

**RESOLUTION NO. 16-014**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD15-0004, CONDITIONAL USE PERMIT NO. UP15-0009 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA15-0003 (ADOPTING A MITIGATED NEGATIVE DECLARATION, AND APPROVING A MITIGATION MONITORING AND REPORTING PROGRAM) TO ALLOW THE DEMOLITION OF AN EXISTING INDUSTRIAL SITE AND TO CONSTRUCT A 171,924 SQUARE FOOT SELF-STORAGE FACILITY IN A HEAVY INDUSTRIAL ZONE (M2) AND TO ALLOW FOR A FAR INCREASE AT 985 MONTAGUE EXPRESSWAY, MILPITAS, CA 95035 (APN 086-32-020)**

**WHEREAS**, on May 13, 2015, an application was submitted by Mike Branagh with Branagh Development, 100 School Street, Danville, CA 94526, for a Site Development Permit and Conditional Use Permit to allow the demolition of an existing industrial site and to construct a 171,924 square foot self-storage facility in a Heavy Industrial zone (M2) and to allow for a FAR increase at 985 Montague Expressway, Milpitas, CA 95035 (APN 086-32-020) (the “Project”).

**WHEREAS**, pursuant to section 21067 of the Public Resources Code, and Section 15367 of the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000, *et seq.*), the City of Milpitas is the lead agency for the proposed Project.

**WHEREAS**, in accordance with State CEQA Guidelines section 15063, the City completed an environmental impact assessment for the Project and prepared an Initial Study.

**WHEREAS**, based on the information contained in the Initial Study, the City determined that any impacts of the Project could be mitigated to a less than significant level with the mitigation measures outlined in the Mitigation Monitoring and Reporting Program.

**WHEREAS**, because those impacts could be reduced to a less than significant level, the City determined that a Mitigated Negative Declaration should be prepared pursuant to Public Resources Code sections 21064.5 and 21080(c), State CEQA Guidelines section 15070, *et seq.*

**WHEREAS**, pursuant to State CEQA Guidelines section 15073, the Mitigated Negative Declaration was circulated for a 30-day review period from February 10, 2016, through March 11, 2016.

**WHEREAS**, during the public comment period, copies of the Mitigated Negative Declaration and technical appendices were available for review and inspection at Milpitas City Hall, located at 455 E. Calaveras Boulevard, Milpitas, CA 95035.

**WHEREAS**, the City of Milpitas received three (3) written comment letters on the Mitigated Negative Declaration; all three (3) of the comment letters were from public agencies.

**WHEREAS**, the proposed Mitigation Monitoring and Reporting Program is attached hereto as Exhibit 2.

**WHEREAS**, all the requirements of the Public Resources Code and the State CEQA Guidelines have been satisfied by the City in connection with the preparation of the Mitigated Negative Declaration, which is sufficiently detailed so that all of the potentially significant environmental effects of the Project, as well as feasible mitigation measures, have been adequately evaluated.

**WHEREAS**, the Mitigated Negative Declaration prepared in connection with the Project sufficiently analyzes the feasible mitigation measures necessary to avoid or substantially lessen the Project's potentially significant environmental impacts.

**WHEREAS**, all of the findings and conclusions made by the Milpitas Planning Commission pursuant to this Resolution are based upon the oral and written evidence presented to it as a whole and the entirety of the administrative record for the Project, which are incorporated herein by this reference, and not based solely on the information provided in this Resolution.

**WHEREAS**, the Milpitas Planning Commission is the decision-making body for the proposed Project.

**WHEREAS**, the Milpitas Planning Commission has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take action on the Project in compliance with CEQA and state and local guidelines implementing CEQA.

**WHEREAS**, the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein.

**WHEREAS**, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

**WHEREAS**, on April 13, 2016, the Planning Commission held a duly noticed public hearing on the proposed Project and the Mitigated Negative Declaration, and considered evidence presented by City staff, the applicant, and other interested parties.

**WHEREAS**, no comments made in the public hearings conducted by the Planning Commission and no additional information submitted to the City have produced substantial new information requiring recirculation of the Mitigated Negative Declaration or additional environmental review of the Project under State CEQA Guidelines section 15073.5.

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

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

**SECTION 1. Recitals.** The above recitals are found to be true and are incorporated herein by reference.

**SECTION 2. Record.** 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.

**SECTION 3. CEQA.** The Planning Commission hereby makes the following findings: (1) it has reviewed and exercised its independent judgment on the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA, and State and local guidelines implementing CEQA; (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project (4) based on the whole record before it, including the Mitigated Negative Declaration, Initial Study, the administrative record and all other written and oral evidence presented to the Planning Commission, all environmental impacts of the Project are either insignificant or can be mitigated to a level of insignificance pursuant to the mitigation measures outlined in the Initial Study, the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program, and (5) there is no substantial evidence in the administrative record supporting a fair argument that the Project may result in any significant environmental impacts. The Planning Commission hereby designates the Director of Planning and Neighborhood Services at the Planning Division's Office at 455 East Calaveras Blvd., Milpitas, CA 95035, as the custodian of documents and records of proceedings on which this decision is based.

The Planning Commission does hereby approve the Site Development Permit and Conditional Use Permit for the Project, as well as the Mitigated Negative Declaration, and adopts the Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) online as an attachment to this agenda item; (2) on file in the Planning Division's Office at 455 East Calaveras Blvd., Milpitas, CA 95035; and (3) available for inspection by any interested person.

Staff is hereby directed to file a Notice of Determination with the County of Santa Clara and the State Clearinghouse within five (5) working days of approval of the Project.

**SECTION 4: *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 approving Site Development Permit No. SD15-0004:***

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 it reflects the design and landscaping elements found in surrounding development which creates an aesthetically harmonious environment. Building elevations visible from Montague Expressway and South Milpitas Boulevard are articulated through massing and fenestrations which create architectural interest. The single story buildings that are not visible from public right-of-way are consistent with other industrially designed buildings in the vicinity of the project. The facades are articulated with metal panels, spandrel glass, aluminum, and trim cap elements. The colors and materials used are similar to other industrial buildings surrounding the project site and create a consistent design between the industrial properties. The layout of the site is also compatible with the surrounding development. The buildings are setback from the street frontages, which diminishes their visual dominance, and views from the street. Given these characteristics, the Project's site design, layout, architecture, massing of the building, and landscaping is compatible and appropriate with the surrounding buildings and uses.

*b) The project is consistent with the Milpitas Zoning Ordinance.*

As discussed in detail in the staff report and herein, the proposed Project is consistent with the Milpitas Zoning Ordinance. The site is zoned as Heavy Industrial (M2) zone in the Zoning Ordinance, which is intended to accommodate facilities for office, research, general manufacturing, warehousing and distribution, and similar uses compatible with the district. The proposed storage facility is a conditionally permitted use in the Heavy Industrial (M2) Zoning Designation. Table 1 demonstrates the project's consistency with the applicable development standards of the M2 Zone, with approval of a Conditional Use Permit. The project meets the minimum setback requirements for all sides of the building; and also meets the other site improvement standards.

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

<b>Standards</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
Front Setback	Along major street: 35 ft. from face of curb	42.6 ft. from the property line	Yes
Side Yard Setback	None	None on west, and 41.6 ft. on east.	Yes
Rear	None	None	Yes
Floor Area Ratio (Maximum)	0.40	0.87	Yes*
Building Height (Maximum)	None, but special finding is required if building height exceeds 35 feet.	38.8 ft.	Yes**
Parking	35 spaces required: One space for every 5,000 sq. ft.	35 spaces	Yes
Landscaping	Required front and street side yard area	Front yard area	Yes

\*With approval of a Conditional Use Permit

Standards	Required	Proposed	Complies
**Finding: Any such excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.			

c) *The project is consistent with the Milpitas General Plan.*

The General Plan designation is Manufacturing and Warehousing which permits various industrial and professional office uses, as well as conditionally permits personal storage facilities uses. The Project is consistent with this designation, it adds a complementary land use that provides self- storage space that serves both local and regional individuals within the vicinity of the project site. The Project also converts a vacant land into a higher and better use, and fosters beautification, new economic, business and employment opportunities. The Project is consistent with the following General Plan Policies:

- 1) (2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance.

The Project replaces underperforming and unaesthetic buildings with a new self-storage facility. The Project also fosters other economic opportunities and development in other sectors of the economy such as residential projects where new residents require storage space for personal belongings.

- 2) (2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

The Project would provide employment opportunities at the storage facility and helps balance jobs with housing.

- 3) (2.a-I-17) Foster community pride and growth through beautification of existing and future development.

The Project includes the demolition of an older industrial site and the construction of a self-storage facility of contemporary design.

**SECTION 5: *Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in approving of Conditional Use Permit No. UP15-0009:***

- a) *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The Project will not be detrimental or injurious to property, improvement, public health, safety and general welfare based on the following:

1. With respect to the land use, the self-storage facility is consistent with the purpose and intent of the Heavy Industrial Zoning District in that it is an industrial establishment that provides storage and warehousing type services. The proposed personal storage facility is a complementary use given the proximity to residential uses located west of the project site and to the east of I-680, and is designed to be harmonious with the surrounding industrial buildings.

2. With respect to the environment, the Project incorporates best management practice and construction measures to ensure environmental impacts are minimized to a level of less than significance such as, but not limited to, implementing best management practices to control dust and emissions during construction, pre-construction survey for special status plants, animals and nesting birds.
3. With respect to improvement, property, public health and safety, the project will not result in any negative impacts based on the following conditions:
  - Contribute to City impact fees for the Calaveras Boulevard Widening Project fee.
  - Comply with the NPDES General Permit, SWPPP, NPDES C.3 requirements, and NPDES Best Management Practices for construction and post construction water quality.

b) *The project is consistent with the Milpitas Zoning Ordinance.*

As discussed above, the proposed Project is consistent with the Milpitas Zoning Ordinance.

c) *The project is consistent with the Milpitas General Plan.*

As discussed above, the proposed Project is consistent with the Milpitas General Plan.

**SECTION 6: *Increases above the Maximum Permitted Floor Area Ratio Findings (Section XI-10-2.03) - The Planning Commission makes the following findings based on the evidence in the public record in approving Conditional Use Permit No. UP15-0009 to exceed the maximum Floor Area Ratio of 0.40:***

a) *The proposed development will generate low peak-hour traffic.*

Based on the Trip Generation Analysis conducted, the project generates approximately 31 PM trips during the peak hour. The trip generation for the proposed self-storage project is less than the number of new trips generated that would cause an impact to the circulation system, which is 100 trips. Therefore, the project will generate low peak-hour traffic and will not impact the City's circulation network.

b) *The proposed development will not create a visual prominence.*

The project will not create a dominating visual presence. The two-story building facing Montague Expressway is setback by over 40 feet. It is obscured from views from Montague Expressway by trees and other landscaping. Further, it is setback from South Milpitas Boulevard by approximately 100 feet. This distance reduces the perception of bulk and size of the structure. In addition, the proposed buildings on the project site have varying heights, with one three-story structure, one two-story structure, and two single story structures. The design features used on the elevations also minimize the bulk and massing of the buildings and they do not create a dominating visual presence.

**SECTION 7: *Increases above the Maximum Building Height Findings (Section XI-10-57.04-2) - The Planning Commission makes the following findings based on the evidence in the public record in approving Conditional Use Permit No. UP15-0009 to exceed the maximum height:***

- a) *That any such excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated;*

The Zoning Code permits a height above the 35 foot requirement if the Planning Commission determines that the increased height will not be detrimental to the light, air, or privacy of any other structure or use existing or anticipated. The site has one 3 story building measured at 34 feet 8 inches, and has a tower element at the southeast and south west corner of the building exceeding the 35 foot height requirement (38 feet 8 inches). This portion of the building is located away from the property line on all sides. The difference in height between the tower elements and the separation between parcels eliminates impacts to light, air and privacy. Based on this finding, the project is consistent with the development standards contained in the Zoning Code.

- b) *The project exhibits exceptional architecture and aesthetic merit to warrant excess height.*

The project also exhibits exceptional architecture and aesthetic merit to justify the additional height. Along street frontages, the facades are articulated with metal panels, spandrel glass, aluminum, and trim cap elements. The roofline of the buildings provide visual interest and movement by incorporating parapet walls and tower features with varied heights. The height of the building only exceeds 35 feet at the tower element, which adds exceptional aesthetic value to the elevations. Therefore, the project employs exceptional architecture and has aesthetic merit that warrants the excess height.

**SECTION 8:** This Resolution shall supersede and replace any prior permits and approval related to the subject properties.

**SECTION 9:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 16-014 approving the Mitigated Negative Declaration, adopting the Mitigation Monitoring and Reporting Program, and approving Site Development Permit No. SD15-0004 and Conditional Use Permit No. UP15-0009 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and the Mitigation Monitoring and Reporting Program attached hereto as Exhibit 2 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on April 13, 2016.

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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 March 25, 2015 and carried by the following roll call vote:

<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				

**CONDITIONS OF APPROVAL FOR  
BRANAGH SELF STORAGE  
SITE DEVELOPMENT PERMIT NO. SD15-0004 AND  
CONDITIONAL USE PERMIT NO. UP15-0009**

**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. SD15-0004 (“Permit”) and Conditional Use Permit No. UP15-0009 (“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 which 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 April 13, 2016, 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)**

16. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
17. 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 submittal. **(ALL)**

### **Project Specific Conditions**

18. Signage. Prior to any building permit issuance, the Permittee shall detail, and construction specification of all signage for review and approval by the Planning Division. Sign plans shall demonstrate compliance with the Milpitas Sign Ordinance and design guidelines. **(P)**
19. Fee. The project is subject to the Calaveras Widening Traffic Impact Fee at \$803 per thousand square feet of net new floor space of Retail Development (in 2009) prior to building permit issuance. Fee shall be adjusted per ENR index rate at the time of building permit issuance.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). *The above fees are preliminary estimates and subject to change.* There is no vesting of the fees with the adoption of this Resolution. **(E)**

20. Approvals/Permits. Permittee shall be responsible for approvals and/or permits from other agencies and utility companies. **(E)**
21. Construction Storm Water Quality. Prior to breaking ground, Permittee shall submit an Erosion and Sediment Control Plan (Erosion Control Plan) for review and approval by the City Engineer or his designee. Permittee shall comply with the requirements of the National Pollution Elimination Discharge System (NPDES) permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board). The erosion control plan shall show all construction best management practices (BMPs) and shall comply with the requirements of the NPDES, the Municipal Regional Permit Order R2-2009-0074 (MRP), and the City's storm water and urban runoff pollution control standards and guidelines (City's Clean Water Program). Permittee shall ensure that all contractors and sub-contractors install and regularly

maintain all construction BMPs as required by the approved erosion control plan, the City of Milpitas Code, and the City's Clean Water Program. (E)

22. Landscape. All on-site landscaping shall meet the requirements of City Ordinance 238.4. (E)
23. Water Supply and Force Majeure. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land development project. The City reserves the right to suspend the issuance of building permits to implement this land use development, if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development in the event the City's ability to deliver water and sewer treatment is affected by force majeure pursuant to the criteria set forth above. This condition of approval applies in case of an emergency declaration of water supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity. Pursuant to Government Code Section 66452.6, in the event the issuance of building permits is suspended due to lack of available water supplies, the period of time set forth as the term for the vesting tentative map in Government Code Section 66452.6(a)(1) shall be tolled for up to five years until said suspension is terminated. (E)
24. Per Chapter 200, Title V, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Trimmings Collection Services*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to any building permit issuance, Permittee shall incorporate following solid waste services requirements to the satisfaction of the City Engineer:
  - a. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house all necessary equipment. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to building permit issuance. The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
  - b. The Permittee shall be responsible for solid waste management, including transfer of material to the collection area. Prior to Building Permit approval, Permittee shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall demonstrate how the waste will be conveyed to the collection area for disposal, the path of travel for refuse, and how recycling shall have a separately maintained process from garbage handling.
  - c. Prior to certificate of occupancy issuance, the Permittee shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Republic Services. After the applicant has full occupancy, the Permittee shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the Permittee shall increase the service to the level determined by the evaluation. (E)

25. The Permittee shall dedicate necessary public service utility easements, street easements, public access easement (over private streets and walkways) and easements for water and sanitary sewer purposes. **(E)**
26. Utility disconnections. All utilities shall be properly disconnected before the building can be demolished. Permittee shall demonstrate to City staff how the water service(s), sewer service(s) and storm service(s) will be disconnected prior to doing so. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. Unless otherwise noted, all utility stubs not utilized shall be capped at the main. **(E)**
27. Recycling Report. Prior to demolition permit issuance, the Permittee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
- a. What materials will be salvaged.
  - b. How materials will be processed during demolition.
  - c. Intended locations or businesses for reuse or recycling.
  - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
- Permittee shall make every effort to salvage materials for reuse and recycling and shall comply with all applicable City ordinances on construction and demolition debris. **(E)**
28. Recycling. Prior to building permit issuance, Permittee shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of “end dumps.” Actual reuse, recycling and disposal tonnage amounts (and estimates for “end dumps”) shall be submitted to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division. **(E)**
29. Recycling. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Permittee, all to the satisfaction of the City Engineer or designee. The Permittee shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Permittee shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Permittee shall perform all recycling and/or disposal by removal from the job site. **(E)**

30. Public Utilities. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. **(E)**
31. Water. In accordance with Chapter 5, Title VIII, of Milpitas Municipal Code, for new landscaping 500 square feet or larger, or rehabilitated landscaping 2500 square feet or larger, the Permittee shall:
- a. Provide separate water meters for domestic water service and irrigation service. Permittee is also required to provide separate domestic meters for each proposed use (Residential, Food Services, and Commercial/Office).
  - b. Comply with all requirements of Chapter 5, Title VIII of the Milpitas Municipal Code. Two sets of landscape documentation package shall be submitted by the Permittee to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.
  - c. Contact the Land Development Section of the Engineering Division at (408) 586-3325 for information on the submittal requirements and approval process.
  - b. New landscaping shall comply with codes in effect at the time of building permit issuance unless otherwise provided by applicable law. **(E)**
32. Irrigation. Per Chapter 6, Title VIII of Milpitas Municipal Code, the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. To meet the recycle water guideline the Permittee shall:
- a. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape.
  - b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the California Department of Public Health (CDPH or Division of Drinking Water, as applicable, for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and state approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3325 to obtain copies of design guidelines and standards.
  - c. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas. **(E)**
33. All connections to the public water system shall be metered and protected with backflow devices in accordance with City standards. Separate on-site water systems owned and maintained by the property owners shall serve the project downstream of the master meters. Master meters shall be located in City right-of-way or public service utility easements. Water services shall have a straight alignment between the public distribution system pipe and the water meter (no bends). **(E)**

34. Locate fire hydrants on the public water system to the maximum extent possible. All hydrants shall be located on a dedicated service lateral. **(E)**
35. Permittee shall design public and private utilities in accordance with State and City requirements. **(E)**
36. Coordinate plans showing landscape, utility, and hardscape to insure no conflicts exist. **(E)**
37. Permittee shall restore surface conditions to City standards (standard pavement, sidewalk, non-paved surfaces, etc.) upon completion of infrastructure repair and/or replacement in City easements. **(E)**
38. Unless otherwise noted and except as set forth in Government Code section 66474.2, City ordinances and other applicable law shall mean the requirements in effect at the time of building permit issuance.
39. The City Council has declared a water supply emergency and enacted a Water Shortage Contingency Plan. The project is required to use recycled water for construction purposes such as dust control and compaction. Landscape planting shall be deferred for any areas designated to use potable water.
40. The on-site sewer system shall be privately owned and maintained by the property owners. The system shall be designed for sufficient capacity and ease of maintenance to minimize sewer blockages and spills.
41. Prior building permit submittal, Permittee shall submit a Storm Water Control plan that incorporates best management practices (BMPs) for treatments of storm water run-off from all parcels. The Storm Water Control plan shall incorporate source control, site design and storm water treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the current California Storm water Quality Association (CASQA) BMP handbooks. The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer.
  - a. Permittee shall submit a final Storm Water Control Plan package for review and approval with the building permit submittal.
  - b. The Plan shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
  - c. Prior to issuance of Certificate of Occupancy, Permittee shall submit a Storm water Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
  - d. Permittee shall include in the approved Property Management Agreement, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination

System (NPDES) requirements. If the City does receive the report, City will conduct the field inspection and report, and the Owner and its successor shall be responsible to pay all associated costs.

- e. Prior to Final occupancy, Permittee shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities, and set up a special Private Job (PJ) account for this purpose..
- f. Permittee shall comply with all “Model Conditions of Approval for Storm Water Quality” as shown in the Storm water Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.
- g. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the Permittee’s final Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City’s Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. (E)

#### **Santa Clara Valley Transportation Authority**

- 42. Permittee shall update VTA regarding the planned construction schedule in order to coordinate with the Montague Widening project.

#### **County of Santa Clara Roads and Airports**

- 43. Permittee shall obtain an encroachment permit with the County.

#### **Santa Clara Valley Water District**

- 44. Permittee is required to work with the District in the removal of 1 existing outfall and the replacement of another outfall. The project will require District review and permitting prior to construction.
- 45. Permittee must remove the wells located within the creek which were installed as part of the Jones Chemical remediation efforts. Follow the requirements provided by San Francisco Bay Regional Water Quality Control Board.
- 46. Regarding Site Section A, the area east of the property line should slope away from the creek. The runoff should be captured east of the tubular steel fence line, captured and directed toward the outfall.

#### **Pacific Gas and Electric**

- 47. No trees that have potential to exceed 15 feet in height at maturity may be planted within the electric transmission easement.
- 48. Parking lot electroliers may not be more than 18 feet tall.

49. Install 3 inches in diameter non-metallic bollards, composed of fiberglass and polyethylene material, at the tower location to ensure a safe touch potential distance from the tower to the bollards.
50. Regarding the installation of the underground fire system and storm drainage system, any underground metallic pipeline must be located at least 25 feet from PG&E's steel tower. This distance is measured from the face of the steel pipe to the face of the steel tower. A distance of less than 25 feet is acceptable only if the pipe is non-metallic. The installation of the fire service pipeline must comply with these same conditions regarding non-metallic material. PG&E approved the alternate pathway for the 10 inch fire service as shown in the drawings.
51. Excavation of the bollards, fire service and storm drainage system adjacent to the tower structure must be coordinated with a PG&E structural engineer. Permittee shall contact with PG&E once the construction plan is finalized and prior to commencement of construction.
52. The proposed monument sign may not exceed the height limit identified in the 9.5 feet PG&E easement strip and as long as it does not impair a radial clearance of 15 feet from any PG&E conductor. No monument sign of any height may be placed within the 40 feet wide PG&E easement area.
53. The automatic tubular steel sliding gate and fence must be properly grounded as it traverses below PG&E's 115kV conductor. In addition, PG&E must have access to its 115kV facility at all times for maintenance, inspection and replacement.

#### **Environmental Mitigation Measures**

54. Generally. Permittee is required to comply with the requirements of the Mitigation Monitoring and Reporting Program attached hereto and incorporated herein as Exhibit 2.
55. Air Quality. Prior to issuance of a Demolition Permit, the City Engineer and the Chief Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that in compliance with Bay Area Air Quality Management District's Basic Construction Mitigation Measures, the following basic construction mitigation measures shall be implemented:
  - a. Water all active construction areas to maintain 12 percent soil moisture.
  - b. All grading shall be suspended when winds exceed 20 miles per hour.
  - c. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - d. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
  - e. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - f. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - g. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
  - h. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne

toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- i. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- j. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

**56. Biological Resources.**

- a. Prior to the issuance of a grading permit, Permittee shall retain a qualified biologist to conduct a Suitability Assessment for the Burrowing Owl (*Athene cunicularia*). If the biologist determines that no suitable habitat, burrowing owl individuals, or sign (i.e., pellets, feathers, or white wash) are found on the project site during the suitability assessment, a final pre-construction burrowing owl clearance survey shall be conducted three (3) days prior to the start of site disturbance activities to ensure burrowing owl remain absent from the project site.

However, if the biologist determines that, based on the Suitability Assessment, the project site has the potential to provide suitable habitat for burrowing owl or burrowing owl sign is observed, the biologist shall conduct a focused burrowing owl survey during the breeding season. The Protocol Survey shall be conducted in accordance with the current California Department of Fish and Wildlife or United States Fish and Wildlife Services survey protocols for the Burrowing Owl.

- b. Prior to the approval of grading plans, Permittee shall retain a Certified Consulting Arborist, as approved by the City of Milpitas, to identify Tree Protection Zones on project grading plans. The project grading plans shall note that trees proposed to be protected-in-place, as identified by the Consulting Arborist, shall be enclosed via six-foot high fencing in order to identify the Tree Protection Zone prior to demolition, grubbing, or grading. The Tree Protection Zone fencing shall allow for pedestrian access. Fences shall remain in place until all grading and construction is completed.

No grading, construction, demolition, or other work shall occur within the Tree Protection Zone, unless approved and monitored by the Consulting Arborist. Grading within the dripline of any tree shall be monitored by the Consulting Arborist. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the Consulting Arborist. Supplemental irrigation shall be applied as determined by the Consulting Arborist. If injury should occur to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied. No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the Tree Protection Zone. Any additional tree pruning needed for clearance during construction must be performed by a Certified Arborist and not by construction personnel.

- c. Prior to approval of Final Design Plans by the City of Milpitas, foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement. These design features, if applicable, shall be noted on the Final Design Plans.

57. Cultural Resources.

- a. If evidence of subsurface archaeological resources is found during construction, excavation, trenching, and/or other construction activities in that area shall cease and the construction contractor shall contact the Director of Planning and Neighborhood Services. With direction from the Director of Planning and Neighborhood Services, an archaeologist approved by the City of Milpitas shall be retained by Permittee to evaluate the discovery prior to resuming grading in the immediate vicinity of the find. If warranted, the archaeologist shall collect the resource and prepare a technical report describing the results of the investigation. The test-level report shall evaluate the site including discussion of significance (depth, nature, condition, and extent of the resources), final mitigation recommendations, and cost estimates.
- b. If evidence of subsurface paleontological resources is found during construction, excavation, trenching, and/or other construction activities in that area shall cease and the construction contractor shall contact the Director of Planning and Neighborhood Services. With direction from the Director of Planning and Neighborhood Services, a paleontologist approved by the City of Milpitas shall evaluate the find. If warranted, the paleontologist shall prepare and complete a standard Paleontological Resources.

58. Geology and Soils. Prior to issuance of a building permit, the City of Milpitas Building Official shall ensure that final engineering plans meet the design parameters for seismic safety identified in the Geotechnical Investigation (Friar Associates, Inc., April 30, 2015), and the latest version of the California Building Code.

59. Hazards and Hazardous Materials.

- a. Prior to and during site disturbance activities, the proposed project shall comply with the requirements set for by the Regional Water Quality Control Board (RWQCB) Order No. 90-072. The project shall implement a Site Management Plan (SMP), as enforced by the RWQCB, for site disturbance activities at the project site. In addition to the existing ongoing remediation activities associated with the 1982 former AST release, Permittee shall also provide in writing verification to the RWQCB that the following former on-site activities have not resulted in exceedance of regulatory thresholds for hazardous substances for commercial uses:
  - On-Site Fill Materials;
  - Miscellaneous Debris;
  - Former Underground Storage Tanks;
  - Former on-site rail spurs;
  - Former on-site sumps; and
  - Former activities associated with the northern storage area.

Should results indicate that elevated hazardous substances, exceeding applicable commercial use thresholds, are present, appropriate remediation activities shall be identified in the SMP, as reviewed and approved by the RWQCB.

- b. Prior to demolition activities, Permittee shall retain an Asbestos Hazard Emergency Response Act (AHERA) and California Division of Occupational Safety and Health (Cal/OSHA) certified building inspector to conduct an asbestos survey to determine the presence or absence of asbestos containing-materials (ACMs). If ACMs are located, the abatement of asbestos shall be completed by the Applicant prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the Bay Area Air Quality Management District (BAAQMD) Rule Regulation 11, Rule 2. Contractors performing asbestos abatement activities shall provide evidence of abatement activities to the City Building Official.
  - c. If paint is separated from building materials (chemically or physically) during demolition of the structures, the paint waste shall be evaluated independently from the building material by a qualified Lead Specialist. If lead-based paint is found, Permittee shall retain a qualified Lead Specialist to conduct abatement prior to any activities that would create lead dust or fume hazard. Lead-based paint removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Contractors performing lead-based paint removal shall provide evidence of abatement activities to the City Building Official.
  - d. Prior to issuance of a grading permit for the proposed project, Permittee shall provide written verification (by a Phase II Site Characterization Specialist) to the Regional Water Quality Control Board that all imported soils are not contaminated above regulatory thresholds for commercial use. If soils are determined to be contaminated above regulatory thresholds, these soils shall not be used as fill material within the boundaries of the project site, unless otherwise specified the Regional Water Quality Control Board.
60. Noise. Prior to Grading Permit issuance, Permittee shall demonstrate, to the satisfaction of the Director and Planning and Neighborhood Services that the project complies with the following:
- a. Construction contracts specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and other state required noise attenuation devices.
  - b. Construction haul routes shall be designed to avoid noise sensitive uses (e.g., residences, convalescent homes, etc.), to the extent feasible.
  - c. During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers.
  - d. Construction activities shall not take place outside of the allowable hours specified by the City of Milpitas Municipal Code Section V-213-3-3.05, Site Construction Regulations (7:00 a.m. and 7:00 p.m. on weekdays and weekends; construction activities are not permitted on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

**NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Pursuant to Condition No. 19 contained herein, prior to any building permit issuance, Permittee shall pay the applicable Calaveras Boulevard Widening Fee in the amount of \$\_\_\_\_\_.

**AGREEMENT**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Printed Name of Permittee