

MEMORANDUM
Office of the Agency Counsel



Date: August 18, 2008
To: Honorable Mayor Esteves and Members of the Milpitas Redevelopment Agency
Board of Directors
From: Michael J. Ogaz, Agency Counsel
Copy: Thomas C. Williams, City Manager
Subject: **Item RA6: Recommended Approval of Sale and Transfer of Property from Western Pacific Housing LLC (D.R. Horton) to Lyon Milpitas LLC (Lyon Apartment Companies)**

At the August 19, 2008 Agency Board Meeting, Agency Staff is requesting in part that the Agency Board approve the sale and transfer of the Centria West site from Western Pacific Housing LLC (D.R. Horton) to Lyon Milpitas LLC (Lyon Apartment Companies). (*Item RA6*).

Pursuant to the Owner Participation Agreement Between Western Pacific Housing LLC (D.R. Horton) and the Milpitas Redevelopment Agency, approval of such a sale would involve the adoption of the following findings, which Agency Staff believes are amply supported by the record and the materials in the Staff Report and its attachments:

- (1) That at the time of this proposed transfer, the Owner Participation Agreement Between the Agency and D.R. Horton (Western Pacific) is in full force and effect, no default by D.R. Horton (Western Pacific) exists with respect to that agreement, and no contractual default will occur upon consummation of the transfer.
- (2) That the proposed transferee, Lyon Milpitas LLC, has demonstrated sufficient qualifications and experience to perform the remaining obligations under the Owner Participation Agreement.
- (3) That the proposed transferee, Lyon Milpitas LLC, agrees to be bound by all the provisions of the Owner Participation Agreement, the attached regulatory agreement, and all conditions of approval attached to all discretionary approvals applicable to the Centria West development .

Accordingly, if the Board were to approve Item RA6, the above findings would also be included in the record.