

**CALENDAR ITEM
C22**

A 25
S 10

02/21/14
W 26688
J. Sampson

GENERAL LEASE - RIGHT OF-WAY-USE

APPLICANT:

OMP / I&G Creekside Investors, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Scott Creek, Assessor's Parcel Number 519-0820-002-13, city of Fremont, Alameda County.

AUTHORIZED USE:

Installation, use, maintenance, and operation of a 12-inch inside diameter (ID) sanitary sewer pipeline within a 30-inch inside diameter (ID) steel casing beneath the bed of Scott Creek.

LEASE TERM:

25 years, beginning February 21, 2014.

CONSIDERATION:

\$740 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$5,000,000 per occurrence.

Bond:

1. Surety Bond or other security in the amount of \$25,000.
2. Construction Performance Bond or other security in an amount equal to the construction cost of the new pipeline within the lease premises.

Other:

This lease contains special provisions related to pre-construction and post-construction project engineering review and verification by Lessor.

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OTHER PERTINENT INFORMATION:

1. The Applicant owns the uplands adjoining the lease premises while maintaining the rights to construct four bridges over sovereign land, as set forth in a 1983 Title Exchange Agreement (SLL 85).
2. The Applicant, OMP / I&G Creekside Investors, LLC, is the successor to Fremont Industrial Partners that acquired nearby land holdings from the State in SLL 85. These land holdings consist of approximately 426 acres within the city of Fremont that have been, or will be, commercially developed in multiple phases. The proposed sanitary sewer pipeline is part of a project known as 'Creekside Landings'.
3. As part of the 'Creekside Landings' 2009 development proposal, the City of Fremont was the lead agency for the development of an Environmental Impact Report (EIR) for the commercial district build-out and extension of Fremont Boulevard, connecting the city of Milpitas and city of Fremont. The EIR findings showed that the project will have significant environmental impacts. Mitigating environmental conditions and monitoring were placed as provisions for approval of the project, and the City of Fremont adopted a Statement of Overriding Conditions and certified the EIR.
4. Extension of Fremont Boulevard is Phase II of the build-out, with the subsequent Fremont Boulevard bridge crossing over Scott Creek. As the primary right-of-way corridor to service the development, utility service infrastructure is integrated into the right-of-way bridge construction. The proposed sanitary sewer pipeline crossing beneath Scott Creek is intended to provide service to the nearby development. Once the sanitary sewer conveyance system facilities are fully operational, the Union Sanitary District will assume ownership of the operation facilities and will apply to the Commission for assignment of the lease.
5. The project installation on the lease premises will be a 'dry' micro-tunneling boring technique, with an approximate length of 175 feet and a depth of approximately 3 ½ feet beneath the bed of Scott Creek. Construction is anticipated to occur in early spring of 2014, and is anticipated to be completed in two weeks. The sanitary sewer line will connect to an existing sanitary sewer line on the Applicant's property.
6. The project includes implementation of Best Management Practices to minimize potential environmental impacts during construction activities within the lease premises. Cardno, Inc., the engineering firm hired by the Applicant,

CALENDAR ITEM NO. **C22** (CONT'D)

and construction boring contractors developed a Contingency Plan to minimize any potential hazardous substances. The contractor will require on-site, and underground, monitoring for potential gassy conditions.

7. An EIR, State Clearinghouse No. 2008042116, was prepared for this project by city of Fremont and certified on 12/10/2009. The California State Lands Commission staff has reviewed such document and Mitigation Monitoring Program prepared pursuant to the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency. The Mitigation Monitoring Program is contained in Exhibit C, attached hereto

Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in Exhibit D, attached hereto.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

City of Fremont
Union Sanitary District
California Department of Fish and Wildlife
U.S. Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Statement of Findings

CALENDAR ITEM NO. **C22** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2008042116, was prepared for this Project by city of Fremont and certified on 12/10/2009 and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.

Adopt the Findings, made in conformance with California Code of Regulations, Title 14, sections 15091 and 15096, subdivision (h), as contained in Exhibit D, attached hereto.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize Issuance of a General Lease – Right-of-Way Use to OMP / I&G Creekside Investors, LLC beginning February 21, 2014, for a term of 25 years, for the installation, use, maintenance, and operation of a 12-inch ID sanitary sewer pipeline within a 30-inch ID steel casing on sovereign land in Scott Creek as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$740, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in an amount no less than \$5,000,000; lease surety bond in an amount no less than \$25,000; and a construction performance bond or other surety in an amount equal to the construction cost of the new pipelines within the lease premises.

EXHIBIT A

W 26688

LAND DESCRIPTION

A strip of submerged land ten (10) feet in width, lying in the bed of the Scott Creek, situated in the city of Fremont, County of Alameda, California, the northeasterly line of which is more particularly described as follow:

COMMENCING at the intersection of Lakeview Boulevard and Fremont Boulevard as said intersection is shown on the Map of Tract 5187, recorded June 7, 1984 in Book 145 of Maps at Page 6, Official Records of Alameda County, California, said point being marked by a Standard City of Fremont Well Monument and Brass Disk stamped L.S 3936, as shown on the Map of said Tract 5187, said point being the beginning of a curve to the right having a radius of 800.00 feet and to which point a radial line bears North 42°24'08" East;

Thence along said curve, through a central angle of 23°54'56", a distance of 333.92 feet thereon;

Thence South 23°40'58" East, 240.48 feet to the beginning of a curve to the left having a radius of 1000.00 feet;

Thence along said curve, through a central angle of 8°37'54", a distance 150.65 feet;

Thence South 32°18'50" East, 512.10 feet to the northerly line of Scott Creek, described in Parcel 3 in the Grant Deed to the State of California recorded December 1, 1983 as Series No. 83-225688, Official Records of Alameda County, and the POINT OF BEGINNING;

Thence continuing South 32°18'50" East, 73.98 feet to the southerly line of Scott Creek described in said Grant Deed and being the POINT OF TERMINUS of said line.

The southwesterly line of said strip to be lengthened or shortened as to terminate at the northerly and southerly lines of Scott Creek.

END OF DESCRIPTION

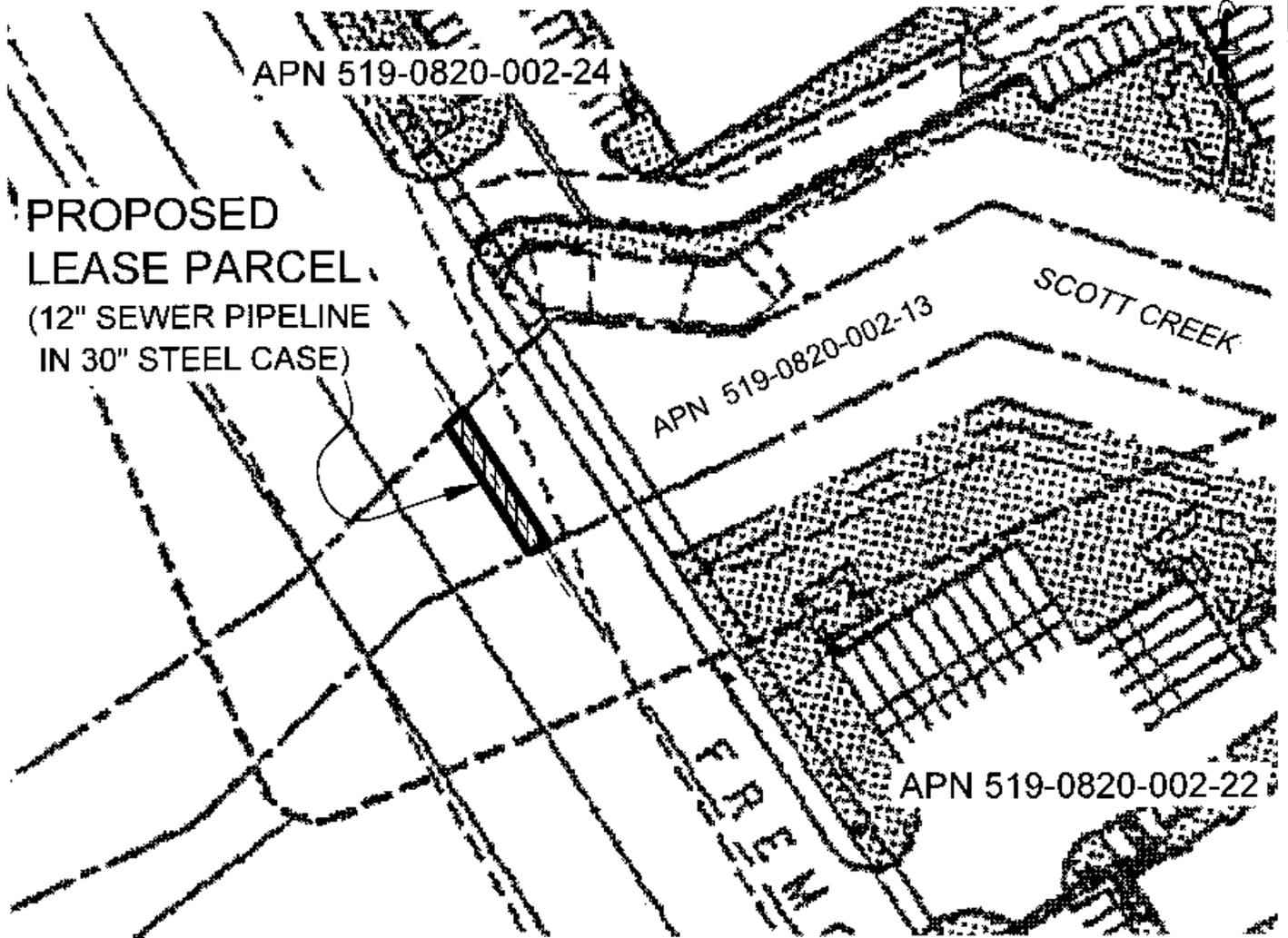
The above description is for Lease of State Lands for a proposed 12" sewer pipe line, together with any and all appurtenances pertaining thereto, to be built at a later day with the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 01/21/2014 by the California State
Lands Commission Boundary Unit.



NO SCALE

SITE



SCOTT CREEK AT FREMONT BLVD., CITY OF FREMONT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26688

I & G CREEKSIDE INVESTORS, LLC

APN 519-0820-002-13

GENERAL LEASE -

RIGHT-OF-WAY USE

ALAMEDA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION (CSLC)
MITIGATION MONITORING PROGRAM
CREEKSIDE LANDING PROJECT (W26688)**

Potential Impact	Mitigation Measure	Location	Monitoring/Reporting Action	Responsible Party	Timing
Air Quality/Greenhouse Emissions					
AIR-3: Potential Impacts to Air Quality/Greenhouse Gas Emissions	MM AIR-3. Implementing Bay Area Air Quality Management District (BAAQMD) Dust Control Measures. During construction activities, the Project Applicant (OMP / I&G Creekside Investors LLC) shall ensure that construction contractors implement the following BAAQMD dust control measures when applicable: <ul style="list-style-type: none"> • Water all active construction and site preparation areas at least twice daily and more often during windy periods. • Cover all hauling trucks or maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer) on all loads. • 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 adjacent roads. • Apply hydroseed or non-toxic soil stabilizers to inactive construction areas (i.e., previously graded development areas that are inactive for a period of 10 days or more). • Enclose or securely cover all exposed stockpiles. • Replant vegetation in disturbed areas as quickly as possible. • Suspend any unmitigated construction activities that cause visible dust plumes to extend beyond the job 	Onsite, and offsite	Notes on plans, and site inspections	City of Fremont (City), Applicant, and contractors	Prior to issuance of permits, and during construction activities

Potential Impact	Mitigation Measure	Location	Monitoring/Reporting Action	Responsible Party	Timing
	site.				
Biological Resources					
BIO-2: Potential Impacts to Special-status Animal Species	MM BIO-2a. Conducting Bird Surveys 30 Days Prior to Disturbance. If tree removal occurs during the nesting season (February 1 to August 31), no more than 30 days prior to any site-disturbing activities, including vegetation removal or grading, the Project Applicant will retain a qualified wildlife biologist to conduct a nesting bird surveys for the burrowing owl, tricolored blackbird, northern harrier, white-tailed kite, and salt marsh common yellowthroat to determine if nests are active or occupied onsite or within 500 feet of the Project site. The surveys shall be conducted a minimum of three separate days during the 30 days prior to disturbance. Active passerine nests shall be protected with a 75-foot minimum buffer, and active raptor nests shall be protected with a 300-foot minimum buffer. The buffers shall be delineated with construction flagging and be maintained until after the nestlings have fledged and left the nest. No construction activities shall be allowed in these buffers. Buffers shall be marked in the field with stakes and flagging at all potential access points to the buffer. Buffers shall remain in place until the nest is no longer active, as determined by a qualified biologist. If warranted by site conditions (as evaluated and documented by a qualified biologist), this buffer may be reduced with the approval of the California Department of Fish and Wildlife (CDFW). This mitigation measure does not apply to any tree removal activities that would occur during the non-nesting season (September 1 to January 31).	Onsite, and offsite	Site inspection, and submittal of survey documentation	City, CDFW, Applicant, and contractors	No more than 30 days prior to any site-disturbing activities

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Responsible Party	Timing
BIO-2: Potential Impacts to Special-status Animal Species (continued)	MM BIO-2b: Conducting Pond Turtle Surveys 48 Hours Prior to Construction. No more than 48 hours prior to the commencement of construction, surveys for the pond turtle should be conducted within the entire Scott Creek corridor adjacent to the development area and within the Scott Creek corridor within 150 feet of the grading limit line. If turtle nests are found within the Scott Creek corridor adjacent to the site or within 150 feet of the grading limit line, then a 100-foot minimum buffer delineated by construction flagging shall be established by a qualified biologist to protect the nesting site. The buffer may be modified, depending on the topography and stress to the turtles at the nesting site. Construction activities within the buffer may proceed once the turtles are able to move on their own. If non-nesting western pond turtles are found within the Scott Creek corridor, a biological monitor shall remain onsite during all ground-disturbing activities within or adjacent to the channel to ensure that no turtles are harmed.	Onsite, and offsite	Site inspection, and submittal of survey documentation	City, CDFW, U.S. Fish and Wildlife Service (USFWS), Applicant, and contractors	No more than 48 hours prior to commencement of construction
	MM BIO-2c. Trapping Salt Marsh Harvest Mouse and Salt Marsh Wandering Shrews Prior to Grading Activities. Prior to grading activities in the northeastern corner of the Project site, areas of non-tidal pickleweed shall be trapped for the salt marsh harvest mouse and salt marsh wandering shrews. Trapping and relocation of salt marsh harvest mouse and shrews will be conducted with similar methods to those used in the salt marsh harvest mouse relocation in 2006 and 2007 following the USFWS-approved biological opinion. All salt marsh harvest mouse and shrews that are trapped will be relocated to the adjacent wetlands area.	Onsite, and offsite	Site inspection, and submittal of survey documentation	City, CDFW, USFWS, Applicant, and contractors	Prior to grading activities in the north-eastern corner of the Project site

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Responsible Party	Timing
Cultural Resources					
CUL-1: Potential Impacts from Subsurface Earthwork to Cultural Resources	MM CUL-1. Stopping Construction Activities Within 100-foot Radius Upon Encountering Significant Cultural Resources. If a potentially significant cultural resource is encountered during subsurface earthwork activities for the Project, all construction activities within a 100-foot radius of the find shall cease until a qualified archaeologist determines whether the resource requires further study. The city of Fremont shall require the Project Applicant to include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction shall be recorded on appropriate California Department of Parks and Recreation forms and evaluated for significance in terms of California Environmental Quality Act (CEQA) criteria by a qualified archaeologist. Potentially significant cultural resources consist of but are not limited to stone, bone, glass, ceramic, wood, or shell artifacts; fossils; or features including hearths, structural remains, or historic dumpsites. If the resource is determined significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant. The archaeologist shall also perform appropriate technical analyses, prepare a comprehensive report and file it with the appropriate Information Center, and provide for the permanent curation of the recovered materials.	Onsite, and offsite	Site inspection, and submittal of relocation documentation	City, Applicant, and contractors	During sub-surface earthwork activities
CUL-3: Potential Impacts to Significant	MM CUL-3. Stopping Construction Activities Within 100-foot Radius Upon Discovering a Fossil. In the event a fossil is discovered during any earthwork activities for the proposed Project (including those occurring at	Onsite, and offsite	Site inspection, and submittal of	City, Applicant, and contractors	During sub-surface earthwork

Potential Impact	Mitigation Measure	Location	Monitoring/Reporting Action	Responsible Party	Timing
Fossils	depths of less than 10 feet), all excavations within 100 feet of the find shall be temporarily halted or delayed until the discovery is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology (SVP) standards. The paleontologist shall notify the City to determine procedures to be followed before construction is allowed to resume at the location of the find. If the find is determined to be significant and the City determines that avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the SVP standards. The plan shall be submitted to the City for review and approval. Upon approval, the plan shall be incorporated into the Project.		relocation documentation		activities
CUL-4: Potential Impacts to Human Remains	MM CUL-4. Stopping Construction Activities Immediately Upon Discovering Human Remains. If human remains are encountered during earth-disturbing activities for the Project, all work in the adjacent area shall stop immediately and the Alameda County Coroner's office shall be notified. If the remains are determined to be Native American in origin, the Native American Heritage Commission shall be notified and will identify the Most Likely Descendent, who will be consulted for recommendations for treatment of the discovered remains.	Onsite, and offsite	Site inspection, and submittal of relocation documentation	City, Alameda County Coroner's office, Applicant, and contractors	During sub-surface earthwork activities
Geology, Soils, and Seismicity					
GEO-1: Potential Impacts from Exposure of Persons and Structures to Seismic Hazards	MM GEO-1a. Submitting and Receiving Prior Approval of Seismic Hazards Technical Study. Prior to issuance of building permits, the Project Applicant shall submit a seismic hazards technical study prepared by a qualified geotechnical engineer to the City for review and approval. The report shall be prepared in accordance with the requirements of the Seismic Hazards Mapping Act and identify necessary design measures to reduce potential seismic ground shaking impacts to acceptable levels. The	Onsite, and offsite	Approval of plans, and site inspection	City, Applicant, and contractors	Prior to issuance of building permits

Potential Impact	Mitigation Measure	Location	Monitoring/Reporting Action	Responsible Party	Timing
	Project Applicant shall incorporate the approved design measures into the Project plans.				
	MM GEO-1b. Submitting and Receiving Prior Approval of Design-Level Geotechnical Investigation. Prior to issuance of building permits, the Project Applicant shall submit a design-level geotechnical investigation to the City for review and approval. The design-level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the Project design.	Onsite, and offsite	Approval of plans, and site inspection	City, Applicant, and contractors	Prior to issuance of building permits
GEO-2: Potential Impacts to Creating Erosion and Sedimentation	MM HYD-1. Submitting and Receiving Prior Approval of Stormwater Prevention Plan. Prior to the issuance of grading permits or building permits (whichever occurs first), the Project Applicant shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City that identify specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for site restoration, BMP implementation, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements: <ul style="list-style-type: none"> • Temporary erosion control measures shall be employed for disturbed areas. • No disturbed surfaces will be left without erosion control measures in place during the winter and spring months. • Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures. • The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous 	Onsite, and offsite	Approval of plans, and site inspection	City, Applicant, and contractors	Prior to the issuance of grading permits or building permits (whichever occurs first)

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Responsible Party	Timing
	<p>materials on the construction site to eliminate or reduce discharge of materials to storm drains.</p> <ul style="list-style-type: none"> BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the San Francisco Bay Regional Water Quality Control Board to determine adequacy of the measure. <p>In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.</p>				
<p>GEO-4: Potential Impacts from Soil Conditions</p>	<p>MM GEO- 4. Submitting and Receiving Prior Approval of Soil Engineering and Foundation Design and Construction Documentation. Prior to issuance of grading permits or building permits (whichever occurs first), the Project Applicant shall provide documentation to the City demonstrating that all applicable recommendations for abating expansive soil conditions from the Berlogar Geotechnical Consultants Preliminary Investigation or comparable geotechnical study have been implemented into the Project's grading and building plans. This includes recommendations associated with soil engineering and foundation design and construction.</p>	<p>Onsite, and offsite</p>	<p>Approval of plans; site inspection</p>	<p>City, Applicant, and contractors</p>	<p>Prior to issuance of grading permits or building permits (whichever occurs first)</p>

Potential Impact	Mitigation Measure	Location	Monitoring/Reporting Action	Responsible Party	Timing
Hydrology and Water Quality					
HYD-1: Potential Impacts to Stormwater Discharge	See MM HYD-1 above.				
Public Services and Utilities					
PSU-7a: Potential Impacts from Waste Handling	MM PSU-7a. Submitting and Receiving Prior Approval of Waste Handling Plan. Prior to issuance of building permits, the Project Applicant shall prepare and submit a Waste Handling Plan in accordance with Fremont Municipal Code Ordinance No. 11-2008 to the City for review and approval. The plan shall indicate how construction and demolition debris will be recycled. The approved Waste Handling Plan shall be incorporated into the proposed Project.	Onsite, and offsite	Approval of plan, and site inspection	City, Applicant, and contractors	Prior to issuance of building permits
Transportation					
TRANS-9: Potential Impacts to Traffic	MM TRANS-9. Submitting and Receiving Prior Approval Construction Traffic Control Plan. Prior to commencement of construction activities, the Project Applicant shall submit a Construction Traffic Control Plan to the City for review and approval. The plan shall identify the timing and routing of all major construction equipment and trucking to avoid potential traffic congestion and delays on the local street network (e.g., Fremont Boulevard north of Flood Channel B), and to encourage the use of I-880. If necessary, construction equipment and materials delivery shall be limited to off-peak hours to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.	Onsite, and offsite	Approval of plan, and site inspection	City, Applicant, and contractors	Prior to commencement of construction activities

EXHIBIT D – CREEKSIDE LANDING PROJECT (W26688)

CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS

1.0 INTRODUCTION

The California State Lands Commission (CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Right of Way Use, to OMP / I&G Creekside Investors LLC (Applicant), for use of sovereign lands associated with the proposed micro-tunnel boring for the installation of a 12” PVC SDR 26 sanitary sewer line within a 30” steel casing underneath Scott Creek as part of the Creekside Landing Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)¹ The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6301, 6306.) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

The CSLC is a responsible agency under CEQA for the Project because the CSLC must approve a lease for the Project to go forward and because the city of Fremont (City), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The City analyzed the environmental impacts associated with the Project in an Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2008042116) and in 12/2009, certified the EIR, adopted the Project Mitigation Monitoring and Reporting Program (MMRP) and Findings, and made a Statement of Overriding Considerations.

The Project involves micro-tunnel boring underneath Scott Creek, APN 519-0820-002-13 for the installation of a 12” PVC SDR 26 sanitary sewer line within a 30” steel casing within a proposed bridge Right of Way, or the Fremont Boulevard extension. The Fremont Boulevard extension will be from existing terminus at the low-flow channel and Lakeview Boulevard to the city limit of city of Milpitas, connecting parcels APN 519-0820-22 and 24, meeting the City of Fremont General Plan and supporting the proposed commercial development by the Applicant.

The City determined that the Project could have significant environmental effects on the following environmental resources:

¹ CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in Title 14 of the California Code of Regulations section 15000 et seq.

- Aesthetics, Light, and Glare;
- Air Quality/Greenhouse Emissions;
- Biological Resources;
- Cultural Resources;
- Geology, Soils, and Seismicity;
- Hazards and Hazardous Materials;
- Hydrology and Water Quality;
- Public Services and Utilities; and
- Transportation

Of those nine resources areas, Project components within the CSLC's jurisdiction (i.e., boring under Scott Creek) could have significant environmental effects on seven of the above resource areas:

- Air Quality/Greenhouse Gas Emissions;
- Biological Resources;
- Cultural Resources;
- Geology, Soils, and Seismicity;
- Hydrology and Water Quality;
- Public Services and Utilities; and
- Transportation.

In certifying the EIR and approving the Project, the City imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures such that the impacts would be less than significant for most resource areas.

However, even with the integration of all feasible mitigation, the City concluded in the EIR that some of the identified impacts would remain significant. As a result, the city of Fremont adopted a Statement of Overriding Considerations to support its approval of the Project despite the significant and unavoidable impacts (Attachment D-1). The City determined that, after mitigation, the Project may still have significant impacts on Air Quality and Transportation. Because these impacts will be from occupying the proposed commercial buildings and their related daily traffic, these significant impacts are outside the jurisdiction and approval authority of the CSLC, and a Statement of Overriding Considerations is not required by the CSLC.

As a responsible agency, the CSLC complies with CEQA by considering the City's EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In so doing, the CSLC may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the CSLC will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or project revisions are implemented, the CSLC adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit C as part of its Project approval.

2.0 FINDINGS

The CSLC's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment. (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by the City for the Project identifies potentially significant impacts that fall within the scope of the CSLC's approval, the CSLC makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund v. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

While the CSLC must consider the environmental impacts of the Project as set forth in the EIR, the CSLC's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the CSLC's exercise of discretion involves only issuing a General Lease – Right of Way Use lease for this Project, the CSLC is responsible for considering only the environmental impacts related to lands or resources subject to the CSLC's jurisdiction. With respect to all other impacts associated with implementation of the Project, the CSLC is bound by the legal presumption that the EIR fully complies with CEQA.

The CSLC has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the CSLC's approval of a General Lease – Right of Way Use, which would allow micro-tunnel boring underneath Scott Creek, are included herein and organized according to the resource affected. These Findings, which reflect the independent judgment of the CSLC, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- A. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
- B. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency;
- C. 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 EIR.²

² See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

These Findings are based on the information contained in the EIR and information submitted by the Applicant, all of which is contained in the administrative record. The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the EIR.

The CSLC is the custodian of the record of proceedings upon which its decision is based. The location of the CSLC’s record of proceedings is in the Sacramento office of the CSLC, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825..

IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION

The following impacts were determined in the EIR to be potentially significant absent mitigation:

Impact	Mitigation Measures
A. Air Quality/Greenhouse Emissions	AIR-3
B. Biological Resources	BIO-2
C. Cultural Resources	CUL-1, CUL-3, CUL-4
D. Geology, Soils, and Seismicity	GEO-1, GEO-2, GEO-4
E. Hydrology and Water Quality	HYD-1
F. Public Services and Utilities	PSU-7a
G. Transportation	TRANS-9

After application of mitigation, however, the impacts were determined to be less than significant.

A. AIR QUALITY/GREENHOUSE EMISSIONS

CEQA FINDING NO. AIR-3	
Impact:	Impact AIR-3. Potential Impacts to Air Quality/Greenhouse Gas Emissions.
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in significant air pollutant emissions during Project construction. Implementation of Mitigation Measure **AIR-3** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure AIR-3: Implementing Bay Area Air Quality Management

District (BAAQMD) Dust Control Measures. During construction activities, the Project Applicant shall ensure that construction contractors implement the following BAAQMD dust control measures when applicable:

- Water all active construction and site preparation areas at least twice daily and more often during windy periods.
- Cover all hauling trucks or maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer) on all loads.
- 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 adjacent roads.
- Apply hydroseed or non-toxic soil stabilizers to inactive construction areas (i.e., previously graded development areas that are inactive for a period of 10 days or more).
- Enclose or securely cover all exposed stockpiles.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend any unmitigated construction activities that cause visible dust plumes to extend beyond the job site.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

B. BIOLOGICAL RESOURCES

CEQA FINDING NO. BIO-2

Impact: **Impact BIO-2.** Potential Impacts to Special-Status Animal Species.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in a substantial adverse effect on special-status animal species. The following five special-status bird species have a moderate potential to occur on the Project site: western burrowing owl, tricolored blackbird, northern harrier, white-tailed kite, and salt marsh common yellowthroat. Adverse impacts could occur through nesting or nesting-related

disturbance. Implementation of Mitigation Measures **BIO-2a through BIO-2c** have been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure BIO-2a: Conducting Bird Surveys 30 Days Prior to

Disturbance. If tree removal occurs during the nesting season (February 1 to August 31), no more than 30 days prior to any site-disturbing activities, including vegetation removal or grading, the Project Applicant will retain a qualified wildlife biologist to conduct a nesting bird surveys for the burrowing owl, tricolored blackbird, northern harrier, white-tailed kite, and salt marsh common yellowthroat to determine if nests are active or occupied onsite or within 500 feet of the Project site. The surveys shall be conducted a minimum of three separate days during the 30 days prior to disturbance. Active passerine nests shall be protected with a 75-foot minimum buffer, and active raptor nests shall be protected with a 300-foot minimum buffer. The buffers shall be delineated with construction flagging and be maintained until after the nestlings have fledged and left the nest. No construction activities shall be allowed in these buffers. Buffers shall be marked in the field with stakes and flagging at all potential access points to the buffer. Buffers shall remain in place until the nest is no longer active, as determined by a qualified biologist. If warranted by site conditions (as evaluated and documented by a qualified biologist), this buffer may be reduced with the approval of the California Department of Fish and Wildlife (CDFW). This mitigation measure does not apply to any tree removal activities that would occur during the non-nesting season (September 1 to January 31).

Mitigation Measure BIO-2b: Conducting Pond Turtle Surveys 48 Hours Prior to

Construction. No more than 48 hours prior to the commencement of construction, surveys for the pond turtle should be conducted within the entire Scott Creek corridor adjacent to the development area and within the Scott Creek corridor within 150 feet of the grading limit line. If turtle nests are found within the Scott Creek corridor adjacent to the site or within 150 feet of the grading limit line, then a 100-foot minimum buffer delineated by construction flagging shall be established by a qualified biologist to protect the nesting site. The buffer may be modified, depending on the topography and stress to the turtles at the nesting site. Construction activities within the buffer may proceed once the turtles are able to move on their own. If non-nesting western pond turtles are found within the Scott Creek corridor, a biological monitor shall remain onsite during all ground-disturbing activities within or adjacent to the channel to ensure that no turtles are harmed.

Mitigation Measure BIO-2c: Trapping Salt Marsh Harvest Mouse and Salt Marsh Wandering Shrews Prior to Grading Activities.

Prior to grading activities in the northeastern corner of the Project site, areas of non-tidal pickleweed shall be trapped for the salt marsh harvest mouse and salt marsh wandering shrews. Trapping and relocation of salt marsh harvest mouse and shrews will be conducted with similar methods to those used in the salt marsh harvest mouse relocation in 2006 and 2007 following the U.S. Fish and Wildlife Service (USFWS)-approved biological opinion. All salt marsh harvest mouse and shrews that are trapped will be relocated to the adjacent wetlands area.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

C. CULTURAL RESOURCES

CEQA FINDING NO. CUL-1

Impact: **Impact CUL-1.** Potential Impacts from Subsurface Earthwork to Cultural Resources

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in damaging or destroying previously undiscovered historic resources or archaeological resources. Implementation of Mitigation Measure **CUL-1** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure CUL-1: Stopping Construction Activities Within 100-foot Radius Upon Encountering Significant Cultural Resources. If a potentially significant cultural resource is encountered during subsurface earthwork activities for the Project, all construction activities within a 100-foot radius of the find shall cease until a qualified archaeologist determines whether the resource requires further study. The City shall require the Project Applicant to include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction shall be recorded on appropriate California Department of Parks and Recreation forms and evaluated for significance in terms of CEQA criteria by a qualified archaeologist. Potentially significant cultural resources consist of but are not limited to stone, bone, glass, ceramic, wood, or shell artifacts; fossils; or features including hearths, structural remains, or historic dumpsites. If the resource is determined significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant. The archaeologist shall also perform appropriate technical analyses, prepare a comprehensive report and file it with the appropriate Information Center, and provide for the permanent curation of the recovered materials.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

CEQA FINDING NO. CUL-3

Impact: **Impact CUL-3.** Potential Impacts to Significant Fossils.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in damaging or destroying previously undiscovered paleontological resources. Implementation of Mitigation Measure **CUL-3** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure CUL-3: Stopping Construction Activities Within 100-foot Radius Upon Discovering a Fossil. In the event a fossil is discovered during any earthwork activities for the proposed Project (including those occurring at depths of less than 10 feet), all excavations within 100 feet of the find shall be temporarily halted or delayed until the discovery is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology (SVP) standards. The paleontologist shall notify the City to determine procedures to be followed before construction is allowed to resume at the location of the find. If the find is determined to be significant and the City determines that avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the SVP standards. The plan shall be submitted to the City for review and approval. Upon approval, the plan shall be incorporated into the Project.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

CEQA FINDING NO. CUL-4

Impact: **Impact CUL-4.** Potential Impacts to Human Remains.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in damaging or destroying previously undiscovered human burial sites. Implementation of Mitigation Measure **CUL-4** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure CUL-4: Stopping Construction Activities Immediately Upon Discovering Human Remains. If human remains are encountered during earth-disturbing activities for the Project, all work in the adjacent area shall stop immediately and the Alameda County Coroner's office shall be notified. If the remains are determined to be Native American in origin, the Native American Heritage Commission shall be notified and will identify the Most Likely Descendent, who will be consulted for recommendations for treatment of the discovered remains.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

D. GEOLOGY, SOILS, AND SEISMICITY

CEQA FINDING NO. GEO-1

Impact: **Impact GEO-1.** Potential Impacts from Exposure of Persons and Structures to Seismic Hazards.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in exposing persons or structures to seismic hazards. Implementation of Mitigation Measures **GEO-1a through GEO-1b** have been incorporated into the Project to reduce this impact to a less-than-significant level.

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

Mitigation Measure GEO-1b: Submitting and Receiving Prior Approval of Design-Level Geotechnical Investigation. Prior to issuance of building permits, the Project Applicant shall submit a design-level geotechnical investigation to the City for review and approval. The design-level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the Project design.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

CEQA FINDING NO. GEO-2

Impact: **Impact GEO-2.** Potential Impacts to Creating Erosion and Sedimentation.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in degrading water quality in downstream water bodies.

Short-Term Water Quality- Construction activities associated with the proposed Project have the potential to degrade water quality in downstream water bodies. Project implementation would require extensive construction and grading. During these activities, there would be the potential for surface water to carry sediment from onsite erosion and small quantities of pollutants into the stormwater system and local waterways. Soil erosion may occur along Project boundaries during construction in areas where temporary soil storage is required. Small quantities of pollutants have the potential for entering the storm drainage system, thereby potentially degrading water quality. Construction of the proposed Project would also require the use of gasoline and diesel-powered heavy equipment, such as bulldozers, backhoes, water pumps, and air compressors. Chemicals such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents, glues, and other substances would be utilized during construction. An accidental release of any of these substances could degrade the water quality of the surface water runoff and add additional sources of pollution into the drainage system.

The National Pollutant Discharge Elimination System (NPDES) stormwater permitting programs regulate stormwater quality from construction sites. Under the NPDES permitting program, the preparation and implementation of Stormwater Pollution Prevention Plan (SWPPP)s are required for construction activities more than one acre in area. The SWPPP must identify potential sources of pollution that may be reasonably expected to affect the quality of stormwater discharges as well as identify and implement Best Management Practices (BMPs) that ensure the reduction of these pollutants during stormwater discharges. Mitigation is proposed that would require the Project applicant to prepare and implement an SWPPP. The implementation of the mitigation measure would ensure that potential, short-term, construction water quality impacts are reduced to a level of less than significant.

Implementation of Mitigation Measure **HYD-1** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure HYD-1: Submitting and Receiving Prior Approval of

Stormwater Prevention Plan. Prior to the issuance of grading permits or building permits (whichever occurs first), the Project Applicant shall prepare and submit a SWPPP to the City that identify specific actions and BMPs to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for site restoration, BMP implementation, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:

- Temporary erosion control measures shall be employed for disturbed areas.
- No disturbed surfaces will be left without erosion control measures in place during the winter and spring months.
- Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.
- The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.
- BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the San Francisco Bay Regional Water Quality Control Board to determine adequacy of the measure.
- In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

CEQA FINDING NO. GEO-4

Impact: **Impact GEO-4.** Potential Impacts from Soil Conditions.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in exposing persons or structures to hazards associated with expansive soils. The Project site contains moderately and highly expansive soils. Left unabated, these conditions could result in the structural integrity of foundations and building systems being compromised

by shrinking and swelling of soils. Implementation of Mitigation Measure **GEO-4** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure GEO-4: Submitting and Receiving Prior Approval of Soil Engineering and Foundation Design and Construction Documentation. Prior to issuance of grading permits or building permits (whichever occurs first), the Project Applicant shall provide documentation to the City demonstrating that all applicable recommendations for abating expansive soil conditions from the Berlogar Geotechnical Consultants Preliminary Investigation or comparable geotechnical study have been implemented into the Project's grading and building plans. This includes recommendations associated with soil engineering and foundation design and construction.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

E. HYDROLOGY AND WATER QUALITY

CEQA FINDING NO. HYD-1

Impact: **Impact HYD-1.** See Impact GEO-2 above.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

See MM-HYD-1 above.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

F. PUBLIC SERVICES AND UTILITIES

CEQA FINDING NO. PSU-7A

Impact: **Impact PSU-7a.** Potential Impacts from Waste Handling.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in generating substantial amounts of solid waste during both construction and operations. Solid waste would be generated by construction and operational activities. Mitigation is proposed that would require the Project Applicant to retain a contractor to recycle construction and demolition debris. The implementation of this mitigation measure would reduce potential impacts to a level of less-than-significant. The operational solid waste generation estimate was calculated by using a standard commercial waste generation rate provided the California Integrated Waste Management Board. Mitigation is proposed that would require the Project applicant to submit a Recycling and Waste Reduction Plan to the City for review and approval. The plan would identify practices and onsite facilities necessary to ensure that recoverable materials and green waste are diverted from the waste stream to the maximum extent feasible. The implementation of this mitigation measure would reduce solid waste generation and reduce demand for landfill capacity. Therefore, solid waste impacts would be reduced to a level of less-than-significant.

Implementation of Mitigation Measure **PSU-7a** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure PSU-7a: Submitting and Receiving Prior Approval of Waste Handling Plan. Prior to issuance of building permits, the Project Applicant shall prepare and submit a Waste Handling Plan in accordance with Fremont Municipal Code Ordinance No. 11-2008 to the City for review and approval. The plan shall indicate how construction and demolition debris will be recycled. The approved Waste Handling Plan shall be incorporated into the proposed Project.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

G. TRANSPORTATION

CEQA FINDING NO. TRANS-9

Impact: **Impact TRANS-9.** Potential Impacts to Traffic.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in impacting traffic. Implementation of Mitigation Measure **TRANS-9** has been incorporated into the Project to reduce this impact to a less-than-significant level.

Mitigation Measure TRANS-9: Submitting and Receiving Prior Approval

Construction Traffic Control Plan. Prior to commencement of construction activities, the Project Applicant shall submit a Construction Traffic Control Plan to the City for review and approval. The Construction Traffic Control Plan shall identify the timing and routing of all major construction equipment and trucking to avoid potential traffic congestion and delays on the local street network (e.g., Fremont Boulevard north of Flood Channel B), and to encourage the use of I-880. If necessary, construction equipment and materials delivery shall be limited to off-peak hours to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less-than-significant level.

ATTACHMENT D-1

CITY OF FREMONT
FINDINGS REGARDING ALTERNATIVES AND
STATEMENT OF OVERRIDING CONSIDERATIONS

PLANNING COMMISSION RESOLUTION NO. PC-2211

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FREMONT CERTIFYING THE ENVIRONMENTAL IMPACT REPORT, MAKING FINDINGS, APPROVING A MITIGATION MONITORING AND REPORTING PROGRAM, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND APPROVING THE PROJECT FOR THE CREEKSIDELANDING PROJECT LOCATED AT THE NORTHWEST CORNER OF INTERSTATE 880 AND DIXON LANDING ROAD IN SOUTH FREMONT

WHEREAS, Developer owns approximately 147 acres of real property in the City of Fremont, generally located west of Interstate 880 and north of Dixon Landing Road ("the Property"). The Property has a general plan designation of "Restricted Industrial and Open Space with a Commercial/Industrial Overlay." City and Developer entered into a "Development Agreement By and Between the City of Fremont and King & Lyons" ("the Agreement") pursuant to City of Fremont Ordinance No. 2065 adopting the Agreement, with an effective date of March 31, 1994, to provide for the development of the Property. The Agreement originally anticipated development of the site as a research and development industrial park; and

WHEREAS, Developer is now considering development of the site as a regional shopping center ("the Project"), which is a conditionally permitted use under the existing general plan designation. The proposed Project consists of the development of a 487,000 square foot retail center along with the extension of Fremont Boulevard and the San Francisco Bay Trail on approximately 59 acres of the Property. (As originally proposed and studied, the Project included 524,000 square feet of retail.) An 88-acre wetland area located west of the developed area would be dedicated as permanent open space. Approval of the Project requires the issuance of a conditional use permit by the planning commission, along with approval of a vesting tentative map and grading plan. The applicant also requests an accompanying amendment and extension of the Agreement by the city council; and

WHEREAS, a draft and final Environmental Impact Report, as well as supplemental information (jointly the "EIR") have been prepared in compliance with the California Environmental Quality Act ("CEQA") to assess the potential environmental impacts of the proposed Project and describe alternatives to the Project proposal and potential mitigation measures; and

WHEREAS, the Project was found to have potentially significant environmental impacts on a number of topical areas, all of which can be reduced to a less-than-significant level with mitigation, except for certain impacts to air quality and traffic which cannot be mitigated; and

WHEREAS, the planning commission held a public hearing on December 10, 2009 and considered the EIR and reports and documents presented by City staff and the written and oral comments presented at the public hearing.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF FREMONT HEREBY RESOLVES AS FOLLOWS:

SECTION 1. EIR CERTIFICATION. The planning commission has reviewed the documents comprising the EIR for the proposed Project, and hereby finds that the EIR reflects the independent judgment of the planning commission and city staff, and is an adequate and extensive assessment of the environmental impacts of the Project. Accordingly, the planning commission hereby certifies the EIR as having been prepared in compliance with the requirements of CEQA. The planning commission also incorporates by this reference the findings contained in the EIR as to the environmental effects of the Project, together with the additional findings contained in this Resolution.

SECTION 2. CONSIDERATION OF PROJECT AND PROJECT ALTERNATIVES. The Project described and considered in the EIR is the development of a commercial retail center to be known as Creekside Landing, and the extension of Fremont Boulevard and the San Francisco Bay Trail along the west side of the retail center to Dixon Landing Road.¹ The Creekside Landing shopping center consists of the development of 487,000 square feet of commercial uses on the 59-acre development site. Two freestanding anchor stores would occupy opposite ends of the shopping center, with smaller in-line and freestanding retail and restaurants located in between the two anchors. Scott Creek runs across the upper portion (roughly the top 1/5 or 12 acres) of the site creating northern and southern project segments.

CEQA guidelines require that an EIR include a comparative analysis of alternatives to a project, to determine whether the project's goals might be met with less environmental impacts. The goals and objectives for the proposed Project are to:

- Promote economic growth and development consistent with the policies of the City of Fremont General Plan in support of a solidified and expanded tax base promoting the City's fiscal health.
- Realize the intrinsic value of the site's regional freeway access and visibility for commercial use.
- Extend Fremont Boulevard to its General Plan-identified terminus.
- Provide additional access and travel route options for vehicular, bicycle, and pedestrian traffic in an effort to reduce travel times through efficient use of existing urban infrastructure and logical extension of infrastructure and development.
- Support the regional benefit of a complete San Francisco Bay Trail by completing a missing segment.
- Enhance the bicycle and pedestrian opportunities of the surrounding industrial neighborhoods and for the City as a whole.
- Implement high-quality site and architectural design features that embrace the prominence and gateway attributes for the site context.

¹ The proposed Project was originally known as the "Bayside Marketplace Project." This previous name is reflected in various documents prepared for the Project such as the Notice of Preparation and certain technical studies.

- Incorporate a range of sustainability measures into the project design for both near-term and long-term benefits.

In addition to the Project, the EIR analyzed and reviewed four alternatives as briefly described below. A more detailed discussion of the Project alternatives and their impacts compared to the Project is included in the draft EIR (Section 5) and incorporated herein by reference. The findings are based on the evidence contained therein.

Alternative 1: No Project/No Development Alternative (as required by Section 15126.6(e) of the State CEQA Guidelines). This alternative discusses what would happen if the Project is not approved and the site remains in its existing condition and no new development occurs.

Alternative 2: No Project/Bayside Business Park Phase II Alternative. This alternative assumes the Project would not be developed and that instead the property would develop under the current entitlement, Phase II of the Bayside Business Park, which consists of 671,000 square feet of research and development uses.

Alternative 3: Hotel Option Alternative. Under this alternative the proposed Project's retail uses would be developed with the exception of the north anchor, which would be replaced with two hotels totaling 300 rooms and a 60,000 square foot health/fitness club facility. The internal vehicular crossing of Scott Creek would be replaced with a pedestrian crossing.

Alternative 4: Reduced Density Alternative. Under this analysis, the proposed Project would be reduced in size by eliminating development from the approximately 12-acre area north of Scott Creek and, instead, establish a biological mitigation bank in the area. This alternative would reduce the developed acreage by 20 percent and the retail uses by 140,000 square feet (27 percent), and it would eliminate the internal vehicular crossing of Scott Creek. The remainder of the retail uses would remain unchanged.

CEQA guidelines specify that an EIR must identify the environmentally superior alternative among those alternatives discussed. The proposed Project would result in some significant unavoidable impacts to traffic and air quality that could not be reduced to an insignificant level by mitigation. Each of the described alternatives would have fewer environmental impacts relative to the proposed Project, with Alternative 1, the No Project/No Development alternative having the fewest as the project site would remain in its existing condition, thereby avoiding any potentially adverse environmental impacts. Accordingly, Alternative 1 is the environmentally superior alternative. CEQA guidelines further provide, however, that if the environmentally superior alternative is the no project/no development alternative, the EIR must identify an environmentally superior alternative among the other alternatives. Based on the review, Alternative 2, the No Project/Bayside Business Park Phase II Alternative is considered the environmentally superior alternative because it would generate less daily vehicle trips and thus would reduce the significant unavoidable impacts associated with vehicle queuing and would result in substantial reductions in air emissions compared to the Project. Although the reduced density alternative (Alternative 4) would have fewer impacts overall on more topical areas because it is a scaled-down development, it would nevertheless generate more vehicle daily trips than Alternative 2 and consequently emit more air pollutants and impact more intersections.

The proposed Project is a modified alternative to the preferred project of the EIR. The proposed Project is roughly 9% less intense in square footage than the preferred project and is the feasible alternative to the preferred project compared to the alternatives identified in the EIR. The proposed Project meets most of the objectives of the project and reduces the severity of the overall significant impacts of the project.

Alternative 1, the no project/no build alternative would not meet or achieve any of the Project objectives. Alternative 2 assumes no different development would occur than that already permitted at the site. Development of the site as a research and development industrial park would not meet the Project's economic growth and development goals because it would result in a general industrial use that would not take advantage of the intrinsic value of the site's regional freeway access and visibility for commercial use, and only minimally contribute to an expanded commercial tax base.

Alternative 3, the hotel option, would have fewer impacts on some topical areas but would result in the same significant and unavoidable impacts as the proposed Project. This alternative would further some of the Project's objectives, but to a lesser degree than the Project. Alternative 3 would have less retail development and generate less revenue overall. While hotels can generate substantial tax revenue through local transient occupancy tax, the hotel market is currently not viable for new investment based on available room inventories in the area and the reduced room rates. Difficult market conditions for business travel are causing excess vacancies (occupancy rates below 60%) in the region and associated reduced hotel room rates.

Alternative 4, the reduced density alternative, analyses development of 384,000 square feet of retail space as opposed to the Project's originally proposed 524,000 square feet for a net decrease of 140,000 square feet. The reduced density alternative would have lesser impacts on a number of environmental topics because it would not develop 12 acres of the site. Nevertheless, it would result in significant unavoidable impacts on intersection operations, similar to the Project. The economic viability of the site with the smaller square footage is questionable as the size of the center would not have the critical mass of a regional shopping center according to the International Council of Shopping Center trade group. Having a size below the median size of 410,000 square feet for a metropolitan area would not be competitive against other larger centers (e.g., McCarthy Ranch, Pacific Commons, and Newark Mall) which would make it difficult to market the site to selective retailers and result in less valuable and non-regionally oriented tenants. Without viability as a regional shopping center, the Project would not meet the objectives of the project. In addition, the size of the proposed Project has been reduced since the initial application, and now proposes 487,000 square feet of retail, a net reduction of 37,000 square feet, which will slightly lessen the impacts. Given that the degree of impact difference between alternative 4 is relatively minor, and that it would not yield the same level of beneficial results of the proposed Project, the planning commission finds in accordance with CEQA Guideline 15091 that the proposed Project is a feasible alternative to the preferred project analyzed in the EIR.

SECTION 3. FINDINGS. CEQA guideline 15091 provides that no public agency shall approve a project for which an EIR has been prepared which identifies one or more significant environmental effects unless the public agency makes written findings for each of those significant effects accompanied by a brief explanation of the rationale for each finding. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained works, make infeasible the mitigation measures or project alternatives identified in the final EIR.

The EIR has identified various potential significant environmental impacts of the proposed Project. In compliance with guideline 15091, the planning commission makes the following findings with respect to each significant environmental impact. The impacts and mitigation measures are summarized and presented by issue area in the same order as presented in the EIR and Mitigation and Monitoring Reporting Program. Impacts are identified by their topical designation and mitigations measures are designated "MM."

1. Aesthetics, Light and Glare (draft EIR, page 4.1-1 et seq.)

Impact AES-2: The proposed Project may substantially degrade the visual character of the Project site or its surroundings because it would create development on land which is currently undeveloped with no structures.

MM AES-2: Prior to issuance of building permits, the project applicant shall provide landscape, tree, and architectural treatment details along the I-880 frontage that ensures a relatively softened and compatible appearance of hardscapes, building wall, apparent building height, wall massing and height, and limited illuminated building wall signage for approval by the City of Fremont. The final plan shall include trees, shrubs, vines, and groundcover planting of appropriate spacing to soften the site without obstructing the visual identity of the shopping center. The landscape plan shall indicate surface materials and soil types to ensure the long-term viability of the selected planting to thrive on the site. The appropriate property interests shall have the opportunity to provide consent regarding implementation. In the event that consent from property interests cannot be obtained, modifications to the landscape type and locations, as well as to building design, treatments, and location will be required to provide visual relief along the I-880 corridor to ensure compatible character.

Finding: The City finds that such a mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact AES-#: The proposed Project may result in the addition of new sources of substantial light and glare that would adversely affect daytime or nighttime views.

MM AES-3a: Prior to issuance of building permits for the Creekside Landing project, the project applicant shall submit a photometric plan to the City of Fremont for review and approval. The photometric plan shall identify types of lighting fixtures and their locations on the project site. In accordance with Fremont Municipal Code Ordinance No. 8-2008, other than public or private streetlights, exterior lighting shall be diffused and/or concealed in order to prevent illumination of adjoining properties or the creation of objectionable visual impacts on other properties or streets.

MM AES-3b: Prior to issuance of permits for the Fremont Boulevard extension, the roadway improvement plans shall identify how street lighting is shielded and directed downward to prevent off-roadway illumination. The approved plans shall be incorporated into the proposed project.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

2. Air Quality/Greenhouse Gas Emissions (draft EIR, page 4.2-1 et seq.)

Impact AIR-3: The proposed Project could potentially result in significant air pollutant emissions during project construction.

MM AIR-3: During construction activities, the project applicant shall ensure that construction contractors implement the following BAAQMD dust control measures when applicable:

- Water all active construction and site preparation areas at least twice daily and more often during windy periods.
- Cover all hauling trucks or maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer) on all loads.
- 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 adjacent roads.
- Apply hydroseed or non-toxic soil stabilizers to inactive construction areas (i.e., previously graded development areas that are inactive for a period of 10 days or more).
- Enclose or securely cover all exposed stockpiles.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend any unmitigated construction activities that cause visible dust plumes to extend beyond the job site.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact AIR-4: The proposed Project would result in significant emissions of pollutants during project operations.

MM AIR-4: Prior to the issuance of any building permits, the applicant shall identify the location of travel display kiosks that include information regarding carpooling, bicycle and pedestrian facilities and transit opportunities on the site plan. The applicant shall consult with AC Transit and VTA for appropriate transit connection content. Displays shall be made available to both employees and customers. Promotional displays shall be located through the project site with a minimum of one display per major building or building cluster. Final plan approval and implementation of these measures shall be included as conditions of approval for the Conditional Use Permit. This mitigation measure shall be coordinated with Mitigation Measure TRANS-8a.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).] However, the adopted mitigation will not reduce the impact to a less than significant impact. Although the Project includes overall sustainability provisions for improved energy efficiency, landscaping, and promoting increased bicycle and pedestrian opportunities in the area and the City as a whole, the Project cannot compensate for the overall increase in emissions related primarily to vehicular travel induced by the development. This impact has no feasible mitigation measures identified to directly reduce the potential significance beyond the proposed Project's design features. Also, as discussed above, none of the alternatives which achieve the Project goals would avoid this impact. However, in an effort to support alternative modes of transportation a mitigation measure

requiring promotion and information displays relating to transit and bicycle opportunities is required. Even with promotion of transit ridership, the potential impact remains significant and unavoidable for the Project. [14 Cal. Code Reg. 15091(a)(3).]

Impact AIR-7: The proposed Project would result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors).

MM AIR-4 (set forth above under discussion for Impact AIR-4);
MM TRANS-8a, 8b and 8c (set forth in full in following discussion under Transportation impacts).

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that lessen the environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).] However, although the adopted mitigation measures will contribute to reducing air pollutant emissions by enhancing accessibility to public transit, bicycles, and pedestrians, the impacts will still be greater than the BAAQMD regional significance thresholds and would still result in a significant unavoidable impact. Also, as discussed above, none of the alternatives which achieve the Project goals would avoid this impact. [14 Cal. Code Reg. 15091(a)(3).]

3. Biological Resources (draft EIR, page 4.3-1 et seq.)

Impact BIO-2: Development of the proposed Project could result in a substantial adverse effect on special-status animal species. Five special-status bird species have a moderate potential to occur on the project site: western burrowing owl, tricolored blackbird, northern harrier, white-tailed kite, and salt marsh common yellowthroat. Adverse impacts could occur through nesting or nesting-related disturbance.

MM BIO-2a: If tree removal occurs during the nesting season (February 1 to August 31), no more than 30 days prior to any site-disturbing activities, including vegetation removal or grading, the project applicant will retain a qualified wildlife biologist to conduct a nesting bird surveys survey for the burrowing owl, tricolored blackbird, northern harrier, white-tailed kite, and salt marsh common yellowthroat to determine if nests are active or occupied onsite or within 500 feet of the project site. The surveys shall be conducted a minimum of three separate days during the 30 days prior to disturbance. Active passerine nests shall be protected with a 75-foot minimum buffer, and active raptor nests shall be protected with a 300-foot minimum buffer. The buffers shall be delineated with construction flagging and be maintained until after the nestlings have fledged and

left the nest. No construction activities shall be allowed in these buffers. Buffers shall be marked in the field with stakes and flagging at all potential access points to the buffer. Buffers shall remain in place until the nest is no longer active, as determined by a qualified biologist. If warranted by site conditions (as evaluated and documented by a qualified biologist), this buffer may be reduced with the approval of the California Department of Fish and Game. This mitigation measure does not apply to any tree removal activities that would occur during the non-nesting season (September 1 to January 31).

MM BIO-2b: No more than 48 hours prior to the commencement of construction, surveys for the pond turtle should be conducted within the entire Scott Creek corridor adjacent to the development area and within the Scott Creek corridor within 150 feet of the grading limit line. If turtle nests are found within the Scott Creek corridor adjacent to the site within 150 feet of the grading limit line, then a 100-foot minimum buffer delineated by construction flagging shall be established by a qualified biologist to protect the nesting site. The buffer may be modified, depending on the topography and stress to the turtles at the nesting site. Construction activities within the buffer may proceed once the turtles are able to move on their own. If non-nesting western pond turtles are found within the Scott Creek corridor, a biological monitor shall remain onsite during all ground-disturbing activities within or adjacent to the channel to ensure that no turtles are harmed.

MM BIO-2c: Prior to grading activities in the northeastern corner of the project site, areas of non-tidal pickleweed shall be trapped for the salt marsh harvest mouse and salt marsh wandering shrews. Trapping and relocation of salt marsh harvest mouse and shrews will be conducted with similar methods to those used in the salt marsh harvest mouse relocation in 2006 and 2007 following the USFWS-approved biological opinion. All salt marsh harvest mouse and shrews that are trapped will be relocated to the adjacent wetlands area.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact BIO-3: Development of the proposed Project may adversely affect riparian habitat. The proposed Project would involve the development of three road crossings of waterways and the reestablishment of the low-flow channel of Scott Creek. In addition, the proposed Project would discharge runoff to Scott Creek and the wetlands area west of Fremont Boulevard.

MM BIO-3a: Prior to commencement of construction activities, the project applicant shall obtain a Streambed Alteration Agreement from the California Department of Fish and Game for the roadway crossings of Scott Creek and Flood

Channel B. As part of the terms of the agreement, the applicant shall offset permanently impacted riparian habitat at a ratio of no less than 1:1. All riparian habitat temporarily disturbed by construction activities shall be restored prior to the completion of work.

MM BIO-3b: Prior to commencement of construction activities, the project applicant shall obtain a permit from the San Francisco Bay Conservation and Development Commission for the roadway crossing of Flood Channel B. As part of the terms of the agreement, the applicant shall offset permanently impacted riparian habitat at a ratio of no less than 1:1. All riparian habitat temporarily disturbed by construction activities shall be restored prior to the completion of work.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact BIO-5: Development of the proposed Project could create obstructions to fish or wildlife movement.

MM BIO-3a and 3b: (set forth above).

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

4. Cultural Resources (draft EIR, page 4.4-11)

Impacts CUL-1 and CUL-2: Subsurface construction activities associated with the proposed Project may damage or destroy previously undiscovered historic resources or previously undiscovered archaeological resources.

MM CUL-1: If a potentially significant cultural resource is encountered during subsurface earthwork activities for the project, all construction activities within a 100-foot radius of the find shall cease until a qualified archaeologist determines whether the resource requires further study. The City of Fremont shall require the project applicant to include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction shall be recorded on appropriate California Department of Parks and Recreation (DPR) forms and evaluated for significance in terms of California Environmental Quality Act

criteria by a qualified archaeologist. Potentially significant cultural resources consist of but are not limited to stone, bone, glass, ceramic, wood, or shell artifacts; fossils; or features including hearths, structural remains, or historic dumpsites. If the resource is determined significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant. The archaeologist shall also perform appropriate technical analyses, prepare a comprehensive report and file it with the appropriate Information Center, and provide for the permanent curation of the recovered materials.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact CUL-3: Subsurface construction activities associated with the proposed Project may damage or destroy previously undiscovered paleontological resources.

MM CUL-3 In the event a fossil is discovered during any earthwork activities for the proposed project (including those occurring at depths of less than 10 feet), all excavations within 100 feet of the find shall be temporarily halted or delayed until the discovery is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the City of Fremont to determine procedures to be followed before construction is allowed to resume at the location of the find. If the find is determined to be significant and the City determines that avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the Society of Vertebrate Paleontology standards. The plan shall be submitted to the City for review and approval. Upon approval, the plan shall be incorporated into the project.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact CUL-4: Subsurface construction activities associated with the proposed Project may damage or destroy previously undiscovered human burial sites.

MM CUL-4: If human remains are encountered during earth-disturbing activities for the project, all work in the adjacent area shall stop immediately and the Alameda County Coroner's office shall be notified. If the remains are determined to be Native American in origin, the Native American Heritage Commission shall

be notified and will identify the Most Likely Descendent, who will be consulted for recommendations for treatment of the discovered remains.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

5. Geology, Soils, and Seismicity (draft EIR, page 4.5-1 et seq.)

Impact GEO-1: The development of the proposed Project may expose persons or structures to seismic hazards.

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

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

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact GEO-2: Construction activities associated with the proposed Project have the potential to create erosion and sedimentation. Construction activities associated with the proposed Project would involve vegetation removal, grading, and excavation activities that could expose barren soils to sources of wind, or water, resulting in the potential for erosion and sedimentation on and off the Project site.

MM HYD-1: (set forth below in the Hydrology and Water Quality section).

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been

required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact GEO-4: Development of the proposed project may expose persons or structures to hazards associated with expansive soils. The project site contains moderately and highly expansive soils. Left unabated, these conditions could result in the structural integrity of foundations and building systems being compromised by shrinking and swelling of soils.

MM GEO-4 Prior to issuance of grading permits or building permits (whichever occurs first), the project applicant shall provide documentation to the City of Fremont demonstrating that all applicable recommendations for abating expansive soil conditions from the Berlogar Geotechnical Consultants Preliminary Investigation or comparable geotechnical study have been implemented into the project's grading and building plans. This includes recommendations associated with soil engineering and foundation design and construction.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

6. Hazards and Hazardous Materials (draft EIR, page 4.6-1 et seq.)

Impact HAZ-1: Development of the proposed project has the potential to expose human health or the environment to hazardous materials associated with past or present site usage. This impact assesses the potential for the proposed project to expose human health or the environment to hazardous materials associated with past or present site usage.

MM HAZ-1 Prior to commencement of fill activities within the PG&E natural gas line easement, the project applicant shall prepare and implement a pipeline safety plan that identifies measures to protect the pipeline during construction in accordance with federal and state regulations. The project applicant shall consult with PG&E about pipeline safety considerations and incorporate applicable recommendations into the plan.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

7. Hydrology and Water Quality (draft EIR, page 4.7-1 et seq.)

Impact HYD-1: Short-Term Water Quality- Construction activities associated with the proposed project have the potential to degrade water quality in downstream water bodies. Project implementation would require extensive construction and grading. During these activities, there would be the potential for surface water to carry sediment from onsite erosion and small quantities of pollutants into the stormwater system and local waterways. Soil erosion may occur along project boundaries during construction in areas where temporary soil storage is required. Small quantities of pollutants have the potential for entering the storm drainage system, thereby potentially degrading water quality. Construction of the proposed project would also require the use of gasoline and diesel-powered heavy equipment, such as bulldozers, backhoes, water pumps, and air compressors. Chemicals such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents, glues, and other substances would be utilized during construction. An accidental release of any of these substances could degrade the water quality of the surface water runoff and add additional sources of pollution into the drainage system. The NPDES stormwater permitting programs regulate stormwater quality from construction sites. Under the NPDES permitting program, the preparation and implementation of SWPPPs are required for construction activities more than 1 acre in area. The SWPPP must identify potential sources of pollution that may be reasonably expected to affect the quality of stormwater discharges as well as identify and implement BMPs that ensure the reduction of these pollutants during stormwater discharges. Mitigation is proposed that would require the project applicant to prepare and implement an SWPPP. The implementation of the mitigation measure would ensure that potential, short-term, construction water quality impacts are reduced to a level of less than significant.

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

- Temporary erosion control measures shall be employed for disturbed areas.
- No disturbed surfaces will be left without erosion control measures in place during the winter and spring months.
- Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.
- The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.
- BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the San

Francisco Bay Regional Water Quality Control Board to determine adequacy of the measure.

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

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

8. Land Use (draft EIR, page 4.8-1 et seq.)

No significant impacts within the meaning of CEQA identified.

9. Noise (draft EIR, page 4.9-1 et seq.)

No significant impacts within the meaning of CEQA identified.

10. Public Service and Utilities (draft EIR, page 4.10-1 et seq.)

Impact PSU-4: The proposed project may be inconsistent with ACWD recycled water infrastructure planning. The Fremont Boulevard extension would provide an opportunity to extend ACWD recycled water infrastructure to the proposed Creekside Landing project, as well as to other areas within the ACWD service area. The installation of the recycled water lines at the time of construction of Fremont Boulevard is necessary to ensure consistency with ACWD recycled water infrastructure planning for the future. Moreover, the installation of recycled water lines within the Fremont Boulevard extension would avoid the need to install such infrastructure at a future date and the disruptions associated with circulation, emergency access, and utility systems. Accordingly, mitigation is proposed requiring that recycled water infrastructure be installed as part of the proposed project. With the implementation of mitigation, impacts would be reduced to a level of less than significant.

MM PSU-4: Prior to issuance of permits for the construction of the Fremont Boulevard extension, improvement plans shall be submitted to the City of Fremont that identify that a recycled water transmission main shall be constructed along the project frontage of Dixon Landing Road and Fremont Boulevard. The recycled water transmission line design shall be in accordance with ACWD standards with a minimum pipe size of 18 inches along Dixon Landing Road and 24 inches along Fremont Boulevard. The onsite design for recycled water shall include installation of piping and stubs for connection to the transmission line.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact PSU-7: The proposed project would generate substantial amounts of solid waste during both construction and operations. Solid waste would be generated by construction and operational activities. Mitigation is proposed that would require the project applicant to retain a contractor to recycle construction and demolition debris. The implementation of this mitigation measure would reduce potential impacts to a level of less than significant. The operational solid waste generation estimate was calculated by using a standard commercial waste generation rate provided the California Integrated Waste Management Board. Mitigation is proposed that would require the project applicant to submit a Recycling and Waste Reduction Plan to the City of Fremont for review and approval. The plan would identify practices and onsite facilities necessary to ensure that recoverable materials and green waste are diverted from the waste stream to the maximum extent feasible. The implementation of this mitigation measure would reduce solid waste generation and reduce demand for landfill capacity. Therefore, solid waste impacts would be reduced to a level of less than significant.

MM PSU-7a: Prior to issuance of building permits, the project applicant shall prepare and submit a Waste Handling Plan in accordance with Fremont Municipal Code Ordinance No. 11-2008 to the City of Fremont for review and approval. The plan shall indicate how construction and demolition debris will be recycled. The approved Waste Handling Plan shall be incorporated into the proposed project.

MM PSU-7b: Prior to issuance of occupancy permits, the project applicant shall prepare and submit a Recycling and Waste Reduction Plan to the City of Fremont for review and approval. The plan shall identify management practices and onsite facilities necessary to collect and store recyclable materials. The plan shall also identify practices and, if necessary, onsite facilities to ensure that organic and green waste are diverted from the solid waste stream.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

11. Transportation (draft EIR, page 4.11-1 et seq.)

Impact TRANS-1: The proposed project would contribute trips to intersections that would operate at unacceptable levels of service under near-term conditions. Under near-term with project conditions, the addition of project-related traffic would result in a

significant impact at the following signalized intersection: Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road (LOS F in the weekday afternoon peak hour). The intersection of Fremont Boulevard/Landing Parkway was identified as the only unsignalized intersection that would operate at unacceptable levels with the additional project-related trips; the intersection would experience an increase of 55.2 seconds of delay, which the City of Fremont considers a significant increase. Mitigation has been identified to fully mitigate the proposed project's impacts at these two intersections. However, it may not be possible to implement the mitigation at Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road. First, the intersection is located in the City of Milpitas and, therefore, is not within the jurisdiction of the City of Fremont. Second, the improvement is not identified in any known capital improvement plan, so there is no way to collect fees to implement improvements at the intersection. Finally, the feasibility of the improvement is uncertain because it would require right-of-way acquisition and utility relocation. These actions may be prohibitively expensive or present significant engineering challenges. Accordingly, the City of Fremont cannot assure that the necessary improvements at this intersection would be in place at the time of project occupancy. Therefore, the residual significance of this impact is significant and unavoidable.

MM TRANS-1a: Prior to issuance of the first final occupancy permit, the project applicant shall install a second through lane on northbound Fremont Boulevard at Landing Parkway. The lane shall be designed and constructed in accordance with City standards. The project applicant shall provide the full cost of this improvement. In the event the project is completely funded in the City's Capital Improvement Program prior to the issuance of the first occupancy permit, the applicant shall have no further responsibility for this improvement.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental impact on the Fremont Boulevard/Dixon Landing intersection as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

MM TRANS-1b: Prior to issuance of the first building permit, if a feasible mitigation for improvements to Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road is planned and programmed by the City of Milpitas, the applicant shall contribute a fair share of the local cost share for improvements related to geometry modifications and improvements consisting of one left-turn lane, one shared through/left-turn lane, and one shared through/right-turn lane on southbound Warm Springs Boulevard. Note that this mitigation currently is not feasible and no fair share will be collected.

Finding: The City finds that identified improvements to the intersection would mitigate the impacts of the Project identified in the EIR; however, it may not be possible to implement this improvement in time to mitigate the proposed project's impacts because the improvement may not be fully funded. The City of Milpitas

has completed a plan line study for the improvements, but there are no developed plans for the improvement or commitment for right of way acquisition. No implementation plan or source of funding for the improvements has been identified. Accordingly, there is no basis at this time for collection of a fair share payment. As a result, no feasible mitigation exists within the meaning of CEQA and the project would have a significant unavoidable impact to this intersection. [14 Cal. Code Reg. 15091(a)(2).]

Impact TRANS-2: The proposed project would contribute trips to intersections that would operate at unacceptable levels of service under long-term conditions. Under long-term with-project conditions, the addition of project-related traffic would result in a significant impact at the following signalized intersections:

- Fremont Boulevard/Cushing Parkway - I-880 Southbound On-ramp
- Milmont Drive/Kato Road
- Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road
- Milmont Road/Dixon Landing Road
- Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road
- McCarthy Boulevard/Ranch Drive (south)

Potential mitigation measures have been identified to fully mitigate the proposed project's impacts at five of the six intersections; however, the proposed mitigation would not fully mitigate the impacts at Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road. No further feasible mitigation is available to mitigate the proposed project's impacts at this intersection. In addition it may not be possible to implement all or some of the necessary mitigation for the following reasons:

- **Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road:** A bridge located south of the intersection needs to be replaced or modified to allow for one left-turn lane, one through lane, one through shared right-turn lane and one right-turn lane. This bridge is located in the City of Milpitas and, therefore, is not within the jurisdiction of the City of Fremont. Furthermore, this improvement may be infeasible because of the expense and logistics of relocating infrastructure and potential mitigation associated with wetlands and riparian habitat. Because the northbound approach is the critical movement, this improvement must be made to improve intersection operations to acceptable levels.
- **Milmont Road/Dixon Landing Road:** The proposed mitigation involves altering the signal timing at this intersection, which is under the jurisdiction of the City of Milpitas. Signal timing alteration is an operational issue at the discretion of the City of Milpitas. There is no way for the City of Fremont to compel the City of Milpitas to alter the timing of the signals; therefore, it is not possible to require this as a mitigation measure.
- **Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road:** This intersection would require the same mitigation as previously identified in Mitigation Measure TRANS-1b. As previously explained, this intersection is under the jurisdiction of the City of Milpitas, the necessary improvements are not identified in any known capital improvement plan, and the improvement itself may not be economically or technically feasible.
- **McCarthy Boulevard/Ranch Drive (South):** The proposed mitigation involves altering the signal timing at this intersection, which is under the jurisdiction of the City of

Milpitas. Signal timing alteration is an operational issue at the discretion of the City of Milpitas. There is no way for the City of Fremont to compel the City of Milpitas to alter the timing of the signals and, therefore, it is not possible to require this as a mitigation measure. Accordingly, the City of Fremont cannot assure that all of the necessary improvements at these intersections would be in place at the time of project occupancy. Therefore, the residual significance of this impact is significant and unavoidable.

MM TRANS-2a: Prior to issuance of first final certificate of occupancy, the project applicant shall construct an exclusive right-turn lane on eastbound Cushing Boulevard at Fremont Boulevard. In-lieu of constructing the right-turn lane, the applicant may provide fee payments for full cost of the improvement to the City of Fremont at the time of building permit issuance.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental impact on the Fremont Boulevard/Dixon Landing intersection as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

MM TRANS-2b: Prior to issuance of building permits, the project applicant shall provide payments to the City of Fremont in accordance with the Fremont Traffic Impact Fee for programmed improvements to the intersection of Milmont Drive/Kato Road.

MM TRANS-2c: Prior to issuance of the first final occupancy permit, the project applicant shall modify the intersection of Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road to provide the following improvements:

- Provide one left-turn lane, one through lane, one through shared right-turn lane, and one right-turn lane on N. McCarthy Boulevard. Note that this geometry would require replacement or modification of the bridge structure located south of the intersection.
 - Provide westbound right-turn auxiliary arrow turns green at the same time southbound left-turn gets green arrow and restrict southbound U-turns.
 - Provide northbound right-turn auxiliary arrow turns green at the same time westbound left-turn gets green arrow and restrict westbound U-turns.
- Note that it may not be possible to fully implement this mitigation measure because of the expense and logistics of relocating infrastructure and potential mitigation associated with wetlands and riparian habitat. The project applicant shall be responsible for the full cost of the feasible portions of the improvement.

MM TRANS-2d: Prior to issuance of the first final occupancy permit, the project applicant shall work with the City of Milpitas to modify the Milmont Road/Dixon Landing Road signal operation to increase the cycle length from 60 seconds to 90 seconds and coordinate the signal with adjacent intersections. The

cost of this improvement is anticipated to be nominal. Note that there is the possibility that the City of Milpitas may not concur with this modified signal operation and, therefore, this improvement may not be fully mitigated.

MM TRANS-2e: Prior to issuance of building permits, the project applicant shall provide the fair-share cost to the City of Milpitas for modifications to the intersection geometry of Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road. The modified geometry shall consist of one left-turn lane, one shared through/left-turn lane, and one shared through/right-turn lane on eastbound Dixon Landing Road. Note that it may not be possible to modify this intersection because of right-of-way constraints, the need to relocate utilities, or the lack of funding to cover the balance of the cost of the improvement.

MM TRANS-2f: Prior to issuance of the first final occupancy permit, the project applicant shall work with the City of Milpitas to modify the McCarthy Boulevard/Ranch Drive (South) signal operation to increase the cycle length from 60 seconds to 80 seconds and coordinate the signal with adjacent intersections. The cost of this improvement is anticipated to be nominal. Note that there is the possibility that the City of Milpitas may not concur with this modified signal operation and, therefore, this improvement may not be fully mitigated.

Findings: The City finds that mitigation measures TRANS-2b through 2f identify improvements to the impacted intersections that could mitigate the impacts of the Project identified in the EIR [14 Cal. Code Reg. 15091(a)(1)]; however, it may not be possible to implement these improvements for the reasons noted above. As a result, no feasible mitigation exists within the meaning of CEQA and the project would have a significant unavoidable impact to these intersections. [14 Cal. Code Reg. 15091(a)(2)];

Impact TRANS-4: The proposed project may create roadway safety hazards associated with vehicular access and site distances. This impact assesses roadway safety, including vehicular access, internal circulation, site distances on Fremont Boulevard, and railroad grade crossing safety.

MM TRANS-4a: Prior to issuance of the first final certificate of occupancy for the Creekside Landing Project, the project applicant shall install a signal at the South, Central, and North driveways with Fremont Boulevard. The signals shall be designed in accordance with City standards. The project applicant shall provide the full cost of this improvement. This mitigation measure shall be coordinated with Mitigation Measure TRANS-4b.

MM TRANS-4b: Prior to issuance of the first final certificate of occupancy for the Creekside Landing Project, the project applicant shall implement coordinated signal operation with the four signals on Fremont Boulevard (Dixon Landing Road, the South Driveway, the Central Driveway, and the North Driveway). The four signals shall meet City of Fremont design specifications, including both

infrastructure that connects the signals together and Intelligent Transportation System (ITS) equipment for monitoring and operation of signals at the City's Traffic Management Center. The City of Fremont will develop the signal coordination plan, and the project applicant will be responsible for implementing it as part of construction of Fremont Boulevard. The project applicant shall provide the full cost of this improvement. This mitigation measure shall be coordinated with Mitigation Measure TRANS-4a.

MM TRANS-4c: Prior to issuance of the first final certificate of occupancy for the Creekside Landing Project, the City of Fremont shall verify that "No Parking" signs are in place along the east side of the roadway along the frontage with the Creekside Landing Project.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact TRANS-5: The proposed project may create significant queuing impacts. Queuing measures vehicle delay lengths relative to available storage capacity. Queuing is a concern at the three full-access project driveways (South, Central, and North) and for southbound left turns at the Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road intersection because of anticipated trip distribution patterns. Driveway A does not have the potential to experience excessive queuing problems because they would be limited to right-in, right-out movements. Driveway B would be unsignalized and full access may be permitted; however, this driveway would provide access to the rear of the North Anchor and, therefore, would experience very low traffic volumes.

MM TRANS-5a: Prior to approval of the Fremont Boulevard improvement plans, the City of Fremont shall verify that southbound left-turn pockets with the minimum storage lengths listed below are provided. The project applicant shall provide the full cost of this improvement.

- South Driveway - 250 feet
- Central Driveway - 230 feet
- North Driveway - 130 feet

MM TRANS-5b: Prior to approval of the Fremont Boulevard - McCarthy Boulevard/Dixon Landing Road improvement plans, the City of Fremont shall verify that the lane geometry listed below is provided. The approved lane geometry shall be incorporated into the proposed project. The applicant shall provide the full cost of implementing the lane geometry.

- Northbound (N. McCarthy Boulevard): One left-turn lane, one shared through/right turn lane, and one right turn-lane.

- Southbound (Fremont Boulevard): Two left-turn lanes with combined capacity for at least 850 feet of storage, one through lane, and one shared through/right turn lane.
- Eastbound (Newby Island Sanitary Landfill): One left-turn lane and one shared through/right-turn lane.
- Westbound (Dixon Landing Road): Two left-turn lanes, one shared through/right-turn lane, and one exclusive right-turn lane. The shared through/right-turn and exclusive right-turn lanes shall provide at least 750 feet of combined storage capacity.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact TRANS-6: The proposed project may have inadequate off-street parking. Based on the proposed site plan, the proposed project would provide 1,975 onsite parking spaces, which is 121 spaces below the Municipal Code requirement.

MM TRANS-6: Prior to issuance of building permits, the project applicant shall submit a site plan to the City of Fremont for review and approval that demonstrates that the proposed Creekside Landing retail center would provide off-street parking in accordance with Municipal Code parking requirements. The approved plan shall be incorporated into the proposed project.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact TRANS-8: The proposed project may not provide adequate access for public transit, bicycles, and pedestrians. This impact addresses accessibility to the project site for public transit, bicycles, and pedestrians.

MM TRANS-8a: Prior to issuance of the first final certificate of occupancy for the Creekside Landing project, the project applicant shall install at least one enhanced bus stop along the project frontage with Fremont Boulevard in accordance with City of Fremont and transit provider requirements. Subject to the final direction of the City of Fremont, the bus stop shall include a shelter, signage, transit information, lighting, and a trash receptacle. Additional bus stops may be required, subject to the determination of the City of Fremont. This mitigation measure shall be coordinated with Mitigation Measure AIR-4.

MM TRANS-8b: Prior to acceptance of Fremont Boulevard, the City of Fremont shall verify that designated Class II bicycle facilities are in place on both sides of the roadway between Flood Channel B and Dixon Landing Road. The Class II bicycle facilities shall be designated with markings and signage.

MM TRANS-8c: Prior to issuance of the first final certificate of occupancy for the Creekside Landing project, the project applicant shall install bicycle storage facilities for customers and employees. Customer bicycle storage facilities shall consist of racks located in visible and convenient locations (e.g., near store entrances). Customer facilities shall provide bicycle storage equivalent to 2 percent of the proposed project's minimum parking requirement. Employee bicycle storage facilities shall consist of racks or lockers located in secure, employee-only portions of buildings in recognition of the fact that employees will require storage for longer periods than will customers.

MM TRANS-8d: Prior to issuance of the first final certificate of occupancy project for the Creekside Landing project, the City of Fremont shall verify that designated pedestrian crossings of the roadway are in place at the three full-access, signalized project driveways. Each pedestrian crossing shall be designated with markings and be linked to the San Francisco Bay Trail. Countdown heads shall be provided with the signals at these intersections. This mitigation measure shall be coordinated with Mitigation Measure TRANS-4a.

Finding: The City finds that such mitigation measures are feasible and hereby agrees to adopt them. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

Impact TRANS-9: Construction activities associated with the proposed project may adversely affect traffic and circulation in the project vicinity. Project construction is anticipated to take at least 12 months to complete and would require regular deliveries of equipment and materials to the project site, as well as daily trips by construction workers. These activities have the potential to create congestion and parking problems on nearby roadways. Much of the construction traffic, especially trucks and equipment delivery vehicles, would be expected to travel via I-880 to Dixon Landing Road and access the site at the Dixon Landing Road/McCarthy Boulevard intersection, which would minimize potential congestion on the local street system. However, the proposed project would necessitate roadway work on the portion of Fremont Boulevard north of Flood Channel B, and, inevitably, construction activities would affect circulation in the Bayside Business Park.

MM TRANS-9: Prior to commencement of construction activities, the project applicant shall submit a Construction Traffic Control Plan to the City of Fremont, City of Milpitas, City of San Jose or Caltrans for construction work occurring within the associated jurisdictional right-of-way for the review and approval. The

plan shall identify the timing and routing of all major construction equipment and trucking to avoid potential traffic congestion and delays on the local street network (e.g., Fremont Boulevard north of Flood Channel B), and to encourage the use of I-880. If necessary, construction equipment and materials delivery shall be limited to off-peak hours to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.

Finding: The City finds that this mitigation measure is feasible and hereby agrees to adopt it. Therefore, City finds that changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the EIR. [14 Cal. Code Reg. 15091(a)(1).]

SECTION 4. MITIGATION MEASURES. The planning commission also finds that the proposed mitigations incorporated in the proposed Project, and the Mitigation Monitoring and Reporting Program set forth in the EIR would reduce all of the environmental impacts of the Project to an insignificant level, with the exception of the identified impacts to certain intersections and air quality. The planning commission accordingly approves the Mitigation Monitoring and Reporting Program and requires all use and development approvals which may be issued in the future to incorporate the mitigations set forth in the Mitigation Monitoring and Reporting Program.

SECTION 5. SIGNIFICANT AND UNAVOIDABLE IMPACTS. The proposed Project would have certain significant and unavoidable environmental effects, which cannot be feasibly mitigated through the imposition of changes or alternatives to the project. These unavoidable impacts are as follows:

AIR QUALITY:

The proposed project's operational emissions would exceed BAAQMD thresholds for reactive organic gases (ROG), oxides of nitrogen (NOx), and fine particulate matter (PM10). Mitigation is proposed requiring various emissions reduction measures; however, these measures would not fully mitigate the impact to a level of less than significant. Therefore, the residual significance of this impact is significant and unavoidable and would be cumulatively considerable. According to the BAAQMD's CEQA Guidelines, a project may have a cumulative impact if it individually has a significant impact. As shown in Impact AIR-4, the project would have a significant impact at the project-level. Therefore, the project would have a significant cumulative impact on air quality. The analysis of operational emissions indicates that the project would exceed the significance thresholds for ROG and NOx (ozone precursors). Because ozone is a secondary pollutant (it is not emitted directly but formed by chemical reactions in the air), it can be formed miles downwind of the project site. Project emissions of ROG and NOx may contribute to the background concentration of ozone and may cumulatively cause health effects.

INTERSECTION IMPACTS:

A. Under near-term conditions, the addition of project-related traffic would result in a significant impact at the Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road (LOS F in the weekday afternoon peak hour) intersection. Mitigation has been identified to fully mitigate the impact; however, it may not be possible to implement the mitigation because the intersection is located in the City of Milpitas and, therefore, is not within the jurisdiction of the City of Fremont. Additionally, the improvement is not identified in any known capital improvement plan, so there is no way to collect fees to implement improvements at the intersection. Finally, the feasibility of the improvement is uncertain because it would require right-of-way acquisition and utility relocation. These actions may be prohibitively expensive or present significant engineering challenges. Accordingly, the City of Fremont cannot assure that the necessary improvements at this intersection would be in place at the time of project occupancy. Therefore, the residual significance of this impact is significant and unavoidable.

B. The proposed project would contribute trips to intersections that would operate at unacceptable levels of service under long-term conditions. Under long-term with-project conditions, the addition of project-related traffic would result in a significant impact at the following signalized intersections:

- Milmont Drive/Kato Road
- Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road
- Milmont Road/Dixon Landing Road
- Warm Springs Boulevard - N. Milpitas Boulevard/Dixon Landing Road
- McCarthy Boulevard/Ranch Drive (south)

Potential mitigation measures have been identified to mitigate the proposed project's impacts at four of these intersections; however, the proposed mitigation would not fully mitigate the impacts at Fremont Boulevard - N. McCarthy Boulevard/Dixon Landing Road. No further feasible mitigation is available to mitigate the proposed project's impacts at this intersection. In addition, although mitigation measures have been identified for the other intersections, it may not be possible to implement all or some of the necessary mitigation for reasons set forth in Section 3 above. Accordingly, under long-term with-project conditions, the impacts to these intersections are considered significant and unavoidable.

SECTION 6. STATEMENT OF OVERRIDING CONSIDERATIONS. As noted above, each of the alternatives to the proposed Project would have significant unavoidable environmental impacts or would not achieve the basic objectives of the Project. In addition, although most of the Project's environmental impacts will be avoided or reduced to insignificant levels by the mitigation measures required by the Mitigation Monitoring and Reporting Program, the development of the Project will nevertheless result in certain unavoidable significant impacts. On balance, these unavoidable significant effects are deemed to be acceptable in view of the economic and social benefits which approval of the Project proposal will make possible. The Project's goals are to:

- Promote economic growth and development consistent with the policies of the City of Fremont General Plan in support of a solidified and expanded tax base promoting the City's fiscal health.
- Realize the intrinsic value of the site's regional freeway access and visibility for commercial use.
- Extend Fremont Boulevard to its General Plan-identified terminus.
- Provide additional access and travel route options for vehicular, bicycle, and pedestrian traffic in an effort to reduce travel times through efficient use of existing urban infrastructure and logical extension of infrastructure and development.
- Support the regional benefit of a complete San Francisco Bay Trail by completing a missing segment.
- Enhance the bicycle and pedestrian opportunities of the surrounding industrial neighborhoods and for the City as a whole.
- Implement high-quality site and architectural design features that embrace the prominence and gateway attributes for the site context.
- Incorporate a range of sustainability measures into the project design for both near-term and long-term benefits.

Development of the Project will further these goals by creating an expanded tax base to support the City's fiscal health and ability to provide basic services. The Creekside Landing site provides an opportunity for development of a regional shopping center within the Commercial-Industrial overlay zone; there are very few sites available to accommodate a regional shopping center of comparable size with convenient freeway access. Development of the site as a shopping center (487,000 square feet of retail) has the potential to generate an average of \$2,000,000 annually in sales tax revenue as a moderately successful center. In addition, the assessed value of the property will be greater if it is developed as a shopping center rather than a research and development facility. Moreover, development of the Project will create approximately 1700 new job opportunities, most of which are anticipated to be filled by the local labor force, thereby enhancing the City's jobs/housing balance ratio.

The Project will contribute to the City's infrastructure by completing the planned extension of Fremont Boulevard, which is provided for in the general plan and will enhance overall traffic circulation access in the area and region. In addition, the Project will extend the San Francisco Bay Trail by completing the segment of the trail to Dixon Landing Road, and will extend and upgrade bicycle and pedestrian through-access in the area. The Project also establishes an 88-acre area as open space, which includes wetlands and habitat for the salt marsh harvest mouse.

Approval of the Project will further the goals and objectives described above. The Project will create new economic opportunities, including employment and shopping, expand the City's tax base, provide new public infrastructure and recreational facilities, and protect environmentally sensitive areas by permanently preserving the 88-acre mitigation site as open space. Accordingly, the planning commission concludes, based on the whole record, that the economic, social and environmental benefits of the Project outweigh the adverse environmental effects.

SECTION 7. PROJECT APPROVAL. The planning commission incorporates and adopts the findings and conditions and plans attached as Exhibits C through H to the Planning Commission Staff Report dated December 10, 2009, and approves the Creekside Landing Project, including the conditional use permit, vesting tentative map and preliminary grading plan.

SECTION 8. The planning commission directs staff to prepare and file a Notice of Determination with the Clerk of the County.

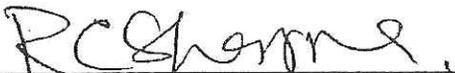
ADOPTED December 10, 2009, by the Planning Commission of the City of Fremont by the following vote, to wit:

AYES: Chairperson Dr. Rakesh Sharma, Vice Chairperson Dirk Lorenz, Commissioners Yogi Chugh, Richard King, Daniel Lydon, and Lisa Quan

NOES: Commissioner David Bonaccorsi

ABSENT: None

ABSTAIN: None


Chairperson

ATTEST:


Planning Commission Secretary

APPROVED AS TO FORM:


Assistant City Attorney