



# LOCATION MAP



**BACKGROUND**

The approximate 46,000 square foot subject building was constructed in 1984 for industrial uses. In 2008, the City adopted the Transit Area Specific Plan and accompanying Zoning and General Plan amendments, which changed the underlying land use designation for the subject property from Heavy Industrial (Manufacturing and Warehousing) to Multi-family residential High Density (R3) with Transit Oriented Development overlay in anticipation of the Bay Area Rapid Transit station. Therefore, the site and building are considered non-conforming. In addition, the building has been vacant for more than a year.

On June 7, 2011, Cliff Miller of Presidio Development Partners submitted an application to re-establish a discontinued plant and facility use (research & development, manufacturing, assembly and associated offices). According to Title XI, Section 10-56.03 (B) of the Municipal Code, re-establishment of a discontinued use within the Transit Area Specific Plan requires a Conditional Use Permit, when the subject site is within 1,000 feet of a residential use. The subject site is within 400 feet of a residential use.

**PROJECT DESCRIPTION**

The project site is a 2.6 acre parcel with a 46,050 square foot single-story building at the end of Tarob Court (cul-de-sac). The surrounding properties are also zoned high density residential and include existing industrial buildings. A vicinity map of the subject site location is included on the previous page.

The applicant proposes to allow a plant and facility use (manufacturing, research & development offices) within the building. Minor tenant improvements may be necessary to accommodate the needs of the future tenant. Since the subject property includes a nonconforming building, certain limitations regarding the use of the property apply. The continuation or change of a non-conforming use of a building has to meet certain criteria in the City’s Municipal Code. Since the building has been vacant for more than a year and the applicant proposes to allow a non-conforming use, the project must meet certain criteria to re-establish a discontinued use outlined in the city’s zoning ordinance.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The project allows for the flexibility to use the underutilized existing building before its eventual permanent conversion to residential.
<i>2.a-I-6 Endeavor to maintain a</i>	<b>Consistent.</b> The existing building was constructed for

Policy	Consistency Finding
<i>balanced economic base that can resist downturns in any one economic sector.</i>	industrial purposes and is underutilized.

**Zoning Ordinance**

Once discontinued for a year or more, nonconforming uses only within the Midtown Specific Plan Area and the Transit Area Specific Plan Area may be re-established if all of the following findings can be made:

- a. The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
- b. The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.
- c. The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

The site and building was developed for industrial uses, is surrounded by other property with industrial buildings, and is located at the end of a cul-de-sac. The closest residential use is 400 feet away, being one industrial property removed, across Capitol Avenue to the northeast. It is not anticipated that the re-establishment of the industrial use will cause any nuisances because the use would use the interior of the building. The building is in good condition to be used for industrial.

**Transit Area Specific Plan**

While the project site is located within the Transit Area Specific Plan, the project does not meet the threshold to evoke the policies and guidelines of the specific plan.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt under section 15301 for existing facilities, since the project only contemplates utilizing the existing building and may require only adjusting partition walls.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

**CONCLUSION**

The building was constructed for industrial purposes and the project proposes the re-establishment of a discontinued use. While the vision of the Transit Area Specific Plan is to have residential on the subject site, the current market conditions do not allow for such conversion at

this time. The continued use of the building for industrial will not cause any nuisances for the surrounding properties.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing after hearing testimony and adopt Resolution No. 11-025 approving Conditional Use Permit No. UP11-0017, 1980 Tarob Court subject to the attached Resolution and Conditions of Approval.

*Attachments:*

- A. Resolution No. 11-025
- B. Project Plans
- C. Applicant's Letter

## RESOLUTION NO. 11-025

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP11-0017, 1980 TAROB COURT, TO RE-ESTABLISHMENT OF A DISCONTINUED PLANT AND FACILITY USE (RESEARCH & DEVELOPMENT, MANUFACTURING, ASSEMBLY AND ASSOCIATED OFFICES) IN ACCORDANCE WITH THE CITY'S NONCONFORMING STANDARDS, LOCATED AT 1980 TAROB COURT

**WHEREAS**, on June 7, 2011, an application was submitted by Cliff Miller of Presidio Development Partners, 1390 Market St., #112, San Francisco, CA 94102, to re-establish a discontinued plant and facility use (research & development, manufacturing, assembly and associated offices) in accordance with the City's Zoning nonconforming standards. The property is located within the Multi-family, high density residential (R3-TOD-S) zoning district (APN: 86-36-040); and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt; and

**WHEREAS**, on July 13, 2011, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is categorically exempt under section 15301 for existing facilities, since the project only contemplates utilizing the existing building and may require adjusting partition walls.

**Section 3:** The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.) in that the subject site and building was originally developed to accommodate industrial uses, such as the one proposed. The nearest residential use is located 400 feet away and is one property removed from the subject site and across from Capitol Avenue to the northeast.

**Section 4:** The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district in that the surrounding properties are also developed as industrial and along with the subject site is located on a cul-de-sac street.

**Section 5:** The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses in that subject site and building is in good condition to be used by industrial uses such as the one proposed.

**Section 6:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP11-0017, 1980 Tarob Court, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on July 13, 2011.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 13, 2011, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP11-0017**

A request to re-establish a discontinued plant and facility use (research & development, manufacturing, assembly and associated offices) in accordance with the City's Zoning nonconforming standards  
1980 Tarob Court (APN: 86-36-040)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on July 13, 2011, in accordance with these Conditions of Approval.

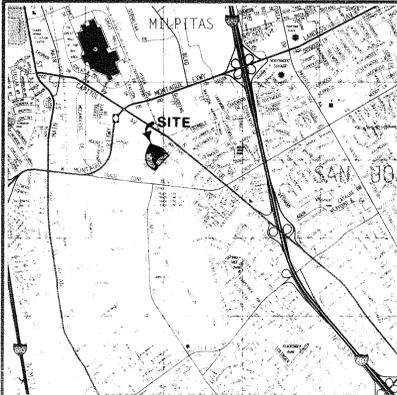
Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

UP11-0017 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP11-0017 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

(P) = Planning  
(B) = Building  
(E) = Engineering  
(F) = Fire Prevention





**VICINITY MAP**

Reproduced with permission granted by "DWA'S BROS. MAPS". This map is to be used only for the purpose for which it was prepared and no liability is assumed for any other use, whether for personal use or resale, without permission.

**LEGAL DESCRIPTION**

All that certain Real Property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

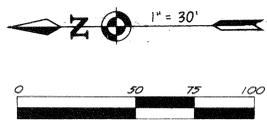
**PARCEL ONE**

Parcel B as shown on that certain Map entitled "Parcel Map" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 27, 1983 in Book 418 of Maps, at Pages 32, 33, and 34.

**PARCEL TWO**

Easements over Parcels A and C, as shown on that certain Parcel Map recorded in Book 418 of Maps, at Page 34, as follows:

- A) 20-foot Private Mutual Storm Drain Easement over Parcel 1
- B) Private ingress and egress Easement over Parcels A and C
- C) Private Fire Water Line Easement over Parcel A
- D) Private Parking Easement over Parcel A
- E) 10-foot Private Water Line Easement over Parcel A



**NOTES:**

- All distances shown hereon are in feet and decimals thereof.
- This survey was prepared from information furnished in a preliminary title report, prepared by Chicago Title Company, dated May 29, 1997, number 771811 LM. No liability is assumed for matters of record not stated in said preliminary title report that may affect the boundary lines, exceptions, or easements affecting the property.
- Physical items shown on this survey are limited to those surface items visible as of the date of this survey. Subsurface objects, if any, are not shown, with the exception of underground utility lines. The locations of these underground utility lines have been compiled from available plans and no warranty is implied as to the exact location of these lines. Said subsurface objects may include, but are not limited to, concrete footings, slabs, shoring, structural piles, utility vaults, piping, underground tanks, and any other subsurface structures not revealed by a surface inspection.
- A.P.N. 86-36-039
- Zoning Note: This survey makes no evaluation as to compliance with zoning and building codes and/or ordinances other than current municipal building setback line locations. The subject property is currently zoned M2, Heavy Industrial. The current building setbacks for this zoning designation are:  
Front: 25.00 feet from face of curb  
Side: 25.00 feet from face of curb  
Rear: 0.00 feet

**SURVEYOR'S CERTIFICATE**  
To Willett & Company, Principal Mutual Life Insurance Company, its successors and/or assigns, and Chicago Title Company.  
This is to certify that this map or plat and the survey on which it is based was made (i) in accordance with "Minimum Standards Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and ACSM in 1992, and includes items 1 (reference monuments shown, no new monuments set), 2 through 4, 6 through 11 and 13 of Table A thereof, and (ii) pursuant to the accuracy standards (as adopted by ALTA and ACSM and in effect on the date of this certification) of an Urban Survey.



Date: 7-9-97

Information was obtained from the City of Milpitas, Public Works Department on July 1, 1997.

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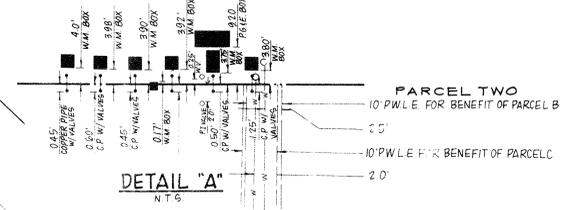
LANDS OF S.C.V.W.D.  
400.56'  
140.58'

**PARCEL A**  
(S1/8 M 32-34)  
1 STORY CONC.  
551 LUNDY PLACE  
**NOT A PART OF THIS SURVEY**

**PARCEL C**  
(S1/8 M 32-34)  
1 STORY CONC.  
1960 TAROB COURT  
**NOT A PART OF THIS SURVEY**

**PARCEL ONE**  
PARCEL B (S1/8 M 32-34)  
AREA: 2.279± ACRES

**1996 TAROB COURT**  
ONE-STORY CONC. BLDG.  
BLDG. AREA: 39,496± SQ.FT.  
(PER EXTERIOR DIMENSIONS)



**LEGEND**

- PI.E.E INDICATES PRIVATE INGRESS & EGRESS EASEMENT
- P.P.E INDICATES PRIVATE PARKING EASEMENT
- P.W.L.E INDICATES PRIVATE WATERLINE EASEMENT
- P.F.W.L.E INDICATES PRIVATE FIRE WATERLINE EASEMENT
- P.M.S.D.E INDICATES PRIVATE MUTUAL STORM DRAIN EASEMENT
- P.S.S.E INDICATES PRIVATE SANITARY SEWER EASEMENT
- PROPERTY LINE
- EASEMENT LINE
- CURB
- CURB & GUTTER
- FENCE
- STREET MONUMENT
- DROP INLET
- STORM DRAIN & MANHOLE
- SANITARY SEWER & MANHOLE
- WATER MAIN
- FIRE WATER MAIN
- FIRE HYDRANT
- UTILITY BOX
- A.C. PAVEMENT
- CLEAN OUT
- INDICATES NUMBER OF STANDARD PARKING STALLS
- INDICATES NUMBER OF COMPACT PARKING STALLS
- HIGH VOLTAGE VAULT
- INDICATES NUMBER OF HANDICAPPED PARKING STALLS
- CHAIN LINK FENCE

**PARKING SUMMARY**  
PARCEL "B" ONLY

STANDARD PARKING STALLS	83
COMPACT PARKING STALLS	38
HANDICAPPED PARKING STALLS	4
<b>TOTAL PARKING STALLS</b>	<b>125</b>

REVISIONS	BY

**KIER & WRIGHT**  
CIVIL ENGINEERS & SURVEYORS, INC.  
3350 Scott Boulevard  
Santa Clara, California 95051

**ALTA / ACSM LAND TITLE SURVEY**  
FOR: WILLETT & COMPANY  
1996 TAROB COURT  
MILPITAS, CALIFORNIA

DATE: JULY, 1997  
SCALE: 1" = 30'  
DESIGNER: RJS  
JOB: 83017-4  
SHEET: 1  
OF 1 SHEETS

# Tarob M&C Investors, LLC

June 7, 2011

Mr. Sheldon Ahsing  
Senior Planner  
City of Milpitas  
455 E Calaveras Blvd.  
Milpitas, CA 95035

Dear Mr. Ahsing,

Attached please find our Planning and Zoning Application requesting a Conditional Use Permit for our property at 1980-1988 Tarob Court, Milpitas. The building is vacant and we wish to re-establish a non-conforming use which will allow for plant or facility use including: R&D, office, manufacturing, assembly, processing, packaging and repair. Under the current economic and housing market conditions it is not feasible to convert the site to residential use under the Transit Area Specific Plan. All of the surrounding properties are currently occupied by similar industrial uses and the intended use for the subject property will be compatible with the neighborhood.

Thank you for your consideration on this matter.

Tarob M&C Investors, LLC



Cliff Miller