



DATE: September 3, 2013

TO: Mayor and Members of the City Council

VIA: James C. Hardy, City Manager

FROM: Curtis Banks, Community Development Director
Marlene Subhashini, Assistant Planner

SUBJECT: APPEAL OF THE DECISION OF THE PLANNING COMMISSION TO APPROVE A SPECIFIC DEVELOPMENT PLAN/USE PERMIT FOR CONSTRUCTION OF A FIVE-STORY TOWNEPLACE SUITES EXTENDED STAY HOTEL WITH 121 GUEST ROOMS – 1299 CHESS DRIVE IN NEIGHBORHOOD VINTAGE PARK (VP) – APN 094-901-360 – SOLOMON TSAI OF FULLWEL INTERNATIONAL GROUP, INC. (OWNER), MILLER STARR REGALIA, AGENTS FOR LARRY AND SHARON KRAMER (APPELLANTS) – UP-12-004

RECOMMENDATION

That the City Council adopt a Resolution denying the appeal filed by Miller Starr Regalia as agents for Larry & Sharon Kramer, thereby affirming the June 20, 2013 Planning Commission's approval of a Specific Development Plan/Use Permit (UP-12-004; Resolution No. P-13-13) for construction of a 69,715 sq ft. five-story extended stay hotel building with 121 guest rooms on the former Black Angus restaurant site at 1299 Chess Drive in the Vintage Park neighborhood.

EXECUTIVE SUMMARY

The TownePlace Suites project is proposed to be located on a 1.69-acre parcel at 1299 Chess Drive which is the former Black Angus restaurant site. Applications associated with the project included a Rezoning/General Development Plan amendment to the Vintage Park General Development Plan to allow a hotel use to replace a previously approved restaurant use (filed as RZ-12-002), an Environmental Assessment (filed as EA-12-003) including preparation of a Mitigated Negative Declaration (MND) of Environmental Impact that analyzes the environmental impacts associated with the project and a Specific Development Plan/Use Permit (filed as UP-12-004) to construct a 69,715 square feet five-story extended stay hotel building with 121 guest rooms at the previously developed site.

Project applications were reviewed by the Planning Commission at two separate Study Sessions and one Public Hearing. At the June 20, 2013 Planning Commission Public Hearing, the Commission voted 5-0 to recommend that the City Council adopt the Mitigated Negative Declaration of Environmental Impact prepared for the project (MND)

and approve the proposed General Development Plan Amendment/Rezoning. The Commission also voted to approve the Specific Development Plan/Use Permit (filed as UP-12-004) subject to City Council approval of the MND and the General Development Plan Amendment/Rezoning.

At approximately 2:30 p.m. on June 20, 2013 (the afternoon of the Planning Commission meeting), Arthur Coon of Miller Starr Regalia, an attorney representing Larry & Sharon Kramer submitted a letter questioning the adequacy of the MND prepared for the project. Mr. Kramer owns the adjoining property that is currently occupied by Harry's Hofbrau restaurant. The Planning Commission considered the comments and concurred with staff that the MND was adequate. On June 28, 2013, an appeal of the Specific Development Plan/Use Permit approval by the Planning Commission was filed by Miller Starr Regalia as agents for Larry & Sharon Kramer. Project entitlements including Council approval of the MND and the Rezoning/General Development Plan Amendment were originally scheduled for the July 15, 2013 City Council meeting however, the attorneys representing the applicant for the proposed project requested that the hearing be reschedule in light of the appeal that was filed. The items, including the appeal were therefore continued to the September 3, 2013 Council meeting. On July 15, 2013, prior to the Council meeting, the Appellants submitted another letter objecting the MND based on additional grounds. Staff also received a letter from the law firm representing Fullwel International Group, Inc. requesting that the Council reject the appeal filed by Mr. Kramer and uphold the Planning Commission's decision. See attached letter from Kristina Lawson.

BACKGROUND

Solomon Tsai of Fullwel International Group, Inc. has proposed to develop the 1.69 acres lot located at 1299 Chess Drive with a five-story extended stay hotel known as the TownePlace Suites project. The hotel is proposed on the former Black Angus restaurant site. The existing vacant Black Angus restaurant building will be demolished to allow construction of the new five-story hotel. The site is bound by the adjacent Harry's Hofbrau restaurant site to the north, State Highway 92 to the south, the Vintage Park Drive overpass to the east, and EMID easement and the City of San Mateo's Bridgepointe Shopping Center to the west. The site is accessed from Chess Drive by an ingress/egress driveway via the lands that belongs to the Harry's Hofbrau restaurant. A mutual ingress/egress and parking agreement is currently recorded for the benefit of both properties.

The Planning Commission reviewed the proposed project at two separate Study Sessions and one Public Hearing.

Planning Commission Study Session #1 – November 1, 2012

On November 1, 2012, the Planning Commission held the first Study Session to review site and architectural plans for the proposed 69,008 square feet five-story extended stay hotel building with 115 guest rooms and a 3,043 square foot bakery. The Planning Commission reviewed the proposed hotel use, general architectural and design elements including building orientation, massing, height and setbacks, market study,

circulation, parking and landscape concepts. Overall, the Commission felt that an extended stay hotel use was appropriate for the site. The proposed use was found to be consistent with the Foster City General Plan Land Use and Circulation Elements, the Vintage Park General Development Plan and the C-M/PD Commercial Mix/Planned Development Zoning Designation. The Commission felt that the five-story building height may be appropriate as long as it was designed properly by setting back the fifth story further, additional stepping down of the five stories to four stories, using more building articulation and possibly reducing some rooms. Staff and the Commission determined that photosimulations would be important to fully evaluate the visual impacts of the height of the building from the overpass. Staff Report of the November 1, 2012 Study Session meeting is attached.

Planning Commission Study Session #2 – February 7, 2013

On February 7, 2013, the Planning Commission held a second Study Session to further review site and architectural plans for the proposed hotel. The applicant had revised the scope of the project from the previous submittal by increasing the number of guest rooms from 115 to 118 and reducing the size of the bakery from 3,043 square feet to 2,581 square feet. The Planning Commission reviewed the proposed changes to the project including the reduced building height from 64'-0" to 59'-0", the amount of on-site parking, loading area requirements, design modifications and visual simulations. Some concern was expressed regarding parking but overall, the Commissioners were pleased with the proposed changes and felt that additional Study Session(s) were not required. Staff Report of the February 7, 2013 Study Session meeting is attached.

On April 10, 2013, the applicant submitted revised plans and additional information for staff review. The applicant further revised the scope of the project by increasing the number of guest rooms from 118 to 121 and eliminating the bakery completely. The applicant also made the guest suites on the fifth story larger and added a roof deck to the three (3) corner suites along with some other architectural changes.

Concurrently, an Environmental Assessment was conducted in accordance with the California Environmental Quality Act (CEQA) and an Initial Study/Mitigated Negative Declaration (MND) was prepared by Metropolitan Planning Group to identify and discuss potential environmental impacts of the project and incorporate mitigation measures that would reduce any potential significant impacts to a less than significant level.

On May 9, 2013, the Notice of Completion of the Initial Study/MND was completed for the project. Pursuant to Sections 15072 and 15073 of the State CEQA Guidelines, a Notice of Intent to adopt the MND was provided to the public, responsible agencies and the San Mateo County Clerk. Additionally, the Notice of Intent to adopt the MND was published in the newspaper and mailed to property owner(s) within a 300' radius. A copy of the MND was distributed to public agencies and made available to the general public for a 30-day public comment period beginning Wednesday May 15, 2013 and ending Monday, June 17, 2013 at 5:00 p.m.

Planning Commission Hearing on June 20, 2013

On June 20, 2013, the Planning Commission held a Public Hearing to review several applications for the proposed hotel including:

1. Recommendation to the City Council regarding the Initial Study/Mitigated Negative Declaration prepared for the project (EA-12-003);
2. Recommendation to the City Council for Rezoning and an amendment to the previously approved Vintage Park General Development Plan (RZ-12-002); and
3. Approval of the Specific Development Plan/Use Permit subject to Conditions of Approval (UP-12-004).

At the conclusion of the Public Hearing on these items, the Planning Commission deliberated and took three (3) separate actions. First, it adopted Resolution No. P-12-13, Resolution of the Planning Commission of the City of Foster City recommending City Council Approval of a Mitigated Negative Declaration of Environmental Impact for construction of a 69,715 Square Feet Five-Story Extended Stay Hotel with 121 guest rooms – 1299 Chess Drive – Neighborhood Vintage Park (VP) – TownePlace Suites – APN 094-901-360 – EA-12-003.

Second, it adopted Resolution No. P-14-13, Resolution of the Planning Commission of the City of Foster City recommending City Council adoption of an amendment to the Foster City Zoning Map to modify the previously approved General Development Plan for ± 132-acre lands known as Vintage Park to allow up to two (2) hotels with a total of 475 Rooms and up to ± 353,246 square feet and decrease the restaurant area from ± 28,194 square feet to ± 18,994 square feet in order to allow the TownePlace Suites Extended Stay Hotel Located at 1299 Chess Drive (APN 094-901-360) in Neighborhood Vintage Park (VP) – RZ-12-002.

Third, the Planning Commission adopted Resolution No. P-13-13, Resolution of the Planning Commission of the City of Foster City approving a Specific Development Plan/Use Permit request for construction of a five-story, 59'0" tall, 69,715 square feet TownePlace Suites Extended Stay Hotel With 121 guest rooms – 1299 Chess Drive in Neighborhood Vintage Park (VP) – APN 094-901-360 – Solomon Tsai – Fullwel International Group, Inc. – UP-12-004 (See attached Resolution P-13-13 approving UP-12-004).

In adopting Resolution P-13-13 approving the Specific Development Plan/Use Permit (UP-12-004), the Planning Commission made the following findings:

- A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:

- (a) Be consistent with the Research/Office Park designation on the Land Use Plan as described in Policy LUC-25;
- (b) Be architecturally compatible with the surrounding buildings in the Vintage Park Development and would be sympathetic to the character and style of the adjacent restaurant and Crowne Plaza hotel buildings and therefore would promote “proper site planning, architectural design and property maintenance” as stated in the Land Use Goal LUC-B and Land Use Policies LUC-38 and LUC-40;
- (c) Provide for economic development consistent with the principles of Land Use Goal LUC-C;
- (d) Maintain a variety of land uses consistent with Land Use Goal LUC-D;
- (e) Be adequately served by municipal services and facilities per Goal LUC-F;
- (f) Provide for adequate on-site parking for safe and effective circulation, consistent with Land Use Goal LUC-K;
- (g) Provide enough land for commercial uses consistent with Land Use Policy LUC-19;
- (h) Mitigate construction noise to the extent feasible per Policy N-5; and
- (i) Provide for economic development by removing an existing vacant restaurant building that is becoming economically obsolete and providing services that will increase the assessed value of the property within the Vintage Park area and the City in general.

B. That the design of the proposal would be compatible with the site’s environment with respect to use, forms, materials, colors, setbacks, location, height, design or similar qualifies as specified in Chapter 2.28 (Planning) of Title 2 (Administration and Personnel), and Section 17.58.010 of Chapter 17.58 (Architectural Control and Supervision) of Title 17 (Zoning), of the Foster City Municipal Code because the proposed five-story extended stay hotel building:

- (a) Is architecturally compatible with the adjacent buildings in the Vintage Park neighborhood in that it uses similar building materials such as cement plaster, aluminum windows, aluminum composite panels for the coping, fascia and soffits, GFRC materials for the base of the building, glazing and metal trellises and canopies in tan and grey color schemes consistent with the Vintage Park Design Guidelines;
- (b) Will be landscaped using drought-tolerant plant materials that not only grow well in Foster City, but also provide color and visual interest to the site consistent with the Vintage Park Recommended Plant List in order to create a consistent landscape palette throughout the Vintage Park Planned Development; and
- (c) Is set back approximately 85 feet from the farthest point and 45 feet from the nearest point from State Route 92, 85 feet from the Vintage Park Drive Overpass, 25 feet from the property line contiguous to Harry’s Hofbrau and 75 feet from EMID easement/Bridgepointe Shopping Center in San Mateo and therefore eliminating any visual impacts caused from building height, scale and/or massing and providing sufficient vehicular and pedestrian access and circulation throughout the site.

- C. That the proposal would not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to property and improvements in the neighborhood, property values in the area, or the general welfare of the City because:
- (a) The impacts likely to result from the proposed building were adequately analyzed in the Mitigated Negative Declaration prepared for the TownePlace Suites project and all pertinent mitigation measures from the MND that are applicable to the Project have been included in the Use Permit Conditions of Approval in Exhibit A;
 - (b) The building will not cause any significant solar, visual, or other adverse long-term impacts on adjacent or neighboring properties or adversely affect property values; the hotel building will be compatible with the uses of the surrounding buildings planned in the Vintage Park Development and will comply with the intent and purpose of the zone in which the hotel building is located consistent with the intent and purpose of the City's Architectural Control and Supervision Ordinance as stated in Section 17.58.010B of the Foster City Municipal Code and the Vintage Park Design Guidelines; and
 - (c) The redeveloped use would not create conflicts with existing on-site and surrounding land uses because the proximity of the proposed extended stay hotel to many corporate offices in Foster City will allow corporate visitors to stay for extended periods with the convenience of walking, biking, or taking a shuttle to and from work and airports in the region and, at the same time, an additional hotel will help absorb the additional demand for rooms without impacting existing hotels in the City.

By its appeal, Miller Starr Regalia asserts that Findings A(a), A(b), A(e), A(f), A(g), B(a)&B(c), C(a)&C(b) and C(b)&C(c) are "inadequate" and, on that basis, requests that the City Council grant their appeal setting aside the Planning Commission's approval of the Specific Development Plan/Use Permit.

Foster City's Ordinance Regarding Use Permit Appeals

Decisions of the Planning Commission may be appealed pursuant to the procedure found in Foster City Municipal Code Section 17.06.150.B which provides:

B. Decisions of the Planning Commission.

1. In case the applicant, or any other person is not satisfied with any decision of the planning commission, they may, within ten calendar days after the decision of the planning commission, appeal in writing to the city council, accompanied by a fee as set by resolution of the city council. The appeal letter or completed appeal form shall contain the same information as required above for appeals of decisions of the planning director.¹

¹ As indicated above, the Foster City Municipal Code Section 17.06.150.A requires that appellants must, in their appeal, provide the following information:

Per Section 17.06.150.B.2, the City Council, during its hearing of the appeal, is required to review the written findings of the Planning Commission and consider the written and oral arguments of the Appellant in order to determine whether to grant or deny the appeal. New matters may not be introduced by either party during the City Council's hearing.

ANALYSIS OF APPEALS

Per Foster City Municipal Code Section 17.06.070, when reviewing an application for a Specific Development Plan/Use Permit, the Planning Commission must "determine whether or not the establishment, maintenance or cooperation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit."

In approving the Specific Development Plan/Use Permit, the Planning Commission affirmatively made these findings.

The Appellants have now challenged eight (8) of the fifteen (15) findings made by the Planning Commission. Each of the challenged findings is shown below. It is followed by the Appellant's argument in support of the appeal and staff's response. As indicated above, per Foster City Municipal Code Section 17.06.150.B.2, the Council must now review each of the challenged findings and determine whether the Planning Commission's findings are supported by substantial evidence and the findings in turn support the decision to approve the Specific Development Plan/Use Permit. If so, the appeal should be denied. If, on the other hand, the City Council determines that the Planning Commission's findings are not supported by substantial evidence, the appeal should be granted and the Planning Commission's approval of the Specific Development Plan/Use Permit overturned.

Having reviewed the Appellant's arguments in support of the appeal, staff recommends that the appeal be denied. As detailed below in staff's response to each point raised on appeal, the record contains substantial evidence to support each of the challenged findings made by the Planning Commission in approving the Specific Development Plan/Use Permit.

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- The person making the appeal;
 - The specific item of appeal, and all supporting documentation, written in clear and concise language;
 - The basis for such appeal; and
 - The relief of action sought.

Appeal Point No. 1 – Planning Commission Findings: The Planning Commission, in adopting Resolution No. P-13-13, made the following Finding. Finding #A(a) provides:

- A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:
- (a) Be consistent with the Research/Office Park designation on the Land Use Plan as described in Policy LUC-25;

Argument in Support of Appeal Point No. 1: Whereas the Planning Commission has found that the Project is consistent with the applicable General Plan land use designation, the proposed Project is significantly too large for the Project Site and location, as detailed in the incorporated Kramer Comments. (MSR letter, pp. 2-3.) The Vintage Park area was established as a business and working community, tightly integrating the various land uses within and surrounding the Project Site. (Staff Report, p. 5.) The addition of a hotel in such a constrained urban area would result in a multitude of impacts, effects, and problems that would be inconsistent with the General Plan's overall vision for this area of the City. The fact that the Vintage Park General Development Plan limits development in the area to one hotel, is an acknowledgment that severe impacts would be associated with hotel development on the Project Site. The Project, which would site a second hotel in the plan area, therefore is not consistent with the General Plan, and the City's finding of consistency is not based on substantial evidence.

Staff Response to Appeal Point No. 1:

The subject property's General Plan land use designation is Research/Office Park. The proposed project site is zoned C-M/PD district (Commercial Mix/Planned Development Combining) and is part of the approved Vintage Park General Development Plan. The General Plan identifies Vintage Park as a diverse mixed-use development.² The area was developed and planned primarily for Office and Research & Development uses. Commercial retail including restaurants and hotels were approved to serve the vicinity work force and visitors to Vintage Park.

General Development Plans in Foster City are used in Planned Development (PD) Zoning Districts to establish the uses and intensity of the development allowed for the entire Planned Development.³ A General Development Plan is not set in perpetuity and can be modified if warranted to meet the needs of the community. To modify a General Development Plan (including new land uses, or increasing the established density etc.), the General Development Plan is amended to reflect the change, which requires review

² City of Foster City General Plan, Chapter 3: Land Use and Circulation Element, Land Use Background, pp. 3-14

³ Section 17.36.030, General Development Plan of Title 17, Zoning of the Foster City Municipal Code

by the Planning Commission and approval by the City Council. The C-M zoning district is used only in conjunction with the PD (Planned Development Combining Zone) to ensure the provision of adequate parking, to minimize potential conflict between dissimilar uses and to provide maximum flexibility for development.⁴ Permitted uses, area, bulk, yard and height regulations are established in a Specific Development Plan/Use Permit required in connection with the C-M district.⁵ There is no use list established for the C-M/PD district that restricts the land use to a particular use nor is there a restriction on the area, bulk, yard and height regulations.

The proposed hotel would service the vicinity work force by providing accommodation for its corporate visitors to stay for extended periods with the convenience of walking, biking or taking a shuttle to and from work and airports in the region. Creating a synergy of uses such as restaurants, hotels and businesses has been the City's long-term goal for Vintage Park in retaining and attracting businesses to Foster City.

Although, the Vintage Park General Development Plan currently limits the number of hotel(s) and/or rooms within the ± 57-acre portion of Vintage Park, it is not intended to restrict development in terms of the size or intensity in perpetuity. As previously discussed, General Development Plans can be amended to respond to the changing needs of the community as long as there are no impacts from the proposed project. In accordance with Section 17.36.030.E. of the Foster City Municipal Code, the Planning Commission evaluated issues related to the findings required for Rezoning, such as consistency with the City's General Plan, interface with surrounding uses, suitability of streets and thoroughfares, availability of public utility services, market demand, parking and financial impact on the City. No project impacts were found that would be inconsistent with the City's adopted General Plan. The Commission also reviewed area, massing, orientation, bulk, height, architectural design, etc., as part of the Specific Development Plan/Use Permit and found the proposed use to be appropriate for the site. Additionally, the Environmental Assessment prepared for the project concluded that although the project has some potential for significant environment impacts, they could be mitigated to less than significant levels by the inclusion of project mitigation measures. A Mitigated Negative Declaration was prepared consisting of the Initial Study documenting the findings and recommendations for reducing any potential significant environmental impacts to less than significant levels by inclusion of mitigation measures.

Conclusion to Staff Response to Appeal Point No 1:

There is no basis upon which to conclude that the project is too large for the site or that the Vintage Park General Development Plan should limit development in the area to one hotel. Although the Appellant states in general that the project would result in a multitude of impacts, effects and problems, no specifics and/or evidence has been provided to substantiate this claim. Staff recommends that this argument in support of the appeal be rejected.

⁴ Section 17.28.020, C-M Commercial Mix District of Title 17, Zoning of the Foster City Municipal Code

⁵ Section 17.28.040, C-M Commercial Mix District of Title 17, Zoning of the Foster City Municipal Code

Appeal Point No. 2 – Planning Commission Findings: The Planning Commission, in adopting Resolution No. P-13-13, made the following Finding. Finding #A(b) provides:

- A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:
- (b) Be architecturally compatible with the surrounding buildings in the Vintage Park Development and would be sympathetic to the character and style of the adjacent restaurant and Crowne Plaza hotel buildings and therefore would promote "proper site planning, architectural design and property maintenance" as stated in the Land Use Goal LUC-B and Land Use Policies LUC-38 and LUC-40;

Argument in Support of Appeal Point No. 2: The Planning Commission found that the Project would be architecturally compatible with the surrounding buildings, and sympathetic to the character and style of our clients' property (the "Hofbrau Site"), thus promoting proper site planning, architectural design, and property maintenance. These findings, however, have no factual basis in the record of proceedings. The Hofbrau Site is located immediately adjacent to the Project Site, and contains an operating restaurant, Harry's Hofbrau. Under the proposed Project, a five-story monolith will be constructed within a few feet of the shared property line, and very close to the existing restaurant, resulting in aesthetic, light/air, architectural, and other incompatibilities. (*E.g.*, MSR letter, p. 2) The facts demonstrate that the Project is neither compatible with nor sympathetic to the HofBrau Site. The Planning Commission's approval violates General Plan goals and policies (e.g., LUC-B, LUC-38), and finding (A)(b) is without any factual basis.

Staff Response to Appeal Point No. 2:

The General Plan goal LUC-B requires high quality site planning and architectural design for all new development. Land Use Policy LUC-38 states that design review shall address, among other things, the following issues:

- a. Preservation of the architectural character and scale of neighborhoods.
- b. That the development is well designed, in and of itself, and in relation to surrounding properties.
- c. Preservation of waterfront views.
- d. Minimizing impacts on the privacy and access to sunlight and adjacent properties.
- e. Minimizing impacts due to excessive noise or undue/glare.
- f. Screening of unsightly uses including trash, loading docks/areas, roof to equipment, and special ventilating systems.
- g. Use of setbacks, open space, and landscaping.
- h. Exterior colors and materials.

The proposed project was reviewed at two separate Planning Commission Study Sessions and one Public Hearing to ensure that the project would promote proper site planning and architectural design and that it would address the various issues outlined under Land Use Policy LUC-38. The Planning Commission evaluated the project's architectural and design elements including but not limited to the site plan, building architecture, exterior materials and colors, orientation, massing, height, setbacks, circulation, parking and landscape concepts while keeping the surrounding buildings in context as well as site constraints. The Commission also reviewed photosimulations provided by the applicant to evaluate visual and aesthetic impacts of the project.

In response to staff comments and recommendations, the applicant made various changes to the project. These changes as outlined in the Planning Commission Staff Reports (attached) included but are not limited to:

- Reducing the number of rooms from 135 rooms to 121 rooms.
- Reduced the first floor building footprint from 17,504 square feet to 14,810 square feet.
- Setting back the building further from the Vintage Park Drive Overpass from the originally proposed 70'-0" to approximately 85'-0".
- Stepping down the building heights at the ends.
- Introducing architectural details/elements to improve the overall building articulation.
- Reducing the overall height of the building from 64'-0" to 59'-0".
- Provide screening of service facilities including trash enclosures etc.,
- Adding a stair tower element and other architectural elements to enhance the design quality of the project.

Because the subject site faces the service and loading areas of the adjacent restaurant and the shopping center with little or no openings, no privacy impacts or loss of access to sunlight on adjacent properties were found. The height of the building was found to be compatible with the Crowne Plaza Hotel and the Visa buildings. The design of the project was found to be consistent with the Vintage Park Design Guidelines. Issues such as light/glare and noise were addressed in the MND prepared for the project. Mitigation measures were incorporated to reduce the impacts from noise and light/glare. The applicant eliminated the bakery that was originally part of the hotel to address Mr. Kramer's concerns related to parking conflicts. The applicant also provided a hammer-head turn on the southeast side as an alternate fire truck access in order to meet the City's Fire access requirements in the event Mr. Kramer decided to fence off the northeast side of his property in the future.

Conclusion to Staff Response to Appeal Point No 2:

Based on the above-referenced factual findings included in the MND and various reports prepared by staff, the Planning Commission found the project to be architecturally compatible with the surrounding buildings and therefore, consistent with Land Use Goal LUC-B and Land Use Policies LUC-38 and LUC-40. Staff recommends that this basis for appeal be rejected.

Appeal Point No. 3 – Planning Commission Findings: The Planning Commission, in adopting Resolution No. P-13-13, made the following finding. Finding #A(e) provides:

A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:

(e) Be adequately served by municipal services and facilities per Goal LUC-F;

Argument in Support of Appeal Point No. 3: Whereas the City found that the Project could be served by municipal services and facilities per Goal LUC-F, the record is devoid of any analysis demonstrating that: the current Project design can be adequately served by the local fire department; that the Project's security and safety needs adequately can be met; that Project water and wastewater demands can be met; and that Project sewer demands can be accommodated. (Loewke letter, pp. 8-9). Accordingly, the City's finding is not supported by any evidence.

Staff Response to Appeal Point No. 3:

The project's impacts on public services is analyzed on pages 64-66 of the MND. The MND concluded that the project would have a less than significant impact on public services, with no mitigation required. As part of the project review process, an Interdepartmental Evaluation Committee (IDEC) meeting was held to review the proposal. During this time, Fire Marshal John Mapes reviewed the proposal and had some initial comments, none of which were determined to cause any Fire access and/or safety issues. It is staff's understanding that Mr. Kramer, indicated that he had issues with the fire lane access as proposed for the project, which is currently shown as a two-way drive aisle overlapping the project site and Mr. Kramer's HofBrau site. Mr. Kramer indicated to the project applicant that they would like the option of installing a fence on the north east corner of the site in the near future. Because this fence would impact the proposed fire lane access, the applicant worked with Fire Marshal Mapes to provide an alternate fire truck access (via a hammer-head turn on the southeast side) should the property be blocked off on the northeast entrance in the future. Fire Marshal Mapes indicated that this was an acceptable proposal. As stated in the MND on page 65, standard project conditions of approval are in place to provide a mechanism for staff to ensure that compliance with Fire Code access and safety standards will be maintained at all times.

During the IDEC meeting, Sergeant Tracy Avelar from the Police Department reviewed the proposal and did not see any safety and/or security issues. Project conditions of approval include that the applicant submit an exterior lighting plan to be reviewed and approved by the Community Development Department and the Police Department. Additionally, per Use Permit Condition of Approval #1.17.1, *"All street addresses shall be clearly visible from the adjacent street. Numerals shall be of a size satisfactory to the Fire and Police Departments. Buildings not fronting on a roadway shall be required*

to have their locations identified along the vehicle roadway nearest the building or at other locations as determined by the Fire and Police Departments” prior to Building Occupancy. The Police Department also required that the connection between the two parking lots remain open and not be locked off (Use Permit Condition of Approval #11.4).

Because no significant impacts were found during the Initial Study, a complete safety and service delivery analysis for the project is not required. The Appellant provides no evidence to the contrary.

The project’s impacts on utilities and service systems including water supply and wastewater capacity is analyzed on pages 78-82 of the MND. The MND concluded that the project would have a less than significant impact on utilities and service systems, with certain mitigations incorporated.

With regard to water supply, the water demand for the proposed project was reviewed by the Estero Municipal Improvement District (EMID) in accordance with SB 610. As required, EMID prepared a Water Supply Assessment which reviewed the water demand of the project and other future projects during normal year, dry year and multiple dry year scenarios. The Water Supply Assessment estimated the proposed project would result in an additional water demand of 15 acre feet per year and concluded that existing water resources were sufficient to serve the project for the next 20 years without affecting water supplies for existing and planned future developments.⁶ Contrary to the statement made by the Appellant, neither the Water Supply Assessment nor the MND applied a credit for the previous restaurant use, but instead measured project demand from the baseline of existing physical conditions which does not take into account any water demand from the previous restaurant use. The Appellant presents no evidence to the contrary.

Analysis of the project’s impact on wastewater capacity set forth on page 80 of the MND is also measured from the baseline of existing physical conditions and does not apply a “credit” for the previous restaurant use. The Appellant presents no evidence to the contrary.

To ensure that the project will not exceed wastewater capacity, the MND imposes Mitigation Measure Wastewater-1 which requires the developer to prepare a sewer protection study and hydraulic capacity study to be approved by the City Engineer to evaluate the existing sewer system size and set forth measures to ensure that project wastewater flows are accommodated. This is a standard measure to ensure that the existing pipes connecting the project site to the City’s system are adequately sized to serve the project. Use Permit Condition of Approval 3.5 clearly states that *“The applicant shall prepare a sewer flow projection study and a hydraulic capacity study, to be submitted to the Foster City Public Works Department for review, to verify that the*

⁶ City of Foster City Estero Municipal District, Water Supply Assessment Report for Gilead Integrated Corporate Campus Master Plan Project, 15-acres project, 400 Mariners Island Boulevard, City of San Mateo (Tideland Parks) Residential Project, Chess Hotel Project, Chess/Hatch Drive Office Project, Bayside Towers III Project, Visa V Project, Marina Project, approved on November 5,2012.

existing sewer system is properly sized to meet the projected increase in wastewater generation on the project site..." prior to Building Permit Issuance (PBP) and therefore, the appropriate measures will be implemented by a certain date. Similarly, there are other project conditions of approval in place with the Use Permit approval that would ensure that the proposed project meets the sewer and hydraulic capacity needs. As such, analysis and mitigation of the project's potential impacts on wastewater capacity was not improperly deferred and the Appellant presents no evidence to the contrary.

Conclusion to Staff Response to Appeal Point No 3:

The above facts were included either in the staff reports, comments from the IDEC meeting and/or the MND and therefore, Appellants' statement that the record is devoid of any analysis or that the Planning Commission's finding is not supported by evidence is an inaccurate statement. Staff recommends that this basis for appeal be rejected.

Appeal Point No. 4 – Planning Commission Findings: The Planning Commission, in adopting Resolution No. P-13-13, made the following finding. Finding #A(f) provides:

A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:

(f) Provide for adequate on-site parking for safe and effective circulation, consistent with Land Use Goal LUC-K;

Argument in Support of Appeal Point No. 4: Whereas the Planning Commission found that the Project would provide for adequate on-site parking for safe and effective circulation, no facts support this determination because the City failed to study the parking configuration that will exist at the Project site at the time of construction. Both the Project Site and the HofBrau Site are accessed primarily by a joint driveway running off of Chess Drive and then south across the HofBrau Site to the Project Site. There exists, as pointed out in the City's Staff Report, a mutual ingress/egress and parking agreement which provides reciprocal parking and access rights to both the HofBrau Site and the Project Site ("Joint Parking and Access Agreement"); however, the Joint Parking and Access Agreement allows our client to reconfigure the access drive currently existing across the HofBrau Site. As disclosed to the Planning Commission before it approved Use Permit UP-12-004, our clients have discussed this issue with the Project applicant and, based on the currently proposed Project, they intend to exercise their rights and to relocate the accessway to protect their parking and customer safety, which will result in a significantly altered access arrangement that has not been analyzed. (See MSR letter, pp. 1-3.) The modification of the access driveway will significantly impact both the method and route of access to the Project Site, and will significantly affect availability of parking and emergency access. Since the analysis supporting the Planning Commission's approval is predicated on a site plan that will not exist at the time of Project implementation, there exists no evidence to support the

Planning Commission's finding that the Project would provide for adequate, safe, and effective on-site parking.

Staff Response to Appeal Point No. 4:

As explained on pages 16-17 of the Planning Commission Staff Report dated June 20, 2013, the required number of parking spaces for the proposed project is 118 spaces. The project proposes a total of 154 spaces, 36 more than required. 103 spaces are provided onsite and 51 spaces are provided under the overpass through a written agreement that will be recorded to constitute a covenant running with the land pursuant to Section 17.62.020.D.1 as outlined in the City's Parking Ordinance. Additionally, shuttle services are provided by the applicant. As such, the proposed project meets its own on-site parking requirements without any dependency on the shared parking available on the adjacent Hofbrau site. As such, the parking associated with project does not cause any physical impacts that require analysis under CEQA.

Although the Appellant has pointed out that Mr. Kramer has plans to reconfigure the shared access driveway and parking lot, no formal plans have been actually submitted for consideration during the Planning review process nor has there been any discussions with City staff. As such, any analysis of this hypothetical scenario would be speculative and therefore such analysis is not required under CEQA.

Conclusion to Staff Response to Appeal Point No 4:

As state above, Mr. Kramer has not even submitted plans to reconfigure the shared access driveway and parking lot. Furthermore, even if such plans had been submitted, they would not trigger analysis under CEQA for this project, because as just explained, the proposed project meets the onsite parking demand based on the City's parking ordinance. The reconfiguration of the joint access and/or parking in the future is restricted to Mr. Kramer's site and is not an impact caused by the proposed project. Should such plans be submitted in the future, they will be analyzed separately for parking, access, safety and circulation when Mr. Kramer applies for his site entitlements. Staff recommends that this basis for appeal be rejected.

Appeal Point No. 5 - Planning Commission Findings: The Planning Commission, in adopting Resolution No. P-13-13, made the following finding. Finding #A(g) provides:

- A. The proposal to construct a five-story, 59'-0" tall, 69,715 square feet TownePlace Suites extended stay hotel with 121 guest rooms, would be consistent with the Foster City General Plan, Chapters 17.28 (C-M Commercial Mix District) and 17.36 (PD Planned Development) or Title 17 (Zoning), and Chapter 2.28 (Planning), of Title 2 (Administration and Personnel), of the Foster City Municipal Code, because the proposal, as conditioned in Exhibit A, will:
 - (g) Provide enough land for commercial uses consistent with Land Use Policy LUC-19;

Argument in Support of Appeal Point No. 5: Whereas the Planning Commission found that the project would provide enough land for commercial uses consistent with Land Use Policy LUC-19 in the General Plan, that policy contemplates the provision of goods and services for City residents. A hotel Project would serve visitors from outside the City and, if anything, would frustrate the provision of goods and services to local citizens by occupying developable space with uses that primarily serve nonlocal populations. The City's finding therefore is in error.

Staff Response to Appeal Point No. 5:

As noted under the response to Appeal Point No. 1, the General Plan identifies Vintage Park as a diverse mixed-use development.⁷ The area was developed and planned for primarily office and Research & Development uses. Commercial retail including restaurants and hotels were primarily to serve the vicinity work force and visitors to Vintage Park. The proposed hotel would service the vicinity work force by providing accommodation for its corporate visitors to stay for extended periods with the convenience of walking, biking or taking a shuttle to and from work and airports in the region.

Conclusion to Staff Response to Appeal Point No 5:

Creating a synergy of uses such as restaurants, hotels and businesses has been the City's long-term goal for Vintage Park in retaining and attracting businesses to Foster City, which, in turn, provide a major source of revenue to fund the City services that residents enjoy consistent with Land Use Policy LUC-19. Staff recommends that this basis for appeal be rejected.

Appeal Point No. 6 – Planning Commission Findings: In adopting Resolution No. Resolution No. P-13-13, the Planning Commission made the following finding. Finding #B(a)&(c) provides:

- B. That the design of the proposal would be compatible with the site's environment with respect to use, forms, materials, colors, setbacks, location, height, design or similar qualifies as specified in Chapter 2.28 (Planning) of Title 2 (Administration and Personnel), and Section 17.58.010 of Chapter 17.58 (Architectural Control and Supervision) of Title 17 (Zoning), of the Foster City Municipal Code because the proposed five-story extended stay hotel building:
 - (a) Is architecturally compatible with the adjacent buildings in the Vintage Park neighborhood in that it uses similar building materials such as cement plaster, aluminum windows, aluminum composite panels for the coping, fascia and soffits, GFRC materials for the base of the building, glazing and metal trellises and canopies in tan and grey color schemes consistent with the Vintage Park Design Guidelines;

⁷ City of Foster City General Plan, Chapter 3: Land Use and Circulation Element, Land Use Background, p:3-14

- (c) Is set back approximately 85 feet from the farthest point and 45 feet from the nearest point from State Route 92, 85 feet from the Vintage Park Drive Overpass, 25 feet from the property line contiguous to Harry's Hofbrau and 75 feet from EMID easement/Bridgepointe Shopping Center in San Mateo and therefore eliminating any visual impacts caused from building height, scale and/or massing and providing sufficient vehicular and pedestrian access and circulation throughout the site.

Argument in Support of Appeal Point No. 6: Whereas the Planning Commission found that the Project would not result in any visual impacts or cause issues related to vehicular access and circulation, such a determination has no evidentiary basis. As this finding acknowledges, the HofBrau Site property line sits only 25 feet away from the Project. Meanwhile, the Project contemplates construction of a five-story monolith within a few feet of the shared property line, and very close to our client's single-story restaurant. (E.g., MSR letter, p. 2.) The Project thus would be architecturally and aesthetically incompatible with our client's restaurant. Second, and as indicated above, both the Project Site and the HofBrau Site are accessed primarily by a joint driveway running off of Chess Drive and then south across the HofBrau Site to the Project Site. Our clients intend to exercise their rights and to relocate the accessway to protect their parking and customer safety, which will result in a significantly altered access arrangement that has not been analyzed. Having failed to evaluate the parking configuration and parameters that actually will exist at the time of Project construction, the Planning Commission could not find that the Project would provide sufficient vehicular access and circulation throughout the site.

Staff Response to Appeal No. 6:

As noted in the response to Appeal Point #2, the proposed project is consistent with the General Plan goal LUC-B and Land Use Policy LUC-38 that requires high quality site planning and architectural design for all new development.

The proposed project was reviewed at two separate Planning Commission Study Sessions and one Public Hearing to ensure that the project would promote proper site planning and architectural design and that it would address the various issues outlined under Land Use Policy LUC-38. The Planning Commission evaluated the project's architectural and design elements including but not limited to the site plan, building architecture, exterior materials and colors, orientation, massing, height, setbacks, circulation, parking and landscape concepts while keeping the surrounding buildings in context as well as site constraints. The Commission also reviewed photosimulations provided by the applicant to evaluate visual and aesthetic impacts of the project.

In response to staff comments and recommendations, the applicant made various changes to the project which are outlined in the response to Appeal Point #2. Because the subject site faces the service and loading areas of the adjacent restaurant and the shopping center with little or no openings, no privacy impacts or loss of access to sunlight on adjacent properties were found. The height of the building was found to be compatible with the Crowne Plaza Hotel and the Visa buildings. The design of the project was found to be consistent with the Vintage Park Design Guidelines. Issues

such as light/glare and noise were addressed in the MND prepared for the project. Mitigation measures were incorporated to reduce the impacts from noise and light/glare. The applicant eliminated the bakery that was originally part of the hotel to address Mr. Kramer's concerns related to parking conflicts. The applicant also provided a hammer-head turn on the southeast side as an alternate fire truck access in order to meet the City's Fire access requirements in the event Mr. Kramer decided to fence off the northeast side of his property in the future.

Additionally, as noted in the response to Appeal Point #4, the proposed project meets its own on-site parking requirements without any dependency on the shared parking available on the adjacent Hofbrau site.

Conclusion to Staff Response to Appeal Point No 6:

Although the Appellant has pointed out that Mr. Kramer has plans to reconfigure the shared access driveway and parking lot, no formal plans have been actually submitted for consideration during the Planning review process nor have there been any discussions with City staff. As such, any analysis of this hypothetical scenario would be speculative and therefore such analysis is not required under CEQA. Furthermore, even if such plans had been submitted, they would not trigger analysis under CEQA for this project, because as just explained, the proposed project meets the onsite parking demand based on the City's parking ordinance. The reconfiguration of the joint access and/or parking in the future is restricted to Mr. Kramer's site and is not an impact caused by the proposed project. Should such plans be submitted in the future, they will be analyzed separately for parking, access, safety and circulation when Mr. Kramer applies for his site entitlements. The project, as proposed, provides sufficient vehicular access and circulation throughout the site. Staff recommends that this basis for appeal be rejected.

Appeal Point No. 7 – Planning Commission Findings: In adopting Resolution No. Resolution No. P-13-13, the Planning Commission made the following finding. Finding #C(a)&(b) provides:

- C. That the proposal would not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to property and improvements in the neighborhood, property values in the area, or the general welfare of the City because:
 - (a) The impacts likely to result from the proposed building were adequately analyzed in the Mitigated Negative Declaration prepared for the TownePlace Suites project and all pertinent mitigation measures from the MND that are applicable to the Project have been included in the Use Permit Conditions of Approval in Exhibit A;
 - (b) The building will not cause any significant solar, visual, or other adverse long-term impacts on adjacent or neighboring properties or adversely affect property values; the hotel building will be compatible with the uses of the surrounding buildings planned in the Vintage Park Development and will

comply with the intent and purpose of the zone in which the hotel building is located consistent with the intent and purpose of the City's Architectural Control and Supervision Ordinance as stated in Section 17.58.010B of the Foster City Municipal Code and the Vintage Park Design Guidelines; and

Argument in Support of Appeal Point No. 7: Whereas the Planning Commission found that environmental review of the Project was adequate, and would not cause any adverse, long-term impacts on adjacent properties, such a finding does not have a basis in the evidentiary record. The Project's environmental analysis, including the MND adopted in support of Use Permit UP-12-004, is not adequate for the reasons listed below, and which are presented in greater detail in the incorporated Kramer Comments:

- Environmental review for the Project fails to account for cumulative impacts, having failed to consider all reasonably foreseeable development in the vicinity of the Project site. (MSR letter, p. 3.)
- As indicated above, both the Project Site and the HofBrau Site are accessed primarily by a joint driveway running off of Chess Drive and then south across the HofBrau Site to the Project Site. Our clients intend to exercise their rights and to relocate the accessway to protect their parking and customer safety, which will result in a significantly altered access arrangement that has not been analyzed under the proposed MND. (MSR letter, pp. 1-3.)
- Implementation of the Project in a congested urban setting will cause dislocation and severe impacts upon the environment which were not evaluated in the MND. In particular, the Kramer Comments, incorporated by reference, show that the Project would have significant adverse and unmitigated environmental effects with respect to:
 - Aesthetics (Loewke letter, pp. 3-4)
 - Air quality (Loewke letter, pp. 4-5)
 - Greenhouse gas emissions (Loewke letter, p. 5)
 - Land use planning (Loewke letter, pp. 5-6)
 - Hydrology and water quality (Loewke letter, p. 6)
 - Transportation, traffic, parking and safety (Loewke letter, pp. 6-8; Abrams letter and attachment, passim)
 - Public services (Loewke letter, pp. 8-9)
 - Utilities and service systems (Loewke letter, p. 9)
- Because the Project would have significant impacts that cannot be mitigated, the City must prepare an Environmental Impact Report, and undertake an analysis of Project alternatives, which the MND does not include. (Loewke letter, p. 2.)
- The MND employs an environmental baseline that departs from CEQA's mandatory requirement of an "existing conditions" baseline, thereby corrupting the environmental analyses that incorporate the baseline selected. (MSR letter, p. 6; Loewke letter, p. 3.)
- The MND improperly attempts to rely on a prior EIR without following CEQA's rules for doing so. (MSR letter, pp. 6-7.)
- The MND relies on improperly deferred mitigation measure. (MSR letter, pp. 7-8.)

Staff Response to Appeal Point No. 7:

- Cumulative Impacts: (MSR letter, p. 3.)

The MND analyzes the cumulative traffic impacts of the project at pages 73-78. See also pages 14-18 of the Focused Transportation Analysis prepared by Fehr & Peers included as Appendix C to the MND. This cumulative impact analysis in turn is reflected in the MND's air quality and greenhouse gas emissions analysis. See MND pages 19-24 and 35-40. With respect to cumulative analysis of the other impact topics, there is no evidence in the record supporting a fair argument that the project would have a considerable incremental effect. Absent such evidence, an in-depth study of potential cumulative impacts is not required in an MND.

- Altered Access: (MSR letter, pp. 1-3.)

As noted under staff's response to Appeal Point #4 above, although the Appellant has pointed out that Mr. Kramer has plans to reconfigure the shared access driveway and parking lot, no formal plans have been actually submitted for consideration during the Planning review process nor has there been any discussions with City staff. As such, any analysis of this hypothetical scenario would be speculative and therefore such analysis is not required under CEQA. The reconfiguration of the joint access in the future is restricted to Mr. Kramer's site and is not an impact caused by the proposed project. The proposed hotel provides for sufficient on-site parking and/or circulation irrespective of the shared parking available at the Hofbrau site. Should such plans be submitted in the future, they will be analyzed separately for parking, access, safety and circulation when Mr. Kramer applies for his site entitlements. The project, as proposed, provides sufficient vehicular access and circulation throughout the site.

- Added Impacts on the environment have not been analyzed:

- **Aesthetics** (Loewke letter, pp. 3-4)

As restated on page 11 of the MND, a project has a significant impact on aesthetics under CEQA if (a) it would have an adverse effect on a scenic vista; (b) substantially damage scenic resources; (c) substantially degrade the existing visual character or quality of the site and its surroundings; or (d) create a new source of light and glare that would adversely affect day or nighttime views in the area. Staff recommended that certain design changes to the project be made to enhance the overall quality of design of the project. These recommendations included adding one additional material, the inseting of windows, reinstating some architectural elements and removing some bump-outs. None of these changes would cause the project to exceed the above stated thresholds of significance and therefore do not trigger any further required analysis under CEQA. Contrary to the Appellant's allegation, these design changes were not recommended to mitigate any identified significant aesthetic impacts of the project. The MND states that the project will result in one potentially significant aesthetic impact (creation of a new source of substantial light or glare). However,

with the imposition of the mitigation measures included, the impact would be reduced to less than significant levels.

- **Air Quality** (Loewke letter, pp. 4-5)

- a. The Air Quality Section does not apply a credit for reduction in emissions. Table 3 on page 22 of the MND compares emissions generated by the hotel project with the former restaurant use for purposes of context only and concludes that the hotel would generate more emissions than a restaurant. However, for purposes of determining whether the emissions generated by the project are significant, it properly compares the total emissions projected to be generated by the project against the identified BAAQMD 2010 CEQA Guidelines significance threshold and concludes that there is no significant impact because the total hotel emissions (not just net emissions above the former restaurant use) will not exceed the identified threshold of significance.
- b. Section 15332 of the CEQA Guidelines outlines the requirements for a project to qualify as an in-fill development project for the purposes of exemption from the provisions of CEQA. However, the proposed project has not been identified as being exempt from the provisions of CEQA. During the Initial Study, significant environmental impacts were anticipated which resulted in the preparation of an MND to mitigate the impacts to less than significant levels.
- c. As explained on pages 20 and 36 of the MND, although BAAQMD published revised CEQA Guidelines in 2011, due to ongoing litigation challenging these thresholds, BAAQMD no longer recommends that these thresholds be applied to measure a project's significant air quality impacts. However, CEQA grants local agencies broad discretion to develop their own thresholds of significance or to rely on thresholds previously adopted or recommended by other public agencies (CEQA Guidelines 15064.7). As such, the City determined, based on best scientific available data, that the thresholds of significance identified in the 2010 BAAQMD CEQA Guidelines were the appropriate thresholds of significance to be used to determine the greenhouse gas related environmental impacts under CEQA (see MND pp. 20, 36).

The MND analyzed the project's impacts related to construction level emissions (see MND pp. 22-23 and Appendix D and E). As discussed on page 22 of the MND, the proposed project (consisting of 121 rooms) is below the threshold of significance for construction related emissions (hotels with 554 rooms) set forth in Table 3-1 of the 2010 CEQA Guidelines. Even though the project did not exceed this identified threshold of significance, the MND included a mitigation measure to further reduce construction related emissions to a less than significant level.

- d. As explained in the section above, CEQA grants local agencies broad discretion to develop their own thresholds of significance or to rely on thresholds previously adopted or recommended by other public agencies

(CEQA Guidelines 15064.7). As such, the City determined, based on best scientific available data, that the thresholds of significance identified in the 2010 BAAQMD CEQA Guidelines were the appropriate thresholds of significance to be used to determine the greenhouse gas related environmental impacts under CEQA (see MND pp. 20, 36). Additionally, a copy of the MND was sent to the Bay Area Air Quality Management District for comments during the public review period. Staff did not receive any comments related to the Air Quality and/or the Greenhouse Gas Emissions section.

- **Greenhouse Gas Emissions** (Loewke letter, p.5)
 - a. As discussed in the 2012 CEQA Guidelines, BAAQMD recommends (but does not require) that URBEMIS and the BAAQMD GHG Model (BGM) be used to calculate greenhouse gas impacts⁸. The URBEMIS program measures on-road and off-road vehicle emissions related to a project. The URBEMIS program measures annual emissions related to Reactive Organic Gases (ROG), Nitrogen Oxides (NO_x), Carbon Monoxide (CO), Sulphur Dioxide (SO₂) Respirable Particulate Matter (PM₁₀), Fine Particulate Matter (PM₂₅) and Carbon Dioxide (CO₂). The project's estimated emissions from URBEMIS were included as Appendix D to the MND. These URBEMIS calculations show that the project's projected greenhouse gas emissions would exceed the 1,100 MT/yr (metric tons per year) threshold of significance identified by the City and the BAAQMD 2010 CEQA Guidelines.

However, BAAQMD acknowledges that the URBEMIS program does not calculate direct and indirect emissions and requires that a second program be used which accounts for both direct and indirect emissions⁹. Accordingly, the MND relied on the program CalEEMod to calculate and analyze indirect and direct emissions related to the project. See pages 35-40 of the MND. The CalEEMod program is an accurate and comprehensive tool for the quantification of air quality impacts for projects in California. The program was developed with the cooperation of all the air districts in California. The program quantifies the direct emissions from construction and operations (including vehicle use), as well as indirect emissions from energy use, solid waste, disposal, landscaping and water use (the URBEMIS program does not do this). Mitigation Measures related to a project can be incorporated into the model to determine the project's actual emissions with incorporation of the identified mitigation measures. This model complies with the BAAQMD's directive to use a program which identified direct and indirect emissions related to a project in order to identify all greenhouse gas emissions related to

⁸ 2012 Bay Area Air Quality Management District CEQA Air Quality Guidelines, Part II, Assessing and Mitigating Operational-Related Impacts

⁹ 2012 Bay Area Air Quality Management District CEQA Air Quality Guidelines, page 4-2

a project when evaluating environmental impacts related to greenhouse gases¹⁰.

Accordingly, CalEEMod was used rather than URBEMIS and the BGM program for purposes of determining the significance of the project's impact on global climate change, because CalEEMod provides information regarding annual CO₂e emissions for the project (which is established as the threshold of significance for the project) and looked at all emissions related to area, energy, mobile (traffic), waste and water related to the project. Additionally, the program allowed the City to determine if the identified mitigation measure for the project would in fact reduce emissions to a less than significant level.

Appendix E of the MND includes the results from the CalEEMod program. As identified in Appendix E and on Table 5 on page 38 of the MND, the program determined that the annual emission of CO₂e would be 1,133.71 MT/yr (Metric Tons per year) which would exceed the threshold of significance of 1,100 MT/yr identified by the City and established by the BAAQMD in the 2010 CEQA Guidelines. In order to reduce CO₂e emissions below the established threshold, the MND identified Mitigation Measure GHG-1, which requires the applicant to include several measures in the project to reduce emissions related to operations. Those measures include water efficient fixtures, recycling, exceeding Title 24 requirements, the use of "green" cleaning products and a shuttle service. The CalEEMod program was used to determine the effectiveness of these measures. As shown in Table 7 on page 40 of the Mitigated Negative Declaration for the TownePlace Suites, the measures would reduce the annual emission of CO₂e to 977.12 MT/yr which is less than the threshold of significance. Therefore, the project would result in a less than significant environmental impact with respect to greenhouse gases, with the implementation of this mitigation measure.

The 2012 BAAQMD CEQA Guidelines states that the thresholds of significance identified in the 1999 CEQA Guidelines are to be used as the thresholds of significance when identifying impacts related to greenhouse gases (page 2-5 of the 2012 BAAQMD Guidelines). The 1999 BAAQMD CEQA Guidelines limits emissions of ROG, NO_x and PM₁₀ to a maximum of 80 pounds per day or 15 tons per year.¹¹ As shown in Appendix D of the Mitigated Negative Declaration, the proposed project would result in emissions of 0.06 tons per year of ROG, 0.41 tons per year of NO_x and 0.10 tons per year of PM₁₀ which is significantly lower than the 1999 thresholds.

The 2012 BAAQMD CEQA Guidelines does allow Cities to adopt thresholds of significance which are more stringent than the 1999 thresholds of significance which was done in this case. If the City had not taken the conservative approach of applying the significance thresholds set forth in the

¹⁰ California Emissions Estimator Model (CalEEMod) Users Guide, including Appendices, (<http://www.caleemod.com/>)

¹¹ Bay Area Air Quality Management District CEQA Guidelines, December 1999, Table 3

2010 CEQA Guidelines in its review of greenhouse gas emissions related to this project, the proposed project would have been well below the thresholds of significance identified in the 2012 BAAQMD CEQA Guidelines and no mitigation measure would have been required.

- b. The 1,292 metric ton amount that the Appellant claims the project will generate was calculated using the URBEMIS program, which alone, is not considered by BAAQMD to be an adequate measure of a project's impacts. As discussed above, a program which also reviews the direct and indirect emissions related to a project must be used. In this case, the City used the CalEEMod model which provided emission calculations for the project related to area, energy, mobile (traffic), waste and water as required for the analysis of greenhouse gases under CEQA. Additionally, the Appellant's calculation does not acknowledge a reduction of greenhouse gases related to implementation of the mitigation measure identified in the MND. As explained in the MND at pages 38-40 and as supported in the calculation generated by the CalEEMod model set forth in Appendix E to the MND, this mitigation measure reduces the project's impact on global climate change to a less than significant level.

- **Land Use and Planning** (Loewke letter, pp. 5-6)

As explained on page 5 of the MND, a 9,700 square foot restaurant building was constructed on the project site in 1984 and operated and occupied by Black Angus restaurant until 2009 when operations ceased. The building included a 9,200 square foot restaurant area and a 500 square foot mezzanine of office spaces. The reduction in the restaurant square footage is based on deducting the square footage for the Black Angus restaurant portion only (not the mezzanine portion).

The Vintage Park General Development Plan included the square footage of three restaurants, El Torito, Black Angus and Harry's Hofbrau. With the proposed amendment, the square footage of the Black Angus restaurant is deducted from the overall square footage. As noted in the staff report, the bakery has been eliminated completely. The most recent version of the plans submitted by the applicant show no bakery for the proposed hotel.

Pages 53 and 54 of the MND contain a comprehensive analysis of the project's direct, indirect and cumulative land use impacts in accordance with CEQA. The MND concludes that the project will not exceed any of the identified thresholds of significance for land use: it will not physically divide an established community, it will not conflict with any applicable land use plan, policy or regulation, and it will not conflict with any applicable habitat conservation plan or natural community conservation plan. As such, and as concluded by the MND, the project will not result in any land use impacts and therefore no mitigation is required. The Appellant provides no evidence to the contrary.

- **Hydrology & Water Quality** (Loewke letter, p.6)

The MND analysis of the project's impacts on hydrology and water quality is contained on pages 45-52 of the MND. As stated on page 50 the MND, the amount of impervious surface on the site would increase by only 369 sf (or 0.5%) of the site. The MND concludes that hydrology and water quality impacts resulting from the project would be less than significant with Mitigation Measure Hydrology-2, which requires the applicant to comply with the C.3 provisions of the Municipal Regional Stormwater Permit. The MND does not identify any significant potential water quality impact that cannot be mitigated to a less than significant level and no analysis is deferred.

Mitigation Measure Hydrology-2 is a standard, generally applicable requirement of the City's Municipal Regional Stormwater Permit which in turn requires the applicant to design best management practices (BMPs) to reduce potential impacts to reduce storm water and incorporate these BMPs into a design-level drainage plan which shall include measures designed to mitigate potential water quality degradation of runoff from all portions of the completed development. "[A] condition requiring compliance with regulations is a common and reasonable mitigation measure." *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912. See also *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 (recognizing that . The Appellant presents no evidence that compliance with these generally applicable requirements to mitigate the potential 0.5% increase in impervious surfaces would be infeasible.

- **Transportation, traffic, parking and safety** (Loewke letter, pp. 6-8; Abrams letter and attachment, *passim*)

- a. The MND analyzes the project's impact on transportation and traffic at pages 67-78 and concludes that these impacts would be less than significant with no mitigation required because the project will generate less than 100 peak hour trips in accordance with the C/CAG Congestion Management Plan. The analysis and conclusion was based in part on a Focused Transportation Analysis prepared by Fehr & Peers included as Appendix C to the MND. No dangerous intersections were found during the review of this project.

A summary of the project's direct and cumulative impact on study intersections within the vicinity of the project is found at pages 73-76 of the MND. The main entrance to the project at Chess Drive was not included as a study intersection because although it allows for limited left and right turn movements, this area is not a four way intersection. It is a driveway and it is not signalized, and, as such, there is no LOS (Level of Service) standard associated with the main entrance that the project would or could exceed. For this reason, analysis of the Project's impact on the main entrance was not included in the MND or the referenced transportation impact analyses contained in the Gilead and General Plan Update EIRs.

- b. The *Focused Transportation Analysis* was prepared by Fehr and Peers who have also prepared transportation analyses for several projects in the area including the General Plan Update and the Gilead Sciences Integrated Corporate Campus Master Plan. Table 13 of the MND at pages 73-74 summarizes the study intersections under cumulative conditions. The main project entrance was not included in the list of study intersections because, as explained above, although it allows for limited left and right turn movements, this area is not a four way intersection. As such, the Appellant's statement that the project would cause this intersection to exceed the applicable LOS for this "intersection" is inaccurate.
- c. Pursuant to one of the thresholds of significance identified by the City, a significant traffic impact would result if the project would "substantially increase hazards due to a design feature or incompatible land uses." (MND page 76) The MND concluded that this was a less than significant impact, explaining that the "site plan has been reviewed by the Fire Department, Police Department and the Public Works Department to ensure that no hazards exist and that adequate access will be provided to the site by the project's access point." (MND at page 77)

While the Appellant complains that "unusual non-standard median design" of the project entrance "would represent a significant safety hazard", it is important to note that neither the project entrance nor its median feature are "design features" of the project. Instead, they are existing conditions. Furthermore, motorists have the option of pulling into the protected area when traveling westbound on Chess Drive prior to making a left turn into the project site. Additionally, a legal U-Turn can also be made at a protected intersection further down Chess Drive for those that would like the protection of a signalized intersection. Although the existing Black Angus restaurant has closed, a restaurant did operate in this location with the roadway configuration as it can currently be found. As such, the project does not substantially increase hazards due to a design feature or incompatible land uses.

With respect to the comment that the project will result in queuing impacts at the El Torito restaurant driveway, it should be noted that there are two entrances/exits into the restaurant that are currently available. Furthermore, it is unlikely that the proposed hotel project will conflict with the peak demand period for the restaurant. As concluded in the MND, the project is not anticipated to create significant trips to and from the project site. (MND, p. 70) As such, queuing impacts on the street is not anticipated as a result of this project. The Appellant provides no evidence to the contrary.

- d. As noted in the response to Appeal Point #4 above, the proposed project adequately meets parking demand and applicable City parking requirements. The Appellant's statement that roughly one-third of the entire parking demand will be met by a remote parking lot underneath the overpass is inaccurate. The required number of parking for the proposed project is 118 spaces. The project proposes to provide 103 of these spaces on-site. The remaining 15

required spaces are provided off-site under the overpass (along with an additional 36 spaces for a total of 51 spaces provided under the overpass). These 15 spaces represent roughly only one-eighth of the entire parking needs and not one-third as stated in the comment. Without taking into account the shuttle services provided by the applicant or taking into consideration the fact that the hotel is unlikely to have 100% occupancy rates at all times, there is ample parking provided on-site to meet project demand. Therefore, the issues of proximity and/or security is not a significant consideration nor would the provision of approximately one-eighth or 13% of the project's required parking off-site cause significant pressure on the adjacent Hofbrau parking area from hotel guests. The Appellant provides no evidence to the contrary.

- **Public Services** (Loewke letter, pp. 8-9)
 - a. As noted under the response to Appeal Point #3 above, the project's impacts on public services is analyzed on pages 64-66 of the MND. The MND concluded that the project would have a less than significant impact on public services, with no mitigation required. As part of the project review process, an Interdepartmental Evaluation Committee (IDEC) meeting was held to review the proposal. During this time, Fire Marshal John Mapes reviewed the proposal and had some initial comments, none of which were determined to cause any Fire access and/or safety issues. It is staff's understanding that Mr. Kramer, indicated that he had issues with the fire lane access as proposed for the project, which is currently shown as a two-way drive aisle overlapping the project site and Mr. Kramer's HofBraU site. Mr. Kramer indicated to the project applicant that they would like the option of installing a fence on the north east corner of the site in the near future. Because this fence would impact the proposed fire lane access, the applicant worked with Fire Marshal Mapes to provide an alternate fire truck access (via a hammer-head turn on the southeast side) should the property be blocked off on the northeast entrance in the future. Fire Marshal Mapes indicated that this was an acceptable proposal. As stated in the MND on page 65, standard project conditions of approval are in place to provide a mechanism for staff to ensure compliance with Fire Code access and safety standards will be maintained at all times.
 - b. During the IDEC meeting, Sergeant Tracy Avelar from the Police Department reviewed the proposal and did not see any safety and/or security issues. Project conditions of approval include that the applicant submit an exterior lighting plan to be reviewed and approved by the Community Development Department and the Police Department. Additionally, per Use Permit Condition of Approval #1.17.1, "*All street addresses shall be clearly visible from the adjacent street. Numerals shall be of a size satisfactory to the Fire and Police Departments. Buildings not fronting on a roadway shall be required to have their locations identified along the vehicle roadway nearest the building or at other locations as determined by the Fire and Police Departments*" prior to Building Occupancy. The Police Department also

required that the connection between the two parking lots remain open and not be locked off (Use Permit Condition of Approval #11.4).

Because no significant impacts were found during the Initial Study, a complete safety and service delivery analysis for the project is not required. The Appellant provides no evidence to the contrary.

▪ **Utilities and Service Systems** (Loewke letter, p.9)

- a. As noted under the response to Appeal Point #3 above, the project's impacts on utilities and service systems including water supply and wastewater capacity is analyzed on pages 78-82 of the MND. The MND concluded that the project would have a less than significant impact on utilities and service systems, with certain mitigations incorporated.

With regard to water supply, the water demand for the proposed project was reviewed by the Estero Municipal Improvement District (EMID) in accordance with SB 610. As required, EMID prepared a Water Supply Assessment which reviewed the water demand of the project and other future projects during normal year, dry year and multiple dry year scenarios. The Water Supply Assessment estimated the proposed project would result in an additional water demand of 15 acre feet per year and concluded that existing water resources were sufficient to serve the project for the next 20 years without affecting water supplies for existing and planned future developments.¹² Contrary to the Appellant's statement, neither the Water Supply Assessment nor the MND applied a credit for the previous restaurant use, but instead measured project demand from the baseline of existing physical conditions which does not take into account any water demand from the previous restaurant use. The Appellant presents no evidence to the contrary.

Analysis of the project's impact on wastewater capacity set forth on page 80 of the MND is also measured from the baseline of existing physical conditions and does not apply a "credit" for the previous restaurant use. The Appellant presents no evidence to the contrary.

- b. To ensure that the project will not exceed wastewater capacity, the MND imposes Mitigation Measure Wastewater-1 which requires the developer to prepare a sewer protection study and hydraulic capacity study to be approved by the City Engineer to evaluate the existing sewer system size and set forth measures to ensure that project wastewater flows are accommodated. This is a standard measure to ensure that the existing pipes connecting the project site to the City's system are adequately sized to serve the project. Use Permit Condition of Approval 3.5 clearly states that "*The applicant shall prepare a*

¹² City of Foster City Estero Municipal District, Water Supply Assessment Report for Gilead Integrated Corporate Campus Master Plan Project, 15-acres project, 400 Mariners Island Boulevard, City of San Mateo (Tideland Parks) Residential Project, Chess Hotel Project, Chess/Hatch Drive Office Project, Bayside Towers III Project, Visa V Project, Marina Project, approved on November 5,2012.

sewer flow projection study and a hydraulic capacity study, to be submitted to the Foster City Public Works Department for review, to verify that the existing sewer system is properly sized to meet the projected increase in wastewater generation on the project site...” prior to Building Permit Issuance (PBP) and therefore, the appropriate measures will be implemented by a certain date. Similarly, there are other project conditions of approval in place with the Use Permit approval that would ensure that the proposed project meets the sewer and hydraulic capacity needs. As such, analysis and mitigation of the project’s potential impacts on wastewater capacity was not improperly deferred and the Appellant presents no evidence to the contrary.

- An EIR is required: (Loewke letter, p.2.)

The Appellant states that the project has a number of unmitigated environmental effects. However, as concluded in the MND there are no potentially significant impacts that would remain unmitigated. Because the project's impacts will be reduced to less than significant levels through the incorporation of project mitigation measures, and because there is no substantial evidence in the record supporting a fair argument that the project would result in any significant and unavoidable impacts, an EIR is not warranted and therefore, project alternatives need not be analyzed under the existing MND.

- The MND employs an incorrect environmental baseline: (MSR letter, p.6; Loewke letter, p.3.)

The MND used the proper baseline of existing physical conditions in its environmental analysis of all environmental impacts of the project, including transportation and traffic impacts. The project description clearly acknowledges that the former Black Angus restaurant on the project site “ceased operations in 2009” and “is currently vacant.” (MND p. 5)

The Focused Transportation Analysis prepared by Fehr & Peers (attached as Exhibit C to the MND) developed trip generation estimates by applying trip generation rates presented in the Institute of Transportation Engineers (ITE) Trip Generation 9th Edition for the proposed hotel use. The project trip generation for the project (that originally included the bakery) is shown on Table 4 of the Focused Transportation Analysis. The daily trip counts presented in Table 4 do not take into account an operational restaurant. Table 5 of the Focused Transportation Analysis shows the amount of traffic generated by the restaurant if it were occupied for comparison purposes only.¹³ Footnote 1 of Table 5 clearly acknowledges that the “Existing restaurant is currently unoccupied.” As summarized on page 70 of the MND the proposed project is expected to generate 68 peak hour trips and 71 pm peak hour trips without accounting for or “crediting” trips generated by the former restaurant use. As such, the MND concludes on page 77 that the proposed project generates less than 100 peak hour trips in accordance with the C/CAG Congestion

¹³ TownePlace Suites MND Appendices, Memorandum prepared by Fehr & Peers and dated February 15, 2013, pp. 12-13.

Management Plan. Appellant's statement that the trip generation from the restaurant use was improperly included in the baseline therefore is incorrect. In the memorandum dated May 3, 2013 prepared by Fehr & Peers, a revised project trip generation was shown that eliminates the bakery use and therefore reduces the number of peak hour trips further from 99 to 71.¹⁴

- The MND improperly relies on a prior EIR: (MSR letter, pp. 6-7)

Per CEQA Guidelines Section 15150, an MND may incorporate by reference all or portions of another document which is a matter of public record and is generally available to the public. The MND properly incorporated the transportation impact analysis prepared for the Gilead EIR by reference in accordance with CEQA Guidelines Section 15150 by summarizing the document and stating where the document is available for public inspection. See MND pages 67-68. This reference was not intended to and did not rely on the Gilead EIR as the EIR for the hotel project in accordance with CEQA Guidelines Section 15153. Because all significant impacts of the project can be mitigated to a less than significant level and there is no substantial evidence supporting a fair argument to the contrary, the impacts of the project were properly analyzed in the MND in accordance with CEQA and an EIR was not required. CEQA does not require an analysis of alternatives in an MND.

- The MND improperly relies on deferred mitigation: (MSR letter, pp. 7-8)

To ensure that the project will not exceed wastewater capacity, the MND imposes Mitigation Measure Wastewater-1 which requires the developer to prepare a sewer protection study and hydraulic capacity study to be approved by the City Engineer to evaluate the existing sewer system size and set forth measures to ensure that project wastewater flows are accommodated. This is a standard measure to ensure that the existing pipes connecting the project site to the City's system are adequately sized to serve the project. Use Permit Condition of Approval 3.5 clearly states that *"The applicant shall prepare a sewer flow projection study and a hydraulic capacity study, to be submitted to the Foster City Public Works Department for review, to verify that the existing sewer system is properly sized to meet the projected increase in wastewater generation on the project site..."* prior to Building Permit Issuance (PBP) and therefore, the appropriate measures will be implemented by a certain date. Similarly, there are other project conditions of approval in place with the Use Permit approval that would ensure that the proposed project meets the sewer and hydraulic capacity needs. As such, analysis and mitigation of the project's potential impacts on wastewater capacity was not improperly deferred and the Appellant presents no evidence to the contrary.

Conclusion to Staff Response to Appeal Point No 7:

As detailed in Staff Response above, the environmental review of the project was adequate and staff recommends that this basis for appeal be rejected.

¹⁴ TownePlace Suites MND Appendices, Memorandum prepared by Fehr & Peers and dated May 3, 2013, p. 2.

Appeal Point No. 8 – Planning Commission Findings: In adopting Resolution No. Resolution No. P-13-13, the Planning Commission made the following finding. Finding #C(b)&(c) provides:

- C. That the proposal would not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to property and improvements in the neighborhood, property values in the area, or the general welfare of the City because:
 - (b) The building will not cause any significant solar, visual, or other adverse long-term impacts on adjacent or neighboring properties or adversely affect property values; 3) The hotel building will be compatible with the uses of the surrounding buildings planned in the Vintage Park Development and will comply with the intent and purpose of the zone in which the hotel building is located consistent with the intent and purpose of the City's Architectural Control and Supervision Ordinance as stated in Section 17.58.010B of the Foster City Municipal Code and the Vintage Park Design Guidelines; and
 - (c) The redeveloped use would not create conflicts with existing on-site and surrounding land uses because the proximity of the proposed extended stay hotel to many corporate offices in Foster City will allow corporate visitors to stay for extended periods with the convenience of walking, biking, or taking a shuttle to and from work and airports in the region and, at the same time, an additional hotel will help absorb the additional demand for rooms without impacting existing hotels in the City.

Argument in Support of Appeal Point No. 8: Whereas the City has found that the Project would not cause any long-term impacts on adjacent properties or adversely affect property values; and that the Project would be compatible with, and not create conflicts with, existing on-site and surrounding land uses, these findings are in error, and are not supported by sufficient evidence in the administrative record. As detailed in the incorporated Kramer Comments:

- o The HofBrau Site will be enormously impacted by the Project. A five-story monolith will be constructed within a few feet of the shared property line, and very close to the existing, single-story HofBrau restaurant, blocking air and light and creating aesthetic disharmony. Approval of this incompatibility would violate the Foster City Municipal Code, including without limitation section 17.58.010B(2) (height to be compatible with heights in immediate vicinity); 17.58.010(B)(3) (structures not to impact privacy of adjacent properties, cause diminution of sunlight, cause undue glare at adjacent properties); and 17.58.010(B)(7) (uses to enhance neighboring property values).
- o Each of the significant and adverse environmental impacts identified in the Kramer Comments would serve as a separate and independent reason why the Project is not compatible with the HofBrau Site, and otherwise would prove detrimental to our clients' property values.

Staff Response to Appeal Point No. 8:

As noted in the responses to Appeal Points #2 and #6, the proposed project is consistent with the General Plan goal LUC-B and Land Use Policy LUC-38 that requires high quality site planning and architectural design for all new development.

The proposed project was reviewed at two separate Planning Commission Study Sessions and one Public Hearing to ensure that the project would promote proper site planning and architectural design and that it would address the various issues outlined under Land Use Policy LUC-38. The Planning Commission evaluated the project's architectural and design elements including but not limited to the site plan, building architecture, exterior materials and colors, orientation, massing, height, setbacks, circulation, parking and landscape concepts while keeping the surrounding buildings in context as well as site constraints. The Commission also reviewed photosimulations provided by the applicant to evaluate visual and aesthetic impacts of the project.

In response to staff comments and recommendations, the applicant made various changes to the project which are outlined in the response to Appeal Point #2. Because the subject site faces the service and loading areas of the adjacent restaurant and the shopping center with little or no openings, no privacy impacts or loss of access to sunlight on adjacent properties were found. The height of the building was found to be compatible with the Crowne Plaza Hotel and the Visa buildings. The design of the project was found to be consistent with the Vintage Park Design Guidelines. Issues such as light/glare and noise were addressed in the MND prepared for the project. Mitigation measures were incorporated to reduce the impacts from noise and light/glare. The applicant eliminated the bakery that was originally part of the hotel to address Mr. Kramer's concerns related to parking conflicts. The applicant also provided a hammer-head turn on the southeast side as an alternate fire truck access in order to meet the City's Fire access requirements in the event Mr. Kramer decided to fence off the northeast side of his property in the future. As noted in the response to Appeal Point #4, the proposed project meets its own on-site parking requirements without any dependency on the shared parking available on the adjacent Hofbrau site.

Each of the significant and adverse environmental impacts identified in the Kramer Comments including but not limited to aesthetics; air quality; greenhouse gas emissions; land use planning; hydrology and water quality; transportation, traffic, parking and safety; public services and utilities and service systems have been addressed in detail in staff's response to the various appeal points above. Therefore, there is no evidentiary basis upon which to state that each of these significant and adverse environmental impacts would serve as a separate and independent reason why the Project is not compatible with the HofBrau Site, and otherwise would prove detrimental to the HofBrau property value.

Conclusion to Staff Response to Appeal Point No 8:

Based upon the above-referenced reasons, staff recommends that this basis for appeal be rejected.

SUMMARY

As detailed above in staff's response to each point raised on appeal, the record contains substantial evidence to support each of the challenged findings made by the Planning Commission in approving the Specific Development Plan/Use Permit and staff recommends that the appeal be denied.

ALTERNATIVES

The City Council has the following alternatives:

1. Adopt a Resolution granting the appeal of a Planning Commission decision, thereby overturning the Planning Commission's approval of the Specific Development Plan/Use Permit. If the Council chooses this alternative, staff requests that the City Council identify which findings were made in error and why. Staff will then prepare a resolution with this language included and place the resolution on the Council's agenda for approval at the next Council meeting.
2. Remand the matter back to the Planning Commission for further hearing with specific direction on which issues the Planning Commission should address further.

ATTACHMENTS

Resolutions (2)

Planning Commission Resolution No. P-13-13 approving UP-12-004

Planning Commission Study Session Staff Report dated November 1, 2012 (without attachments)

Planning Commission Study Session Staff Report dated February 7, 2013 (without attachments)

Planning Commission Public Hearing Staff Report dated June 20, 2013 (without attachments)

Appeal of Planning Commission Approval of Use Permit (UP-12-004) filed by Miller Starr Regalia dated June 28, 2013

Letter from Arthur Koon, Miller Starr Regalia, Legal counsel for Larry and Sharon Kramer dated June 20, 2013

Letter from Richard T. Loewke, Loewke Planning Associates Urban & Environmental Planning (Exhibit A to Arthur Koon Letter dated June 20, 2013) dated June 19, 2013

Letter from Stephen C. Abrams, Abrams Associates Traffic Engineering, Inc. (Exhibit B to Arthur Koon Letter dated June 20, 2013) dated June 20, 2013

Letter from Arthur Koon, Miller Starr & Regalia, Legal counsel for Larry and Sharon Kramer dated July 15, 2013

Letter from Kristina Lawson, Manatt Phelps Phillips dated August 12, 2013

MND (including appendices)