

DRAFT 10/28/16 *rum*

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE CERTIFYING THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT, MAKING FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING THE MITIGATION AND MONITORING REPORTING PROGRAM, AND STATING OVERRIDING CONSIDERATIONS IN THE APPROVAL OF THE 1250 LAKESIDE DRIVE HOTEL AND RESIDENTIAL PROJECT**

WHEREAS, the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*, ("CEQA") and the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Sections 15000 *et seq.*) (the "CEQA Guidelines") requires local agencies to consider environmental consequences of projects for which they have discretionary authority; and

WHEREAS, a Draft Supplemental Environmental Impact Report ("DEIR") and Final Supplemental Environmental Impact Report ("FEIR", collectively, the "SEIR") has been prepared for and by the City of Sunnyvale for the 1250 Lakeside Drive Hotel and Residential Project ("the Project") pursuant to CEQA and the CEQA Guidelines; and

WHEREAS, the SEIR addresses the environmental impacts of the Project, which are further described in Sections VI of Exhibit A attached hereto; and

WHEREAS, in conformance with CEQA, the City has issued notices, held public hearings, and taken other actions as described in Section IV of Exhibit A attached hereto; and

WHEREAS, the EIR is incorporated by this reference in this Resolution, and consists of those documents referenced in Section IV of Exhibit A attached hereto; and

WHEREAS, by motion adopted on November 14, 2016, the Sunnyvale Planning Commission recommended to the City Council the certification of the SEIR; and

WHEREAS, a public hearing was held by the City Council on December 13, 2016, regarding the Project and the SEIR, following notice duly and regularly given as required by law, and all interested persons expressing a desire to comment thereon or object thereto were heard, and the SEIR was considered; and

WHEREAS, by this Resolution, the City Council, as the lead agency under CEQA for preparing the SEIR and the entity responsible for approving the Project, desires to comply with the requirements of CEQA and the CEQA Guidelines for consideration, certification, and use of the SEIR in connection with the approval of the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sunnyvale as follows:

1. The City Council hereby finds and certifies that the SEIR has been completed in compliance with CEQA and the CEQA Guidelines; that the SEIR adequately addresses the environmental issues of the Project; that the SEIR was presented to the City Council; that the City Council has reviewed and considered the information contained in the SEIR prior to approving the Project; and that the SEIR reflects the independent judgment and analysis of the City Council.

2. The City Council hereby identifies the significant effects, adopts the mitigation measures, adopts the monitoring Mitigation Monitoring and Reporting Plan to be implemented for each mitigation measure, makes the findings, and adopts a statement of overriding considerations set forth in detail in the attached Exhibit A, which is incorporated in this Resolution by this reference. The statements, findings and determinations set forth in Exhibit A are based on the above certified SEIR and other information available to the City Council , and are made in compliance with Sections 15091, 15092, 15093, and 15096 of the CEQA Guidelines and Sections 21081 and 21081.6 of CEQA.

Adopted by the City Council at a regular meeting held on December 13, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

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City Clerk  
(SEAL)

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Mayor

APPROVED AS TO FORM:

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City Attorney

**EXHIBIT A**

**CITY OF SUNNYVALE**

**1250 LAKESIDE DRIVE HOTEL AND RESIDENTIAL PROJECT**

**SIGNIFICANT ENVIRONMENTAL EFFECTS, FINDINGS OF FACT,  
MITIGATION MEASURES, MONITORING PROGRAM, AND  
STATEMENT OF OVERRIDING CONSIDERATIONS**

**I. PURPOSE OF THE FINDINGS**

The purpose of these findings is to satisfy the requirement of Public Resources Code Section 21000, et seq., and Sections 15091, 15092, 15093 and 15097 of the CEQA Guidelines, 14 Cal. Code Regs. Sections 15000, et seq., associated with approval of the 1250 Lakeside Drive Hotel and Residential Project (“project”) and associated approvals (Lakeside Specific Plan Amendment, Special Development Permit and Tentative Parcel Map). These findings provide the written analysis and conclusions of the City Council regarding the project. They are divided into general sections, each of which is further divided into subsections. Each addresses a particular impact topic and/or requirement of law. At times, these findings refer to materials in the administrative record, which is available for review in the City’s Planning Division.

**II. PROJECT OBJECTIVES**

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the proposed project. As noted in Section 1.3 of the Draft Environmental Impact Report for the Project, the specific project objectives of the project proponent are to:

- Create a dynamic, economically viable hotel and residential development project that is beneficial to the City’s economic base and will complement the quality and character of the neighborhood and adjacent land uses, integrate the project with the surrounding neighborhood, and that will best utilize existing transportation infrastructure and access.
- Implement the goals, policies and directives in the Lakeside Specific Plan (LSP) by enhancing the project site with hotel and residential uses.
- Provide space for meetings, conferences, and other larger scale gatherings and events.
- Increase the diversity of housing units to permit a range of choices for current and future Sunnyvale residents and improve the jobs/housing ratio.

- Develop indoor and outdoor social gathering places and open space areas that create synergies between the hotel and residential uses.
- Facilitate and encourage convenient public access to the lake and open park spaces on the site and optimize pedestrian and traffic flow to and within the site and between the uses on the property.
- Develop a minimum LEED Gold Level certified project.
- Provide opportunities for alternative modes of transportation including bicycle racks, electric vehicle charging stations, share cars and shuttle buses.
- Create a landmark project that showcases the City of Sunnyvale at a highly visible and gateway site along US Highway 101.

### **III. PROJECT DESCRIPTION**

The 8.83-acre vacant project site is located at 1250 Lakeside Drive in the City of Sunnyvale. The project site is located south of US Highway 101 (US 101) and east of Lawrence Expressway. On September 13, 2005, the City of Sunnyvale certified The Crescent – Lakeside Specific Plan Final EIR (2005 Final EIR, SCH# 2005022089), adopted the Lakeside Specific Plan (LSP), and approved a Special Development Permit (SDP) for a specific hotel and residential development project that was never built and the project entitlements have expired. The 2005 Final EIR analyzed the hotel use on the western portion of the site and the residential use on the eastern portion of the site with the maximum development envelope of 263 hotel rooms, 3,000 square feet of commercial uses, 251 residential units, and buildings of up to 80 feet tall and the 2005 development project site plan. The LSP adopted by the City Council in 2005 identified a maximum building height of 78 feet (rather than the 80 feet analyzed in the 2005 Final EIR) and a range of residential units of 186-250 (rather than 188-251 analyzed in the 2005 Final EIR). The LSP allows rooftop features to extend up to 93 feet tall.

The current project proposes development substantially within the parameters of the LSP and the development project analyzed in the 2005 Final EIR, except that the project is not proposing ancillary commercial uses as evaluated in the 2005 Final EIR. The primary differences between the proposed project and what was evaluated in the 2005 Final EIR are the location of the land uses on-site and the site architecture and design. In addition, the project is proposing to increase the maximum building height from 80 to 85 feet (with a parapet that extends to 100 feet). As a part of the project, the site would be subdivided into at least two parcels: one parcel for the hotel and the other parcel for the residential development.

The proposed hotel would be located on the eastern portion of the site. The 263-room hotel would be a six-story central courtyard hotel. The hotel building would be up to 85 feet tall, with rooftop features (e.g., mechanical equipment) up to 100 feet tall. The hotel would include indoor meeting and banquet space, bar and lounges, outdoor function space including a pool area, and a

restaurant that would be open to the public. Parking for the hotel would be primarily provided in an attached two-story parking garage with parking on the top deck.

The proposed residential development would be located on the western portion of the site. The 250 residential units would be constructed in one five-story building located on top of a two-story, above-grade landscaped podium parking garage. The residential building would be up to 82 feet tall, with rooftop features up to 88 feet tall. The apartment units would include studios, one-bedroom units, and two-bedroom units. It is anticipated that the residential units would be market-rate apartments.

Vehicular access to the site would be from four locations on Lakeside Drive. The easternmost and westernmost driveways would be for emergency and service vehicles only. Pedestrians would access the project site from the sidewalks on Lakeside Drive and located internally within the project site. The frontage sidewalk on Lakeside Drive would be reconstructed to meander in order to preserve existing trees and enhance the pedestrian experience. The project proposes a new public pedestrian and bicycle path along the southern boundary of the site along the man-made lake that would be accessed from Lakeside Drive as the southwest corner of the site. Another pathway from the sidewalk on Lakeside Drive would connect to the public pedestrian and bicycle path along the hotel driveway. The proposed pedestrian and bicycle path would connect to the existing bridges crossing the lake, which connect to an existing pedestrian path on the south side of the lake.

A complete description of the project is contained in Draft Supplemental Environmental Impact Report (Draft SEIR) Section 1.0, Project Description.

#### **IV. THE CEQA PROCESS**

A draft and a final Supplemental Environmental Impact Report (collectively, the “SEIR”) has been prepared for and by the City in accordance with the California Environmental Quality Act (“CEQA”, Public Resources Code Sec 21000 et seq.), and the State CEQA Guidelines (14 Cal. Code of Regulations, Sections 15000 et seq.) in connection with the Project.

Section 15163 of the State CEQA Guidelines provides that the lead agency may choose to prepare a supplement to a previous EIR if only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised. When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised.

The SEIR for the Project consists of the following:

- A. Draft Supplemental Environmental Impact Report (“DEIR”), issued July 28, 2016;

- B. All appendices to the DEIR;
- C. Final Supplemental Environmental Impact Report (“FEIR”), issued November 1, 2016, containing all written comments and responses on the DEIR, refinements and clarifications to the DEIR, the mitigation monitoring and reporting program, and technical appendices;
- D. All of the comments and staff responses entered into the record orally and in writing, as well as accompanying technical memoranda or evidence entered into the record.

In conformance with CEQA, the City has taken the following actions in relation to the SEIR:

- A. On February 8, 2016, a Notice of Preparation (NOP) was distributed to appropriate agencies and parties for the purpose of obtaining written comments from the agencies and parties regarding the scope and content of environmental information and analysis which they wanted addressed in the SEIR.
- B. On February 25, 2016, the City held a scoping meeting with interested parties for the purpose of receiving comments on the scope of the SEIR.
- C. A Draft Supplemental Environmental Impact Report (DEIR) was prepared for the Project and was circulated for public review and comment from July 28, 2016, through September 12, 2016. The DEIR was submitted to the State Clearinghouse for review on July 28, 2016 (State Clearinghouse No. 2016022035). Also on this date, notice of the availability of the DEIR was provided to appropriate agencies and the general public via a Notice of Completion sent to the State Clearinghouse and via mailed notice to all interested parties, and to persons living within 2,000 feet of the Project site.
- D. On August 15, 2016, the City of Sunnyvale Planning Commission held a public hearing to receive oral comments on the DEIR.
- E. On September 12, 2016, all comments received on the DEIR during the public comment period were responded to and included in a Final Supplemental EIR (SEIR), made available for public review on November 1, 2016.
- F. Pursuant to CEQA Guidelines §15088(b), a written response was provided to each public agency on comments made by that public agency at least 10 days prior to the date of this certification.
- G. On November 14, 2016, the Planning Commission conducted a duly and properly noticed public hearing on the Project and the SEIR, and recommended that the City Council certify the SEIR and approve the Project.

- H. The Project and the SEIR came before the City Council on December 13, 2016, at a duly and properly noticed public hearing. On this date, the City Council adopted the following findings, Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations.

**V. FINDINGS ARE DETERMINATIVE**

On September 13, 2005, the City Council certified the Final Environmental Impact Report for the Crescent-Lakeside Specific Plan (SCH# 2005022089), which analyzed and addressed impacts related to a specific hotel and residential development project located on Lakeside Drive in the City of Sunnyvale. The City Council made findings supporting the approval of that project and adopted a Mitigation Monitoring and Reporting Program, as reflected in Resolution No. 182-05.

The City Council has considered the 2005 Final EIR as revised by the SEIR. The City Council certifies that the SEIR has been completed in compliance with CEQA and that it was presented to, and reviewed and considered by, the City Council prior to acting on the Project. In so certifying, the City Council recognizes that there may be differences in and among the different sources of information and opinions offered in the documents and testimony that make up the EIR and the administrative record; that experts disagree; and that the City Council must base its decision and these findings on the substantial evidence in the record that it finds most compelling. Therefore, by these findings, the City Council ratifies, clarifies, and/or makes insignificant modifications to the SEIR and resolves that these findings shall control and are determinative of the significant impacts of the Project.

The mitigation measures proposed in the SEIR are adopted in this Exhibit A, substantially in the form proposed in the SEIR, with such clarifications and non-substantive modifications as the City Council has deemed appropriate to implement the mitigation measures. Further, the mitigation measures adopted in this Exhibit A are expressly incorporated into the Project pursuant to the adopted conditions of approval.

The findings and determinations in this Exhibit A are to be considered as an integrated whole and, whether or not any subdivision of this Exhibit A fails to cross-reference or incorporate by reference any other subdivision of this Exhibit A, that any finding or determination required or permitted to be made shall be deemed made if it appears in any portion of this document. All of the text included in this document constitutes findings and determinations, whether or not any particular caption sentence or clause includes a statement to that effect.

Each finding herein is based on the entire record. The omission of any relevant fact from the summary discussions below is not an indication that a particular finding is not based in part on the omitted fact.

Many of the mitigation measures imposed or adopted pursuant to this Exhibit A to mitigate the environmental impacts identified in the administrative record may have the effect of mitigating multiple impacts (e.g., conditions imposed primarily to mitigate traffic impacts may also secondarily mitigate air quality impacts, etc.). The City Council has not attempted to exhaustively cross-reference all potential impacts mitigated by the imposition of a particular mitigation measure; however, such failure to cross-reference shall not be construed as a limitation on the potential scope or effect of any such mitigation measure.

Reference numbers to impacts, mitigation measures, and page numbers in the following sections are to the page numbers used in the EIR, as specified.

## **VI. IMPACTS, MITIGATION MEASURES AND FINDINGS**

In conformance with Section 15091 of the State CEQA Guidelines, this section of the findings lists each significant environmental effect of the project listed in the SEIR; describes those mitigation measures recommended in the SEIR; and, as required by Section 15091(a), finds that either: the adopted mitigation measures have substantially lessened the significant effect; the adopted mitigation measures, though implemented, do not substantially lessen the significant effect; the mitigation measures cannot be adopted and implemented because they are the responsibility of another public agency; or that specific considerations make infeasible the mitigation measures identified in the SEIR. Pursuant to Section 15163, these findings include each significant effect shown in the 2005 Final EIR as revised by the SEIR.

All feasible mitigation measures listed below have been incorporated into the Mitigation Monitoring and Reporting Program (“MMRP”), further described in Section X, below. Compliance with the MMRP is a condition of approval of the Project, and the construction of the Project will incorporate all conditions contained in the MMRP.

### **1. Transportation**

**1.1 Impact.** The project would result in a significant impact at the intersection of Lawrence Expressway and Oakmead Parkway during the PM peak hour under background plus project conditions.

**Mitigation.** In addition to the City’s standard Transportation Impact Fee, the project proposes to implement the following mitigation measure:

MM TRAN-1.1: The Santa Clara County Expressway Plan 2040 includes a near-term Tier 1 improvement would change the southbound HOV lane to a general purpose lane. This change improves the background plus project PM peak hour



level of service from LOS F to LOS E, which would mitigate the project's impact. The project shall pay its fair-share contribution towards this improvement.

**Finding.** The project would result in a significant impact at the intersection of Lawrence Expressway and Oakmead Parkway under background plus project conditions. The project shall pay its fair-share towards the Santa Clara County Expressway Plan 2040 near-term Tier 1 improvement that would change the southbound HOV lane to a general purpose lane. This improvement would mitigate the project's impact to a less than significant level. Because payment of a fair share contribution, however, does not guarantee that the full construction price will be obtained by the County or that the improvement would be constructed concurrently with the project, this impact with the payment of the project's fair-share contribution is considered **significant and unavoidable**.

- 1.2 Impact.** The project would result in significant cumulative impacts at three intersections: 1) Lawrence Expressway/US 101 southbound off-ramp (PM peak hour), 2) Lawrence Expressway/Oakmead Parkway (AM peak hour), and 3) Central Expressway/Oakmead Parkway (AM peak hour) under cumulative plus project conditions.

**Mitigation.** In addition to the implementation of MM TRAN-1.1, the project proposes to implement the following mitigation measure:

MM TRAN-2.1: Pay a fair share contribution for constructing an additional right turn lane at the southbound off-ramp, which would improve the PM Cumulative Plus Project operations from an unacceptable LOS F to an acceptable LOS D.

**Finding.** For the project's cumulative impact at Lawrence Expressway/US 101 southbound off-ramp, the implementation of the Tier 1 improvement of changing the southbound HOV lane to a general purpose lane and constructing an additional right turn lane at the southbound off-ramp (which the project would pay its fair share towards both improvements) would reduce the project's contribution to the significant cumulative impact at the intersection of Lawrence Expressway/US 101 southbound off-ramp to a less than significant level. This intersection, however, is under the jurisdiction of Santa Clara County and implementation of improvements at this intersection is not under the City of Sunnyvale's control. Because payment of a fair share contribution, however, does not guarantee that the full construction price will be obtained by the County or that the improvement would be constructed concurrently with the project, this impact with the payment of the project's fair-share contribution is considered **significant and unavoidable**.

For the project's cumulative impact at Lawrence Expressway/Oakmead Parkway, the implementation of the Tier 1 improvement of changing the southbound HOV lane to a general purpose lane (which the project would pay its fair-share towards)

would improve AM peak hour operations in the cumulative plus project condition from 153.5 seconds (LOS F) to 147.9 seconds (LOS F); however, it does not improve intersection operations to a less than significant level (i.e., an acceptable LOS E or to cumulative no project levels). The Expressway Plan 2040 outlines a long-term Tier 3 improvement to provide a grade separation at the intersection. The grade separation would significantly improve the north-south flow of traffic and mitigate the project's cumulative impact to a less than significant level. However, there is no established implementation timeline for Tier 3 improvements, and there is currently no mechanism in place to collect fees for such improvements. In addition, this intersection is outside the City of Sunnyvale's jurisdiction and implementation of the mitigation measure cannot be guaranteed. For these reasons, the project's cumulative impact at Lawrence Expressway/Oakmead Parkway is considered **significant and unavoidable**.

For the project's cumulative impact at Central Expressway/Oakmead Parkway, the widening Central Expressway from four to six through-lanes, as outlined in the Tier 3 list of the Expressway Plan 2040, would improve the AM peak hour LOS in the cumulative plus project condition from LOS F to D- and mitigate the project's cumulative impact to a less than significant level. However, there is no established implementation timeline for Tier 3 improvements, and there is currently no mechanism in place to collect fees for such improvements. In addition, this intersection is outside the City of Sunnyvale's jurisdiction and implementation of the mitigation measure cannot be guaranteed. For this reason, the project's cumulative impact at Central Expressway/Oakmead Parkway is considered **significant and unavoidable**.

## 2. Air Quality

**2.1 Impact.** Construction activities related to the proposed project would result in significant short-term air quality impacts.

**Mitigation.** The project proposes to implement the following mitigation measure:

MM AIR-1: The project shall implement the following best management practices identified by BAAQMD to reduce fugitive dust emissions that contribute to localized elevated concentrations of PM<sub>10</sub> and PM<sub>2.5</sub> to a less than significant level:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day or covered.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage explaining this rule shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and name of an individual working for the construction contractor who can be contacted regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

**Finding.** Implementation of the above mitigation measure would reduce the project's short-term construction air quality impacts to a **less than significant** level.

**2.2 Impact.** Construction toxic air contaminant emissions would result in significant health risks at nearby sensitive receptors.

**Mitigation.** The project shall implement MM AIR-1 (see above) and the following:

MM AIR-2: All mobile diesel-powered construction equipment larger than 50 horsepower and operating on site for more than two days continuously shall meet USEPA particulate matter emissions standards for Tier 2 engines or equivalent. Equipment retrofitted with CARB Level 3 Verified Diesel Emissions Control Strategy would exceed this standard.

MM AIR-3: All stationary or portable diesel-powered construction equipment larger than 50 horsepower and operating on site for more than two days continuously (including building cranes) shall meet USEPA particulate matter emissions standards for Tier 4 engines or equivalent. Equipment retrofitted with CARB Level 3 Verified Diesel Emissions Control Strategy would meet this standard.

Note that other measures may be used to minimize construction diesel emissions, such as use of alternative-powered equipment, alternative fuels, added exhaust devices, or a combination of measures. Any measures substituted for those

defined in MM AIR-2 and MM AIR-3 shall be reviewed and verified by a qualified air quality consultant.

**Finding.** Implementation of the above mitigation measures would reduce the project's construction toxic air contaminant emissions impact to a **less than significant** level.

### 3. Biological Resources

**3.1 Impact.** Construction activities during the nesting season may result in the disturbance or destruction of breeding raptors or their nests.

**Mitigation.** The project shall implement the following mitigation measure to reduce impacts to nesting birds:

MM BIO-1: Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February 1 through August 31.

If it is not possible to schedule construction and tree removal between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of grading, tree removal, or other demolition or construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August).

During this survey, the ornithologist shall inspect all trees and other possible nesting habitats within and immediately adjacent to the construction area for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that nests of bird species protected by the MBTA or State Code shall not be disturbed during project construction.

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 or tree removal.

**Finding.** Implementation of the above mitigation measure would reduce the project's impact to nesting birds to a **less than significant** level.

- 3.2 Impact.** The proposed project could result in the removal of up to 206 trees, some of which are of significant size.

**Mitigation.** The project proposes to implement the following mitigation measures:

MM BIO-2: 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, significant trees that are to be removed shall be replaced, replanted, or relocated (Municipal Code, Sections 19.94.080, 19.94.090, and 19.94.100).

MM BIO-3: A tree protection plan shall be completed. The plan shall demonstrate how tree protection shall be provided during and after construction and shall include any of the protective measures set forth in Section 19.94.120 of the Municipal Code.

**Finding.** Implementation of the above mitigation measures would reduce the project's impact to trees to a **less than significant** level.

#### **4. Cultural Resources**

- 4.1 Impact.** Development of the project site could result in a significant impact to buried cultural resources which could be present on the site.

**Mitigation.** The project proposes to implement the following mitigation measures:

MM CULT-1: In the event of the discovery of unanticipated prehistoric or historic era cultural materials, operations shall stop within 25 feet of the find and the Community Development Director will be notified. The find shall be evaluated by a qualified archaeologist, and if the find is significant, treatment recommendations shall be developed.

MM CULT-2: Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site within a 50-foot radius of the remains or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

**Finding.** Implementation of the above mitigation measures would reduce the project's impacts to unknown buried cultural resources to a **less than significant** level.

## 5. Hydrology and Water Quality

**5.1 Impact.** Development of the proposed project could cause a significant temporary increase in the amount of contaminants in storm water runoff during construction.

**Mitigation.** The project shall comply with the NPDES General Permit for Construction Activities and implement the following mitigation measures:

MM HYDRO-1: Prior to construction of any phase of the project, the applicant(s) shall submit a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) to the State of California Water Resource Quality Control Board to control the discharge of storm water 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.

MM HYDRO-2: Prior to issuance of a grading permit, the applicant will be required to submit copies of the NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works. The applicant will also be required to maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand.

**Finding.** Implementation of the above mitigation measures would reduce the project's temporary construction-related impacts to storm water quality to a **less than significant** level.

**5.2 Impact.** Development of the proposed project could cause a significant increase in the amount of contaminants in storm water runoff post construction.

**Mitigation.** The project proposes to implement the following mitigation measures:

MM HYDRO-3: Each phase of development shall include provision for post-construction structural controls in the project design where feasible, and would include Best Management Practices (BMP) for reducing contamination in storm water runoff as permanent features of the project. BMPs and design features could include regular sweeping of parking lots and driveways; use of erosion control devices such as silt fences; biofilters; and stenciling on-site catch basins to discourage illegal dumping.

MM HYDRO-4: The project shall comply with the RWQCB MRP NPDES permit to adequately treat post-construction runoff. In order to meet the requirements of the permit, the project proposes to incorporate site design, source control, and LID treatment measures including disconnecting downspouts, incorporating green roofs, covering dumpster areas, and incorporating permeable pavement and bioretention areas.

MM HYDRO-5: The applicant, their arborist and landscape architects, shall work with the City and the SCVURPPP to select pest resistant plants to minimize pesticide use, as appropriate.

MM HYDRO-6: The project shall comply with the City Storm Water Management Ordinance (Municipal Code Chapter 12.60).

**Finding.** Implementation of the above mitigation measures would reduce the project's post-construction storm water quality impacts to a **less than significant** level.

## 6. Noise

**6.1 Impact.** The proposed project would result in short-term increase in noise levels in the project area, especially during grading, below grade work, and pile driving.

**Mitigation.** The project proposes to implement the following mitigation measures:

MM NOI-1: Construction activities for the proposed project shall implement the following best management practices to reduce noise from construction activities near sensitive land uses:

- Construction activities (including the loading and unloading of materials, truck movements, and warming of equipment motors) shall be limited to the hours of 7:00 AM to 6:00 PM on weekdays and between the hours of 8:00 AM and 5:00 PM on Saturdays. No construction is permitted on Sundays or on federal holidays when City offices are closed.
- Contractors shall equip all internal combustion engine-driven equipment

with mufflers, which are in good condition and appropriate for the equipment.

- Contractors shall utilize “quiet” models of air compressors and other stationary noise sources where technology exists.
- Loading, staging areas, and stationary noise-generating equipment shall be as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- The project shall comply with California Air Resource Board idling prohibitions of uneasy idling of internal combustion engines.
- The project shall construct solid plywood fences around the construction site adjacent to operational business, residences, or noise-sensitive land uses.
- Construction-related traffic shall be routed along major roadways and as far as feasible from sensitive receptors. Businesses, residences, and noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing. A Construction Liaison, responsible for responding to any local complaints about construction noise, shall be designated for the site. The liaison shall determine the cause of the noise complaints and institute reasonable measures to correct the problem. A telephone number for the liaison shall be conspicuously posted at the construction site.

**Finding.** Implementation of the above mitigation measure would reduce the project’s short-term, construction-related noise impacts to a **less than significant** level.

## VII. SUMMARY OF SIGNIFICANT UNAVOIDABLE ADVERSE EFFECTS

With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined significant and unavoidable transportation impacts to the following intersections:

- Lawrence Expressway/Oakmead Parkway in the PM peak hour under background plus project conditions and in the AM peak hour under cumulative plus project conditions; and
- Lawrence Expressway/US 101 southbound off-ramp in the PM peak hour under cumulative plus project conditions; and
- Central Expressway/Oakmead Parkway in the AM peak hour under cumulative plus project conditions.

The project shall pay fair-share contributions to identified near-term improvements at Lawrence Expressway/Oakmead and Lawrence Expressway/US 101, as discussed in Section 2.1 of the Draft SEIR. Future, long-term Tier 3 improvements outlined in the Expressway Plan 2040 for Lawrence Expressway/Oakmead Parkway and Central Expressway/Oakmead Parkway would mitigate the project’s significant cumulative impact at these intersections. However, there is no



established implementation timeline for Tier 3 improvements and there is currently no mechanism in place to collect fees for these improvements.

The project's significant impact at the above three intersections is considered significant and unavoidable because improvements at the intersections are not within the jurisdiction of the City of Sunnyvale, the payment of fair-share fees does not guarantee that the full construction prices will be obtained by the County or that the improvements would be constructed concurrently with the project, and/or there is currently no mechanism in place to collect fair-share fees for Tier 3 improvements.

## **VIII. PROJECT ALTERNATIVES**

### **A. Legal Requirements**

Section 15126.6(a) of the State CEQA Guidelines requires that an environmental impact report include a "reasonable range of alternatives to the project, or to the location of the project, which would avoid or substantially lessen any significant effects of the project." Based on the analysis in the EIR, the Project would be expected to result in significant and unavoidable impacts to transportation. The EIR alternatives were designed to avoid or reduce these significant unavoidable impacts, while attaining at least some of the proposed objectives of the Project. The City Council has reviewed the significant impacts associated with the reasonable range of alternatives as compared to the Project, and in evaluating the alternatives has also considered each alternative's feasibility, taking into account a range of economic, environmental, social, legal, and other factors. In evaluating the alternatives, the City Council has also considered the important factors listed in the Statement of Overriding Considerations listed in Section IX below.

Public Resources Code Section 21081(a)(3) provides that when approving a project for which an environmental impact report has been prepared, a public agency may find that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report and, pursuant to Section 21081(b) with respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment as more fully set forth in Article IX below.

### **A. No Project/No Development Alternative**

- 1. Description.** The No Project/No Development Alternative assumes that the project site would continue to remain undeveloped.

2. **Comparison to the Proposed Project.** The No Project/No Development Alternative would not result in any development and would avoid all of the project's significant impacts.
3. **Finding.** While the No Project/No Development Alternative would avoid the project's significant impacts, it would not meet the applicant's summarized project objectives or the City's vision for the site in the General Plan and LSP.

**B. No Project/Development Alternative**

1. **Description.** The No Project/Development Alternative assumes that the project site is redeveloped as prescribed in the LSP. The western portion of the site would be developed with an up to eight-story hotel development with 237-263 rooms and 2,000-3,000 square feet of support commercial uses. The eastern portion of the site would be developed with 186-250 residential units. The residential units could be grouped into multiple buildings of up to seven stories tall. All buildings on-site would not exceed 78 feet. Per the LSP, the development would incorporate green building and sustainable measures that are energy and water efficient.
2. **Comparison to the Proposed Project.** The No Project/Development Alternative would have greater construction-related air quality and noise impacts than the proposed project because the project specifically proposes to implement modular construction techniques where the buildings would be constructed off-site then transported to the site to be connected together. The LSP does not require development to be LEED certified. Because the project proposes LEED Gold certification for the proposed hotel and a minimum of 80 points on the Build it Green GreenPoint Checklist or LEED Silver certification for the proposed residential development, the No Project/Development Alternative would result in greater energy and utility demands than the proposed project.

The No Project/Development Alternative would have similar transportation impacts as the project because the same amount of development is proposed. The No Project/Development Alternative would result in the same impacts to other resources, including nesting birds (if present on or adjacent to the site), as the proposed project.

Although the No Project/Development Alternative would not be as tall as the proposed project, the difference of in maximum building height between 80 feet (the maximum building height analyzed in the 2005 Final EIR and was determined to have a less than significant aesthetics impact) and 85 feet (the maximum building height of the proposed project) is not a substantial difference.

In addition, the location of the uses under the proposed project is slightly more compatible with the existing land uses than the location of the uses under the No

Project/Development Alternative because proposed residences would be located adjacent residences and the proposed hotel would be located adjacent to an existing hotel. No land use impact would occur with the proposed project or No Project/Development Alternative.

3. **Finding.** The No Project/Development Alternative would have greater construction-related air quality and noise impacts than the proposed project and would have greater energy and utility demands than the proposed project. The No Project/Development Alternative would have similar transportation and aesthetic impacts as the proposed project. The No Project/Development Alternative would result in the same impacts to other resources as the proposed project. The No Project/Development Alternative would have the ability to meet all of the summarized project objectives, except for the objective of developing a minimum LEED Gold Level certified project.

C. **Reduced Development Alternative**

1. **Description.** The purpose of the Reduced Development Alternative is to avoid the project's significant and unavoidable impact at the intersection of Lawrence Expressway and Oakmead Parkway under background plus project conditions in the PM peak hour. The project's PM inbound trips would need to be reduced by 27 percent to avoid the project's impact at Lawrence Expressway and Oakmead Parkway. As a result, the Reduced Development Alternative assumes the development of 241 hotel rooms and 235 residential units on-site, which is 92-94 percent of the hotel rooms and residential units proposed.
2. **Comparison to the Proposed Project.** The Reduced Development Alternative would develop 22 fewer hotel rooms and nine fewer residential units on-site. This alternative would avoid the project's significant and unavoidable impact at the intersection of Lawrence Expressway and Oakmead Parkway under background plus project conditions in the PM peak hour. This alternative, however, would still result in significant and unavoidable cumulative impacts at Lawrence Expressway/Oakmead Parkway, Oakmead Parkway/Central Expressway, and Lawrence Expressway/US 101 southbound off ramp as the proposed project.

Because the Reduced Development Alternative would have less development than the proposed project, it is assumed its construction-related air quality and noise impacts would be less though still require the same mitigation measures as the proposed project.

The Reduced Development Alternative would result in the same impacts to other resources, including nesting birds (if present on or adjacent to the site), as the proposed project.

3. **Finding.** The Reduced Development Alternative would avoid one of the project's significant and unavoidable traffic impacts, but would still result in significant and unavoidable cumulative traffic impacts at three intersections as the proposed project. This alternative would result in reduced construction-related air quality and noise impacts compared to the project because less development is assumed, but the alternative would still need to implement the same mitigation measures as the project to reduce the construction-related air quality and noise impacts to a less than significant level. All other impacts of the Reduced Development Alternative would be the same as the proposed project. The Reduced Development Alternative could meet all of the summarized project objectives.

## **IX. STATEMENT OF OVERRIDING CONSIDERATIONS**

The City Council of the City of Sunnyvale adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project.

The Council has carefully balanced the benefits of the Project against any adverse impacts identified in the SEIR that could not be feasibly mitigated to a level of insignificance. Notwithstanding the identification and analysis of impacts that are identified in the SEIR as being significant and which have not been eliminated, lessened or mitigated to a level of insignificance, the Council, acting pursuant to CEQA Guidelines Section 15092 and 15093, hereby determines that significant effects on the environment found to be unavoidable in Section VII above (degradation of the level of service under background plus project conditions at the intersection of Lawrence Expressway/Oakmead Parkway in the PM peak hour and in the AM peak hour under cumulative plus project conditions; and under cumulative plus project conditions at Lawrence Expressway/US 101 southbound off-ramp in the PM peak hour and Central Expressway/Oakmead Parkway in the AM peak hour) is acceptable due to overriding concerns described herein. Based on the objectives identified in the proposed Project and EIR, the Council has determined that the Project should be approved, and the unmitigated environmental impacts attributable to the Project are outweighed by the following specific environmental, economic, fiscal, social, housing and other overriding considerations, each one being a separate and independent basis upon which to approve the Project. Substantial evidence in the record demonstrates the City would derive the benefits listed below from adoption and implementation of the Project.

With regard to the significant and unavoidable transportation impacts to the intersections in Section VII, the City cannot require or control implementation of mitigation measures because improvements at the intersections are not within the jurisdiction of the City of Sunnyvale, they are within the responsibility and jurisdiction of another public agency. Additionally payment of fair-share fees identified in MM TRAN-1.1 and 2.1 does not guarantee that the full construction prices will be obtained by Santa Clara County or that the improvements would be constructed concurrently with the project, and/or there is currently no mechanism in place to collect fair-share fees for Tier 3 improvements. Public Resources Code § 21081(a)(2).

Therefore, this impact will remain significant and unavoidable notwithstanding adoption of feasible mitigation measures. Because the City cannot require mitigation measures that are within the responsibility and jurisdiction of other public agencies to be adopted or implemented by those agencies, it is hereby determined that any remaining significant and unavoidable adverse impacts are acceptable for the reasons specified below. Public Resources Code §.21081(a)(3).

- A. The Project incorporates all feasible mitigation measures to reduce potential environmental impacts to the greatest extent feasible. Payment of City transportation impact fees (TIF) and fair-share fees to Santa Clara County have been identified as mitigation measures, but the impacts are still considered significant and unavoidable adverse effects of the Project since the affected intersections are in the jurisdiction of Santa Clara County.
- B. The City Council finds that the development of the site with a 250-unit residential use and 263-room hotel use and a supporting public park area is consistent with the policies and buildout of the City of Sunnyvale's General Plan and the Lakeside Specific Plan. The development will create much needed housing to contribute to the housing needs of the City, and will provide a high-quality hotel.
- C. Project implementation would provide public improvements to improve pedestrian and bicycle circulation and safety.
- D. The proposed project would increase the number of residents in the area and support the existing commercial retail uses in the area.
- E. The proposed project would provide a landmark project that showcases the City from a highly visible location along US-101.
- F. The City would receive transient occupancy tax (TOT) revenue from the hotel use which can be used for public benefit.
- G. The proposed project would provide meeting space and space for special events onsite.
- H. The proposed project would provide traffic impact fees that may be applied to fund improvements to nearby roads and other City transportation projects.
- I. The proposed project would remove and properly dispose of contaminated soils onsite.
- J. The project will provide a fully improved 3.44-acre public park area to serve existing and future residents in the neighborhood and will include an additional contribution of park dedication in-lieu fees to fund future parkland acquisition and planned park and recreational improvements in the City. Additionally, the public park area will improve neighborhood connections with public access easements recorded throughout.

The above statements of overriding considerations are consistent with, and substantially advance, the following goals and policies of the City's General Plan and Lakeside Specific Plan:

## **General Plan**

Goal LT-2 Attractive Community - Preserve and enhance an attractive community, with a positive image and a sense of place, that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

Goal LT-3 Appropriate Housing - Ensure ownership and rental housing options in terms of style, size, and density that are appropriate and contribute positively to the surrounding area.

Policy LT-3.1 - Provide land use categories for and maintenance of a variety of residential densities to offer existing and future residents of all income levels, age groups and special needs sufficient opportunities and choices for locating in the community.

Policy LT-3.2 - Encourage the development of ownership housing to maintain a majority of housing in the city for ownership choice.

Policy LT-3.3 - Maintain lower density residential development areas where feasible.

Policy LT-3.4 - Determine appropriate density for housing based on site planning opportunities and proximity to services.

GOAL LT-4 Quality Neighborhoods and Districts - Preserve and enhance the quality character of Sunnyvale's industrial, commercial, and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

Policy LT-4.1 Protect the integrity of the City's neighborhoods; whether residential, industrial or commercial.

Policy LT-4.2 Require new development to be compatible with the neighborhood, adjacent land uses, and the transportation system.

Policy LT-4.3 Support a full spectrum of conveniently located commercial, public, and quasi-public uses that add to the positive image of the City.

Policy LT-4.4 Preserve and enhance the high quality character of residential neighborhoods.

Policy LT-4.5 Support a roadway system that protects internal residential areas from City-wide and regional traffic.

Policy LT-4.6 Safeguard industry's ability to operate effectively, by limiting the establishment of incompatible uses in industrial areas.

Policy LT-4.7 Support the location of convenient retail and commercial services (e.g., restaurants and hotels) in industrial areas to support businesses, their customers and their employees.

GOAL LT-6 Supportive Economic Development Environment - Sustain a strong local economy that contributes fiscal support for desired City Services and provides a mix of jobs and commercial opportunities.

GOAL LT-8 Adequate and Balanced Open Space – Provide and maintain adequate and balanced open space and recreation facilities for the benefit of maintaining a healthy community based on community needs and the ability of the City to finance, construct, maintain, and operate these facilities now and in the future.

Policy LT-8.8 Support the acquisition or joint use through agreements with partners of suitable sites to enhance Sunnyvale's open spaces and recreation facilities based on community need and through such strategies as development of easements and right-of-ways for open space use, conversion of sites to open space from developed use of land and landbanking.

Policy LT-8.13 Mitigate as feasible the open space need in areas identified as underserved through the acquisition of new parkland and/or the addition of amenities in order to bring sites in line with Design and Development Guidelines.

### **Lakeside Specific Plan (LSP)**

#### LSP Goals

Create a landmark project that showcases the City at this important gateway site.

Maintain a successful hotel that is an important part of the City's economy and business environment.

Increase the City's supply of housing stock and improve the jobs/housing ratio.

Residential should only be allowed if a high quality residential project is created.

#### LSP Objectives

Create a dynamic, economically viable hotel, residential development project that is beneficial to the City's economic base and that will complement the quality and high intensity character of the neighborhood and adjacent land uses and that will best utilize existing transportation infrastructure and access.

Create housing that increases the diversity of unit types in tenure, type, size and location to permit a range of choice for all current residents and those expected to become city residents. The mix of these higher density units, both in terms of size and affordability, shall provide for a variety of future residents. The project shall expand the City's commitment to improving the jobs/housing ratio in the City.

Create a place that encourages quality architectural and landscape design, that improves the City's identity, and that inspires creativity in utilizing opportunities to strengthen sensitive neighborhoods.

Based on the detailed findings made above, the City Council hereby finds that economic and social considerations outweigh the remaining environmental effects of approval and implementation of the Project, and the City Council hereby concludes that the Project should be approved.

## **X. MITIGATION MONITORING AND REPORTING PROGRAM**

The Mitigation Monitoring and Reporting Program (“MMRP”) sets forth specific monitoring actions, timing requirements and monitoring/verification entities for each mitigation measure adopted in this Exhibit A, in compliance with Public Resources Code Section 21081.6(a)(1) and CEQA Guidelines Section 15097. The City Council hereby adopts the MMRP and determines that compliance with the MMRP is a condition of approval of the Project.

## **XI. THE RECORD**

The environmental analysis provided in the SEIR and these findings are based on and are supported by the following documents, materials and other evidence, which constitute the administrative record for the approval of the Project:

- A. All application materials for the Project and supporting documents submitted by the applicant, including but not limited to those materials constituting the Project and listed in Section III of this Exhibit A.
- B. The NOP, comments received on the NOP and all other public notices issued by the City in relation to the EIR (e.g., Notice of Availability).
- C. The 2005 Final EIR, the Draft Supplemental EIR, the Final Supplemental EIR, all appendices to any part of the SEIR, all technical materials cited in any part of the EIR, comment letters, oral testimony, responses to comments, as well as all of the comments and staff responses entered into the record orally and in writing between July 28, 2016, and December 13, 2016.
- D. All non-draft and/or non-confidential reports and memoranda prepared by the City and consultants related to the EIR, its analysis and findings.
- E. Minutes and transcripts of the discussions regarding the Project and/or Project components at public hearings or scoping meetings held by the Planning Commission and the City Council.



F. Staff reports associated with Planning Commission and Council Meetings on the Project and supporting technical memoranda and any letters or other material submitted into the record by any party.

G. Matters of common knowledge to the City Council which they consider, such as the Sunnyvale General Plan, any other applicable specific plans or other similar plans, and the Sunnyvale Municipal Code.

## **XII. LOCATION AND CUSTODIAN OF RECORDS**

The documents and other materials that constitute the record of proceedings on which the Council findings regarding the mitigation measures and statement of overriding considerations are based are located and in the custody of the Community Development Department, 456 West Olive Avenue, Sunnyvale, California 94086. The location and custodian of these documents is provided in compliance with Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e).

## **XIII. FILING NOTICE OF DETERMINATION**

The Council hereby directs the Planning Division to file a Notice of Determination regarding the approval of the Project within five business days of adoption of this resolution.