffic signal modifications at Elko Drive/Lawrence Station Road. Right-of-way (ROW) could be required from the project site.</p>	<p>At the final design phase, the project proponent shall be responsible for showing all improvements related to this measure on project plans.</p> <p>During the construction phase, the project proponent and contractor are responsible for implementing the improvements.</p>	<p>The improvements shall be printed on all construction documents, contracts, and project plans and shall be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Public Works</p>

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**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>Impact TRAN – 6: Based on the project’ pedestrian demand and the general lack of sidewalks in the project area, the proposed project would result in significant pedestrian impacts.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM TRAN – 6.1: The project applicant shall take steps to separate pedestrian traffic and vehicle traffic to increase pedestrian safety. The project proponent shall work with the City to evaluate the project vicinity to determine where additional sidewalks shall be installed.</p>	<p>At the final design phase, the project proponent shall work with City staff to identify improvements to increase pedestrian safety and accessibility in the project site vicinity.</p> <p>At the construction phase, the project proponent and contractor are responsible for constructing the improvements.</p>	<p>The pedestrian improvements identified shall be printed on all construction documents, contracts, and project plans and shall be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>
<p>Impact TRAN – 8: If the proposed project includes commercial uses other than general retail or personal service, the project would result in inadequate parking capacity.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM TRAN – 8.1: When a restaurant use is proposed on the project site, the proposed restaurant use’s tenancy shall be reviewed by the City as follows:</p> <ul style="list-style-type: none"> • Up to 10 percent of the approved commercial square footage shall be permitted for restaurant use without City planning staff review. • Ten to 20 percent of the approved commercial square footage for restaurant use shall require City planning staff review (through a 	<p>At the final design phase, and continuing through life of commercial project, the project proponent shall be responsible for coordinating with the City planning staff to ensure compliance with this measure.</p>	<p>The project proponent shall submit a memo (and a Parking Management Plan if necessary) stating the project’s compliance with this measure to the Director of</p>	<p>Director of Community Development and Planning Commission (if necessary)</p>

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>Miscellaneous Plan Permit) to verify that the proposed use meets the City's parking requirements.</p> <ul style="list-style-type: none"> Above 20 percent of the approved commercial square footage for restaurant use shall require Planning Commission review. <p>If the review process indicates that the proposed commercial use exceeds the minimum parking required by the City's Municipal Code, a Parking Management Plan (PMP) shall be required. Components of the PMP may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> Provision of valet parking (either on- or off-site); Provision of off-site employee parking with a shuttle; Provision of off-site shared use with nearby property owners (e.g., industrial uses to the east of the site) during evening and weekend periods. (This option would require recording an agreement that would restrict future use on the shared site.) <p>A condition of approval of the PMP may include conducting a parking study at some defined date (e.g., six months after full occupancy of the commercial uses on</p>		Community Development for review and approval prior to issuance of occupancy permits	

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	the project site), which would include recording the number of parked vehicles during peak time periods. Results of the study may trigger additional conditions (e.g., TDM program) be met to continue the commercial uses [i.e., restaurant use(s)] on-site.			
Air Quality				
<p>Impact AIR – 4: The proposed project would result in significant exposure to diesel particulate matter at units located closest to Lawrence Expressway and the on-ramp to eastbound SR 237 until approximately the year 2015.</p> <p>Significant Unavoidable Impact</p>	<p>The implementation of the following measures would reduce diesel particulate matter exposure impacts, but not to a less than significant level.</p> <p>MM AIR – 4.1: The applicant shall provide centralized forced air mechanical ventilation systems with appropriate filter systems in units where significant health risks (i.e., excess cancer risks above 10 people in one million), which are identified in the Draft EIR, and discourage the occupants from opening their windows. This HVAC system shall maintain positive pressure in all living areas and include high efficiency filters for particulates. Air intakes for the HVAC systems shall be placed at positions that minimize roadway air pollution sources. A licensed mechanical engineer shall certify that the designed HVAC system</p>	<p>At the construction phase, the project proponent is responsible for implementing MM AIR – 4.1.</p> <p>When renting, leasing, or selling affected units, the project proponent shall be responsible for implementing MM AIR – 4.2.</p>	<p>These measures shall be printed on all construction documents, contracts, project plans, and sales disclosure documents and shall be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>offers the best available technology to minimize outdoor to indoor transmission of air pollution.</p> <p>The developer shall ensure an ongoing maintenance plan for the HVAC and filtration systems.</p> <p>Residences shall be equipped with low-air infiltration windows and sealed doors to prevent air contamination. Instructions regarding the proper use of any installed air filtration systems shall be provided to future occupants.</p> <p>MM AIR – 4.2: The project sponsor shall provide notification (e.g., in the form of a fact sheet) to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter generated by Lawrence Expressway and SR 237 truck traffic. This notification shall describe the harmful effects of diesel particulate matter, sources of this contaminant, potential level of exposure and planning/regulatory efforts being taken to reduce harmful effects.</p>			

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>Impact AIR – 5: The proposed project would result in short-term demolition and construction related air quality impacts from dust (PM₁₀) and diesel exhaust.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM AIR – 5.1: Water all active construction areas at least twice daily and more often during windy periods.</p> <p>MM AIR – 5.2: Cover all hauling trucks or maintain at least two feet of freeboard.</p> <p>MM AIR – 5.3: Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.</p> <p>MM AIR – 5.4: Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.</p> <p>MM AIR – 5.5: Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).</p> <p>MM AIR – 5.6: Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.</p>	<p>During construction, the project proponent and contractor shall be responsible for implementing these measures.</p>	<p>The project proponent shall print all measures on all construction documents, contracts, and project plans and will be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>MM AIR – 5.7: Limit traffic speeds on any unpaved roads to 15 mph.</p> <p>MM AIR – 5.8: Replant vegetation in disturbed areas as quickly as possible.</p> <p>MM AIR – 5.9: Suspend construction activities that cause visible dust plumes to extend beyond the construction site.</p> <p>MM AIR – 5.10: Meet BAAQMD rules and regulations by prohibiting use of equipment that has visibly high emission rates. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour by using a Ringelmann Chart. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.</p> <p>MM AIR – 5.11: Diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep</p>			

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>their engines running continuously as long as they are on-site.</p> <p>MM AIR – 5.12: Properly tune and maintain equipment for low emissions.</p>			
Noise				
<p>Impact NOI – 3: Future residential units and common use areas would be exposed to conditionally acceptable noise levels (greater than 60 dBA L_{dn}) near SR 237 and Lawrence Expressway.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM NOI – 3.1: When refining the project site plan, the project applicant shall continue to locate noise-sensitive outdoor use areas away from adjacent noise sources (e.g., SR 237 and Lawrence Expressway).</p> <p>Noise-sensitive spaces shall be shielded with the proposed residential and/or commercial buildings or noise barriers (i.e., soundwalls) whenever possible to reduce exterior noise levels.</p> <p>The final detailed design of the heights and limits of proposed noise barriers shall be completed by a professional acoustical consultant at the time that the final site and grading plans are submitted, and be reviewed and approved by the Community Development Director.</p> <p>Based on the conceptual site plan, preliminary calculations indicate that a 10-</p>	<p>At the final design phase, the project proponent and qualified acoustical consultant shall be responsible for determining the specifics of noise barriers required to meet the City’s exterior noise goal of 65 dBA L_{dn} or less.</p> <p>At the construction phase, the project applicant and contractor are responsible for constructing the necessary noise barriers.</p>	<p>The project proponent shall submit a final detailed design that complies with this measure to the Director of Community Development for review and approval at the time the final site and grading plans are submitted.</p>	<p>Director of Community Development</p>

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>foot tall noise barrier along the project site perimeter fronting SR 237 and Lawrence Expressway would reduce exterior noise levels to 65 dBA L_{dn} or less at the proposed residential units on the first floor, outdoor common use areas along SR 237 and Lawrence Expressway, courtyard areas located between the residential buildings, and the outdoor retail plaza.</p>			
<p>Impact NOI – 4: Future residential units (especially near SR 237 and Lawrence Expressway) would be subject to interior noise levels above the City and state standard of 45 dBA L_{dn}.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM NOI – 4-1: The interior average noise levels shall be reduced to 45 dBA L_{dn} or lower to meet City and state standards. Building sound insulation requirements shall include the provision of forced-air mechanical ventilation for all new units exposed to exterior noise levels greater than 60 dBA L_{dn}. Special building construction techniques (e.g., sound-rated windows and building facade treatments) shall be required for new residential uses adjacent to SR 237 and Lawrence Expressway. These treatments include, but are not limited to, sound rated windows and doors, sound rated wall constructions, and acoustical caulking.</p> <p>Preliminary estimates indicate that windows and doors with Sound Transmission Class (STC) ratings between</p>	<p>At the final design phase, the project proponent shall be responsible for having a qualified acoustical consultant complete a design-level analysis to determine the appropriate noise attenuations requirements to comply with this measure.</p> <p>At the construction phase, the project applicant and contractor are responsible for implementing the noise attenuation measures</p>	<p>The design-level analysis report shall be submitted to the Director of Community Development for review and approval prior to issuance of building permits.</p> <p>The improvements associated with this measure shall be printed on all construction documents,</p>	<p>Director of Community Development</p>

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>26 and 28 would be required to reduce interior noise levels at first-floor units that are shielded by the proposed 10-foot tall soundwall. STC ratings of between 30 and 37 would be sufficient to reduce interior noise levels to 45 dBA L_{dn} in units that do not benefit from the proposed 10-foot tall soundwall (e.g., units on the second, third, and fourth floors) adjacent to SR 237 and Lawrence Expressway. The specific determination of what treatments are necessary shall be completed on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit.</p>	<p>identified in the design-level report.</p>	<p>contracts, and project plans; and be reviewed by the Director of Community Development prior to issuance of building permits.</p>	
Biology				
<p>Impact BIO – 1: The project would result in significant impacts to burrowing owls, if they are present on-site at the time of construction.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM BIO – 1.1: Pre-construction surveys for burrowing owls shall be completed by a qualified ornithologist prior to any soil-altering activity or development occurring within the project area. The preconstruction surveys shall be completed per California Department of Fish and Game (CDFG) guidelines (currently no more than 30 days prior to the start of site grading), regardless of the time of year in</p>	<p>The project applicant shall be responsible for having a qualified ornithologist complete a pre-construction surveys per CDFG guidelines no more than 30 days prior to the start of site grading.</p>	<p>A final report, including any protection measures, shall be submitted to the Director of Community Development prior to start of grading.</p>	<p>Director of Community Development and CDFG (if necessary)</p>

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>which grading occurs.</p> <ul style="list-style-type: none"> If no burrowing owls are found, then no further mitigation would be warranted. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone around the active burrow must be established as determined by the ornithologist in consultation with CDFG. In order to effectively avoid habitat utilized by burrowing owls, a buffer distance of 75 meters shall be required during the nesting season (February 1 through August 31). During the non-nesting season, this distance could be reduced to 50 meters. Avoidance would allow the use of areas currently occupied by burrowing owls to continue uninterrupted. No activities that may disturb breeding owls, including grading or other construction work or evictions of owls, shall proceed. If burrowing owls are found, and avoiding development of owl occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the 			

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Mitigation Monitoring and Reporting Program Luminaire/Lawrence Station Road Project				
Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	CDFG. The CDFG typically only allows eviction of owls outside of the breeding season (non-breeding season is September 1 through January 31) by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands.			
<p>Impact BIO – 2: The project would result in significant impacts to nesting raptors, if they are present on-site at the time of construction.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM BIO – 2.1: If demolition and/or construction are to occur between January and August, 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 demolition/construction activities during the early part of the breeding season (January 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).</p> <p>During this survey, the ornithologist shall inspect all trees and other potential habitats (e.g., buildings) within and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be</p>	The project applicant shall be responsible for implementing this measure no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January 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).	A final report of nesting birds, including any protection measures, shall be submitted to the Director of Community Development prior to the start of grading.	Director of Community Development

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>disturbed by these activities, the ornithologist, in consultation with the California Department of Fish and Game, shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that no nests of species protected by the Migratory Bird Treaty Act or state code will be disturbed during project implementation.</p> <p>If vegetation is to be removed by the project and all necessary approvals have been obtained, potential nesting substrate (e.g., bushes, trees, grass, burrows) that would be removed by the project shall be removed before the start of the nesting season (February), if feasible, to help preclude nesting. Removal of vegetation or structures to be removed by the project shall be completed outside of the nesting season, which extends from January to August.</p> <p>A final report of nesting birds, including any protection measures, shall be submitted to the Director of Community Development prior to start of grading.</p>			

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>Impact BIO – 3: Implementation of the proposed project could result in the removal of up to a total of 136 trees, including 78 significant size trees (five of which are located adjacent to the site).</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM BIO – 3.1: The project proponent shall work with City staff to preserve the maximum number of trees to maximum extent feasible.</p> <p>MM BIO – 3.2: The project shall conform to the City’s Tree Preservation Ordinance (Municipal Code, Chapter 19.94) which requires obtaining a protected tree removal permit from the Department of Community Development to remove any protected tree from private property and replacing trees that have been removed as a result of the project. At the discretion of the Director of Community Development, trees that are to be removed shall be replaced, replanted, or relocated based on measures set forth in Municipal Code Sections 19.94.080, 19.94.090, and 19.94.100.</p> <p>MM BIO – 3.3: In the event trees on-site are proposed for preservation, a tree protection plan shall be completed. The plan shall demonstrate how tree protection shall be provided during and after construction. The key elements of a tree protection plan would include retaining selective trees with good or moderate</p>	<p>At the final design phase, the project proponent shall be responsible for coordinating with City staff about trees to be preserved on-site and preparing a tree preservation plan.</p> <p>At the construction phase, the project proponent shall be responsible for obtaining necessary permits to remove trees, implementing the tree preservation plan, and complying with the Municipal Code.</p>	<p>The tree preservation plan shall be submitted to the Director of Community Development for review and approval.</p> <p>Tree removal permits shall be submitted to the Director of Community Development for approval.</p> <p>These measures (including the details of the tree preservation plan) shall be printed on all construction documents, contracts, and project plans; and be reviewed</p>	<p>Director of Community Development</p>

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	<p>suitability for preservation based on the proximity and type of the proposed improvement(s); establishing Tree Protection Zones (TPZs) for each tree to be preserved; and providing supplemental irrigation during the demolition and construction phases of the project. The tree preservation plan shall include the following measures and any of the protective measures set forth in SMC Section 19.94.120:</p> <p><u>Design Measures</u></p> <ul style="list-style-type: none"> • Any development plan affecting trees shall be reviewed by a qualified consulting arborist with regard to tree impacts. These include, but are not limited to, improvement plans, utility and drainage plans, grading plans, and landscape and irrigation plans. • The truck location and elevations of trees proposed to be preserved shall be surveyed and plotted to assist in evaluating impacts to trees. • In consultation with the qualified consulting arborist, TPZs shall be identified in which no construction, grading, and underground services including utilities, subdrains, water or 		<p>by the Director of Community Development prior to issuance of the site development permit.</p>	

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>sewer shall be located. For design purposes, the TPZ shall be the dripline of the trees.</p> <ul style="list-style-type: none"> • Tree preservation guidelines (to be prepared by the consulting arborist) shall be printed on all plans. • Ensure that any herbicides placed under paving materials are safe for use around trees and labeled for that use. • The irrigation system shall be designed so that no trenching would occur within the TPZs. • Soil within 50 feet of any tree designated for preservation shall not be treated with lime. Lime is toxic to tree roots. <p><u>Pre-construction Treatments</u></p> <ul style="list-style-type: none"> • The construction superintendent shall meet with the consulting arborist before being work to discuss work procedures and tree protection. • All trees to be preserved shall be fenced and completely enclose the TPZ prior to demolition, grubbing, or grading. Fences shall be six-foot chain-link or equivalent as approved by the City. Fences shall remain in place until all grading and construction is 			

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>completed.</p> <ul style="list-style-type: none"> • All trees to be preserved shall be pruned to clean the crown and to provide clearance. All pruning shall be completed by a certified arborist or tree worker and adhere to the <i>Tree Pruning Guidelines</i> of the International Society of Arboriculture. Brush shall be chipped and spread beneath the trees within the TPZ. <p><u>Tree Protection During Construction</u></p> <ul style="list-style-type: none"> • Grading, construction, demolition, or other work within the TPZ is prohibited. Any modifications shall be approved and monitored by the qualified consulting arborist. • Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the Consulting Arborist. • A four- to six-inch wood chip mulch shall be applied and maintained within the TPZ. Mulch shall be kept two-inches from the base of the trunk. • Any injury to a tree shall be evaluated. The consulting arborist shall be notified so that appropriate treatments can be applied. 			

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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<ul style="list-style-type: none"> The dumping and/or storage of excess soil, chemicals, debris, equipment or other materials within the TPZ shall be prohibited. Any tree pruning needed for clearance during construction shall be performed by a certified arborist and not by construction personnel. 			
Hydrology and Water Quality				
<p>Impact HYD – 3: The proposed project could result in water quality impacts both during and after construction.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM HYD – 3.1: Prior to construction of any phase of the project, the City of Sunnyvale requires that the applicant(s) submit a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to the State of California Water Resource Quality Control Board to control the discharge of stormwater pollutants including sediments associated with construction activities. Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City’s storm drainage system from construction activities. The SWPPP shall include control measures during the</p>	<p>The project proponent shall be responsible for implementing these measures prior to issuance of a grading permit and/or issuance of a site development permit.</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans; and be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development, Department of Public Works Project Engineer</p>

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**Mitigation Monitoring and Reporting Program
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Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>construction period for:</p> <ul style="list-style-type: none"> • Soil stabilization practices • Sediment control practices • Sediment tracking control practices • Wind erosion control practices; and • Non-storm water management and waste management and disposal control practices. <p>MM HYD – 3.2: Prior to issuance of a grading permit, the applicant shall submit copies of the NOI and Erosion Control Plan (if required) to the City Department of Public Works Project Engineer. The applicant shall maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand.</p> <p>MM HYD – 3.3: Prior to issuance of a Special Development Permit, the project shall include provisions for post-construction structural controls in the project design in compliance with the NPDES C.3 permit provisions, and shall include BMPs for reducing contamination in stormwater runoff. Post-construction BMPs and design features could include,</p>			

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Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>but are not limited to, infiltration basins, infiltration trenches, permeable pavements, vegetated filter strips, vegetated swales, flow-through planter boxes, hydrodynamic separators, media filtration devices, green roofs, and wet vaults.</p> <p>MM HYD – 3.4: The project shall comply with Provision C.3 of NPDES Permit Number CAS029718, Order #01-119, which provides enhanced performance standards for the management of stormwater for new development.</p> <p>MM HYD – 3.5: The applicant, their arborist, and landscape architects shall work with the City to select pest resistant plants to minimize pesticide use, as appropriate using the guidance provided by the SCVURPPP. This may include the use of integrated pest management techniques, site design measures to reduce pest infestations, and the use of pest-resistant plants or landscape management methods to reduce the need for pesticide applications.</p>			

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Mitigation Monitoring and Reporting Program Luminaire/Lawrence Station Road Project				
Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	MM HYD – 3.6: The project shall comply with the City Storm Water Management Ordinance, which outlines the requirements to comply with the City’s NPDES permit.			
Cultural Resources				
<p>Impact CUL – 1: The development of the proposed project would result in significant impacts to buried cultural resources (including Muwekma Ohlone Indian ancestral resources), if they are encountered on the site.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM CUL – 1.1: If any unanticipated prehistoric or significant historic era cultural materials including Native American burials are exposed during construction grading and/or excavation, operations shall stop within a minimum of 10 feet of the find to avoid altering the cultural materials and their context and a qualified professional archaeologist retained for identification, evaluation, and further recommendations. The Community Development Director of the City of Sunnyvale shall be notified of the discovery. Construction work shall not begin again within the find area until the archaeologist has been allowed to examine the cultural materials, assess their significance, and offer proposals for any additional exploratory measures deemed necessary for the further evaluation of, and/or mitigation of adverse impacts to, any potential historical resources or unique archaeological resources that have been</p>	<p>The project proponent shall be responsible for ensuring that contractors implementing these measures during ground-disturbing demolition and construction phases.</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans; and be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>

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**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>exposed.</p> <p>If the discovery is determined to be a unique archaeological or historical resource under the criteria of the <i>California Register of Historic Resources</i> after review and evaluation by a professional archaeologist, and if avoidance of the resource is not possible, the professional archaeologist shall develop plans for treatment of the find(s) and mitigation of impacts acceptable to the City of Sunnyvale. The treatment plan shall be designed to result in the extraction of sufficient non-redundant archaeological data to address important regional research considerations. The project proponent shall make every effort to insure that the treatment program is completed. The work shall be performed by the archaeologist, and shall result in a detailed technical report that shall be filed with the California Historical Resources Information System, Northwest Information Center. Construction in the immediate vicinity of the find shall not recommence until treatment has been completed.</p>			

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**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	If human remains are discovered, they shall be handled in accordance with state law including immediate notification of the Santa Clara County Medical Examiner.			
Utilities and Service Systems				
<p>Impact UTIL – 5: The demolition and construction under any of the project scenarios would generate significant quantities of waste with associated resource, pollution, and infrastructure impacts, which would negatively affect the City’s state mandated waste diversion level and Solid Waste Goal 3.2B.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>AM UTIL – 4.1: The proposed project shall include waste and recycling receptacles around the project site. The proposed Homeowners Association, Apartment Operator, and/or property managers shall hire staff to keep the site clean.</p> <p>MM UTIL – 5.1: The project shall implement the City approved Waste Management Plan to be prepared for the project, which shall include recommendations regarding facility design for on-going waste and recycling management systems.</p> <p>The Waste Management Plan shall also include recommendations for recycling demolition wastes and reusing or recycling unused construction materials. The Plan shall describe the projected quantities of waste generated during demolition and construction, how much of those materials will be reused, recycled, or otherwise</p>	<p>At the final design phase, the project proponent shall be responsible for implementing these measures.</p> <p>The project proponent shall provide the City with the project’s Waste Management Plan for review and approval prior to issuance of permits.</p>	<p>The Waste Management plan shall be submitted to the Director of Community Development for review and approval.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans; and be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>

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**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	diverted from landfills, and where unrecycled materials will be disposed. Upon completion, the project shall provide the City with a report summarizing the waste type, quantity, disposition (e.g., recycled or landfilled) and facility used, to document execution of the plan.			
Cumulative Impacts				
<p>Impact C-AIR – 1: The cumulative projects would result in cumulatively significant impacts on regional air quality. The proposed project would result in a considerable contribution to this cumulative regional air quality impact.</p> <p>Significant Unavoidable Cumulative Impact</p>	<p>The implementation of the following measures would cumulative regional air quality impacts, but not to a less than significant level.</p> <ul style="list-style-type: none"> • Provide bicycle amenities, such as residential and employee bicycle parking, bicycle racks for retail customers and visitors, and bike lane connections; • Include easy access and signage to bus stops and roadways that serve the site uses from pedestrian facilities; • Create and implement a landscape plan that includes shade trees along sidewalks and pedestrian pathways; • Include traffic calming measures in traffic circulation and roadway connection designs; • Require project site employers to promote transit use by providing transit 	<p>At the final design stage, the project proponent shall be responsible for identifying and incorporating these measures into the project plans.</p> <p>At the construction phase, the project proponent and contractor shall be responsible for implementing the improvements related to these measures</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans; and be reviewed by the Director of Community Development prior to issuance of permits.</p>	<p>Director of Community Development</p>

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**Mitigation Monitoring and Reporting Program
Luminaire/Lawrence Station Road Project**

Impact	Mitigation or Avoidance Measure(s)	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	information and incentives to employees; and • Consider requirements for unbundling a portion of the residential parking spaces.			

Source: Luminaire/Lawrence Station Road Project Environmental Impact Report (May 2008).

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Draft Environmental Impact Report (EIR) was previously provided for public review and comment on May 21, 2008.

Copies are available for viewing at the Sunnyvale Public Library, One-Stop Permit Center and Senior Center.

Final Environmental Impact Report (EIR) was made available for public review a minimum of 10 days prior to the hearing (Planning Commission Hearing of July 14, 2008) to parties who responded in writing to the Draft EIR.

Copies are available for viewing at the Sunnyvale Public Library, One-Stop Permit Center and Senior Center.

PLANNING COMMISSION MINUTES OF OCTOBER 13, 2008

2006-0712 – Trumark Companies [Applicant] Ray Street Office, LLC. [Owner]: Application for related proposals on a 6.63 acre site located at **1275 and 1287 Lawrence Station Road** (near Elko Drive) in an M-S (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044) GC, SL

- **Resolution** to Certify the Environmental Impact Report
- **Introduction of an Ordinance** to Amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a Mixed Use Zoning Combining District (MU), which may be combined with the R-3, R-4, and R-5 Residential Zoning Districts.
- **General Plan Amendment** to change the land use designation from Industrial to Very High Density Residential,
- **Rezone** the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use),
- **Special Development Permit** to allow development of 338 condominium units and 16,000 square feet of commercial space,
- **Vesting Tentative Map** for condominium purposes.

Gerri Caruso, Principal Planner, presented the staff report. She advised that this is the first of three related reports tonight that will be presented regarding this development and that this portion of the presentation will be for the Planning Commission to consider the recommendation to City Council regarding the certification of the Environmental Impact Report (EIR). She said there are two impacts that are considered significant and unavoidable: impacts to project residents related to diesel particulate matter (DPM); and the project generated impacts on cumulative regional air quality. She said what this means is later this evening when the Commission considers the development for this project, in order to approve the development the Commission must make findings to adopt statements of overriding consideration. These statements of overriding consideration state that there are other reasons that make this project beneficial to the City even though there would be significant unavoidable environmental impacts. She said these findings do not need to be made to certify the EIR and they are required as part of the third hearing tonight when considering the development. She said staff is recommending the Planning Commission recommend to City Council that the EIR be certified.

Comm. Hungerford said that the report indicates that a mitigation to the DPM issue is to delay occupancy of the affected units. He asked staff if this is something that the Commission should address in this portion of the action tonight or during the development portion. Ms. Caruso said that the Commission could address this during the development portion and could include the mitigation as

part of the recommendation. She said the mitigation is not part of certifying the EIR.

Comm. McKenna asked if staff has any statistics about whether persons actually live in areas for 70 years. Ms. Caruso said staff does not have the information about how long people live in one place or how often they move. Ms. Caruso explained that the standard measuring the DPM is based on if a person were outside for 70 years in the same location. Comm. McKenna said it is difficult to think that someone would live in one place for 70 years and be outside most of that time. **James Reyff**, with Illingworth & Rodkin, Inc. said they are the sub-consultant who prepared the Air Quality Study. He said EPA (Environmental Protection Agency) statistics show that a resident stays on the average in a location about nine years with the upper end range being about 30 years. He said the State uses the 70 year lifetime exposure standard, which is meant to be a conservative standard. Comm. McKenna confirmed with Mr. Reyff that statistically people tend to live in an area about nine years.

Comm. Hungerford asked Mr. Reyff if the standard being discussed is the same standard that is uniformly applied by the Bay Area Air Quality Management District (BAAQMD) when it reviews projects or issues air permits. Mr. Reyff said for air permits this standard is the BAAQMD's health risk policy and for CEQA (California Environmental Quality Act) projects, like this, there is a little more grey area. Mr. Reyff further discussed the standard with Comm. Hungerford.

Chair Rowe confirmed with Mr. Reyff that the nine years per resident timeframe applies to rental units and homeowner units and that the statistics are the statistics that are used with the Air District, or were the State-developed risk criteria.

Comm. Hungerford asked about references to noise levels within the report, attachments, and the EIR, which indicate that the interior noise levels would be 45 dBA (A-weighted decibels). He said in another section of the documents the reference is about an average of 45 dBA. Mr. Reyff said their firm prepared the noise study, that the noise levels are based on an energy average of the day/night interior noise levels within a 24 hour period, and are based on the State's Title 24 requirements. Comm. Hungerford further discussed issues that might increase the average noise levels, i.e. traffic. **Trudi Ryan**, Planning Officer, added that the EIR report, page 108 indicates that maximum interior noise level would of 45 dBA L_{dn} (day/night average).

Chair Rowe opened the public hearing.

Chair Rowe disclosed that she met with the developer.

Comm. Klein disclosed the he met with applicant.

Comm. Sulser disclosed that he met with the applicant.

Comm. McKenna disclosed that she met with the developer.

Aaron Yakligian, applicant with Trumark Companies introduced **Miles Imwalle** of Morrison & Foerster, their CEQA attorney. Mr. Imwalle said that in general this EIR is well written and that they would like to clarify their understanding of the DPM issue. He pointed out that they think there is substantial evidence in the record that the DPM impact is less than significant with mitigation. He referred to the Air Quality Study on page 18 that indicates with mitigation that the impact would be less than significant due to the filtration device. He said that the only issue the EIR takes with the finding on page 106 is that the City cannot guarantee that the system would be installed and maintained properly.

Arthur Schwartz, a Sunnyvale resident, commented that he has a problem with the noise limits. He said that the dBA does not measure the impact of deep bass noise on people living in an area.

Chair Rowe closed the public hearing.

Comm. McKenna moved to adopt a resolution recommending certification of the EIR and adopting the Mitigation Monitoring and Reporting Program. **Comm. Hungerford** seconded the motion.

Comm. Hungerford commented that he is seconding the motion with the understanding that they are voting on whether the EIR is an adequate document describing the environmental impact of the project. He said he thinks this is a nice, thorough document.

ACTION: **Comm. McKenna** made a motion on 2006-0712 to recommend to City Council to adopt a resolution recommending certification of the EIR and adopting the Mitigation Monitoring and Reporting Program. **Comm. Hungerford** seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the November 18, 2008 City Council meeting.