



# MILPITAS PLANNING COMMISSION STAFF REPORT

June 24, 2015

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**APPLICATION:** **Sobek Swimming Pool & Spa – 1506 Augusta Court – SD15-0003** - A Site Development Permit request to construct a new swimming pool for an existing single-family residence located on a 7.2-acre lot with a zoning designation of Single-Family Residence with Hillside Combining District (R1-H). This project is categorically exempt from further CEQA review pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

**RECOMMENDATION:** **Staff recommends the Planning Commission adopt Resolution No. 15-022 approving Site Development Permit No. SD15-0003 to allow the construction of a swimming pool and spa on a hillside residential lot subject to the conditions of approval.**

**LOCATION:**

Address/APN: 1506 Augusta Court (APN 29-54-013)  
Area of City: Southerly side of Augusta Court at Country Club Drive

**PEOPLE:**

Project Applicant: Sally Z. Sobek  
Consultant(s): Mark Lindquist  
Property/Business Owner: Dale W. Sobek, Trustee  
Project Planner: Darryl Boyd, Contract Planner

**LAND USE:**

General Plan Designation: Hillside Medium Density (HMD) up to three units per gross acre  
Zoning District: Single Family Residential with Hillside Combining District (R1-H PUD 21)  
Overlay District: Site and Architectural Overlay (-S)

**ENVIRONMENTAL:** Categorically Exempt from further environmental review pursuant to Section 15303 (New Construction of Small Structures) of the California Environmental Quality Act (CEQA).

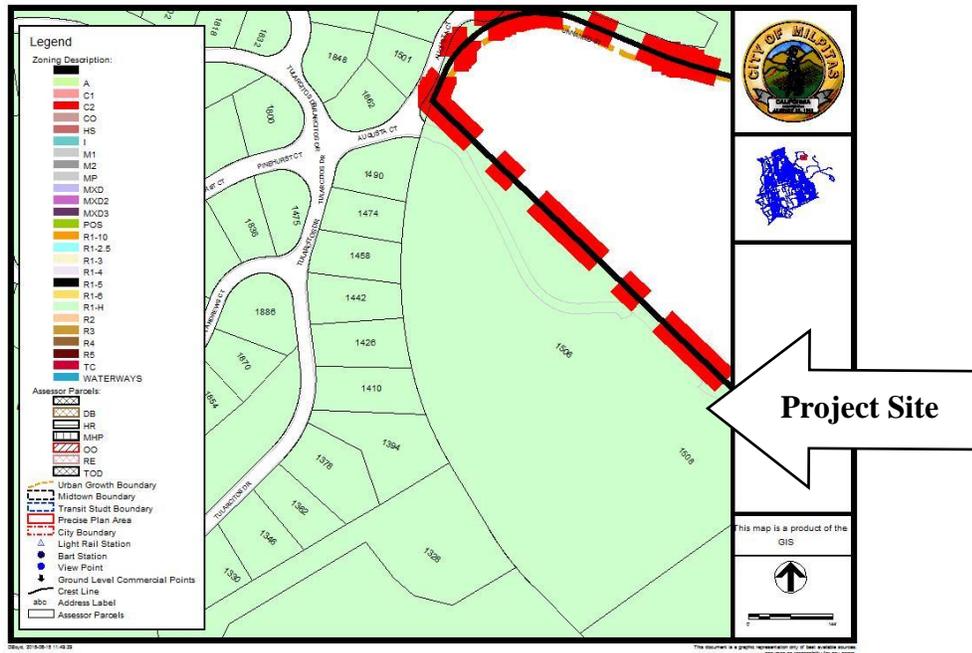
**EXECUTIVE SUMMARY**

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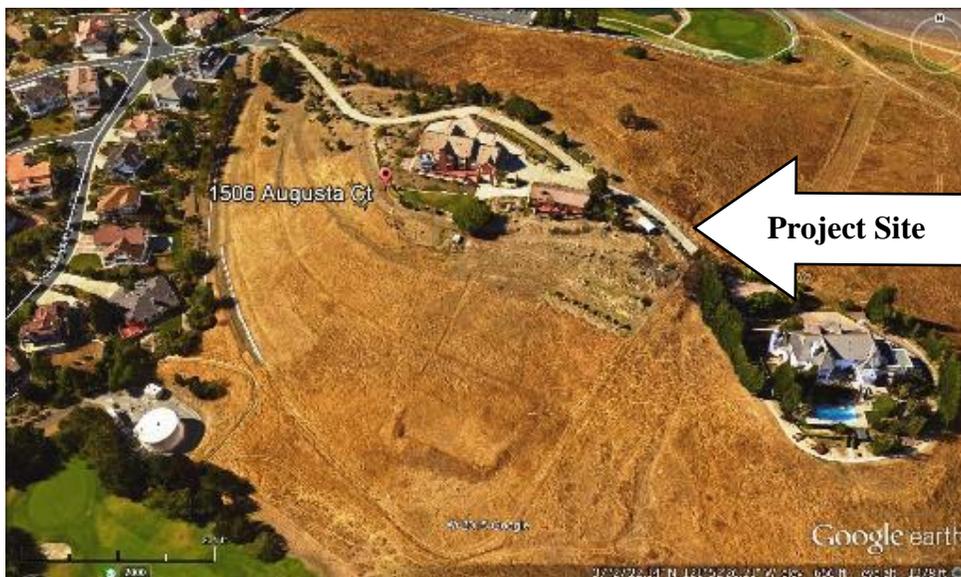
The applicant is requesting a Site Development Permit to construct an in-ground swimming pool and spa on a hillside single-family residential lot. The Site Development Permit is required because Milpitas Municipal Code Section XI-10-45.09-2(c) states that an approved site and architectural review by the Planning Commission and City Council is necessary prior to the issuance of a building permit for any modification that requires a building permit in any Hillside

“H” Zoning District. The purpose of the review in this particular case is to ensure that the swimming pool and spa will not constitute an invasion of privacy, unreasonable interfere with views, light or air, or create adverse impacts upon the aesthetic character of the existing neighborhood residential structures. A public hearing is only required at the Planning Commission level. The City Council review is not a public hearing item.

**Map 1**  
**Project Location**



**Aerial Photo**



**Photo 1**  
**Pool Area**



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**Photo 2**  
**View Off-site from Pool Area**



**Photo 3**  
**View Uphill from 1394 Tularcitos Drive**



**BACKGROUND**

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The project site is located in the Summitpointe Residential Subdivision on an approximately 7.2-acre parcel with an existing single-family detached residence and a caretaker residence that was granted with an approved Conditional Use Permit. On May 22, 2015, Mark Lindquist, on behalf of the property owner, Sally Sobek, submitted a complete application to construct a new swimming pool and spa in the rear yard of the existing residence. Existing lawn area will be removed for the pool excavation.

**PROJECT DESCRIPTION**

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*Overview*

The new in-ground swimming pool and spa will replace an existing turf area in the rear yard. No existing trees will be removed. The pool is approximately 20 ft. by 62 ft. in size with a vanishing edge. The spa is elevated about 18 inches above the pool. The pool excavation will result in less than 500 cubic yards of soil material, some of which may need to be exported. The pool is setback from the rear of the residence at approximately 38 feet and 24 feet from the existing patio and sunroom. A new low retaining wall will be constructed between the house/patio and the pool to create a flat terrace area around the pool and spa.

## ***Location and Context***

The project is located on a large lot in the southeasterly corner of the residential subdivision around the Summitpointe Golf Club. The residence has a private driveway access from Augusta Court. Vertically, the existing residence and proposed pool sit at a height elevation that is substantially above (approximately 120 feet) the nearest residences to the west. Horizontally, the nearest existing residence is approximately 350 feet away, ranging up to about 520 feet for the closest houses. An open, non-buildable hillside separates the pool site from the nearest existing residences located downhill to the west.

## **PROJECT ANALYSIS**

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The project has a General Plan Land Use designation of Hillside Medium Density (HMD) that allows up to three (3) units per gross acre. The zoning designation is Single Family Residential with Hillside Combining District (R1-H) and is within PUD 21. The site is bounded by open space and Augusta Court to the north, open hillside to the east, another large single-family residential lot to the south, and existing single-family residences and the golf course to the west. Vicinity and location maps of the subject site location are included on the previous page.

### ***General Plan and Zoning Conformance***

The General Plan Designation for this site is Hillside Medium Density. The current General Plan utilizes this land use category to accommodate existing hillside development. To ensure safety and to preserve the natural ambiance of the hillside areas, all development is to be of low-density rural residential nature. General Plan Policy 2.a.-1-25 requires city review and approval of all proposed development or major alterations to existing development in the hillside. The intent of this policy is to ensure that development within the foothills is in keeping with the natural character of the hillside, and that views are protected. The proposed project is consistent with the Hillside Medium Density designation in that no new residential development or subdivision is proposed. The proposed pool and spa is for an existing single-family residence.

The Zoning Designation for this site is Single Family Residential with Hillside Combining District (R1-H) and is within PUD 21. The purpose and intent of the Hillside Combining district is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with the development of hillside areas. The proposed project is for an in-ground swimming pool and spa in the rear yard of an existing single-family residence. Municipal Code Section XI-10-45.09-2 requires site and architectural review any modification on a hillside lot that require a building permit. The swimming pool and spa requires a building permit, therefore, a site development permit is necessary.

In accordance with Section XI-10-45.09-7, the Planning Commission and City Council are required to consider the following site and architectural guidelines in its review process.

1. Avoid unreasonable interference with views and privacy.
2. Preserve natural landscape.
3. Minimize perception of excessive bulk.
4. Avoid impairment of light, air and solar access.
5. Minimize grading.

The project is consistent with the Milpitas Zoning Code in terms of land use. The construction of an in-ground swimming pool and spa for an existing single-family residence is permitted in the R1-H Zoning District with an approved site development permit. The project complies with the R1-H development standards and requirements as described in the sections below.

***Climate Action Plan Conformance – Water Conservation***

The construction of new swimming pools is not permitted, due to the prohibition for potable water use in accordance with Milpitas Municipal Code Title VIII, Chapter 6-5.00 *Supplemental Water Use Restrictions*. A request for an exception to use potable water is not supportable in this case due to the current drought conditions and the California Governor’s proposed statewide water reduction (25%) mandate. However, as part of the proposed project, the applicant has committed to the use of imported (trucked) water from a source other than City of Milpitas potable water (see attached letter dated June 8, 2015). Currently, the most likely water source would be Sala Brothers Trucking based in San Benito County. The trucked water would be used to fill the pool initially after construction. The need to replenish the pool water will be minimized by the installation of an automatic water conservation cover. The use of this alternate water source is sufficient to allow the construction of this swimming pool.

***Development Standards***

The proposed project will not alter the existing residential structure in any way other than replacing the turfed rear yard area with an in-ground swimming pool, spa and surrounding patio/pool deck. There is no accessory structure to be used as a pool house or cabana included in the project. The existing impervious area of the site increases by 2,400 sq. ft. with the construction of the pool and spa. The table below demonstrates how the project is consistent with the development standards of the R1-H zoning district.

**Table 1**  
**Summary of Development Standards**

	<b>Hillside Standard</b>	<b>Proposed</b>	<b>Complies?</b>
<u>Setbacks</u> (Minimum)			
Front	40 feet	No change	Yes
Side	40 feet,	No change	Yes
Rear	40 feet	No change	Yes
<u>Building Height</u> (Maximum)	17’, one story	No change	Yes
Impervious Surface	30,000 sq. ft.	28,550 sq. ft.	Yes

The following discussion reviews the hillside development site and architectural design review guidelines as required by the Zoning Ordinance.

***Site & Architectural Design***

- 1. Avoid unreasonable interference with views and privacy.*

The project will not interfere with existing views and privacy due to the horizontal and vertical distances from the nearest existing residences. The project conforms to the hillside lighting standards for swimming pools and spas in that no light sources will be directly visible from off the site. The Summerpointe HOA has reviewed and approved the project.

*2. Preserve natural landscape.*

The project will not remove or disturb any existing natural landscaping. It is located within the building envelope (rear yard) of the existing residence. An existing turfed area will be removed.

*3. Minimize perception of excessive bulk.*

The project is an in-ground swimming pool and spa that will not alter or increase the bulk or massing of the existing residential development. A pool house or cabana accessory structure is not proposed as part of the project.

*4. Avoid impairment of light, air and solar access.*

As an in-ground swimming pool and spa, the project will not impair the light, air or solar access of the adjacent residences. There is significant horizontal and vertical separation between the project and the nearest houses. The Summerpointe HOA has reviewed and approved the project.

***Grading***

*5. Minimize grading.*

The hillside combining district defines excavation as grading. The excavation for the swimming pool and spa will result in an aggregate volume of grading that is less than 500 cubic feet. The Community Development Manager can approve this amount of grading if the grading plan is found to be in conformance with the provisions of the hillside combining district. The project does conform to the grading provisions in that the swimming pool installation only requires the excavation of the existing terraced rear yard. The grading could not be much less minimal.

***Utilities***

The project will not use potable water from the City of Milpitas to fill or replenish the swimming pool and spa. The use of recycled water is not an option. The pool and spa will be filled by using trucked water from outside the City. Therefore, an exception to the water conservation ordinance is not required.

**FINDINGS FOR APPROVAL**

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A finding is a statement of fact relating to the information that the Planning Commission has considered in making its decision. The following findings identify the rationale behind the staff recommendation that the Planning Commission approve the project.

***Site Development Permit (Section XI-10-57-03-1(F))***

- 1. 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.

*2. 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.

*3. 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.

*4. 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.

## **ENVIRONMENTAL REVIEW**

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The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15303 of the CEQA Guidelines, New Construction of Small Structures in that the project is for the construction of a residential swimming pool.

## **PUBLIC COMMENT/OUTREACH**

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Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on June 12, 2015. In addition, public hearing notices were sent to owners and occupants within 300 feet of the project site. A public notice was also provided on the project site, on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall.

Lily Shen, 1426 Tularcitos Drive, submitted an email expressing concerns about the use of potable water for a new swimming pool during the drought (copy attached). As stated elsewhere, the applicant is not allowed to use potable water from the City of Milpitas for filling or replenishing the swimming pool and spa. The Summitpointe Homeowner's Association has reviewed and approved the project (see attached letter dated March 27, 2015).

## **CITY COUNCIL REVIEW**

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This project requires review by the City Council as a consent item and is tentatively scheduled on the August 4, 2015 Council agenda.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing
2. Adopt a Resolution approving the Site Development Permit No. 15-0003 with Conditions of Approval.
3. Recommend City Council adopts a Resolution approving the Site Development Permit with Conditions of Approval.

## **ATTACHMENTS**

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- A. Resolution approving the Site Development Permit with Conditions of Approval
- B. CEQA - Exempt
- C. PLANS: 1) Pool site plan on topo map, 2) Site distance with sections, 3) Impervious calculations
- D. Memos and Correspondence: 1) Land Development Memo 4/27/15, 2) Applicant Letter 6/8/15, 3) HOA Letter 3/27/15 and 4) Neighbor email 6/14/15