

**RESOLUTION NO. 15-022**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING SITE DEVELOPMENT PERMIT NO. 15-0003 FOR A HILLSIDE IN-  
GROUND SWIMMING POOL AND SPA LOCATED AT 1506 AUGUSTA COURT**

**WHEREAS**, on May 22, 2015, Mark Lindquist submitted a complete application on behalf of Sally Sobek, the property owner, to construct an in-ground swimming pool and spa on a single-family residential hillside lot at 1506 August Court. The property is located within Single-Family Residence with Hillside Combining (R1-H) Zoning District (APN: 29-54-013).

**WHEREAS**, the applicant has committed to **not** use City of Milpitas potable water for purposes of filling or periodic replenishing the swimming pool and spa.

**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 exempt under CEQA.

**WHEREAS**, on June 24, 2015, 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 Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The project is Categorically Exempt from further environmental review pursuant to Section 15303 (New Construction of Small Structures) of the California Environmental Quality Act Guidelines.

**Section 3: Site Development Permit (Section XI-10-57-03(F) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD15-0003:***

- a) *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project is consistent with this finding because the in-ground swimming pool and spa will be located in the rear yard of an existing single-family residence on a 7.2-acre hillside lot and complies with the hillside development site and architectural design review guidelines.

*b) The project is consistent with the Milpitas General Plan:*

The project is consistent with this finding because the proposed in-ground swimming pool and spa is for an existing single-family residence with a General Plan Land Use designation of Hillside Medium Density that was developed consistent with the allowed density and applicable policies of that land use designation.

*c) The project is consistent with the Milpitas Zoning Ordinance:*

The project is consistent with this finding because the in-ground swimming pool and spa is an allowed use in the Single Family Residential with Hillside Combining District (R1-H) Zoning District and complies with the development standards of that zoning district.

*d) The project is consistent with the Milpitas Water Conservation Ordinance.*

The project is consistent with this finding because the proposed in-ground swimming pool and spa will not use City supplied potable water for filling or replenishing the pool and spa. The applicant has committed to have water delivered via truck from outside the City.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-022 approving Sobek Pool Site Development Permit No. 15-0003 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on June 24, 2015.

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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 June 24, 2015, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
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<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

## EXHIBIT 1

**CONDITIONS OF APPROVAL  
SOBEK POOL, SITE DEVELOPMENT PERMIT NO. 15-0003**

**General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Site Development Permit No. 15-0003 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - 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.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d) (1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages that City incurs in enforcing the

indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on June 24, 2015, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

1. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application at the time of first submittal. **(ALL)**

### **Project Specific Conditions**

16. **Outdoor Lighting.** The project shall comply the Swimming Pool and Spa outdoor artificial lighting standards as enumerated in Municipal Code Section XI-10-45.15-2. **(P)**
17. **Water Use Restriction.** The project shall not use potable water supplied by the City of Milpitas to fill or periodically replenish the swimming pool and spa so long as the City's water use restrictions remain in place. Applicant shall provide written confirmation of the specific outside water source prior to the issuance of building permits to the satisfaction of the Building Official. **(E)**
18. **Approved Site Plan.** The project shall conform to the Pool Site Plan prepared by Lifetime Pools, dated 1/23/2015 and received by the City on June 11, 2015. As shown on the plans, no accessory structures, such as a cabana or shower/changing room is approved with the swimming pool and spa.

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney