

**LIST OF ATTACHMENTS FOR PUBLIC HEARING
ITEM NO. 4 – ADOPT A RESOLUTION APPROVING
THE MILPITAS SQUARE MASTER PLAN PROJECT
AND CERTIFY THE ENVIROMENTAL IMPACT
REPORT, AND INTRODUCE ORDINANCE NO. 38.794,
APPROVING THE ZONING AMENDMENT AND
DEVELOPMENT AGREEMENT**

- A. Resolution**
- B. Ordinance No. 38.794**
- C. Planning Commission’s Staff Report of 10/27/2010**
- D. Planning Commission’s Draft Minutes of 10/27/2010**
- E. City Council Transportation and Land Use
Subcommittee Draft Minutes of 09/13/2010**
- F. Demographic Study**
- G. Parking Study**

**PLEASE NOTE: DUE TO THE LARGE SIZE OF THE
FILES LISTED BELOW, HARD COPIES ARE
AVAILABLE AT THE CITY CLERK’S OFFICE**

-  ENVIRONMENTAL IMPACT REPORT (EIR)**
-  MASTER DEVELOPMENT PLANS (Exhibit B of
Exhibit 1 to Ordinance No. 38.794)**
-  DESIGN GUIDELINES (Exhibit C of Exhibit 1 to
Ordinance No. 38.794)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING GENERAL PLAN AMENDMENT NO. GP07-0002 AND RELATED ENTITLEMENTS, AND CERTIFYING ENVIRONMENTAL IMPACT ASSESSMENT NO. EA09-0001 FOR THE MILPITAS SQUARE MASTER DEVELOPMENT PLAN

WHEREAS, the applicant (Ben Chuaqui of Van Meter Williams Pollack, representing Anthony Morici) submitted a proposal ("Project") to change the General Plan and Zoning designation on a 16.85 acre parcel from General Commercial with Site and Architectural Overlay to Very High Density Mixed Use with Site and Architectural Overlay; a Site Development Permit to consider a master plan to develop the site with a maximum of 900 dwelling units and 175,000 square feet of commercial, the phasing of development and infrastructure; and a Conditional Use Permit to consider shared parking and height above 12 stories for two buildings; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the City determined that an Environmental Impact Report would be required for the Project ("Milpitas Square Mixed Use Project EIR") and circulated a Notice of Preparation dated February 8, 2008 to public agencies and interested parties for consultation on the scope of the Milpitas Square Mixed Use Project EIR; and

WHEREAS, based on the responses to the Notice of Preparation, the City prepared a draft of the Milpitas Square Mixed Use Project EIR dated April 2009 (SCH No. 2008022065) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft Milpitas square Mixed Use Project EIR was circulated for a 45-day public review and comment period, from April 24, 2009 to June 8, 2009; and

WHEREAS, City staff reviewed all comments received on the Draft Milpitas Square Mixed Use Project EIR during the public review period and prepared written responses providing the City's good faith, reasoned analysis on the issues raised by the comments. Revisions to the Draft Milpitas Square Mixed Use Project EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft Milpitas Square Mixed Use Project EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft Milpitas Square Mixed Use Project EIR pursuant to CEQA Guidelines § 15088.5. The comment letters, written responses to comments and revisions to the Draft Milpitas Square Mixed Use Project EIR are contained in a separately bound Final Milpitas Square Mixed Use Project EIR dated August 2009. The April 2009 Draft Milpitas Square Mixed Use Project EIR and the August 2009 Final Milpitas Square Mixed Use Project EIR together constitute the complete Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, reflect the City's independent judgment and analysis on the potential environmental impacts of the Project, and are collectively referred to herein is the "Milpitas Square Mixed Use Project EIR," and

WHEREAS, the Milpitas Square Mixed Use Project EIR identifies the potential for significant effects on the environment from development of the Project, most but not all of which can be reduced to a less than significant level through implementation of mitigation measures; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Exhibit C; and

WHEREAS, some of the significant effects identified in the EIR cannot be lessened to a level of less than significant; therefore, approval of the Project must include a Statement of Overriding Considerations as set forth in Exhibit D; and

WHEREAS, the City has prepared a Mitigation Monitoring and Reporting Program to ensure monitoring and implementation of the mitigation measures set forth by Exhibit E; and

WHEREAS, on October 27, 2010, the Planning Commission held a duly noticed public hearing on the Project's development applications and reviewed an Environmental Impact Report prepared for the Project in accordance with the California Environmental Quality Act ("Milpitas Square Mixed Use EIR"), which identifies the potential for significant effects on the environment from development of the Project; and

WHEREAS, on November 16, 2010, the City Council held a properly noticed public hearing to consider certification of the Milpitas Square Mixed Use Project EIR and approval of the Project.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. With respect to the General Plan Amendment:
 - a. The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
 - b. The City Council adopted the Findings set forth in the Resolution certifying the Milpitas Square Mixed Use EIR.
 - c. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.
 - d. The proposed amendment will not adversely affect the public health, safety, and welfare in that the amendments potential environmental effects have been analyzed in accordance with CEQA.
 - e. General Plan Amendment No. GP07-0002 is hereby approved, as set forth in Exhibit A (General Plan Amendment).
2. With respect to the Site Development Permit:
 - 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 in that:
 - i. The phasing plan ensures that adequate infrastructure and parking is provided during the interim; and
 - ii. The design guidelines ensure orderly development between phases and at build-out; and
 - iii. The master development plan provides for the timing and coordination of future development for a mixed use project.
 - b. The project is consistent with the Milpitas Zoning Ordinance in that the master development plan adheres to the development standards in effect.
 - c. The project is consistent with the Milpitas General Plan in that the future development of the site:
 - i. Maintains a relatively compact form because the project includes high density vertical mixed use; and
 - ii. The project uses zoning for new residential developments to encourage a variety and mix of housing types and costs because the project proposes multiple housing types within the development (6-8 story mixed use to 18-story mixed use); and
 - iii. The project encourages economic pursuits which will strengthen and promote development through stability and balance because the project proposes to redevelop a commercial center, which will renew a shopping center that was developed in the 1990s. The new investment will revitalize the area.
 - d. Site Development Permit No. SZ07-0001 is hereby approved, subject to conditions of approval in Exhibit B.
3. With respect to the Conditional Use Permit:
 - 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 in that:

- i. The shared parking program ensures adequate parking is available to suit the peak demand of the combined residential (dedicated, shared residential and guests) and commercial uses for the site; and
 - ii. The additional height above 12 stories for two buildings will not cause inadequate privacy or excessive shade to surrounding properties.
 - b. Conditional Use Permit No. UP09-0035 is hereby approved, subject to conditions of approval in Exhibit B.
- 4. With respect to the Environmental Impact Report:
 - a. The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
 - b. The following findings are made and directions given:
 - i. The Milpitas Square Mixed Use Project EIR has been completed in compliance with CEQA and the CEQA Guidelines.
 - ii. The Milpitas Square Mixed Use Project EIR was presented to the City Council, which reviewed and considered the information contained therein prior to approving the Project.
 - iii. The Milpitas Square Mixed Use Project EIR reflects the City's independent judgment and analysis of the potential for environmental effects of the Project.
 - iv. The custodian of the documents and other materials which constitute the record of proceedings for the Project is the City of Milpitas Planning Division located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.
 - c. The City Council adopts the Findings set forth in Exhibit C, the Statement of Overriding Considerations set forth in Exhibit D, and the Mitigation Monitoring and Reporting Program set forth in Exhibit E and certifies the Environmental Impact Report.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Exhibit A



City of Milpitas Milpitas Square General Plan Amendment No. GP07-0002 Exhibit A

Legend

-  Boulevard Very High Density Mixed Use (BVMU)
-  Parcel Boundary



Resolution No. _____

Exhibit B

CONDITIONS OF APPROVAL Milpitas Square Master Development Plan

General Conditions

1. Subsequent development on the subject project parcel shall demonstrate compliance with mitigation monitoring program in the Milpitas Square Mixed Use EIR. **(P)**
2. The project shall include parking guidance systems within the garages to detect and display the amount of available parking for users of the parking structures. **(P)**
3. Before construction of the first phase of development, the developer shall submit and obtain approval of a Sign Program. **(P)**
4. The project is subject to the Milpitas Square Development Agreement and its obligations therein. **(P)**
5. The applicant shall provide a notice and ensure that all subsequent sellers of units and/or parcels within the project provide a disclosure notice to all buyers of units and/or parcels regarding the project's proximity to a PG&E gas line. **(P)**
6. The project at each phase of development shall meet the shared parking requirement. **(P)**
7. The project shall comply with the Milpitas Square Master Development Plan (dated October 15, 2010) and the Milpitas Square Design Guidelines (dated October 15, 2010). **(P)**
8. The issuance of building permits to implement this land use development will be suspended in circumstances beyond City's control 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. The foregoing provisions are a material (demand/supply) condition to this approval. **(E)**
9. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, as determined to be acceptable to the City Engineer. **(E)**
10. Prior to final map recordation, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study. **(E)**
11. As part of this approval, developer has requested to defer final design of the conceptual details of the off-site public improvements, thus developer shall comply with following conditions of approvals prior to any approval phase development of the approved Master Development Plan or approval of any Parcel Map, Final Map approval or recordation, which ever occurs first:
 - A. Developer shall submit a master tentative map consistent with the master development plan for review and approval. The tentative map should include the design details of the proposed infrastructures to support the master development plan. The master tentative map shall include all mitigation off-site public improvements identified in the EIR, and any focus special studies conditioned here forth. The proposed improvements shall be submitted for review and approval to the City Engineer and shall be constructed to the satisfaction of City Engineer.

- B. Plans shall include separate fire suppression system, separate recycled water system for Building E internal use (dual plumb), and show locations of master meters and backflow devices for all systems, and provide grease interceptors at food preparations/service areas.
 - C. Plans shall show 36-inch storm drain parallel line from Baber Court Cul-de-Sac to Bellew Drive to Bellew Pump Station to address deficiency capacity as identified in the Storm Drain Master Plan.
 - D. The project shall comply with all requirements in the engineering guidelines and standard specification requirements.
 - E. At the time of the Tentative Map submittal, developer shall submit a MASTER Storm Water Management (SWM) plan for the project and phase approval thereafter. Any design changes to the site plan due to the compliance with condition will require City review and approval as required by the Development Agreement. The developer shall comply with City's NPDES permit requirements as mandated by the State Regional Water Quality Control Board at the time seeking approval of building permit.
 - F. Street sections and lane configuration shown on the submitted plans for Barber Lane and Barber Court are conceptual. Prior to any phase development of the approved master development plan, developer shall submit off-site improvement plan for review and approval of the City Engineer and the proposed improvements to be constructed to the City Engineer satisfaction. Proposed street improvement plans for Barber land and Barber Court shall include alignment changes to the existing conditions, and Northbound and Southbound roadway transitions beyond the proposed development frontage as required by the City Engineer.
 - G. Developer shall provide a construction phasing plan for the proposed private and public improvements, consistent with the proposed master development phasing plan.
 - H. A supplemental focus TIA for intersections of Sandisc Drive (Sumac) / McCarthy Boulevard and Bellew / Cypress Drive shall be completed and mitigated.
 - I. The proposed driveways to building A and B will be restricted to Right In and Right out only, and no Left-In and Left-out movements will be allowed to and from these driveways.
 - J. No parking along E/S of barber Drive frontage is allowed between proposed private street "C" and Bellew Drive. **(E)**
12. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2008-1, and agree to pay the special taxes levied by Community Facility District (CFD 2008-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. **(E)**
13. Prior or concurrent with map recordation, the developer shall dedicate necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. **(E)**
14. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements required to support the project, along Barber Lane and Barber Court, including but not limited to the following:
- A. Removal and installation of new curb, gutter, and sidewalk, new median installation, signage and striping, street lights, fire hydrants, bus stop, traffic signal modification, and storm, water and sewer service installation.

- B. Barber Lane reconfiguration from Bellew to the projects southern boundary including restriping and median island configuration to manage traffic.
- C. Installation of a parallel 36-inch storm drain from the Barber Court cul-de-sac to Bellew Drive to address the overloaded storm drain system on Barber Court as identified in the City storm master plan.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD, PDF, and TIFF format) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas Engineering Guidelines, Standard Plans and Specification, and all public improvements shall be constructed in accordance with the approved construction phasing plan as approved by the City and consistent with the development agreement to the satisfaction of the City Engineer's and accepted by the City. (E)

- 15. All identified mitigation measures on the approved EIR shall be mitigated and complied with to the satisfaction of the City Engineer. (E)
- 16. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance or in accordance with the approved development agreement terms and conditions:
 - A. Storm water connection fee of **\$363,320** based on 16.85 acres @ \$21,562per acre.
 - B. Water Connection fee of **\$921,096** (or **\$1,179,146** for the Hotel option).
 - C. Sewer connection fee of **\$1,084,821** (or **\$1,507,702** for the Hotel option).
 - D. Sewer Treatment Plant Fee (TPF) of **\$841,487** (or **\$944,016** for the Hotel option).
 - E. Water Service Agreement(s) for water meter(s) and detector check(s).
 - F. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

- 17. Prior to building permit issuance or in accordance with the approved development agreement terms and conditions, the developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the development. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be **\$916,940**, as of June 2009, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E)
- 18. Prior to any building permit issuance or in accordance with the approved development agreement terms and conditions, the developer shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of **\$278,750** to the City for this purpose. This amount is as of June 2009, and to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee. (E)
- 19. Prior to building permit issuance or in accordance with the approved development agreement terms and conditions, the developer shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be **\$441,500**, as of June 2009, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E)

20. Prior to any building permit issuance or in accordance with the approved development agreement terms and conditions, developer shall pay an estimated fair share contribution of **\$220,560** (or **\$259,570** for the Hotel option) toward the Calaveras Boulevard widening project. The impact fee amount will be adjusted by ENR at the time of payment. **(E)**
21. Prior to building permit issuance or in accordance with the approved development agreement terms and conditions, developer shall pay **\$124,000** toward the construction of a bike lane along McCarthy Boulevard from Montague Expressway to Ranch Drive. **(E)**
22. Prior to any building permit issuance or in accordance with the approved development agreement terms and conditions, developer shall pay an estimated fair share contribution of **\$86,688** toward the Montague Expressway widening project. **(E)**
23. Prior to building permit issuance or in accordance with the approved development agreement terms and conditions, developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor and materials. **(E)**
24. 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)**
25. All proposed utilities including but not limited to sewer, water, recycled water, and storm drain system within the proposed development are privately owned and maintained. At Public Works Director's discretion the proposed water line within the project boundary can be publicly maintained. Show locations of master meters and backflow devices for all systems. Provide grease interceptors at food preparation/service areas. **(E)**
26. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. **(E)**
27. Prior to occupancy permit issuance, applicant/property owner shall construct a new trash enclosure or expand the existing enclosure to accommodate the required number of bins needed to serve this shopping center. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure. **(E)**
28. Developer shall comply with the City's NPDES State Regional Water Quality Control Board permit requirements for both pre-construction and post-construction requirements. **(E)**
29. The developer shall comply with Regional Water Quality Control Board's requirements for post construction treatments and implement the following:
 - A. Prior to site development permit approval by planning commission, developer shall submit a Storm Water Control Plan package for review and approval.
 - B. At the time of building permit plan check submittal, the developer shall submit a "final" Storm Water Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Storm Water Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the MRP and the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.

- C. Prior to issuance of Certificate of Occupancy, the developer 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 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. Developer shall include in the approved CC&R, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the NPDES requirements. If the City does receive the report, City will conduct the field inspection and report, and the developer and its successor shall be responsible to pay all associated costs.
- E. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. **(E)**
30. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved 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. Any changes to the approved Storm water Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. **(E)**
31. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. **(E)**
32. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed two feet when measured from street elevation. **(E)**
33. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner 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 Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation); the applicant shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. **(E)**
34. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. **(E)**
35. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our

receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. **(E)**

36. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall comply with Engineering Guidelines and the following conditions:

- A. Provide separate water meters for domestic water service & irrigation service. Developer is also required to provide separate domestic meters for each proposed use (Residential, Food Services, and Commercial/Office).
- B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No. 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect 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.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. **(E)**

37. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), 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 developer shall:

- A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).
- 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 Department of Public Health (CDPH) 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 CDPH approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 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)**

38. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, CALTRANS, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. **(E)**

39. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. **(E)**

40. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. **(E)**

41. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. **(E)**
42. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off 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. **(E)**
43. Prior to demolition permit issuance, the Applicant, or Contracted Designee, 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.

Applicant/Contractor shall make every effort to salvage materials for reuse and recycling. **(E)**

44. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section, which 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)**
45. 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 Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor 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 Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site. **(E)**
46. The developer shall obtain information from the Milpitas Unified School District (MUSD) regarding providing services. **(E)**
47. Prior to submittal for building permit issuance, the developer shall submit plans to CALTRANS for review and approval. Provide their comments to the City. **(E)**
48. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". **(E)**
49. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. **(E)**

50. If necessary, the developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755. **(E)**
51. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. **(E)**
52. The site is located in Local Improvement District #9R and 12R and shall comply with any requirements prior to Certificate of Occupancy for any phased development permit. **(E)**
53. The Developer shall work with city staff to establish a shopping cart master plan. **(P)**

Exhibit C

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE PROJECT LOCATED AT 198 BARBER COURT: MILPITAS SQUARE

SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

198 Barber Court, Milpitas Square (“Project”) and means for mitigating those impacts. The impacts and mitigations included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and mitigations.

LESS THAN SIGNIFICANT IMPACTS WITH MITIGATION

LAND USE

Impact LU-1: The proposed project may result in land use compatibility impacts due to the proposed placement of two shopping center identification signs with electronic displays on the site and the potential for disturbance caused by nighttime light emission.

As conditions of approval, the following mitigation measure will be implemented by the applicant to reduce the land use impacts of the project to a *less than significant level*:

MM LU-1.1: The proposed shopping center identification signs with electronic displays shall be oriented so that the displays are visible primarily from the adjacent freeway traffic in order to reduce the incidence of light spillover onto adjacent properties. The proposed shopping center identification signs with electronic displays shall also be located so that the proposed buildings on the site will provide a buffer and shield views of the signs, to the extent feasible, from adjacent sensitive land uses and the residential development proposed on the site and/or that the orientation and design of residential buildings on-site shall be reviewed and approved by the City taking into consideration measures mitigating any perceived negative impacts of such electronic displays on occupants of such buildings as well as in addition to location of such electronic signage displays. The final location of the shopping center identification signs with electronic displays may require some modifications to the proposed bioswales on the site; however, the function of the proposed swales will be retained.

Impact LU-5: The proposed project conflicts with the City’s regulations adopted for the purpose of avoiding or mitigating an environmental effect.

As conditions of approval, the following mitigation measure will be implemented by the applicant to reduce the land use impacts of the project to a *less than significant level*:

MM LU-5.1: In accordance with the California Fire Code Section 1001.12, as amended by the Milpitas Municipal Code, the project will be conditioned to include the construction of helicopter pads on all buildings on the project site exceeding 150 feet in height (Buildings B and F) which meet the requirements of the Milpitas Fire Department or provide alternative measures for such buildings as required and approved by the Fire Department to conform to the Milpitas Municipal Code for emergency access. Prior to the issuance of an occupancy permit, the Fire Marshall shall inspect the helicopter pad and/or the construction of approved alternative measures to ensure compliance with the Municipal Code. Implementation of the mitigation measure will reduce the impact to a *less than significant level*.

FINDING: The project would significantly impact land use because of the proposed electronic display signs and the height of the two proposed tower requires adequate emergency access. Implementation of Mitigation Measures LU-1.1 and LU-5.1 would result in the impact being reduced to a *less than significant level*.

TRANSPORTATION

Impact TRANS-1: McCarthy Boulevard/Bellew Drive – Intersection operations degrade from LOS D- to LOS F during the PM peak hour.

As conditions of approval, the project applicant shall be responsible for the implementation of the following measures to reduce transportation impacts:

MM TRANS-1.1: *McCarthy Boulevard/Bellew Drive* – Prior to issuance of a building permit, the developer shall modify the roadway and traffic signal facilities or pay a fair share contribution into an account created by the City of Milpitas for the sole purpose of providing two eastbound left turn lanes and one shared through/right turn lane, which would provide acceptable (LOS D-) operations. This improvement, in conjunction with optimizing the signal coordination along the McCarthy Boulevard corridor, would also provide acceptable midday operations at this intersection. Installation of the double eastbound left turn lanes requires median island and traffic signal modification work on Bellew Drive from Barber Lane to Technology Drive and on McCarthy Boulevard from Bellew Drive to Ranch Drive. To ensure proper operation, these improvements must also be coordinated with modifications for the intersection of Bellew Drive and Cypress Drive. **(Less Than Significant Impact with Mitigation)**

Impact TRANS-6: McCarthy Boulevard-O’Toole Avenue/Montague Expressway (Milpitas) – Project traffic degrades intersection operations from LOS D- to LOS E+ in the AM peak hour and exacerbates LOS F operations during the PM peak hour.

Impact TRANS-7: McCarthy Boulevard-O’Toole Avenue/Montague Expressway (San José) – Project traffic degrades intersection operations from LOS D- to LOS E+ in the AM peak hour and exacerbates LOS F operations during the PM peak hour.

MM TRANS-6.1: *McCarthy Boulevard-O’Toole Avenue/Montague Expressway (Option 1)* – Prior to the issuance of a building permit, the developer shall construct the identified improvements or pay a fair share contribution for the value of the improvement and right-of-way needed into an account created by the City of Milpitas for the sole purpose of providing the necessary improvements. Mitigation that reduces sidewalk widths below the City standard is not allowed under City of San José Transportation Impact Policy 5-3. The standard sidewalk width in North San José is five feet. The existing sidewalk is five and one-half feet wide.

Therefore, in order to implement this mitigation consistent with adopted policy, approximately two and one-half feet of right-of-way behind the sidewalk in the landscape area of the adjacent development would need to be acquired from the adjacent private property for the length of the dedicated right turn lane. This equates to the acquisition of approximately 513 square feet of right-of-way (i.e., 2.5 square feet x 250 feet = 625 square feet). The mitigation would also require relocating existing utilities (e.g., a light pole). The landscape reduction and utility relocation would not result in a significant impact. The south half of the intersection is within the jurisdiction of the City of San José and, therefore this mitigation is outside the control of the City of Milpitas to implement.

MM TRANS-6.2: *McCarthy Boulevard-O’Toole Avenue/Montague Expressway (Option 2)* – A square-loop interchange is planned to be constructed at the intersection of McCarthy Boulevard-O’Toole Avenue/Montague Expressway under Phase 3 of the North San José Area Development Policy (NSJADP). With the square loop interchange, a level of service is not reported at this location because the intersection is eliminated (Montague Expressway will be elevated over McCarthy Boulevard with on and off-ramps located to the west) and the project’s impact at this location will be less than significant. The City of San José has stated that payment of an in-lieu fee towards the planned square-loop interchange is acceptable and is the preferred mitigation for the project impact at this intersection. The dollar amount of the in-lieu fee would be equal to the appraised value of the right-of-way needed to construct the dedicated right turn lane (625 square feet, described in Option 1, above) and the value of the identified improvements. The NSJADP is the adopted program that would allow for a fair-share contribution to this mitigation. The NSJADP does not establish a timeline for the development phases. As with this proposed project and its impacts, the amount of development in North San José and its timing will be determined by the economy, markets, and the decisions made by private sector property owners and developers. Therefore, if the City of Milpitas accepts the City of San José’s timeline for implementation of the mitigation (i.e., unknown), then payment of the in-lieu fee would mitigate the project’s traffic impact at the intersection of McCarthy Boulevard-O’Toole Avenue/Montague Expressway. **(Less Than Significant Impact with Mitigation)**

FINDING: Traffic from the Project would significantly impact seven signalized intersections. The mitigation measures described above would reduce impacts at two of the seven signalized intersections to a *less than significant level* by improving operations to an acceptable level of service.

AIR QUALITY

Impact AQ-4: The proposed project would expose residents to levels of diesel particulate matter (DPM) in excess of BAAQMD thresholds.

MM AQ-4.1: Controlling the exposure of future occupants to diesel particulate matter during the first five years of the project could reduce the impact to a less than significant level. The exposure could be controlled in two ways: delay occupancy of Buildings C, E, and F by up to three years (until 2015) where significant health risks are predicted, or provide centralized forced air mechanical ventilation systems with appropriate filter systems in those units and discourage the occupants from using the windows. A properly designed and installed heating, ventilation and air conditioning (HVAC) system with proper filtration would adequately reduce exposure to particulate matter. This HVAC system shall maintain positive pressure in all living areas and include high efficiency filters for particulates. Air intakes for the HVAC systems shall be placed at positions that minimize roadway air pollution sources. A licensed mechanical engineer shall certify that the designed HVAC system offers the best available technology to minimize outdoor to indoor transmission of air pollution. The developer shall ensure an ongoing maintenance plan for the HVAC and filtration systems. Residences would have to be equipped with low-air infiltration windows and sealed doors to prevent air contamination. Opening of windows by occupants would reduce the effectiveness of this measure. Instructions regarding the proper use of any installed air filtration systems shall be provided to future occupants. In addition, the project applicant shall provide notification (e.g., in the form of a fact sheet) to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter generated by SR 237 and I-880 truck traffic. This notification shall describe the harmful effects of diesel particulate matter, sources of this contaminant, potential level of exposure and the planning/regulatory efforts being taken to reduce harmful effects. **(Less Than Significant Impact with Mitigation)**

Impact AQ-6: Construction activities on the project site could result in PM10 levels downwind of the project site that exceed State standards.

MM AQ-6.1: Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. These measures are required as conditions of approval and shall be included on the construction documents and plans.

- Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- Cover all hauling trucks or maintain at least two feet of freeboard.
- Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- Limit traffic speeds on any unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend construction activities that cause visible dust plumes to extend beyond the construction site. **(Less Than Significant Impact with Mitigation)**

Impact AQ-7: The proposed project could result in significant diesel particulate matter emissions during project construction.

MM AQ-7.1: As conditions of approval, the applicant shall implement the following measures to reduce the short-term health impacts of diesel particulate matter and PM2.5 emissions to nearby sensitive receptors from construction to a less than significant level. These measures shall be included on the construction documents and plans.

- Diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.
- Prohibit the use of “dirty” equipment. Opacity is an indicator of exhaust particulate emissions from off-road diesel-powered equipment. The applicant shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).
- Properly tune and maintain equipment for low emissions. **(Less Than Significant Impact with Mitigation)**

FINDING: The project contemplates a General Plan and Zoning amendment for a 16.85-acre parcel and addresses future impacts of developing the site with mixed use buildings. It is expected that subsequent approvals will lead to construction activity. Implementation of mitigation measures AQ-4.1, AQ-6.1 and AQ-7.1 will reduce the impact to a *less than significant level*. The occupancy and operation of the sites are addressed in the project long-term analysis for air quality.

NOISE AND VIBRATION

Impact NV-1: The proposed common open space area in Building E would be exposed to exterior noise levels exceeding 65 dBA DNL.

As conditions of approval, the project applicant shall be responsible for the implementation of the following measures to reduce noise and vibration impacts:

MM NV-1.1: Proposed rooftop open space areas on Building E should be located away from sources of roadway noise and must include 25-foot-wide areas that are acoustically shielded by walls at least ten feet in height. Having some activity areas (e.g. pools) that exceed 60 dBA DNL may be acceptable if residents have usable quiet areas available that are acoustically protected. A qualified acoustical consultant shall review final site plans and building elevations prior to the issuance of a building permit to calculate noise levels in proposed open spaces and ensure compliance with City policies. **(Less Than Significant Impact with Mitigation)**

Impact NV-2: The proposed project would be exposed to interior noise levels exceeding 45 dBA DNL without the incorporation of noise attenuation measures in the building design.

MM NV-2.1: A project-specific acoustical analyses is required by the City of Milpitas prior to issuance of building permits to ensure that interior noise levels will be reduced to 45 dBA DNL or lower. Building sound insulation requirements will need to include the provision of forced-air mechanical ventilation for all outer facing residential units so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques may be required in areas exposed to sound levels of 70 dBA DNL or greater. These treatments could include sound rated windows and doors, sound rated wall constructions, acoustical caulking, etc. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA DNL or lower. A qualified acoustical consultant shall review final site plans, building elevations, and floor plans prior to the issuance of a building permit to calculate expected interior and exterior noise levels and ensure compliance with City policies and State noise regulations. **(Less Than Significant impact with Mitigation)**

Impact NV-5: Businesses within the project area would be exposed to intermittent high noise levels from project construction.

MM NV-5.1: With the implementation of the following measures, construction noise impacts would be reduced to a less than significant level:

- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists;
- Prohibit all unnecessary idling of internal combustion engines and equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from businesses or noise-sensitive land uses;
- Notify all adjacent land uses of the construction schedule in writing;
- Designate a disturbance coordinator, responsible for responding to complaints about construction noise. The name and telephone number of the disturbance coordinator shall be posted at the construction site and made available to businesses, residences or noise-sensitive land uses adjacent to the construction site;
- If pile driving is necessary, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile; and
- If pile driving is necessary, when possible the project shall work with the owners and managers of adjacent commercial uses to select days and times to conduct pile-driving activities that would minimize the impact on these uses. **(Less Than Significant Impact with Mitigation)**

Impact NV-6: Businesses on the project site and in the vicinity of the project could be exposed to construction related vibration during the excavation and foundation work of the project, particularly if pile driving is used as a construction method.

MM NV-6.1: With the implementation of the following measures, in addition to the measures specified in MM NV-5.1, construction vibration impacts would be reduced to a less than significant level:

- Avoid impact pile driving where possible. Drilled piles or slab mats causes lower vibration levels where geological conditions permit their use;
- Identify any highly vibration sensitive uses located on the adjoining properties and/or remaining commercial uses;
- If impact pile driving is proposed within 50 feet of adjacent structures or within 200 feet of any highly sensitive uses identified in the adjoining buildings, a construction vibration monitoring plan would need to be implemented to document conditions prior to, during and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall be implemented to include the following tasks:
 - Schedule pile driving so that piles furthest from adjacent structures are driven first, and only after vibration levels are found to be within the limits is pile driving allowed at closer distances.
 - Performance of a photo survey, elevation survey, and crack monitoring survey for each impacted structure. Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion and shall include internal and external crack monitoring in structures, settlement, and distress and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
 - Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approached the limits.
 - At a minimum, vibration monitoring shall be conducted during pavement demolition, excavation, and pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.
 - If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.
 - Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.
 - The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report will include a description of measurement methods, equipment used, calibration certificates and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper documentation supporting any such claims. **(Less Than Significant Impact with Mitigation)**

FINDING: Short-term construction impacts may occur as a result of development of the site. In addition, long-term operational impacts may occur as a result of residential development being developed on the site. Implementation of the Mitigation Measures NV-1.1, NV-2.1, NV-5.1 and NV-6.1 would reduce this potential impact to a *less-than-significant level*.

HAZARDS AND HAZARDOUS MATERIALS

Impact HM-1: If on-site soils are contaminated with agricultural chemicals, construction personnel working on the proposed project would be exposed to these chemicals.

Impact HM-2: If on-site soils are contaminated with agricultural chemicals, improper disposal of soil could contaminate the environment.

As conditions of approval, the project applicant shall be responsible for the implementation of the following measures to reduce impacts from hazardous materials on the proposed project to a *less than significant level*:

MM HM-1.1 & 2.1: Prior to the issuance of a Grading Permit, but after removal of pavement for each of the project phases, the developer shall implement the following measures, which would reduce potential impacts related to pesticide contaminated soil to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- Soil on the site will be sampled and tested for organochloride pesticides and associated heavy metals by qualified professionals (e.g., a California-Registered Environmental Assessor and analyzed by a State certified laboratory). The results of the soil sampling shall be submitted to the City of Milpitas for review.
- If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above residential Environmental Screening Level (ESL) thresholds established by the Regional Water Quality Control Board (RWQCB), a Soil Management Plan (SMP) will be prepared for the proposed project and submitted to the City of Milpitas for review and approval. The city may also refer this site to the Santa Clara County Department of Environmental Health for further review if sample test results indicate contamination above California Human Health Screening Levels (CHHSLs). The SMP would detail the handling/disposal of the contaminated soil in a manner that ensures workers, adjacent uses, and the environment are protected. The main objective of the SMP is to establish protocols for the contractor in handling on-site soil during redevelopment of the site (e.g., preparation of a Health and Safety Plan).
- If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above CHHSLs, all soil off-hauled from the project site will be disposed at an appropriate facility that is designed and operated to accept and dispose of contaminated soils. California Total Threshold Limit Concentration (TTLC) values maybe used to assist in the proper disposal of the contaminated soil. (**Less Than Significant Impact with Mitigation**)

FINDING: Construction activities associated with the implementation of the Project may temporarily expose construction workers to contaminated soils. With the implementation of the Mitigation Measures HM-1.1 and 1.2, the Project will have a *less than significant impact*.

HYDROLOGY AND WATER QUALITY IMPACTS

Impact HYD-2: Construction of the proposed project could result in a significant temporary increase in the amount of contaminants in stormwater runoff during construction and, therefore, requires the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP).

As conditions of approval, the project applicant shall be responsible for the implementation of the following measures to reduce hydrology and water quality impacts:

MM HYD-2.1: The following measures, based on Regional Water Quality Control Board Best Management Practices, have been included in the project to reduce construction-related water quality impacts. All mitigation will be implemented prior to the start of earthmoving activities on-site and will continue until the construction is complete. These measures shall be printed on all construction documents, contracts, and project plans:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). In addition, a tire wash system may be required.
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation.

- The project proponent will submit a copy of the draft SWPPP to the City of Milpitas for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.
- When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Milpitas. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan is in place as described in the SWPPP for the site. **(Less Than Significant Impact with Mitigation)**

Impact HYD-3: Dewatering during project construction and, if needed, after construction could pollute surface water with sediment or hazardous materials.

MM HYD-3.1: The following measures shall be implemented by the applicant to reduce water quality impacts that could result during dewatering to a less than significant level. The project shall also be compliant with all applicable requirements of the City’s NPDES permit in place when the project application is deemed complete. All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue until dewatering is complete.

These measures shall be printed on all construction documents, contracts, and project plans:

- Groundwater below the project site shall be sampled and tested for contaminants.
 - If groundwater contaminant levels are below discharge thresholds, the project must receive City approval prior to discharge of groundwater into the City’s storm drain system. This permit will specify the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.) and the frequency of ongoing water quality testing.
 - If groundwater contaminant levels are above discharge thresholds, the project shall obtain an NPDES permit from the RWQCB prior to discharging the water into the stormdrain system. This permit will specify the groundwater treatment measures and the water quality treatment standards that shall be achieved prior to discharge into the storm drain system, the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.), and the frequency of ongoing water quality testing. **(Less Than Significant Impact with Mitigation)**

FINDING: Implementation of Mitigation Measures HYD-2.1 and 3.1 would reduce the construction-related soil erosion and sedimentation impacts to a *less-than-significant level*.

BIOLOGICAL RESOURCES

Impact BIO-2: The proposed project will remove four ordinance-size trees on the site.

As conditions of approval, the project applicant shall be responsible for the implementation of the following measures to reduce biological resource impacts:

MM BIO-2.1: Prior to receiving an occupancy permit, the applicant shall implement the following measures, which would reduce the impact of the loss of ordinance-size trees on the project site to a *less than significant level*. These measures shall be printed on all construction documents, contracts, and project plans:

- In conformance with the City of Milpitas Zoning Ordinance, all trees removed from the site that measure 37 inches or greater in circumference (12-inches in diameter) at four feet six inches above the ground surface will be replaced in-kind at a 3:1 ratio within the project site.
- Trees that are removed but cannot be mitigated on-site due to lack of available planting area will be mitigated by fees paid to the City. The funds will be deposited in the City’s Tree Replacement Fund and will be used to plant trees within the City of Milpitas. **(Less Than Significant Impact with Mitigation)**

FINDING: Construction activities resulting from implementation of the Project and development of the site may impact certain trees. The implementation of the Mitigation Measure 2-1 will reduce impacts to trees to a *less than significant level*.

CULTURAL RESOURCES

Impact CULT-1: The project site is located in an area that contains several recorded prehistoric archaeological sites and, therefore, excavation for the project has the potential to encounter and damage archaeological resources.

As conditions of approval, the applicant shall implement the following mitigation measures to avoid possible impacts from the project to archaeological resources, or reduce them to a less than significant level:

MM CULT-1.1: A qualified archaeologist shall be retained to inspect the parcel for buried resources following demolition of existing buildings and site clearing during each phase of the project. In the event that any archaeological materials are encountered, work shall be stopped in the area designated by the project archaeologist until a plan has been submitted to the Milpitas Planning Division for the evaluation of the resource as required by CEQA. Evaluation typically takes the form of limited hand excavation of the suspected deposit to determine if it 1) possesses integrity (is not historically disturbed) and 2) possesses information and/or materials which would make it eligible for inclusion on the California Register of Historic Resources.

MM CULT-1.2: If evaluative testing demonstrates that further construction related earthmoving will affect a register eligible resource, a plan for the mitigation of impacts to the resource shall be submitted to the Milpitas Planning Director for approval. Mitigation can include limited additional hand excavation to retrieve additional data from the deposit, coupled with archaeological monitoring of all subsequent construction related earthmoving inside the area designated as archaeologically sensitive to ensure that significant archaeological materials and/or information are retrieved for future analysis and report preparation.

MM CULT-1.3: Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the project applicant and the Coroner shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. **(Less Than Significant Impact with Mitigation)**

FINDING: Archaeological resources could be encountered and damaged during construction of the Project. Implementation of mitigation measures would determine if archaeological resources are present on the Project site and, if archaeological resources are present, ensure the Project does not significantly impact the resources through the implementation of mitigation or avoidance measures. Implementation of Mitigation Measures CULT-1.1, CULT-1.2 and CULT-1.3 would reduce this potential impact to a *less-than-significant level*.

VISUAL AND AESTHETICS

Impact VIS-4: The proposed shopping center identification signs with electronic displays would intrude into views of the foothills from adjacent land uses such as the hotels located on Bellevue Drive and Barber Court.

As conditions of project approval, the applicant shall implement the following mitigation measures to ensure that the visual and aesthetic impacts of the project are reduced to a less than significant level:

MM VIS-4.1: The proposed project will be subject to architectural and design review. The proposed shopping center identification signs with electronic displays shall be located and oriented in a manner which avoids or minimizes their direct exposure from adjacent or nearby hotel suite uses. Spot or floodlight sources shall be directed to prevent spill light or glare onto adjacent land uses. In order to minimize visual intrusion impacts, the proposed signs shall be located on the site so that, to the extent feasible, the proposed buildings provide shielding of the signs for adjacent land uses. **(Less Than Significant Impact with Mitigation)**

Impact VIS-6: The two proposed shopping center identification signs with electronic displays may result in light and glare impacts on nighttime views from light spillover onto adjacent properties.

MM VIS-6.1: The proposed shopping center identification signs with electronic displays shall be oriented to avoid light spillover onto adjacent properties to the extent feasible. The proposed signs shall also be located so that the proposed buildings on the site will provide a buffer and shield views of the signs, to the extent feasible, from hotel and residential land uses. **(Less Than Significant Impact with Mitigation)**

FINDING: The project’s proposed electronic display signs would have a significant impact on aesthetics. The implementation of Mitigation Measures VIS-4.1 and VIS-6.1 would reduce these impacts to the level of *less than significant impact*.

UTILITIES AND SERVICE SYSTEMS

Impact UTIL-1: The proposed project will substantially increase water demand from the project site.

As conditions of project approval, the applicant shall implement the following mitigation measures to ensure that the utility and service system impacts of the project are reduced to a less than significant level:

MM UTIL-1.1: The proposed project would substantially increase water demand at the site compared to the existing commercial use and zoning designation. Prior to issuance of an occupancy permit, the developer shall implement the following measures, which would reduce impacts to the water system to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:

- The developer shall design and install all water lines necessary to serve the development (including fire flow), sized in accordance with the City’s Water Master Plan and Guidelines.
- The developer shall purchase adequate public system water capacities for the project, including costs for capacity and storage needs above the master plan capacities, as determined by the City.
- Prior to receiving recycled water, the site shall be permitted by South Bay Water Recycling (SBWR). In general, a permit will be granted after the following steps have been completed:
 - Plan Submittal and Approval
 - Inspection
 - Retailer Service Meter
 - Customer Training

MM UTIL-1.2: In accordance with City Ordinance 238.2, the project shall install low-water use landscaping and use high efficiency devices for outdoor water use. **(Less Than Significant Impact with Mitigation)**

Impact UTIL-2: The existing allocated wastewater treatment capacity for the City of Milpitas could be exceeded with development of the project.

MM UTIL-2.1: The project will reduce the City’s available limited treatment capacity at the WPCP. Prior to issuance of an occupancy permit, the developer shall implement the following measures. These measures shall be printed on all construction documents, contracts, and project plans:

The developer shall purchase adequate public sewage system capacities for the respective development. Fees shall consist of connection fees, treatment plant fees up to the build-out master plan levels, plus additional fees for costs of sewage collection and regional plant capacity needs above the build-out master plan capacities, and proportional replacement costs for a new Main sewage pump station above the existing 2004 Master Plan capacities, as determined by the City. **(Less Than Significant Impact with Mitigation)**

FINDING: Implementation of Mitigation Measures UTIL-1.1, UTIL-1.2 and UTIL-2.1 would reduce the project impact on water and sewage to a *less-than-significant level*.

PUBLIC FACILITIES AND SERVICES

Impact PF-4: The project would increase the demand for park and recreational facilities in the City of Milpitas and would partially offset that demand through the provision of open spaces in the proposed development.

As a condition of project approval, the proposed project includes the following measure to reduce its impacts on park and recreational facilities to a less than significant level:

MM PF-4.1: Consistent with the City of Milpitas General Plan for new developments within the Midtown Specific Plan Area, three and one-half acres of neighborhood/community parks would be required per 1,000 residents due to the infill nature of the project. This requirement can be fulfilled through land dedication or through equivalent in-lieu fees. Up to 1.5 acres per 1,000 residents can be developed as usable on-site common or private open space within new residential developments, and the remaining two acres must be developed as public parkland. The proposed project would provide

housing for approximately 1,737 residents and, therefore, would be required to provide approximately 6.08 acres of neighborhood/community park. The on-site common open space areas proposed by the project total approximately 1.76 acres. In accordance with the General Plan, the project would pay in-lieu fees for the remaining parkland acres required by the City. (**Less Than Significant Impact with Mitigation**)

FINDING: Implementation of Mitigation Measure PF-4.1 would reduce the project impact on open space to a *less-than-significant level*.

SIGNIFICANT AND UNAVOIDABLE IMPACTS

AIR QUALITY

Impact AQ-2: The proposed project would result in significant regional air quality impacts associated with reactive organic gases (ROG) and respirable particulates (PM10) emissions.

FINDING: The EIR offers a reasonable and feasible set of mitigation measures to reduce this impact to long term regional air quality. **MM AQ-2.1:** The measures listed below represent reasonable and feasible measures that would reduce air pollutant emissions from the project.

- Provide exterior electrical outlets to encourage use of electrical landscape equipment.
- Prohibit idling of trucks at loading docks for more than three minutes and include signage indicating such a prohibition.
- If necessary, provide 110- and 220-volt electrical outlets at loading docks to eliminate any idling of trucks to operate auxiliary equipment.
- Implement a landscape plan that provides shade trees along pedestrian pathways.
- Implement “Green Building” designs, such as Leadership in Energy and Environmental
- Design (LEED) or GreenPoint Rated for new buildings to increase energy efficiency, which would reduce the future energy demand caused by the project, thus reducing air pollutant emissions indirectly.
- Explore options to provide or share shuttle service to the Tasman Light Rail Station.
- Provide Eco-passes to all new residents.

However, the implementation of these measures, while helping to reduce the impact will not fully reduce the impact to a less than significant level and therefore the impact remains *significant and unavoidable*.

Impact AQ-5: The project would expose sensitive receptors to objectionable odors from the San Jose/Santa Clara Water Pollution Control Plant (WPCP) and Newby Island Landfill. BAAQMD advises that the most effective method of avoiding odor impacts is distance (i.e., separation between the odor source and sensitive receptors); however, the project’s proximity to and downwind location of these sources makes it susceptible to objectionable odors. Forced-air mechanical ventilation will be required on the site to reduce interior noise levels which would also reduce residents’ exposure to objectionable odors. Odor complaints in the vicinity of the project site indicate objectionable odors would impact residents of the proposed project.

The EIR identifies a mitigation measure to reduce the impact. **MM AQ-5.1:** New residents at the project shall be provided notice that the project may be affected by odors generated by a number of facilities in the area. This would inform people who choose to live at the project site of the potential to experience odors.

FINDING: While the mitigation measures may reduce or eliminate potential odor complaints, it cannot reduce the impact to a less-than-significant level and therefore, the impact is *significant and unavoidable*.

Impact C-AQ-1: Based on the project’s inconsistency with the population assumptions in the Ozone Strategy, which is the current CAP for the Bay Area, and the significant increase in regional criteria pollutants resulting from the project, the proposed project would result in a considerable contribution to a cumulative regional air quality impact.

FINDING: Although the proposed project is consistent with the goals of the Clean Air Plan, the project would result in an increase in population that is inconsistent with the population projections contained in the CAP and the project would also significantly contribute to regional criteria pollutant emissions, and therefore, the proposed project would result in a considerable contribution to a cumulatively significant regional air quality impact. The result is a *significant and unavoidable* impact.

TRANSPORTATION AND CIRCULATION

Impact TRANS-2: McCarthy Boulevard/Alder Drive – Project traffic exacerbates LOS E during the PM peak hour. The intersection would operate at LOS E (61.5 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS E (65.2 seconds of delay) with significant increase in critical movement and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

FINDING: The new office development that has been approved for construction on the currently vacant parcel on the west side of the McCarthy Boulevard/Alder Drive intersection will add a fourth leg to this intersection to provide access to the site. Access to this new development will be via an exclusive northbound left-turn lane on McCarthy Boulevard and a westbound through lane on Alder Drive. Southbound traffic to this site would use the existing through lanes which will be converted to a shared through and right turn lane. After completion of these intersection improvements, this intersection will be built out. Under Background Conditions, this intersection would operate at unacceptable LOS during the PM peak-hour. The poor level of service is mainly attributable to the high southbound-to-eastbound left turn volumes. The intersection only provides one southbound left turn lane which is inadequate to accommodate future traffic volumes. Under Project Conditions, traffic operations at this intersection would further deteriorate within the level of service E with critical delay to movements and (V/C) ratio during the PM peak-hour. The addition of a second southbound left-turn lane (from McCarthy Boulevard to Alder Drive) improves intersection operations to acceptable levels (LOS B-). The southbound approach and southbound receiving through lanes on McCarthy Boulevard would need to be shifted westward to accommodate a second southbound left-turn lane. Due to right-of-way constraints, adding a second southbound left-turn lane would not be feasible. Therefore, the project traffic impact at this intersection is considered *significant and unavoidable*.

Impact TRANS-3: Alder Drive/Tasman Drive – Project traffic exacerbates LOS F operations during the PM peak hour. The intersection would operate at LOS F (137 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS F (156.4 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

FINDING: There are no feasible mitigation measures available to reduce the project impact at the intersection of Alder Drive/Tasman Drive to a less than significant level. Conversion of one southbound (Alder Drive) through lane to a left turn lane to provide a total of three southbound left turn lanes improves intersection operations; however, this improvement would impact pedestrian and bicycle activity (which would increase substantially with this and other recently approved residential projects), and degrade vehicle progression and VTA light rail transit operations along Tasman Drive. Thus, the project impact at this intersection is *significant and unavoidable*. Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections (i.e. Tasman Drive/I-880 SB Ramps and Great Mall Parkway/I-880 NB Ramps).

Impact TRANS-4 and TRANS-5: Tasman Drive/I-880 SB Ramps – Project traffic exacerbates LOS E operations during the PM peak hour. The intersection would operate at LOS E (61.7 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS E (64.5 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

Great Mall Parkway/I-880 NB Ramps -- Project traffic exacerbates LOS E operations in the AM peak hour. The intersection would operate at LOS E (61 seconds of delay) under Background Conditions during the AM peak hour. The intersection would operation at LOS F (85 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

FINDING: Signal coordination between this intersection, Great Mall Parkway/I-880 NB Ramps and Alder Drive/Tasman Drive will improve operations at these intersections, but will not reduce these impacts to a less than significant level. There is no feasible mitigation measure to reduce the impact to a less than significant level. The project shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination Tasman Drive/Alder Drive, which will help improve overall traffic circulation in the project area; however, it will not

fund specific improvements necessary to mitigate the project' impact. Thus, the project impact at these intersections is *significant and unavoidable*.

Impact TRANS-9: Eastbound SR 237, McCarthy Boulevard to I-880 – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour. According to CMP guidelines, this constitutes a significant impact.

FINDING: The project proposes a mitigation measure to improve the significant impact. **MM TRANS-9:** The proposed project would impact the segment of Eastbound SR 237 between McCarthy Boulevard and I-880. Mitigation of the project's impacts to SR 237 would require roadway widening that is infeasible for an individual development project to implement due to the extensive nature of the improvements required. When project mitigation measures on CMA facilities are not feasible or fail to improve the level of service to the CMA's LOS standard, a CMA-approved Deficiency Plan must be prepared. The City of Milpitas is currently preparing a Citywide Deficiency Plan (CDP) to identify local and regional transportation improvements. The CDP will include the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines. Pending final approval of the CDP, the City of Milpitas will require the project applicant to implement, the "Immediate Actions" list in Appendix D of the Transportation Impact Analysis Guidelines (May 1998), as part of the project's approval. These actions include measures to encourage alternative modes of transportation and site design guidelines for new development. Measures from the "Immediate Actions" list (refer to Appendix A of this EIR for the full list) that are appropriate for this project include:

- Improve Pedestrian Facilities (A-4)
- Shuttle (B-3)
- Bus Stop Improvements (B-8)
- Traffic signal timing and synchronization program (F-3)
- HOV parking preference program (G-1)
- Bike facilities (G-2)
- Pedestrian circulation system (G-4)

While implementation of these measures would incrementally reduce traffic, they would not reduce the project's freeway impacts to a less than significant level. For this reason and those listed above, the project's freeway impacts are *significant and unavoidable*.

Impact C-TRANS-1: The proposed project would result in a cumulatively considerable contribution to impacts on seven roadway segments during the AM peak hour and 19 roadway segments during the PM peak hour. This represents a significant impact.

FINDING: The project's fair share contribution toward the City's established transportation improvement fees will help improve overall traffic circulation in the project area; however, it will not fund specific improvements necessary to reduce the project's cumulative traffic impacts to a less than significant level. Thus, the project's 2030 cumulative traffic impacts are *significant and unavoidable*.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which "would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project." Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project's significant effects. CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines [Section 15126.6(a)] specify that an EIR identify alternatives which "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." **Alternatives** of this EIR analyzes several alternatives to the Project. A brief summary of these alternatives and their impacts is provided below.

Alternative 1: No Project ("No Build" Scenario). As required by the CEQA Guidelines section 15126.6[e][1], this alternative assumes that the project would not occur, i.e., the three project sites would remain in their present condition.

Alternative 2: Reduced density alternative. Implementation of the proposed project would result in significant LOS impacts to the intersections of Tasman Drive and I-880 SB ramps, Great Mall Parkway and I-880 NB ramps, and the segment of SR 237 between McCarthy Boulevard and I-880. All of the traffic impacts of the project could be eliminated if the project size were reduced to include the 12,800 square foot increase in commercial space on the site and 20 residential units. The Reduced Density Alternative would require a substantial reduction in the amount of development proposed on the site. In addition to avoiding the significant LOS impacts of the project, reducing the total number of residential units would avoid the regional air quality emissions impacts of the project. The Reduced Density Alternative may not be economically viable due to the relatively small amount of development that would be allowed on the site under this alternative. The project site would not be redeveloped with a true mixed use development on an infill site that assists the City in meeting its fair share housing obligation. The Reduced Density Alternative would not create a neighborhood residential units that would be allowed on the site.

Similar to the proposed project, residential development on the site, depending on the location of the development, would be subject to elevated noise levels due to the proximity of the adjacent freeways, but without the shielding from proposed parking structures. The Reduced Density Alternative would also be subject to the same hazardous materials, construction water quality, and cultural resource impacts which would be reduced to a less than significant level with mitigation measures. The impacts to mature trees would likely be reduced since the amount of area required for bioswales would be reduced such that less mature trees on the site would require removal. The visual and aesthetic impacts of the project may increase because the proposed shopping center identification signs with electronic displays would not be shielded by the substantially taller buildings proposed on the site, but the very much smaller buildings would have less impact.

The Reduced Density Alternative would meet any of the project objectives. The allowance of 20 residential units on the site would allow for some mixed-use development, however, it would not be to the extent that it substantially assists the City in providing housing to meet its fair share needs, reducing commute distances, or decreasing the jobs/housing imbalance. The Reduced Density Alternative, however, would reduce the traffic and air quality impacts of the project to a less than significant level. The Reduced Density alternative, therefore, is environmentally superior to the proposed project.

Exhibit D

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Pursuant to CEQA Guidelines § 15093, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Project as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the “Project” whose primary focus is to develop a high quality corporate center that would support technology development enabling additional high tech businesses to locate in the area. Although the City Council believes that many of the unavoidable environmental effects identified in the EIR will be substantially lessened by mitigation measures and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

AIR QUALITY

Impact AQ-2: The proposed project would result in significant regional air quality impacts associated with reactive organic gases (ROG) and respirable particulates (PM10) emissions.

Impact AQ-5: The project would expose sensitive receptors to objectionable odors from the San Jose/Santa Clara Water Pollution Control Plant (WPCP) and Newby Island Landfill. BAAQMD advises that the most effective method of avoiding odor impacts is distance (i.e., separation between the odor source and sensitive receptors); however, the project’s proximity to and downwind location of these sources makes it susceptible to objectionable odors. Forced-air mechanical ventilation will be required on the site to reduce interior noise levels which would also reduce residents’ exposure to objectionable odors. Odor complaints in the vicinity of the project site indicate objectionable odors would impact residents of the proposed project.

Impact C-AQ-1: Based on the project’s inconsistency with the population assumptions in the Ozone Strategy, which is the current CAP for the Bay Area, and the significant increase in regional criteria pollutants resulting from the project, the proposed project would result in a considerable contribution to a cumulative regional air quality impact.

Mitigation: The mitigation measures, in combination with the roadway improvement and traffic congestion reduction mitigations identified in (Transportation) of the Milpitas Square Mixed Use Project EIR, would serve to reduce project-related traffic congestion and associated air emissions, and odor impacts, but the level of reduction would fall short of the emissions reduction needed to reduce the project's cumulative air emissions impact contribution to a less-than-significant level.

TRANSPORTATION AND CIRCULATION

Transportation and Circulation Impact: Unacceptable Intersection Operations. Development of the Project as proposed could result in unacceptable operations at multiple intersections in and around the Project site. These intersections are listed below:

Impact TRANS-2: McCarthy Boulevard/Alder Drive – Project traffic exacerbates LOS E during the PM peak hour. The intersection would operate at LOS E (61.5 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS E (65.2 seconds of delay) with significant increase in critical

movement and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

Impact TRANS-3: Alder Drive/Tasman Drive – Project traffic exacerbates LOS F operations during the PM peak hour. The intersection would operate at LOS F (137 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS F (156.4 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

Impact TRANS-4 and TRANS-5: Tasman Drive/I-880 SB Ramps – Project traffic exacerbates LOS E operations during the PM peak hour. The intersection would operate at LOS E (61.7 seconds of delay) under Background Conditions during the PM peak hour. Under Project Conditions, it would operate at LOS E (64.5 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

Great Mall Parkway/I-880 NB Ramps -- Project traffic exacerbates LOS E operations in the AM peak hour. The intersection would operate at LOS E (61 seconds of delay) under Background Conditions during the AM peak hour. The intersection would operation at LOS F (85 seconds of delay) with significant increase in critical-movement delay and demand-to-capacity ratio (V/C). According to the City of Milpitas guidelines, this would constitute a significant impact.

Mitigation: While a number of mitigation measures improve the impacts described above, there are no feasible mitigation measures to reduce the Project impact at these intersections to a less than significant level.

Transportation and Circulation Impact: Unacceptable Freeway Operations. Added traffic from implementation of the proposed Project will exacerbate already unacceptable traffic operations on the following freeway segments:

Impact TRANS-9: Eastbound SR 237, McCarthy Boulevard to I-880 – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour. According to CMP guidelines, this constitutes a significant impact.

Impact - 2030 Cumulative - C-TRANS-1: The proposed project would result in a cumulatively considerable contribution to impacts on seven roadway segments during the AM peak hour and 19 roadway segments during the PM peak hour. This represents a significant impact.

Mitigation: While a number of mitigation measures improve the impacts described above, there are no feasible mitigation measures to reduce the Project impact to a less than significant level because of the uncertainty of the quality, nature and timing of future developments and the mitigation funding they might provide.

Overriding Considerations

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the Milpitas Square Mixed Use Project EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to redevelop the 16.85-acre regional shopping center over time into a very high density mixed use project allowing up to 900 dwelling units and 175,000 square feet of commercial in a vertical mixed use setting. The City Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the development of the site that will increase the city's job base, economic vitality, promote more integration with commercial serving and residential uses, thus reducing to the extent possible environmental impacts.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the social, environmental, economic and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits, any one of which independently outweighs the Project's unavoidable significant impacts.

Provides High Density Mixed Use. The Project provides the opportunity to intensify development in an appropriate area near major freeways, and will respond to strong market interest in integrated mixed use in taller buildings, thus lending itself to compact development, as opposed to single story, single use structures that would lead to unwanted urban sprawl and inefficient use of scarce land and other natural resources.

Strengthens the City's Tax Base. The Project provides for the opportunity for new commercial enterprises to develop and provides for the convenience of having a high density population near and/or above commercial serving uses. The result will be increased sales tax and property tax revenues. Such revenues provide a primary funding source for a number of essential City services, programs, and facilities, including fire and police protection services, recreation programs, public infrastructure, and neighborhood beautification.

Supports Local Construction Activity. The Project will provide construction jobs as well as other new commercial and residential space installation-related stimulus to the local economy.

Economic Diversity. The Project will emphasize and promote employment and increase the healthy mix of economic development opportunities within the City, thereby complementing economic development strategies for the surrounding area and other parts of the City. A wide variety and diversity of retail, service, and restaurant uses would be available within the Project.

Subregional Draw. The Project provides a unique, integrated mixed-use "urban village" development that would serve as a subregional destination of interest for culinary, employment, retail, and commercial activity.

Considering all factors, the City Council finds that there are specific economic, legal, social, technological and other considerations associated with the Project that outweigh the Project's significant unavoidable effects, and the adverse effects are therefore considered acceptable.

Exhibit E

Mitigation Monitoring and Reporting Program

**MITIGATION MONITORING AND
REPORTING PROGRAM**

**MILPITAS SQUARE MIXED-USE
DEVELOPMENT**

(SCH# 2008022065)

CITY OF MILPITAS

NOVEMBER 2010

P R E F A C E

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

On November 16, 2010, the Final EIR was certified for the Milpitas Square Mixed-Use Development project by the Milpitas City Council. The Environmental Impact Report concluded that the implementation of the project could result in significant effects on the environment, and where feasible, mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program outlines these measures and how, when, and by whom they will be implemented.

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
LAND USE						
<p>Impact LU-1: The proposed project may result in land use compatibility impacts due to the proposed placement of two shopping center identification signs with electronic displays on the site and the potential for disturbance caused by nighttime light emission.</p>	<p>MM LU-1.1: The proposed shopping center identification signs with electronic displays shall be oriented so that the displays are visible primarily from the adjacent freeway traffic in order to reduce the incidence of light spillover onto adjacent properties. The proposed shopping center identification signs with electronic displays shall also be located so that the proposed buildings on the site will provide a buffer and shield views of the signs, to the extent feasible, from adjacent sensitive land uses and the residential development proposed on the site and/or that the orientation and design of residential buildings on-site shall be reviewed and approved by the City taking into consideration measures mitigating any perceived negative impacts of such electronic displays on occupants of such buildings as well as in addition to location of such electronic signage displays. The final location of</p>	<p>Prior to the issuance of a building permit, the applicant shall submit project plans demonstrating compliance.</p>	<p>This measure shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	the shopping center identification signs with electronic displays may require some modifications to the proposed bioswales on the site; however, the function of the proposed swales will be retained.					
Impact LU-5: Due to the lack of a helicopter pad on buildings exceeding 150 feet in height, the proposed project conflicts with the City’s regulations adopted for the purpose of avoiding or mitigating an environmental effect.	MM LU-5.1: In accordance with the California Fire Code Section 1001.12, as amended by the Milpitas Municipal Code, the project will be conditioned to include the construction of helicopter pads on all buildings on the project site exceeding 150 feet in height (Buildings B and F) which meet the requirements of the Milpitas Fire Department or provide alternative measures for such buildings as required and approved by the Fire Department to conform to the Milpitas Municipal Code for emergency access. Prior to the issuance of an occupancy permit, the Fire Marshall shall inspect the helicopter pad and/or the construction of approved alternative measures to ensure compliance with the Municipal Code.	Prior to the issuance of an occupancy permit, the applicant shall ensure this measure mitigation is implemented	This measure shall be printed on all construction documents, contracts, and project plans.	Fire Marshall		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
TRANSPORTATION						
<p>Impact TRANS-1: McCarthy Boulevard/Bellew Drive – Intersection operations degrade from LOS D- to LOS F during the PM peak hour.</p>	<p>MM TRANS-1.1: McCarthy Boulevard/Bellew Drive – Prior to issuance of a building permit, the developer shall modify the roadway and traffic signal facilities or pay a fair share contribution into an account created by the City of Milpitas for the sole purpose of providing two eastbound left turn lanes and one shared through/right turn lane, which would provide acceptable (LOS D-) operations. This improvement, in conjunction with optimizing the signal coordination along the McCarthy Boulevard corridor, would also provide acceptable midday operations at this intersection. Installation of the double eastbound left turn lanes requires median island and traffic signal modification work on Bellew Drive from Barber Lane to Technology Drive and on McCarthy Boulevard from Bellew Drive to Ranch Drive. To ensure proper operation, these improvements must also be coordinated with modifications for the</p>	<p>Prior to the issuance of a building permit, the developer will modify the roadway or pay a fair share contribution toward the construction of the necessary improvements.</p>	<p>This measure shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	intersection of Bellew Drive and Cypress Drive.					
Impact TRANS-3: Alder Drive/Tasman Drive – Project traffic exacerbates LOS F operations during the PM peak hour.	MM TRANS-3.1: <i>Alder Drive/Tasman Drive</i> – There are no feasible mitigation measures available to reduce the project impact at the intersection of Alder Drive/Tasman Drive to a less than significant level. Conversion of one southbound (Alder Drive) through lane to a left turn lane to provide a total of three southbound left turn lanes improves intersection operations; however, this improvement would impact pedestrian and bicycle activity (which would increase substantially with this and other recently approved residential projects), and degrade vehicle progression and VTA light rail transit operations along Tasman Drive. Thus, the project impact at this intersection is significant and unavoidable. Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination	Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections.	The measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	with adjacent intersections (i.e. Tasman Drive/I-880 SB Ramps and Great Mall Parkway/I-880 NB Ramps).					
Impact TRANS-4: Tasman Drive/I-880 SB Ramps – Project traffic exacerbates LOS E operations during the PM peak hour.	MM TRANS-4.1: <i>Tasman Drive/I-880 SB Ramps</i> – Prior to issuance of a building permit, the applicant shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections (i.e., Tasman Drive/Alder Drive and Great Mall Parkway/I-880 NB Ramps).	Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections.	The measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
Impact TRANS-5: Great Mall Parkway/I-880 NB Ramps – Project traffic exacerbates LOS E operations in the AM peak hour.	MM TRANS-5.1: <i>Great Mall Parkway/I-880 NB Ramps</i> – Prior to issuance of a building permit, the applicant shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections (i.e. Tasman Drive/I-880 SB Ramps and Tasman Drive/Alder Drive).	Prior to issuance of a building permit, the developer shall provide all funding necessary for the design and implementation of traffic operation improvements to help in signal coordination with adjacent intersections.	The measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
Impact TRANS-6: McCarthy Boulevard-O’Toole	MM TRANS-6.1: <i>McCarthy Boulevard-O’Toole Avenue/Montague Expressway</i>	Prior to the issuance of a building permit, the	All measures shall be printed on all	Director of Planning and Neighborhood		

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<p>Avenue/Montague Expressway (Milpitas) – Project traffic degrades intersection operations from LOS D- to LOS E+ in the AM peak hour and exacerbates LOS F operations during the PM peak hour.</p> <p>Impact TRANS-7: McCarthy Boulevard-O’Toole Avenue/Montague Expressway (San José) – Project traffic degrades intersection operations from LOS D- to LOS E+ in the AM peak hour and exacerbates LOS F operations during the PM peak hour.</p>	<p><i>(Option 1)</i> – Prior to the issuance of a building permit, the developer shall construct the identified improvements or pay a fair share contribution for the value of the improvement and right-of-way needed into an account created by the City of Milpitas for the sole purpose of providing the necessary improvements. Mitigation that reduces sidewalk widths below the City standard is not allowed under City of San José Transportation Impact Policy 5-3. The standard sidewalk width in North San José is five feet. The existing sidewalk is five and one-half feet wide. Therefore, in order to implement this mitigation consistent with adopted policy, approximately two and one-half feet of right-of-way behind the sidewalk in the landscape area of the adjacent development would need to be acquired from the adjacent private property for the length of the dedicated right turn lane. This equates to the acquisition of approximately 513 square feet of right-of-way (i.e., 2.5 square</p>	<p>developer shall construct the identified improvements or pay a fair share contribution for the value of the improvement and right-of-way needed into an account created by the City of Milpitas for the sole purpose of providing the necessary improvements.</p> <p>- and -</p> <p>Prior to the issuance of a building permit, the developer shall pay an in-lieu fee to the City of San José toward the planned square-loop interchange at this intersection.</p>	<p>construction documents, contracts, and project plans.</p>	<p>Services</p>		

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	<p>feet x 250 feet = 625 square feet). The mitigation would also require relocating existing utilities (e.g., a light pole). The landscape reduction and utility relocation would not result in a significant impact. The south half of the intersection is within the jurisdiction of the City of San José and, therefore this mitigation is outside the control of the City of Milpitas to implement.</p> <p>MM TRANS-6.2: <i>McCarthy Boulevard-O'Toole Avenue/Montague Expressway (Option 2)</i> – A square-loop interchange is planned to be constructed at the intersection of McCarthy Boulevard-O'Toole Avenue/Montague Expressway under Phase 3 of the North San José Area Development Policy (NSJADP). With the square loop interchange, a level of service is not reported at this location because the intersection is eliminated (Montague Expressway will be elevated over McCarthy Boulevard with on and off-</p>					

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	<p>ramps located to the west) and the project’s impact at this location will be less than significant. The City of San José has stated that payment of an in-lieu fee towards the planned square-loop interchange is acceptable and is the preferred mitigation for the project impact at this intersection. The dollar amount of the in-lieu fee would be equal to the appraised value of the right-of-way needed to construct the dedicated right turn lane (625 square feet, described in Option 1, above) and the value of the identified improvements. The NSJADP is the adopted program that would allow for a fair-share contribution to this mitigation. The NSJADP does not establish a timeline for the development phases. As with this proposed project and its impacts, the amount of development in North San José and its timing will be determined by the economy, markets, and the decisions made by private sector property owners and developers.</p>					

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	Therefore, if the City of Milpitas accepts the City of San José’s timeline for implementation of the mitigation (i.e., unknown), then payment of the in-lieu fee would mitigate the project’s traffic impact at the intersection of McCarthy Boulevard-O’Toole Avenue/Montague Expressway.					
Impact TRANS-9: Eastbound SR 237, McCarthy Boulevard to I-880 – Traffic from the proposed project causes the freeway segment to degrade from LOS E to LOS F during the PM peak hour.	MM TRANS-9: The proposed project would impact the segment of Eastbound SR 237 between McCarthy Boulevard and I-880. Mitigation of the project’s impacts to SR 237 would require roadway widening that is infeasible for an individual development project to implement due to the extensive nature of the improvements required. When project mitigation measures on CMA facilities are not feasible or fail to improve the level of service to the CMA’s LOS standard, a CMA-approved Deficiency Plan must be prepared. The City of Milpitas is currently preparing a Citywide Deficiency Plan (CDP) to identify local and	Prior to the issuance of a building permit, the project applicant will be required to implement appropriate measures to encourage alternative modes of transportation, including site design measures.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		

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	<p>regional transportation improvements. The CDP will include the “Immediate Actions” list in Appendix D of the Transportation Impact Analysis Guidelines. Pending final approval of the CDP, the City of Milpitas will require the project applicant to implement, the “Immediate Actions” list in Appendix D of the Transportation Impact Analysis Guidelines (May 1998), as part of the project’s approval. These actions include measures to encourage alternative modes of transportation and site design guidelines for new development. Measures from the “Immediate Actions” list (refer to Appendix A of this EIR for the full list) that are appropriate for this project include:</p> <ul style="list-style-type: none"> • Improve Pedestrian Facilities (A-4) • Shuttle (B-3) • Bus Stop Improvements (B-8) • Traffic signal timing and synchronization program (F-3) 					

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	<ul style="list-style-type: none"> • HOV parking preference program (G-1) • Bike facilities (G-2) • Pedestrian circulation system (G-4) 					

AIR QUALITY

<p>Impact AQ-2: The proposed project would result in significant regional air quality impacts associated with reactive organic gases (ROG) and respirable particulates (PM₁₀) emissions.</p>	<p>MM AQ-2.1: The measures listed below represent reasonable and feasible measures that would reduce air pollutant emissions from the project.</p> <ul style="list-style-type: none"> • Provide exterior electrical outlets to encourage use of electric-powered landscape equipment. • Prohibit idling of trucks at loading docks for more than three minutes and include signage indicating such a prohibition. • If necessary, provide 110- and 220-volt electrical outlets at loading docks to eliminate any idling of trucks to operate auxiliary equipment. • Implement a landscape plan that provides shade trees along pedestrian pathways. • Implement “Green Building” designs, such as Leadership in Energy and 	<p>Prior to the issuance of a building permit, the applicant shall submit project plans demonstrating compliance.</p>	<p>This measure shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		
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	<p>Environmental Design (LEED) or GreenPoint Rated for new buildings to increase energy efficiency, which would reduce the future energy demand caused by the project, thus reducing air pollutant emissions indirectly.</p> <ul style="list-style-type: none"> • Explore options to provide or share shuttle service to the Tasman Light Rail Station. • Provide Eco-passes to all new residents. 					
<p>Impact AQ-4: The proposed project would expose residents to levels of diesel particulate matter (DPM) in excess of BAAQMD thresholds.</p>	<p>MM AQ-4.1: Controlling the exposure of future occupants to diesel particulate matter during the first five years of the project could reduce the impact to a less than significant level. The exposure could be controlled in two ways: delay occupancy of Buildings C, E, and F by up to three years (until 2015) where significant health risks are predicted, or provide centralized forced air mechanical ventilation systems with appropriate filter systems in those units and discourage the occupants from using the windows.</p>	<p>Prior to the issuance of an occupancy permit, the applicant shall demonstrate compliance.</p>	<p>This measure shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

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	<p>A properly designed and installed heating, ventilation and air conditioning (HVAC) system with proper filtration would adequately reduce exposure to particulate matter. This HVAC system shall maintain positive pressure in all living areas and include high efficiency filters for particulates. Air intakes for the HVAC systems shall be placed at positions that minimize roadway air pollution sources. A licensed mechanical engineer shall certify that the designed HVAC system offers the best available technology to minimize outdoor to indoor transmission of air pollution. The developer shall ensure an ongoing maintenance plan for the HVAC and filtration systems. Residences would have to be equipped with low-air infiltration windows and sealed doors to prevent air contamination. Opening of windows by occupants would reduce the effectiveness of this measure. Instructions regarding the proper use of any installed</p>					

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	<p>air filtration systems shall be provided to future occupants.</p> <p>In addition, the project applicant shall provide notification (e.g., in the form of a fact sheet) to new affected project residents of the incremental health risks presented by exposure to concentrations of diesel particulate matter generated by SR 237 and I-880 truck traffic. This notification shall describe the harmful effects of diesel particulate matter, sources of this contaminant, potential level of exposure and the planning/regulatory efforts being taken to reduce harmful effects.</p>					
Impact AQ-5: Odor complaints in the vicinity of the project site indicate objectionable odors would impact residents of the proposed project.	MM AQ-5.1: New residents at the project shall be provided notice that the project may be affected by odors generated by a number of facilities in the area. This would inform people who choose to live at the project site of the potential to experience odors.	Prior to the issuance of an occupancy permit, the applicant shall demonstrate compliance.	This measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
Impact AQ-6: Construction activities on the project site could	MM AQ-6.1: Implementation of the measures recommended by BAAQMD and listed below	During demolition/construction, the developer shall	All measures shall be printed on all	Director of Planning and Neighborhood		

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<p>result in PM₁₀ levels downwind of the project site that exceed State standards.</p>	<p>would reduce the air quality impacts associated with grading and new construction to a less than significant level. These measures are required as conditions of approval and shall be included on the construction documents and plans.</p> <ul style="list-style-type: none"> • Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times. • Cover all hauling trucks or maintain at least two feet of freeboard. • Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas. • Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads. 	<p>ensure these measures are implemented.</p>	<p>construction documents, contracts, and project plans.</p>	<p>Services</p>		

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	<ul style="list-style-type: none"> Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more). Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles. Limit traffic speeds on any unpaved roads to 15 mph. Replant vegetation in disturbed areas as quickly as possible. Suspend construction activities that cause visible dust plumes to extend beyond the construction site. 					
<p>Impact AQ-7: The proposed project could result in significant diesel particulate matter emissions during project construction.</p>	<p>MM AQ-7.1: As conditions of approval, the applicant shall implement the following measures to reduce the short-term health impacts of diesel particulate matter and PM_{2.5} emissions to nearby sensitive receptors from construction to a less than significant level. These measures shall be included on the construction documents and plans.</p> <ul style="list-style-type: none"> Diesel equipment standing 	<p>During demolition/construction, the developer shall ensure these measures are implemented.</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

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	<p>idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.</p> <ul style="list-style-type: none"> • Prohibit the use of “dirty” equipment. Opacity is an indicator of exhaust particulate emissions from off-road diesel-powered equipment. The applicant shall ensure that emissions from all construction diesel-powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately. • The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. 					

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	compressors). • Properly tune and maintain equipment for low emissions.					
NOISE AND VIBRATION						
Impact NV-1: The proposed common open space area in Building E would be exposed to exterior noise levels exceeding 65 dBA DNL.	MM NV-1.1: Proposed rooftop open space areas on Building E should be located away from sources of roadway noise and must include 25-foot-wide areas that are acoustically shielded by walls at least ten feet in height. Having some activity areas (e.g. pools) that exceed 60 dBA DNL may be acceptable if residents have usable quiet areas available that are acoustically protected. A qualified acoustical consultant shall review final site plans and building elevations prior to the issuance of a building permit to calculate noise levels in proposed open spaces and ensure compliance with City policies.	Prior to the issuance of a building permit, the project applicant shall ensure these measures are implemented.	These measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
Impact NV-2: The proposed project would be exposed to interior noise levels exceeding 45 dBA DNL without the incorporation of noise attenuation	MM NV-2.1: A project-specific acoustical analysis is required by the City of Milpitas prior to issuance of building permits to insure that interior noise levels will be reduced to 45 dBA DNL or lower.	Prior to the issuance of a building permit, the applicant shall submit an acoustical analysis and building plans	The required measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		

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measures in the building design.	<p>Building sound insulation requirements will need to include the provision of forced-air mechanical ventilation for all outer facing residential units so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques may be required in areas exposed to sound levels of 70 dBA DNL or greater. These treatments could include sound rated windows and doors, sound rated wall constructions, acoustical caulking, etc. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA DNL or lower.</p> <p>A qualified acoustical consultant shall review final site plans, building elevations, and floor plans prior to the</p>	demonstrating compliance.				

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	issuance of a building permit to calculate expected interior and exterior noise levels and ensure compliance with City policies and State noise regulations.					
Impact NV-5: Businesses within the project area would be exposed to intermittent high noise levels from project construction.	<p>MM NV-5.1: With the implementation of the following measures, construction noise impacts would be reduced to a less than significant level:</p> <ul style="list-style-type: none"> • Utilize ‘quiet’ models of air compressors and other stationary noise sources where technology exists; • Prohibit all unnecessary idling of internal combustion engines and equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment; • Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from businesses or noise-sensitive land uses; • Notify all adjacent land 	During demolition/construction, the developer shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		

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	<p>uses of the construction schedule in writing;</p> <ul style="list-style-type: none"> • Designate a disturbance coordinator, responsible for responding to complaints about construction noise. The name and telephone number of the disturbance coordinator shall be posted at the construction site and made available to businesses, residences or noise-sensitive land uses adjacent to the construction site; • If pile driving is necessary, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile; and • If pile driving is necessary, when possible the project shall work with the owners and managers of adjacent commercial uses to select days and times to conduct pile-driving activities that would minimize the impact on these uses. 					
Impact NV-6: Businesses on the project site and in the vicinity of the project	MM NV-6.1: With the implementation of the following measures, in addition to the measures specified in	During demolition/ construction, the developer shall ensure these	All measures shall be printed on all construction	Director of Planning and Neighborhood Services		

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could be exposed to construction related vibration during the excavation and foundation work of the project, particularly if pile driving is used as a construction method.	<p>MM NV-5.1, construction vibration impacts would be reduced to a less than significant level:</p> <ul style="list-style-type: none"> • Avoid impact pile driving where possible. Drilled piles or slab mats causes lower vibration levels where geological conditions permit their use; • Identify any highly vibration sensitive uses located on the adjoining properties and/or remaining commercial uses; • If impact pile driving is proposed within 50 feet of adjacent structures or within 200 feet of any highly sensitive uses identified in the adjoining buildings, a construction vibration-monitoring plan would need to be implemented to document conditions prior to, during and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural 	measures are implemented.	documents, contracts, and project plans.			

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	<p>Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall be implemented to include the following tasks:</p> <ul style="list-style-type: none"> ▪ Schedule pile driving so that piles furthest from adjacent structures are driven first, and only after vibration levels are found to be within the limits is pile driving allowed at closer distances. ▪ Performance of a photo survey, elevation survey, and crack monitoring survey for each impacted structure. Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion and shall include internal and external crack monitoring in 					

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	<p>structures, settlement, and distress and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.</p> <ul style="list-style-type: none"> ▪ Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approached the limits. ▪ At a minimum, vibration monitoring shall be conducted 					

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	<p>during pavement demolition, excavation, and pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.</p> <ul style="list-style-type: none"> ▪ If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures. ▪ Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. ▪ Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or 					

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	<p>compensation where damage has occurred as a result of construction activities.</p> <ul style="list-style-type: none"> ▪ The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report will include a description of measurement methods, equipment used, calibration certificates and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper documentation supporting any such claims. 					

HAZARDS AND HAZARDOUS MATERIALS

Impact HM-1: If on-site soils are contaminated with	MM HM-1.1 & 2.1: Prior to the issuance of a Grading Permit, but after removal of	Prior to the issuance of a grading permit, but	These measures shall be printed on all	Director of Planning and Neighborhood		
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<p>agricultural chemicals, construction personnel working on the proposed project would be exposed to these chemicals.</p> <p>Impact HM-2: If on-site soils are contaminated with agricultural chemicals, improper disposal of soil could contaminate the environment.</p>	<p>pavement for each of the project phases, the developer shall implement the following measures, which would reduce potential impacts related to pesticide contaminated soil to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:</p> <ul style="list-style-type: none"> • Soil on the site will be sampled and tested for organochloride pesticides and associated heavy metals by qualified professionals (e.g., a California-Registered Environmental Assessor and analyzed by a State certified laboratory). The results of the soil sampling shall be submitted to the City of Milpitas for review. • If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with agricultural pesticides and/or heavy metals above residential Environmental Screening Level (ESL) thresholds established by the Regional Water Quality 	<p>after removal of pavement for each of the project phases, the developer shall implement the following measures.</p>	<p>construction documents, contracts, and project plans.</p>	<p>Services</p>		

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	<p>Control Board (RWQCB), a Soil Management Plan (SMP) will be prepared for the proposed project and submitted to the City of Milpitas for review and approval. The City may also refer this site to Santa Clara County Department of Environmental Health for further review if sample test results indicate contamination above California Human Health Screening Levels (CHHSLs). The SMP would detail the handling/disposal of the contaminated soil in a manner that ensures workers, adjacent uses, and the environment are protected. The main objective of the SMP is to establish protocols for the contractor in handling on-site soil during redevelopment of the site (e.g., preparation of a Health and Safety Plan).</p> <ul style="list-style-type: none"> • If the results of the soil sampling/testing indicate that the soil on the project site is contaminated with 					

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	agricultural pesticides and/or heavy metals above CHHSLs, all soil off-hauled from the project site will be disposed of at an appropriate facility that is designed and operated to accept and dispose of contaminated soils. California Total Threshold Limit Concentration (TTLC) values may be used to assist in the proper disposal of the contaminated soil.					

HYDROLOGY AND WATER QUALITY

Impact HYD-2: Construction of the proposed project could result in a significant temporary increase in the amount of contaminants in stormwater runoff during construction and, therefore, requires the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP).	MM HYD-2.1: The following measures, based on Regional Water Quality Control Board Best Management Practices, have been included in the project to reduce construction-related water quality impacts. All mitigation will be implemented prior to the start of earthmoving activities on-site and will continue until the construction is complete. These measures shall be printed on all construction documents, contracts, and project plans:	All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue until dewatering is complete.	These measures shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
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	<ul style="list-style-type: none"> • Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains. • Earthmoving or other dust-producing activities shall be suspended during periods of high winds. • All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary. • Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered. • All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard. • All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). In addition, a tire wash system may be required. • Vegetation in disturbed 					

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Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
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	<p>areas shall be replanted as quickly as possible.</p> <ul style="list-style-type: none"> • All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City. • A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation. • The project proponent will submit a copy of the draft 					

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<p>SWPPP to the City of Milpitas for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.</p> <ul style="list-style-type: none"> When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Milpitas. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan is in place as described in the SWPPP for the site. 					
Impact HYD-3: Dewatering during project construction and, if needed, after construction could pollute surface water	MM HYD-3.1: The following measures shall be implemented by the applicant to reduce water quality impacts that could result during dewatering to a less than significant level. The project	All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue	These measures shall be printed on all construction documents, contracts, and	Director of Planning and Neighborhood Services		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
with sediment or hazardous materials.	<p>shall also be compliant with all applicable requirements of the City's NPDES permit in place when the project application is deemed complete. All mitigation shall be implemented prior to the start of earthmoving activities on-site and will continue until dewatering is complete.</p> <p>These measures shall be printed on all construction documents, contracts, and project plans:</p> <ul style="list-style-type: none"> • Groundwater below the project site shall be sampled and tested for contaminants. <ul style="list-style-type: none"> ▪ If groundwater contaminant levels are below discharge thresholds, the project must receive City approval prior to discharge of groundwater into the City's storm drain system. This permit will specify the sediment removal measures to be implemented during 	until dewatering is complete.	project plans.			

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<p>dewatering (e.g., settling tank, particulate filters, etc.) and the frequency of ongoing water quality testing.</p> <ul style="list-style-type: none"> ▪ If groundwater contaminant levels are above discharge thresholds, the project shall obtain an NPDES permit from the RWQCB prior to discharging the water into the stormdrain system. This permit will specify the groundwater treatment measures and the water quality treatment standards that shall be achieved prior to discharge into the storm drain system, the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.), and the frequency of ongoing water quality testing. 					

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
BIOLOGICAL RESOURCES						
<p>Impact BIO-2: The proposed project will remove four ordinance-size trees on the site.</p>	<p>MM BIO-2.1: Prior to receiving an occupancy permit, the applicant shall implement the following measures, which would reduce the impact of the loss of ordinance-size trees on the project site to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:</p> <ul style="list-style-type: none"> • In conformance with the City of Milpitas Zoning Ordinance, all trees removed from the site that measure 37 inches or greater in circumference (12-inches in diameter) at four feet six inches above the ground surface will be replaced in-kind at a 3:1 ratio within the project site. • Trees that are removed but cannot be mitigated on-site due to lack of available planting area, will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within 	<p>Prior to receiving an occupancy permit, the applicant shall implement the required measure.</p>	<p>These measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	the City of Milpitas.					
CULTURAL RESOURCES						
<p>Impact CULT-1: The project site is located in an area that contains several recorded prehistoric archaeological sites and, therefore, excavation for the project has the potential to encounter and damage archaeological resources.</p>	<p>MM CULT-1.1: A qualified archaeologist shall be retained to inspect the parcel for buried resources following demolition of existing buildings and site clearing during each phase of the project. In the event that any archaeological materials are encountered, work shall be stopped in the area designated by the project archaeologist until a plan has been submitted to the Milpitas Planning Division for the evaluation of the resource as required by CEQA. Evaluation typically takes the form of limited hand excavation of the suspected deposit to determine if it 1) possesses integrity (is not historically disturbed) and 2) possesses information and/or materials which would make it eligible for inclusion on the California Register of Historic Resources.</p> <p>MM CULT-1.2: If evaluative testing demonstrates that further construction related earthmoving will affect a</p>	<p>Prior to the issuance of a grading permit, but after removal of pavement for each of the project phases, the developer shall implement the following measures.</p>	<p>These measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<p>register eligible resource, a plan for the mitigation of impacts to the resource shall be submitted to the Milpitas Planning Director for approval. Mitigation can include limited additional hand excavation to retrieve additional data from the deposit, coupled with archaeological monitoring of all subsequent construction related earthmoving inside the area designated as archaeologically sensitive to insure that significant archaeological materials and/or information are retrieved for future analysis and report preparation.</p> <p>MM CULT-1.3: Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara</p>					

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<p>County Coroner shall be notified by the project applicant and the Coroner shall make a determination as to whether the remains are Native American.</p> <p>If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.</p>					
VISUAL AND AESTHETICS						
Impact VIS-4: The proposed shopping center identification signs with electronic displays would intrude into views of the foothills from adjacent land uses such as the hotels located on Bellew	MM VIS-4.1: The proposed project will be subject to architectural and design review. The proposed shopping center identification signs with electronic displays shall be located and oriented in a manner which avoids or minimizes their direct exposure	Prior to the issuance of a building permit, the applicant shall submit project plans demonstrating compliance.	This measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
Drive and Barber Court.	from adjacent or nearby hotel suite uses. Spot or floodlight sources shall be directed to prevent spill light or glare onto adjacent land uses. In order to minimize visual intrusion impacts, the proposed signs shall be located on the site so that, to the extent feasible, the proposed buildings provide shielding of the signs for adjacent land uses.					
Impact VIS-6: The two proposed shopping center identification signs with electronic displays may result in light and glare impacts on nighttime views from light spillover onto adjacent properties.	MM VIS-6.1: The proposed shopping center identification signs with electronic displays shall be oriented to avoid light spillover onto adjacent properties to the extent feasible. The proposed signs shall also be located so that the proposed buildings on the site will provide a buffer and shield views of the signs, to the extent feasible, from hotel and residential land uses.	Prior to the issuance of a building permit, the applicant shall submit project plans demonstrating compliance.	This measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
UTILITIES AND SERVICE SYSTEMS						
Impact UTIL-1: The proposed project will substantially increase water demand from the project site.	MM UTIL-1.1: The proposed project would substantially increase water demand at the site compared to the existing commercial use and zoning designation. Prior to issuance	Prior to issuance of an occupancy permit, the developer shall implement the following	These measures shall be printed on all construction documents, contracts, and	Director of Planning and Neighborhood Services		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<p>of an occupancy permit, the developer shall implement the following measures, which would reduce impacts to the water system to a less than significant level. These measures shall be printed on all construction documents, contracts, and project plans:</p> <ul style="list-style-type: none"> • The developer shall design and install all water lines necessary to serve the development (including fire flow), sized in accordance with the City’s Water Master Plan and Guidelines. • The developer shall purchase adequate public system water capacities for the project, including costs for capacity and storage needs above the master plan capacities, as determined by the City. • Prior to receiving recycled water, the site shall be permitted by South Bay Water Recycling (SBWR). In general, a permit will be granted after the following steps have been completed: 	measures.	project plans.			

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	<ul style="list-style-type: none"> ▪ Plan Submittal and Approval ▪ Inspection ▪ Retailer Service Meter ▪ Customer Training <p>MM UTIL-1.2: In accordance with City Ordinance 238.2, the project shall install low-water use landscaping and use high efficiency devices for outdoor water use.</p>					
<p>Impact UTIL-2: The existing allocated wastewater treatment capacity for the City of Milpitas could be exceeded with development of the project.</p>	<p>MM UTIL-2.1: The project will reduce the City’s available limited treatment capacity at the WPCP. Prior to issuance of an occupancy permit, the developer shall implement the following measures. These measures shall be printed on all construction documents, contracts, and project plans:</p> <ul style="list-style-type: none"> • The developer shall purchase adequate public sewage system capacities for the respective development. Fees shall consist of connection fees, treatment plant fees up to the buildout master plan levels, plus additional fees for costs of sewage collection and regional plant capacity needs above 	<p>Prior to issuance of an occupancy permit, the developer shall implement these measures.</p>	<p>These measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning and Neighborhood Services</p>		

**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	the build-out master plan capacities, and proportional replacement costs for a new Main sewage pump station above the existing 2004 Master Plan capacities, as determined by the City.					

PUBLIC FACILITIES AND SERVICES

Impact PF-4: The project would increase the demand for park and recreational facilities in the City of Milpitas and would partially offset that demand through the provision of open spaces in the proposed development.	MM PF-4.1: Consistent with the City of Milpitas General Plan for new developments within the Midtown Specific Plan Area, three and one-half acres of neighborhood/ community parks would be required per 1,000 residents due to the infill nature of the project. This requirement can be fulfilled through land dedication or through equivalent in-lieu fees. Up to 1.5 acres per 1,000 residents can be developed as usable on-site common or private open space within new residential developments, and the remaining two acres must be developed as public parkland. The proposed project would provide housing for approximately 1,737 residents and, therefore, would be	Prior to the issuance of a building permit, the project applicant shall ensure this measure is implemented.	This measure shall be printed on all construction documents, contracts, and project plans.	Director of Planning and Neighborhood Services		
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**Mitigation Monitoring and Reporting Program
Milpitas Square Mixed-Use Development**

Impact	Mitigation or Avoidance Measure(s)	Monitoring			Verification	
		Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation	Signature	Date
	required to provide approximately 6.08 acres of neighborhood/community park. The on-site common open space areas proposed by the project total approximately 1.76 acres. In accordance with the General Plan, the project would pay in-lieu fees for the remaining parkland acres required by the City.					

Source: City of Milpitas. Milpitas Square Mixed-Use Development Final EIR. September 2009.

REGULAR

NUMBER: 38.794

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CITY’S ZONING SECTIONAL MAP, CHANGING THE ZONING DESIGNATION OF 16.85 ACRES FROM GENERAL COMMERCIAL TO VERY HIGH DENSITY MIXED USE WITH SITE AND ARCHITECTURAL OVERLAY (PARCEL 086-01-043) AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND MILPITAS SQUARE, LLC.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on December 19, 2007, an application was submitted by Ben Chuaqui of Van Meter Williams Pollack, representing Anthony Morici to consider a master plan for a 16.85-acre shopping center site, including a General Plan and Zoning Amendment to change the land use designation from General Commercial (C2) to Very High Density Mixed Use (MXD3) with Site and Architectural Overlay (-S); a Conditional Use Permit to consider shared parking and height over 12 stories for two buildings; a Site Development Permit to consider the layout, phasing and design guidelines for up to 900 dwelling units and 175,000 square feet of commercial space; and a Development Agreement to consider obligations by the developer and timing of the project. The project is located at 198 Barber Court (APNs: 086-01-043); and

WHEREAS, on October 27, 2010, the Planning Commission held a duly noticed public hearing on the Project's development applications and reviewed an Environmental Impact Report prepared for the Project in accordance with the California Environmental Quality Act ("Milpitas Square Mixed Use EIR"), which identifies the potential for significant effects on the environment from development of the Project; and

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. FINDINGS

1. With regard to the proposed Development Agreement:
 - a. The proposed Development Agreement between the City of Milpitas and Milpitas Square, LLC, for the Milpitas Square Master Development Plan, complies with all the applicable procedural and eligibility requirements for the amendment of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.* A valid application was submitted to the Planning & Neighborhood Services Director by an applicant with proper legal standing. The proposed Development Agreement would eliminate uncertainty in land use planning and help ensure the orderly development of Milpitas Square. The proposed Development Agreement would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed Development Agreement would also be beneficial to the health, safety, and general welfare of the community.
2. With regard to the zoning amendment:
 - a. The proposed zoning amendment is consistent with the General Plan in that the zoning designation will be consistent with the General Plan land use designation; and
 - b. The proposed zoning amendment will not adversely affect the public health, safety and welfare in that future development will adhere to the development standards set forth in the MXD3 zoning district and other public health, safety and welfare laws and regulations in effect at the time of contemplated development; and
 - c. The proposed Sectional Zoning Map amendment will be consistent with the General Plan.

SECTION 3. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement for 198-550 Barber Lane (190 Barber Lane), Milpitas, California, By and Between the City of Milpitas and Milpitas Square, LLC, attached hereto as Exhibit 1. City staff is directed to have said Development Agreement recorded with the Santa Clara County Recorder.

SECTION 4. AMENDMENT OF THE CITY OF MILPITAS ZONING SECTIONAL MAP

The Zoning Map of the City of Milpitas, which was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code of said City, is hereby amended by adding a new Section District No. 577, a copy of which is attached hereto and incorporated herein as Exhibit 2.

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT 1

This document is recorded for the benefit of the City of Milpitas and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code.

After recordation, mail to:

OFFICE OF THE CITY ATTORNEY
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

DEVELOPMENT AGREEMENT

FOR

198-550 Barber Lane (190 Barber Lane)

MILPITAS, CALIFORNIA

By and Between

**THE CITY OF MILPITAS,
a municipal corporation,**

and

**MILPITAS SQUARE, LLC,
a Delaware limited liability company**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 16th day of November, 2010 (the "Effective Date"), by and among MILPITAS SQUARE, LLC, a Delaware limited liability company, ("Developer"), and the City of Milpitas, a municipal corporation ("City") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California and Ordinance No. 38.794 of the City of Milpitas.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted Government Code Section 65864 - 65869.5, authorizing municipalities to enter into property development agreements with persons having a legal or equitable interest in real property.

B. The purpose of Government Code Sections 65864 & 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. Developer has filed an application ("Planning Application") for the land use approval of a proposed multi-phase development program for an existing all-commercial 162,200 square foot shopping center into a mixed used residential-commercial development. The new development would be comprised of a minimum of 167,500 square feet of commercial space and up to 900 new residential units, with the option of replacing 214 of those residential units with a 380-room hotel (collectively referred to herein as the "Project"). The Project would be located on 16.85 acres of land located at 190 Barber Lane in Milpitas, California (referred to herein as the "Property"), the legal description of which is attached hereto as **Exhibit "A"**.

D. Developer desires this Agreement with the City to assure that the Developer will, at the time of application, be issued a building permit and may, except as expressly provided herein, proceed to construct and complete the project at any time within the term of this Agreement in accordance with the Master Development Plan attached hereto as **Exhibit "B"** and the Design Guidelines attached hereto as **Exhibit "C"**, and all applicable laws and regulations in effect at the Effective Date.

E. In addition, the City Council of the City of Milpitas, in conjunction with the consideration of this Agreement, approved a proposed General Plan land use designation and an application for a zoning change from General Commercial to Very High Density Mixed Use with Site and Architectural Overlay (MXD3-S) and a Conditional Use Permit and the Site Development Permit for the Project (collectively the "Land Use Approvals").

F. On October 27, 2010, after conducting a duly noticed public hearing, the City's Planning Commission considered this Agreement and recommended its approval.

G. City has examined the environmental effects of this Agreement and the Project in the Milpitas Square Mixed use Development Project Environmental Impact Report SCH# 2008022065 ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). After conducting a duly noticed public hearing on November 16, 2010, the Milpitas City Council reviewed and certified the EIR as adequate to assess the environmental effects of this Agreement and the Project. The terms and conditions of this Agreement are consistent with and within the scope of the EIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into this Agreement and undertake its terms and conditions.

H. On November 16, 2010, the Milpitas City Council also approved this Agreement by ordinance, authorizing its execution and finding that the provisions of the Agreement are consistent with the City's General Plan, are compatible with the requirements of the Zoning Ordinance, comply with applicable state law and City Resolution No. 6642, as amended, and provide substantial public benefits to persons residing outside the boundaries of the Project, beyond the normal exactions for public benefit imposed in the development review process.

I. For the reasons recited herein, Developer and City have determined that the Project is a development for which this Agreement is appropriate. City finds and Developer represents that the Project shall provide a compact urban development with substantial public benefits in the form of additional sales tax revenues and good quality housing near job centers. In exchange for providing these public benefits, Developer receives assurance that it may proceed with the Project in accordance with ordinances, resolutions and regulations existing as of the date of this Agreement, subject only to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

SECTION 1

GENERAL PROVISIONS

A. City and State Laws

This Agreement is subject to applicable law pertaining to development agreements, specifically City Resolution No. 6642, and any of its amendments, and Government Code Sections 65864 *et seq.*

B. Covenants

The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Project Site. The burdens and benefits hereof shall bind and inure to the benefit of all successors in interest to the parties hereto.

C. Term

The term of this Agreement ("Term") shall commence upon the Effective Date and shall expire Twenty Five (25) years from the date of execution of this Agreement, unless terminated, modified or extended as provided herein or under City Resolution No. 6642 or Government Code Sections 65864 - 65869.5 or by mutual consent of the parties hereto.

D. Assignment

1. General Prohibition on Transfers. Prior to the expiration of this Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "Transfer") of the whole or any part of the Property, the Project, or this Agreement without the prior written approval of the City which the City may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, except as expressly permitted by this Agreement, Developer shall not undergo any Significant Change of Ownership without the prior written approval of City. For purposes of this Agreement, a "Significant Change of Ownership" shall mean a transfer of the beneficial interest of more than forty-nine percent (49%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis. As used in this Agreement, the term "Transfer" shall include a Significant Change of Ownership.

2. Categorically Allowed Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Section shall not be deemed to prevent the following transactions, and the following transactions are hereby authorized and permitted (collectively, the "Permitted Transfers"):

- a. The granting of temporary easements or permits to facilitate development of the Project;
- b. The granting of permanent easements to facilitate development and operations of the Project;
- c. The dedication of any property required pursuant to this Agreement or the Project land use approvals, including without limitation its entitlements and the conditions of approval;
- d. The lease of individual commercial spaces or residences to tenants for occupancy as their principal residence;
- e. Subject to subsection h, below, the sale of individual condominium units in the Project;
- f. Subject to subsection h, below, the sale conveyance or transfer of completed improvements within separate ownership elements of any completed Phases of the Project, subject to the terms of this Agreement and the Land Use Approvals where, and conditioned upon, the proposed developer entity as the transferee expressly assuming by written agreement in form and content reasonably acceptable to the City all of the rights and obligations of the Developer under the City Documents which are applicable to development site that is to be transferred to the proposed developer entity arising after the effective date of the transfer. No such transfer shall diminish or limit the obligations of the Developer hereunder as to the Project under this Development Agreement as to the Project or any prior phases or future phases of the Project;
- g. Subject to subsection h, below, the sale, conveyance or transfer of development sites within Phases of the Project to developer entities expressly subject to the terms of this Agreement and the Land Use Approvals where, and conditioned upon, the proposed developer entity as the transferee expressly assuming by written agreement in form and content reasonably acceptable to the City all of the rights and obligations of the Developer under the City Documents which are applicable to development site that is to be transferred to the proposed developer entity arising after the effective date of the transfer. No such transfer shall diminish or limit the obligations of the Developer hereunder as to the Project under this Development Agreement as to the Project or any prior phases or future phases of the Project;
- h. Before any such sales, conveyances or transfers of any parcels, or of any buildings or building sites within any Phase of the Milpitas Square Center can be made in accordance with subsections e, f or g, above, there must be established an operational control association (“Center Master Association”) in place under a master declaration of covenants, restrictions and easements recorded for the Project as developed, in form and substance approved in writing by the City Attorney, providing for centralized management, operations, maintenance and repair of the Center’s common areas and commonly used facilities and for standards of operations, maintenance and repair of each of the Center’s project components and for the assessment of common costs and charges of such operations to the project components;
- i. Subject to subsection h, above, assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or any portion thereof or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest and subject to subsection h, above, the subsequent Transfer by the party acquiring such a security interest after foreclosure or such grant by deed in lieu of foreclosure;

- j. A Significant Change of Ownership consisting of an adjustment of the membership ownership percentages among the Developer principals as they existed at the time of the execution of this Agreement;
- k. A Significant Change of Ownership consisting of the admission of one or more additional members in Developer so long as:
 - i. one or more of the Developer Principals remain as managing member or co-managing members of Developer; and
 - ii. Developer notifies the City not less than sixty (60) days prior to the proposed Significant Change in Ownership of such change, and the City's City Manager approves such Significant Change of Ownership, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within thirty (30) days of receipt of Developer's notice.

3. Transfers Permitted at the Discretion of the City. In addition to the categorically permitted transfers listed above, the City may, in the exercise of its reasonable discretion, approve any other Transfer of this Agreement, the Property or portion thereof only if all of the following requirements are met:

- a. The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete construction of the Project (or applicable portion thereof) and to otherwise fulfill the obligations undertaken by the Developer under this Agreement. The City may request transfer instruments and other legal documents, as deemed necessary, to review the proposed transfer. Such documents, if appropriate, may be marked "Confidential" and/or "Proprietary/Trade Secret Information", to the extent allowed by the California Public Records Act and other applicable law. The reasonable costs of such due diligence review by the City shall be paid for by the Developer prior to the City's issuance of approval or disapproval. **Failure to pay the City its review fee shall constitute grounds for automatic rejection by the City of a proposed assignment of transfer under this section.** The City shall exercise its reasonable judgment in the review of any proposed transfer requiring City review and approval. If the City does not object in writing to any such proposed transfer within thirty (30) days after receipt from Developer of a written request from Developer for approval of such a proposed transfer, the proposed transfer as described in the written request shall be deemed approved. Any rejection by the City of a request from the Developer for approval of such a proposed transfer shall be based on the reasonable determination of the City regarding the capability and experience of the proposed transferee as being able to comply financially and with adequate experience with the Land Use Approvals and the applicable provisions of this Development Agreement, and shall be in writing and shall contain the reasons and grounds that the City rejected the request and shall not be unreasonably delayed.
- b. The proposed transferee shall expressly assume by written agreement in form and content reasonably acceptable to the City all of the rights and obligations of the Developer under the City Documents which are applicable to the Transfer arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations).

- c. The Transfer shall be effectuated pursuant to a written instrument reasonably satisfactory to the City in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer pursuant to this Section may be given administratively by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council.

4. Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement. However, without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City at its sole discretion.

5. Recovery of City Costs in Event of Transfer Request. In the event that Developer requests City's written consent to a proposed Transfer requiring City approval pursuant to this Agreement, Developer shall pay all of the City's reasonable costs incurred in reviewing information submitted by Developer, including but not limited to City Attorney, outside legal counsel, and/or consultant fees and costs.

E. Recitals

The recitals set forth above are incorporated herein and constitute an integral part of this Agreement.

F. Definitions

A list of defined terms is attached hereto as Appendix 1 and incorporated by this reference.

SECTION 2

DEVELOPMENT

A. Developer Obligations in Development of Property

City specifically consents to the development of the Property and to the construction of the Project during the term of this Agreement, but only on the condition that Developer complies with all conditions of approval set forth in the Site Development Permit, including the Master Development Plan and the Design Guidelines. Development of the Property and construction of the Project shall be in accordance with Planning Application, the terms of the corresponding development approvals, the terms of this Agreement and City Laws (as that term is defined herein) in effect on the Effective Date.

1. Project Development and Phasing. Developer shall have a vested right to develop the existing commercial shopping center into a mixed use residential commercial development in accordance with and subject to the terms and provisions of this Development Agreement and the Site Development Permit, including, but not limited to the Master Development Plan and the Design Guidelines. At full build out, the new development shall be comprised of a total of no greater than 175,000 square feet of commercial space and no less than 167,500 square feet of gross leasable area of commercial space and up to 900 new residential units or up to 520 new residential units and a 380-room hotel. Developer may develop the Project in as many phases as it wishes. Each phase shall require a City review to ensure compliance with the Site Development Permit, the Master Development Plan, the Design Guidelines, and this Agreement ("Phase-Specific Compliance Check").

This Development Agreement and the Site Development Permit establish a phased plan for development of the Project and what is required to commence and implement each phase. Developer shall not have any obligation to commence the Project or any particular phase of the Project. However, once any phase of the Project is commenced, Developer shall be obligated to perform all of the Developer's obligations herein stated as to such phase and as to any other phases previously commenced. Each Phase that is commenced shall be prosecuted to

completion such that the Phase is fully constructed and operational in accordance with the Site Development Permit, including, but not limited to the Master Development Plan and the Design Guidelines.

2. Commercial Activity. In order to maintain the occurrence of commercial activity on the Property during the future development of the Project, Developer shall ensure the availability of at least 155,000 square feet of gross leasable area of commercial space at the end of any given development phase (i.e., upon the issuance of certificates of occupancy for all structures in each phase). However, during future development work in any given phase of Project, as set forth in the applicable Phase-Specific Compliance Check approval, the total gross leasable area of commercial space may fall below 155,000 square feet, prior to completion of that phase.

3. Development Standards – Master Development Plan and Design Guidelines. The intensity of use, maximum height, bulk, size, location and design of the Project (including materials, color palate, signage and landscaping) shall be essentially as set forth in the Master Development Plan and the Design Guidelines, as approved by the Site Development Permit and this Agreement.

4. Compliance with Master Development Plan, Design Guidelines and Development Agreement (Phase Specific Compliance Check Application). Each Phase-Specific Compliance Check application for a Project Phase shall comply with standard plan check requirements and shall also be reviewed by the Planning Commission for consistency with this Agreement, the Master Development Plan, and the Design Guidelines. A finding of consistency will be based primarily on the footprints (location) of the buildings, height, the number of units, minimum commercial square footage, parking supply, and compliance with the Design Guidelines. Notwithstanding any provisions to the contrary in the Milpitas Municipal Code, the following Project-specific review procedures shall apply to each Phase-Specific Compliance Check application:

- a. For Phase-Specific Compliance Check applications that do not request any exception to or modification of the Design Guidelines, the Master Development Plan, or this Agreement, the Planning Commission may consider such applications as a regular meeting agenda item. No public hearing shall be required. The Planning Commission's power over such application shall be limited to review and a determination as to whether the application complies with the Master Development Plan and Design Guidelines. Any appeal of the Planning Commission decision may be pursued according to the procedures set forth in the Milpitas Municipal Code in effect at the time of the appeal for review of any Planning Commission decision.
- b. For Phase-Specific Compliance Check applications that do request minor exceptions to or de minimis modifications of the Design Guidelines and/or the Master Development Plan, the Planning Commission shall hold a duly noticed public hearing to review such requested changes or exceptions. If an exception or modification request is granted, both the relevant permit (i.e., Site Development Permit and/or Conditional Use Permit) and the Design Guideline or Master Development Plan, shall be amended. Absent an appeal, the decision of the Planning Commission on such a request shall be final. Any appeal of the Planning Commission decision may be pursued according to the procedures set forth in the Milpitas Municipal Code in effect at the time of the appeal for review of any Planning Commission decision.
- c. Review of Project Infrastructure Site Improvements: The Master Development Plan and the Design Guidelines at the time of the execution of this Agreement provide only conceptual design for certain project infrastructure site improvements, including project grading and the Project site's storm water control plans. The specific details of the design and approval of these site improvements items shall be subject to submittal by the Developer of specific design and improvements plans and specifications for such site improvements prior to the issuance of building permits for the first phase of development of the Project which shall be subject to review and approval by the City's Engineering Department as being compatible and in substantial conformance with the conceptual design for such site improvements as provided in the Site Development Permit, the Master Development Plan, and Design

Guidelines and the generally applicable statewide and regionally mandated standards for such site improvements as of the date of such site improvement review applications. For each subsequent Phase of the Development, any revisions to the site improvements as applied to the project improvements for a specific Phase shall substantially conform to the site improvements plan approved by the City for Phase 1 development, modified as may be necessary and reasonable for accommodating the details of the project improvements for a specific Phase.

5. Material exceptions from or modifications to the Master Development Plan and/or the Design Guidelines. The following procedures shall apply to any requested material exception from or modifications to the Master Development Plan and/or the Design Guidelines by the Developer:

- a. Any request to modify the Master Development Plan and/or the Design Guidelines shall require an amendment of this Agreement, as set forth in Resolution No. 6642, and any of its amendments, and Government Code Sections 65864 et seq.
- b. Determination of whether an exception or modification is material or de minimis shall lie within the sole discretion of the Director of Planning of the City.

6. Public Parkland and Private Open Space Requirements. Developer shall be subject to public parkland and private open space requirements. The public parkland and private open space requirements shall be calculated as each development phase is submitted to the City.

- a. The estimated population per unit will be 1.93 persons per unit for the purposes of calculating the amount of public parkland and private open space.
- b. Each phase shall contain the minimum amount of private open space as required in the City's park dedication ordinance.
- c. Open space plazas. The 99 Ranch Plaza, Bellew Plaza, and Barber Plaza shown on the Master Plan total 1.13 acres. The acreage of these plazas will be counted toward the public open space requirement for the development phase that each plaza comes in with.
- d. Additional publicly accessible open space offered within or on top of the buildings in each phase may, upon request of Developer, be reviewed by the City Council to determine if those areas offer enough public benefit to serve as full or partial credit towards the public open space requirement for that phase. If those areas are acceptable to the City, both the square footage and value of the open space improvements will be considered in the credit calculation and the public open space shall be accessible to the public in perpetuity.
- e. Any fees owed in lieu of public parkland will be determined as part of the approval of each phase and be based on the land values in effect at that time.

7. Community Facilities District. Developer shall request that the City annex the Property into Community Facilities District 2008-1 or establish an equivalent Mello-Roos tax district, as determined by the City, prior to the recordation of any subdivision maps. Developer shall cooperate with the City in the proceedings necessary to establish the special tax district or annex into the existing special tax district, including consenting to and/or voting in favor of the special tax and other actions. Developer shall not protest annexation into or the formation of a Community Facilities District or the levying of any special taxes there under, pursuant to the terms of this Agreement. Any leases, agreements for sale or other documents transferring rights to part or all of Developer's Property, entered into after the date hereof, shall include provisions that assure that any right to consent, right to protest, or right to vote on the formation of or annexation into a Community Facilities District or the levy of a special tax held by the a tenant or a transferee shall be exercised in the same manner as is required of Developer pursuant to this Agreement. Developer shall open a private job (deposit) account and shall bear all

costs associated with annexation into Community Facilities District 2008-1 or the establishment of a new community facilities district.

8. Shuttle Transportation Program. During the Term of this Agreement, at and after such time as the City commences operation of a shuttle transportation service serving the Project and surrounding areas of the City, Developer or its successors in ownership to the Project, or an owners association for the owners within the Project, shall contribute the sum of \$30,000 per year (in 2010 dollars) towards the cost of operating a shuttle transportation program commencing after such time as Developer has obtained certificates of occupancy for the improvements in the first Phase of development of the Project. Such sum shall be adjusted in accordance with the Consumer Price Index for All Urban Consumers in the San Francisco – Oakland – San Jose area to assure that such sum continues to reflect 2010 dollars and shall be payable as long as such shuttle transportation service is being operated in a manner that serves the Project.

9. Water and Wastewater Connection Fees - Residential. Developer shall pay all City water and wastewater connection fees and the San Jose/Santa Clara Water Pollution Control Plant Fee for the entirety of the residential component of this Project. The water and wastewater connections fees and the San Jose/Santa Clara Water Pollution Control Plant Fee shall all be paid on a per residential unit basis prior to the issuance of any building permits. The actual amount of said fees shall be calculated at the time of building permit submittal of each phase and shall be paid for each building at the time such building permit is issued. The 2010 estimate of the fees for the non-hotel option are provided below:

Water connection fees: \$921,096 estimated total cost (\$1,023 per unit)

Wastewater connection fees: \$1,084,821 estimated total cost (\$1,205 per unit)

San Jose/Santa Clara Water Pollution Control Plant Fee: \$621,000 estimated total cost (\$690 per unit)

10. Water and Wastewater Connection Fees - Commercial. Water and wastewater connection fees and the San Jose/Santa Clara Water Pollution Control Plant Fee for the total commercial square footage of the Property between 162,200 square feet and 170,000 square feet (“additional commercial square footage”) shall be subject to the restrictions set forth in this subsection.

- a. No water and wastewater connection fees shall be owed for the additional commercial square footage planned within the Project.
- b. San Jose/Santa Clara Water Pollution Control Plant Fee. The San Jose/Santa Clara Water Pollution Control Plant Fee shall be increased for the additional commercial square footage only based on the following: The estimate of the San Jose/Santa Clara Water Pollution Control Plant Fee for the additional commercial square footage at the time of the execution of this Agreement is \$220,487. The actual Water Pollution Control Plant Fee will be calculated at the time of building permit submittal for any commercial square footage above 162,200 square feet. The Water Pollution Control Plant Fee will be due prior to issuance of building permit for the additional commercial space for the added space that is subject to such building permit.

The water and wastewater connection fees and the San Jose/Santa Clara Water Pollution Control Plant Fee for the remaining permitted commercial square feet (i.e., the first 162,200 square feet) have previously been paid in full.

11. Storm Drainage Connection Fees. Developer shall pay storm drainage connection fees for the entirety of the Project. The estimated storm drainage connection fee of \$363,000 will be collected in full prior to any building permits issued for any phase of the project. The actual fee will be calculated at the time of building permit submittal.

12. Water and Wastewater Impact Fees-Residences. Developer shall pay water and wastewater impact fees for the residences within the Project on the following basis: Water and wastewater impact fees shall be paid on a per residential unit basis at prior to the issuance of any building permits for such

residences. The impact fee amounts are show below and will be adjusted annually the Engineering News Record cost of construction index for the San Francisco Bay Area.

Water impact fees: \$441,500 total cost (\$491 per unit)

Wastewater impact fees: \$1,195,700 estimated total cost (\$1,329 per unit)

13. Traffic Impact Fees. Developer shall pay in two installments traffic impact fees totaling approximately \$431,000 in 2010 dollars for the entirety of the Project.

- a. The first installment of \$215,500 in 2010 dollars shall be paid to the City prior to the issuance of a final occupancy permit for a residence in the first phase of the Project.
- b. The second installment of \$215,500 in 2010 dollars shall be paid to the City prior to the issuance of a final occupancy permit for a residence in the second phase of the Project or occupancy of the 400th residential unit in the Project, whichever comes first.
- c. All traffic fee installment amount will be adjusted annually to reflect the changes from 2010 construction costs as stated by the Engineering News Record construction Cost Index for the San Francisco Bay Area.

14. Local Taxes. In order to assist City in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of the Project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the Project site, within the City, to the maximum extent reasonably possible. The Project, as currently envisioned, has the potential to be a significant source of additional local sales and/or use tax revenue to the City. Developer, and all of its contractors, subcontractors, and suppliers shall cooperate with the City to the extent reasonably possible to maximize the allocation of the Local Tax to the City. Such cooperation shall include but not be limited to:

- a. Sales Office: To the extent commercially reasonable, the Developer's contractor and all sub-contractors shall order purchases from its vendors' and suppliers' sales offices located in the City of Milpitas;
- b. Use of Tax Direct Payment Remits: The Developer's contractor, sub-contractors, and suppliers shall apply for, obtain, and utilize, to the extent commercially reasonable, a California Use Tax Direct Payment Permit, and a complete copy of each quarterly tax return is to be sent to the City of Milpitas; and
- c. Purchases: to the extent commercially reasonable, the Developer's contractor and sub-contractor shall require equipment and material vendors and suppliers from which they make any individual purchases, which are subject to use tax and are to be used in the City, to allocate the local use tax to the City to the extent authorized by law. The incremental Local Tax generated from the construction of Project shall accrue to the City in accordance with applicable law.

15. Digital Display LED Signage. The City and Developer agree that electronic digital display signage adjacent to the adjoining freeway and adjacent roadways within the Project shall be subject to the reasonable review and approval of the City in accordance with the City's current sign ordinance and procedures and commitments made by the City as of the Effective Date for such digital signage elsewhere in the City.

16. Notice of Gas Line Proximity. Developer shall record a notice or other document in the chain of title to the Property putting prospective owners of the Property or a portion thereof that the Property is within general proximity to a Pacific Gas & Electric gas line.

B. City Obligations and Laws

Except as provided herein, City's laws, ordinances, rules, regulations and official policies applicable to the Project and the Project Site shall be those City laws, ordinances, rules, regulations and official policies in force at the Effective Date governing uses of the Project Site, density and intensity of use, maximum height, bulk, size, design and location of the Project (herein collectively referred to as "City Laws"). City agrees that under City Laws, the Project can be built and occupied on the Property.

1. Consideration of Request for Independent Utility Connection. In the event that the Project is developed in a manner that includes a hotel component, as set forth in Section A.1., the City shall consider in good faith an application by Developer for independent utility connections for said hotel component. Such application shall be considered and reviewed under existing law at the time of the submission of the application.

C. Applicable Future Laws and Regulations

Notwithstanding Paragraph B. above, City may apply the following new City laws to the Project and Project Site:

(1) New City Laws which do not conflict with the existing City Laws or with the General Plan land use designations, permitted uses, density and intensity of use, height, bulk, size or location of the Project, or which do not diminish any of Developer's rights granted herein, or which are not in conflict with any of the terms and conditions hereof;

(2) New City Laws which are specifically mandated and required by changes in State or federal laws and regulations; and

(3) City Laws that are applicable to the following and are in effect at the time Developer submits an application for a building permit for the Project:

(a) Procedural requirements for building and occupancy permit application submittal and issuance;

(b) Construction standards pursuant to all Uniform Building Codes incorporated by the Milpitas Municipal Code;

(c) Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks;

(d) Permit fees;

(e) Impact fees adopted by ordinance or resolution, applicable on a City wide basis or generally applied to a designated subregion of the City that includes more than just the Project, and payable upon issuance of a building permit, but only for new impact fees not specifically covered under this Development Agreement and that are established, due and payable on or after December 17, 2020;

(f) Any fees payable upon issuance of a building permit for which City acts as a collecting agent for another government agency or municipality; and

(g) Any requirements applicable upon issuance of a building permit for which City acts as an administering agent for another government agency or City.

(4) Moratoria adopted by City as an emergency ordinance on the basis of its finding that such action is a health or safety necessity.

D. Development Not Required

Notwithstanding anything to the contrary contained herein, Developer is not obligated to develop the Project.

SECTION 3

AMENDMENT

A. Mutual Consent

This Agreement may be amended, or cancelled in whole or in part, at any time and from time to time by mutual consent of the parties or their successors in interest. Notice of, and a public hearing regarding an intention to amend or cancel any portion of this Agreement shall be given and held in the manner provided in City Resolution No. 6642.

B. Conflict with State or Federal Laws and Regulations

In the event that State or Federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified in accordance with the provisions set forth in this Section or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

C. Procedure for Modification Due to Conflict with State or Federal Laws

In the event that state or federal laws or regulations enacted after the effective date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Resolution No. 6642.

SECTION 4

DEFAULT, TERMINATION AND REMEDIES

A. General Provisions

Any failure to perform, or any delay in performing, the terms and conditions hereof shall constitute a default under this Agreement. Any party alleging a default under this Agreement shall give the other party not less than sixty (60) days notice in writing, specifying the nature of the alleged default and the manner in which it may be satisfactorily cured. During the period specified in the notice, the alleged default shall not be considered a default for purposes of termination or institution of legal proceedings. If the default is cured within the period specified in the notice, the noticing party shall take no further action.

B. Periodic Reviews

During the term of this Agreement, the City shall conduct annual reviews of Developer's good faith compliance with the terms and conditions of this Agreement in accordance with the procedures set forth in Section 8.0 of Resolution 6642. The Developer shall open and maintain a PJ (Deposit) Account of \$5,000 for this purpose, the minimum amount of which may be adjusted for inflation or increased City costs, as reasonably determined by the City. The Developer shall pay the City's reasonable costs incurred in conducting said review, including staff expended and attorney's fees.

Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement, nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

C. Default and Remedies

Developer shall be in default under this Agreement upon the happening of one or more of the following events:

(a) If a warranty, representation or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made; or,

(b) A finding and determination by the City made following an annual or special review under the procedure provided for in Resolution No. 6642 and Government Code Section 65865.1 that, upon the basis of substantial evidence, Developer has not complied in good faith with the terms and conditions of this Agreement; or,

(c) Developer fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond any applicable cure period provided in this Agreement. This provision shall not be interpreted to create a cure period for any event of default where such cure period is not specifically provided for in this Agreement; provided, however, that if such default is not capable of being cured within such 30 day period, Developer shall have such additional time to cure as is reasonably necessary.

D. Procedure upon Default

(a) Upon the occurrence of an event of default, City may terminate or modify this Agreement in accordance with the provisions of Government Code Section 65865.1 and Resolution No. 6642.

(b) The City shall not be deemed to have waived any claim of defect in Developer's performance if, on annual or special review, the City does not propose to terminate this Agreement.

(c) No waiver or failure by the City or Developer to enforce any provision of this Agreement shall be deemed to be a waiver of any provision of this Agreement or of any subsequent breach of the same or any other provision.

(d) Any actions for breach of this Agreement shall be decided in accordance with California law. The remedy for breach of this Agreement shall be limited to specific performance.

(e) The City shall give Developer written notice of any default under this Agreement, and Developer shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default.

E. Effects of Agreement Termination on Developer's Obligations.

Upon termination of this Agreement, such termination shall not affect Developer's obligations to comply with the City's General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements with respect to the Property.

F. Effects Upon Termination on City's Obligations.

Upon termination of this Agreement, the entitlements, conditions of development, limitations on fees and all other terms and conditions set or modified by this Agreement shall no longer be vested hereby with respect to the portion of the Property affected by such termination and the City shall no longer be limited, by this

Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such portion as allowed by federal, state and local laws in effect at the time of the contemplated change or modification.

G. Enforceability

Except as otherwise provided herein, the rights of the parties under this Agreement shall be enforceable notwithstanding any change subsequent to the Effective Date in any applicable General or Specific Plan or building, zoning, subdivision or other land use ordinance.

SECTION 5

INDEMNIFICATION

Developer shall defend, hold harmless and indemnify City and its officials, employees, agents, and representatives, as appropriate, from and against any and all claims, suits, demands, liability, loss, costs, damages, and other expenses of litigation arising from or relating to the negligence or willful misconduct of the Developer.

SECTION 6

NOTICES

Any notice or communication hereunder must be in writing and may be given either by personal service or by registered or certified mail, return receipt requested. Any notice or communication personally served shall be deemed given and received on the date of personal service on the party noticed at the appropriate address designated below, and any notice or communication sent by registered or certified mail, return receipt requested, property addressed to the appropriate address designated below, with postage prepaid, shall be deemed given and received on the fifth (5th) day after the date appearing on the signed return receipt. Any party hereto may at any time and from time to time, in the manner provided herein, designate any other address in substitution of the address to which such notice or communication shall be given. All such notices or communications shall be given to the parties at their addresses hereinafter set forth:

IF TO CITY:
City Clerk, City of Milpitas
City Hall
455 E. Calaveras Blvd.
Milpitas, CA 95035
ATTN: Director of Planning

IF TO DEVELOPER:
MILPITAS SQUARE LLC
One Kimber Park
39812 Mission Blvd. Suite 203
Fremont, CA 94539
Attention: Philip Su

Copy to:
David M. Van Atta
Hanna & Van Atta
525 University Avenue, Suite 600
Palo Alto, CA 94301

SECTION 7

NO WAIVER

No failure, delay or omission by a party in exercising or asserting any right, power or remedy hereunder shall impair such right, power or remedy, and no failure, delay or omission by a party occurring upon the other party's noncompliance with or failure to perform the terms and conditions of this Agreement shall be construed as a waiver thereof. A waiver by either party of any failure on the part of the other party to perform any of the terms or conditions to be performed by such other party shall not be construed as a waiver of any succeeding failure of the same or other terms or conditions hereof, nor shall any failure, delay or omission by a party in asserting any of its rights or remedies hereunder deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 8

RECORDING

After this Agreement is approved and executed by the parties hereto, either party may submit it to the Santa Clara County Recorder to be recorded. Such recording shall occur with ten (10) days of the effective date of the ordinance adopting this Agreement.

SECTION 9

MISCELLANEOUS

A. No Joint Venture or Partnership

Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

B. Severability

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

C. Attorneys' Fees

In the event a lawsuit is filed to resolve any dispute between the parties involving the covenants or conditions contained herein, the prevailing party in such suit shall be entitled to recover its reasonable expenses, including attorneys' fees and all costs of suit.

1. Action by Third Party. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

D. Further Assurance; Covenant to Sign Documents.

Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

E. Time.

Time is of the essence to this Agreement and to each and every term and condition hereof.

F. Force Majeure

Notwithstanding anything to the contrary contained herein, either party shall be excused for the period of any delay in the performance of any of its obligations hereunder, except the payment of money, when prevented or delayed from so doing by certain causes beyond its control, including, and limited to, major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy, fires, explosions, floods, earthquakes, invasions by non-United States armed forces, failure of transportation due to no fault of the Parties, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than Developer's, freight embargoes, sabotage, riots, acts of terrorism and acts of the government (other than the City). The Party claiming such extension of time to perform shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

G. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

H. Incorporation of Exhibits

Each of the exhibits attached hereto are incorporated herein by this reference and made a part hereof for all purposes.

SECTION 10

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

A. Mortgagee Protection.

This Development Agreement shall be superior and senior to an lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Development Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

B. Mortgagee Not Obligated.

Notwithstanding the provisions of Paragraph A of this Section 10, above, no Mortgagee shall have any obligation or duty under this Development Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Development Agreement.

C. Notice of Default to Mortgagee and Extension of Right to Cure.

If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently

with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in City's notice. City, through its City Manager, may extend the cure period provided in Paragraph D of Section 4 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee, in the City Manager's sole discretion.

D. Reasonable Assurances.

City, at the discretion of the City Manager, may agree to make reasonable modifications to the provisions of this Section 10 through administrative action to provide reasonable and appropriate assurances to a Mortgagee of the Property as requested by a Mortgagee, in the City Manager's reasonable discretion, which in no event shall modify or alter in any material way the substance of this Agreement or the rights or obligations of the parties. City administrative time shall be subject to private job account requirements.

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the day and year first written on Page 2.

CITY OF MILPITAS,
a Municipal Corporation

MILPITAS SQUARE, LLC,
a Delaware limited liability company

By: _____
Robert Livengood, Mayor

By: _____

ATTEST:

By: _____
Mary Lavelle, City Clerk

APPROVED AS TO FORM:

By: _____
Michael J. Ogaz, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

PARCEL 3, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 14, 1992, IN BOOK 642 OF MAPS, PAGE(S) 37 AND 38.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY GRANT DEED RECORDED DECEMBER 31, 1992, IN BOOK M567, PAGE 1294 OFFICIAL RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL ONE, PARCEL TWO AND PARCEL THREE, DESCRIBED IN THE DEED TO THE WESTWOOD COMPANY-237, A CALIFORNIA LIMITED PARTNERSHIP RECORDED NOVEMBER 21, 1983, IN BOOK I 087, AT PAGE 717, OFFICIAL RECORDS OF SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY TERMINUS OF THE COURSE DESCRIBED IN PARCEL NUMBER ONE (1) OF THE DIRECTOR'S DEED TO THE ASGROW SEED COMPANY, A CORPORATION, RECORDED AUGUST 28, 1970 IN BOOK 9036 AT PAGE 714, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AS "THENCE ALONG LAST SAID LINE SOUTH 66° 03' 00" WEST 28.38 FEET"; THENCE NORTHERLY AND WESTERLY ALONG THE RIGHT OF WAY OF INTERSTATE ROUTE 880 AND STATE HIGHWAY ROUTE 237, THE FOLLOWING SIX COURSES:

NORTH 15° 28' 25" WEST 550.37 FEET; NORTH 17° 05' 03" WEST 1016.96 FEET; ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 447.00 FEET, THROUGH AN ANGLE OF 38° 42' 57" AN ARC LENGTH OF 302.05 FEET; NORTH 55° 48' 00" WEST 397.90 FEET; ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 300.00 FEET, THROUGH AN ANGLE OF 58° 04' 00" AN ARC LENGTH OF 304.04 FEET; SOUTH 66° 08' 00" WEST, 156.05 FEET TO THE SOUTHWESTERLY LINE OF THE TRACT OF LAND CONVEYED TO ASGROW SEED COMPANY, A CORPORATION, BY DEED RECORDED MAY 6, 1968 IN BOOK 8112, AT PAGE 44, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 24° 34' 57" EAST 159.44 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE FROM A TANGENT THAT BEARS NORTH 74° 50' 50" EAST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 731.00 FEET, THROUGH AN ANGLE OF 74° 54' 36" AN ARC LENGTH OF 955.73 FEET; THENCE SOUTH 15° 12' 52" EAST 580.58 FEET, THENCE NORTH 74° 47' 08" EAST 32.00 FEET; THENCE SOUTH 15° 12' 52" EAST 318.04 FEET; THENCE SOUTH 4° 50' 13" EAST 106.35 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 1448.00 FEET, THROUGH AN ANGLE OF 12° 09' 18" AN ARC LENGTH OF 307.19 FEET; THENCE SOUTH 16° 59' 31" EAST 231.00 FEET TO THE NORTHWESTERLY LINE OF THAT STRIP OF LAND 80.00 FEET WIDE, AS CONDEMNED IN THE FINAL DECREE OF CONDEMNATION, RECORDED DECEMBER 8, 1950 IN VOLUME 2112, AT PAGE 7, OFFICIAL RECORDS OF SANTA CLARA COUNTY, THENCE ALONG SAID NORTHWESTERLY LINE NORTH 66° 03' 00" EAST 102.07 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF MILPITAS BY DEED RECORDED MARCH 3, 1998 AS DOCUMENT NO. 14078235 AND BEING A PORTION OF PARCEL 3, AS SAID PARCEL 3 IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN BOOK 642 OF MAPS AT PAGES 37 AND 38, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE GENERAL WESTERLY LINE OF SAID PARCEL 3 WITH THE GENERAL SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE GRANT DEED FROM 'THE WESTWOOD COMPANY - 237, A CALIFORNIA LIMITED PARTNERSHIP TO THE STATE OF CALIFORNIA, RECORDED DECEMBER 31, 1992 IN BOOK M567 OF OFFICIAL RECORDS AT PAGE 1294, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, ALONG SAID GENERAL WESTERLY LINE OF PARCEL 3 SOUTH 24° 35' 00" EAST 8.289 METERS; THENCE LEAVING SAID GENERAL WESTERLY LINE NORTH 44° 09' 27" EAST 10.480 METERS; THENCE NORTH 56° 41' 21" EAST 6.680 METERS TO A POINT IN ME SAID GENERAL SOUTHERLY LINE OF SAID PARCEL CONVEYED TO THE STATE OF CALIFORNIA; THENCE ALONG SAID GENERAL SOUTHERLY LINE, FROM A TANGENT BEARING OF SOUTH 79° 33' 16" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 222.809 METERS, THROUGH A CENTRAL ANGLE OF 04° 18' 16" FOR AN ARC LENGTH OF 16.739 METERS TO THE POINT OF BEGINNING.

APN: 086-01-043

EXHIBIT B

**MASTER DEVELOPMENT PLAN
FOR THE MILPITAS SQUARE MIXED USE DEVELOPMENT PROJECT**

**PLEASE NOTE: THIS EXHIBIT IS AVAILABLE, IN HARD COPY, AT THE
CITY CLERK'S OFFICE**

EXHIBIT C

**DESIGN GUIDELINES
FOR THE MILPITAS SQUARE MIXED USE DEVELOPMENT PROJECT**

**PLEASE NOTE: THIS EXHIBIT IS AVAILABLE, IN HARD COPY, AT THE
CITY CLERK'S OFFICE**

APPENDIX 1

DEFINED TERMS

A. “2010 Dollars” shall mean the value of the United States Dollar as of December 16, 2010 as compared to the value of the United States Dollar at the time in the future called for in a provision of this Agreement that requires a calculation of a monetary amount in 2010 Dollars, as computed based on the then comparative value of the United States as adjusted in accordance with the Consumer Price Index for All Urban Consumers in the San Francisco – Oakland – San Jose area to assure such value continues to reflect 2010 dollars.

B. “City Laws” shall mean and refer collectively to the City laws, ordinances, rules, regulations and official policies in force at the Effective Date governing uses of the Project Site, density and intensity of use, maximum height, bulk, size, design and location of the Project.

C. “Design Guidelines” shall mean and refer to the Design Guidelines for the Project attached as Exhibit “C” submitted to the City by the Developer that have been approved by the City as part of and incorporated into the Site Development Permit.

D. “Developer” shall mean and refer to MILPITAS SQUARE, LLC, a Delaware limited liability company, and its successors and assigns as permitted under the Development Agreement.

E. “Land Use Approvals” shall mean the approved General Plan land use designation and an application for a zoning change from General Commercial to Very High Density Mixed Use with Site and Architectural Overlay (MXD3-S), the Conditional Use Permit and the Site Development Permit for the Project. Any subsequent approvals or approval modifications granted by the City with respect to those entitlements, effected by way of the permit modifications procedures set forth in the Milpitas Municipal Code, City resolutions and this Agreement shall be vested into by Developer and City automatically, and shall become a part of the Agreement as if set forth herein in full; no further action with regards to this Agreement shall be necessary.

F. “Master Development Plan” shall mean and refer to the Master Development Plan for the Project attached as Exhibit “B” submitted to the City by the Developer that has been approved by the City as part of and incorporated into the Site Development Permit.

G. “Project” shall mean and refer to the real property described on Exhibit A as developed or is to be developed by the Developer by and pursuant to the Land Use Approvals, including the Site Development Permit, the Master Development Plan and the Design Guidelines.

H. “Site Development Permit” shall mean and refer to the Site Development Permit for the Milpitas Square Mixed Use Development Project attached approved by the City by and pursuant to Resolution of the City Council, dated November 16, 2010, Resolution No. 8043. The Design Guidelines and Master Development Plan are attached to that Site Development Permit are reproduced and attached hereto as Exhibits B and C.

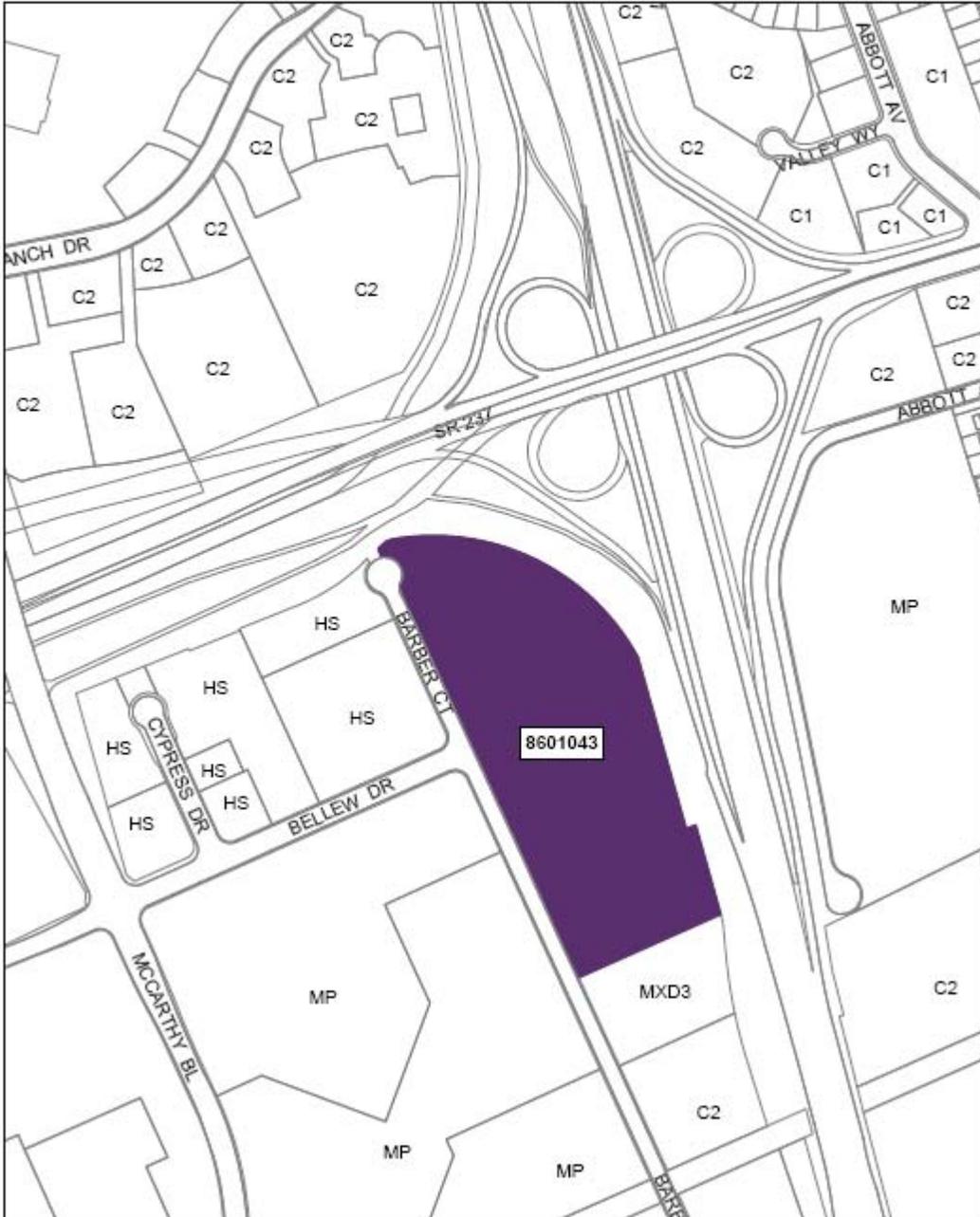
Exhibit 2



City of Milpitas Milpitas Square Sectional District Map No. 577 Exhibit A

Legend

-  Very High Density Mixed Use (MXD3)
-  Parcel Boundary



Ordinance No. 38.794



AGENDA ITEM: IX-1

MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 27, 2010

APPLICATION: **GENERAL PLAN AMENDMENT NO. GP07-0002/ZONING AMENDMENT NO. ZA07-0001/SITE DEVELOPMENT PERMIT NO. SZ07-0001/CONDITIONAL USE PERMIT NO. UP09-0035/DEVELOPMENT AGREEMENT NO. DA09-0003, Milpitas Square Master Development Plan**

APPLICATION SUMMARY:

A request to allow a master plan that would accommodate phased future development of an existing regional commercial site that would ultimately include six buildings, a maximum of 900 dwellings and 175,000 sq. ft. of retail, shared parking and site improvements over a 25 year period. The project includes a General Plan and Zoning Amendment to consider a change in the underlying site land use designation from commercial to mixed use; a Site Development Permit to consider the site layout, phasing plan and design guidelines; a Conditional Use Permit to consider shared parking, height above 12 stories, deviations from setbacks; and a development agreement to address timing and obligations by the developer.

LOCATION: 198 Barber Court (APN: 086-01-043)

APPLICANT: Ben Chuaqui, Van Meter Williams Pollack, 18 De Boom Street, San Francisco, CA, 94107

OWNER: Anthony Morici, The Westwood Company, 1855 Park Avenue, San Jose, CA 95126

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution Nos. 10-042 and 10-043, recommending approval of the master development plan, the development agreement and certification of the EIR to the City Council.**

PROJECT DATA:

General Plan/
Zoning Designation: General Commercial/General Commercial (C2)

Overlay Districts: Site and Architectural Overlay (-S)

Proposed GP/Zoning: Mixed Use /Very High Density Mixed Use (MXD3)

Minimum/Maximum

Dwellings: 690/900

Maximum Commercial: 175,000 square feet

CEQA Determination: In accordance with Article 7 of the CEQA Guidelines, an Environmental Impact Report was prepared and circulated between April 24, 2009 and June 8, 2009.

PLANNER: Sheldon S. Ah Sing, Senior Planner

PJ: 3224

ATTACHMENTS:

- A. Resolution No. 043 (ZA/SDP/DA/CUP/GPA)
- B. Resolution No. 042 (EIR)
- C. Milpitas Square Design Guidelines
- D. Master Development Plan
- E. Demographic study
- F. Hexagon parking study
- G. General Plan/Zoning Map Exhibit
- H. Development Agreement
- I. Environmental Impact Report (Draft and Final) (previously distributed and available online)

LOCATION MAP



No scale

BACKGROUND

On July 12, 1995, the Planning Commission approved Milpitas Square, a 162,200 square foot shopping center, as well as Use Permit No. 1278 for a supermarket that included the sale of all types of alcohol. Since the original approval, a sign program for the center was approved on April 10, 1996 and numerous conditional use permits for restaurants.

On December 19, 2007, Ben Chuaqui of Van Meter Williams Pollack, representing Anthony Morici, submitted an application to consider a master development plan for the site, including a General Plan and Zoning Amendment to change the land use designation; a Conditional Use Permit to consider shared parking and height over 12 stories for two buildings; a Site Development Permit to consider the phasing, layout, and design guidelines for up to 900 dwelling units with an additional 12,800 square feet of commercial space; and a Development Agreement to consider obligations by the developer and timing of the project over a twenty-five year period.

PROJECT DESCRIPTION

The Milpitas Square shopping center is located on approximately 17 acres at the southwest corner of State Route 237 and Interstate 880, at Barber Lane and the eastern terminus of Bellew Drive. Surrounding land uses include two hotels, the former Billings Chevrolet dealership (entitled for a high-rise mixed use development) and Cisco Systems. The shopping center contains numerous restaurants, a grocery store and a variety of other retail establishments.

The property is zoned General Commercial (C2). The property to immediate south is zoned Very High Density Mixed Use (MXD3), the property to the northwest is zoned Highway Services (HS) and the property to the west is zoned Industrial Park (MP). A vicinity map of the subject site location is included on the previous page. The surrounding properties also include a “Recreation and Entertainment” overlay that allows for additional entertainment types of uses.

The applicant proposes a master development plan to accommodate the future phased development of the site into a mixed use project. Through phasing, the developer proposes to replace existing surface parking and buildings with multi-level buildings and parking structures, new internal streets, streetscapes and courtyard areas, similar in vision to “Santana Row” in San Jose. Ultimately, the site may include up to 900 new dwelling units and a total of 175,000 square feet of commercial space in six buildings. A development agreement is proposed because the applicant wishes to build the project in phases with a timeline longer than Municipal Code will allow. The term of the development agreement term would be 25 years. The following sections describe the various components of the project and the required entitlements and review for consideration.

General Plan and Zoning Amendment

The existing General Plan designation for the property is General Commercial, which is also the Zoning designation (C2). General Commercial does not allow for residential development or a combination of residential and commercial on the same site. To achieve the goals of the project and to be consistent with the approved Landmark Tower development to the south of the project site, the applicant requests a General Plan and Zoning Amendment to Very High Density Mixed Use (MXD3). This designation allows residential and commercial on the same site. Residential

density is between 41 and 60 dwelling units per gross acre. The maximum Floor Area Ratio is 2.0. The Site and Architectural overlay district will be maintained for the property.

Development Standards

Table 1
Development Standards

	<i>Zoning Ordinance</i>	<i>Proposed</i>
<u>Density</u> (Maximum)	60	53.4
<u>Setbacks</u> (Minimum)		
Front to Primary Structure	12 ft.	44'
Interior/Street Side	10 ft., 20 ft. for portions of buildings over 60 ft. or four stories tall.	17'-9"
Rear	15 ft. 30 ft. for portions of buildings over 60 ft. or four stories tall.	9'-11"
<u>Floor Area Ratio</u> (Maximum)	2.0	1.6
<u>Building Height</u> (Maximum)	20 stories with CUP	20 stories (tallest tower)
<u>Parking</u>	Varies by use.	See discussion below.
<u>Landscaping</u> (Minimum)	All required front setback areas.	Complies

A Conditional Use Permit is required for deviations from any setbacks. Because of the intensity of the development, the reduced rear setback is warranted. The project will complement the approved high-rise development to the south. The project provides an ample amount of setback in the front of the project.

Master Development Plan and Phasing

Overview

The entire site will be planned for future development with the exception of the 99 Ranch Market. A minor façade change is proposed for the Ranch Market to ensure consistency and integration with the rest of the site upon build out. The master plan provides detailed information relating to the site plan and outlines the maximum development envelope for each building. The site plan is developed with enough detail to provide a framework for the establishment of streets, sidewalks, plazas and parking

Phasing

Two phasing options [sheets A0.12 and A0.13 of the master development plan (Attachment D)] are proposed with the master plan. Each option consists of five sub-phases that include a tally of the amount of parking, retail and residential units existing prior to construction and upon completion of the phase. Phasing is determined by market conditions and demand for each product, however, once a phase is initiated, the developer will continue with that plan. Each phasing concept maintains an acceptable amount of commercial space, available parking, adequate site circulation and utilities to service the development. The Development Agreement requires that a minimum of 155,000 square feet of commercial be maintained after each phase, until the build out phase whereby a minimum of 167,500 square feet of retail space shall be built.

Development Potential

The maximum development Milpitas Square can include is 900 dwelling units combined with 175,000 square feet of commercial. The proposed General Plan and Zoning designations for the property would allow for more development, however, this maximum development is described and analyzed in the Environmental Impact Report for the project (Attachment G) and provides a ceiling for maximum development.

The exact program configuration and site distribution will be determined by market conditions during the time of each development. The site plans illustrate how the minimum amount of commercial square footage, 167,500 square feet, could be developed on site in accordance with the terms of the Development Agreement described later in this report. In addition, an option to build a 380 room hotel in lieu of 214 dwelling units is included in the site plans (Building F).

The table below describes the potential development for the site. For more specific information regarding the project see Sheet A0.11 of the master development plan (Attachment D).

Table 2
Potential Development

Building	Residential Units	Commercial Square Feet
A	170	43,300
B	255	17,215
C	195	18,200
D	0	38,800
E	66	22,000
F	214*	28,000
Total	<i>900</i>	<i>167,515</i>

*Residential option only and does not contain hotel alternative.

The integration of the newer development and the older development is addressed with the design guidelines described in the next section.

Architecture and Signs

Specific design guidelines, included as Attachment C to this report, are proposed as a part of this development and considered with the Site Development Permit. These guidelines describe the overall layout, open space and streetscape design, parking garage design, building façade, entryway, and fenestration, and general sign guidelines.

In accordance with the Development Agreement, the applicant shall submit materials for Planning Commission consideration (for example a Minor Site Development Permit) ensuring that each phased proposal is consistent with the approved master development plan and the design guidelines. A public hearing will not be required for the review of this submittal. A specific sign program is still required, since the design guidelines do not describe in detail specific sign area, location or material or lighting methods. It is also expected that with the submittal of the first phase, the sign program will be established, as conditioned.

Requested exceptions from the master development plan for any phase such as changes to building footprints or massing would require review with a public hearing by the Planning Commission and City Council in conjunction with an amendment to the development agreement.

Open Space

It is anticipated that the residential units would be delivered as condominiums. As such, a tentative map for condominium subdivision purposes would need to be submitted in the future. According to Title XI (Zoning) Section 9 (“Improvements: Dedication of land or payment of fee or both, for recreational purposes”), of the City’s Municipal Code, every applicant who subdivides land shall dedicate a portion of such land, pay a fee, or do both for the purpose of providing park and recreational facilities to serve future residents of such subdivision. The amount of recreational area is divided into public and private amenities.

The amount of land necessary for recreational purposes is derived from a formula stipulated in the Municipal Code, taking into account the amount of land (in acres) per population and population density for the project. Based on similar types of developments, the project should provide three and a half (3.5) acres per thousand people in parks and open spaces, 57.4% of which shall be accessible public park land.

The estimated population density proposed by the applicant and recommended by staff is 1.93 persons per unit for the purposes of calculating the amount of public parkland and private open space. This density differs from the 2.58 persons per unit calculated pursuant Section 9.05 of the Subdivision Ordinance. Section 9.05-2 allows the applicant to propose a different population density if supported by a demographic study. Staff supports the reduced population density by the applicant because of the higher intensity or urban development in taller buildings and smaller units proposed by the project. To view the demographic study, refer to Attachment E of this report.

When computing the open space requirement, the entire project requires 3.49 acres of public open space and 2.59 acres of private open space. The private open space requirement can be met by providing recreation areas, balconies and other common open areas. The project also proposes public plazas (99 Ranch Plaza, Bellew Plaza and Barber Plaza), which total 1.13 acres. The acreage of these plazas will be counted toward the public open space requirement for the

development phase that each plaza is constructed in given the requirement that each plaza will have dedicated public access easements. Additionally, publicly accessible open space offered within or on top of the buildings may be included in each phase, and at the request of the developer be reviewed by the City Council to determine if those areas offer enough public benefit to serve as credit towards the public open space requirement for that phase. Any fees owed in lieu of public parkland will be determined as part of the approval of each phase and be based on the land values in effect at that time.

Parking

Parking will be provided on the site along new internal streets, in multi-level structured parking structures as well as in a surface parking lot on the north end of the site accessed via Barber Lane. Because of the large scale, mixed multiple uses within this development, a shared parking approach is being considered in accordance with Section 53.11, Shared Parking, of the Zoning Ordinance. The developer used two traffic studies to verify the shared parking approach.

Existing Parking Demand

Two independent parking studies were conducted, one in December 2007 and the other in February 2009, to establish a baseline parking demand for the shared parking analysis. Given the historic parking congestion at Milpitas Square the parking studies included a survey of Milpitas Square patrons that parked on-site, on the on-street and off-site during the survey period. Forty-five percent of the total square footage at the center was occupied by restaurants during the surveys. The December 2007 study showed the highest demand of 6.65 parking spaces for every 1,000 square feet of space within the center and was the one used to establish the existing baseline parking demand. As a point of comparison, the Zoning Ordinance requires five parking spaces per 1,000 square feet for general retail uses or four parking spaces per 1,000 square feet for ground floor retail space within mixed use buildings. A key assumption for the existing parking demand is the 55 / 45 ratio of retail / restaurant square footage.

Shared Parking

Section 53.11 of the Zoning Ordinance allows the use of shared parking through the approval of a Conditional Use Permit. Shared parking is applicable to mixed use buildings containing uses with different parking peak hours or shopping centers that contain at least 20% restaurants or entertainment uses. The premise of shared parking is to maximize the use of spaces throughout the day given the varying peak hour of parking demand for different uses.

The Urban Land Institute's (ULI) Shared Parking methodology was used to calculate the parking demand for the project. This is the same methodology used at the Great Mall for the mix of entertainment and retail uses. The general assumption made with shared parking is that commercial demand peaks on weekend afternoons and residential demand peaks in the evening. The commercial peak period at Milpitas Square was confirmed to be Saturday afternoon and the baseline demand rate was established at 6.65 spaces per 1,000 square feet based on the ratio of retail space and restaurants. ULI recommends including a 10% parking cushion to help reduce congestion that can be created when visitors perceive a parking lot to be full when it fills to 90% of capacity. Parking guidance systems for multi-story structures have advanced to the point where visitors can be more efficiently guided to locations with available parking. Such systems can support a reduction in the cushion from 10% to 5%. The applicant is proposing to

incorporate a guidance system for the entire center and therefore staff is supporting a 5% increase in the commercial demand rate from 6.65 to 6.98 spaces per 1,000 square feet. The specific details of the parking guidance systems (e.g. location of way-finding signs and parking availability displays) will be provided with submission of the first phase development plans.

Four of the five parking structures will have parking for both commercial and residential uses; a secured section in each structure will be reserved for residential owners/tenants. Building A's parking area will be dedicated completely for the residential units and contain no parking for commercial customers. The four mixed use parking structures will have an average of 1.2 secure parking spaces per residential unit located on the top floors of the garages. Additional un-secured residential parking is provided in the lower un-secured floors of the garages. These lower floors contain the "flex spaces" that will be shared at different peak hours between the commercial customers and the additional demand for residential parking not met in the upper floors including guest parking. All of the residential parking demand for Building A is being met with an average of 1.96 secured parking spaces per unit.

The total parking demand projected for the 167,500 commercial square feet (assuming a maximum 75,375 square feet of restaurant space) and 900 residential units is 2,662 spaces for. The master development plan shows the project providing 2,785 on-site spaces and each development phase will be required to meet the respective parking demand. The applicant intends to utilize a portion of the surplus commercial parking spaces for future outdoor dining areas.

Development Agreement

The applicant requested a development agreement with the City given the 25-year time frame desired to build out the project. The key points of the agreement include:

- City agrees to the development of up to a total of 175,000 square feet of commercial space and 900 new residential units within the next 25-years.
- City agrees to review each development phase for its consistency with the master development plan through a compliance review by the Planning Commission.
- Developer agrees to maintain at least 155,000 square feet of commercial space at the completion of end of each phase until the build out phase, when a minimum of 167,500 square feet will be developed.
- Developer agrees to annex into Community Facilities District 2008-1 to fund the additional cost of providing municipal services to the new residential units.
- Developer agrees to help fund an inter-city shuttle at such time as the City develops such a service. A similar funding requirement is part of the development agreement covering the Lands of McCarthy and Equity Office.

The entire development agreement is included as an Exhibit to Attachment A of this report.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

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

Table 4
General Plan Consistency

Policy	Consistency Finding
<i>2.a-G-2. Maintain a relatively compact urban form.</i>	Consistent. The project proposes high density, vertical mixed use.
<i>2.a-I-12. Use zoning for new residential developments to encourage a variety and mix in housing types and costs.</i>	Consistent. The project proposes multiple housing types within the development (6-8 story mixed use to 18 story mixed use).
<i>2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The project proposes to redevelop a commercial center, which will renew a shopping center that was developed in the 1990s. New investment will revitalize the area.

Zoning Ordinance

The project proposes to change the underlying zoning district to MXD3 with Site and Architectural Overlay. As demonstrated in Table 1, the project meets the development standards of the MXD3 district with the exception of side and rear setbacks. With the approval of the Conditional Use Permit, the project’s proposed shared parking plan meets the intent of the parking requirements. With the approval of the Conditional Use Permit, the deviations from the required setbacks do not detract from the overall architecture, landscaping and site planning integrity.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Because the project proposes land use changes and additional residential and commercial development, the project is subject to additional environmental review. A scoping meeting open to the community was held on February 20, 2008 to obtain comments on the scope and contents to be evaluated by the Environmental Impact Report. The draft EIR was circulated for public review between April 24, 2009 and June 8, 2009. Staff reviewed all comments received regarding the draft EIR during the review period and prepared written responses on the environmental issues raised by the commenter. The comment letters, written responses and any revisions to the draft EIR that resulted from the responses are contained in the Final EIR. The draft and final EIR together constitute the EIR for the proposed project.

The EIR identifies the potential for significant effects on the environment from the development of the project, most of which can be substantially reduced through the implementation of mitigation measures. The mitigation measures that are required to reduce the impacts to a less than significant level have been included as a part of the Mitigation, Monitoring and Reporting Program. This program identifies all of the required mitigation and when it is required. For example, if payment of an impact fee is required to mitigate congestion at an intersection, the party responsible shall submit payment of the fee prior to a stated time.

The potential significant environmental impacts that could not be reduced to a less-than significant level are listed below:

- Implementation of the proposed project would result in significant Level Of Service impacts at seven intersections. The impacts would remain even with the proposed mitigation at five of those intersections (Section 4.2.3, Mitigation and Avoidance Measures for Transportation Impacts, of the draft EIR).
 - McCarthy Boulevard/Alder Drive
 - Alder Drive/Tasman Drive
 - Tasman Drive/I-880 SB Ramps
 - Great Mall Parkway/I-880 NB Ramps
 - EB SR 237, McCarthy Boulevard to I-880

- The proposed project would create significant impacts to air quality. The following impacts would remain significant and unavoidable:
 - The proposed project would result in significant regional air quality impacts associated with reactive organic gases (ROG) and respirable particulates (PM10) emissions.
 - Odor complaints in the vicinity of the project site indicate objectionable odors would impact residents of the proposed project.

When a project has impacts that can not be reduced to a less than significant level, the approval body must make the required findings and Statement of Overriding Considerations. The draft findings and Statement of Overriding Considerations have been prepared for the City Council and are provided in Exhibit B of Attachment B of this report.

PUBLIC COMMENT/OUTREACH

A scoping meeting was held in conjunction with the development of the EIR on February 20, 2008. That meeting also served as a community meeting as required by the City’s Municipal Code for General Plan amendments.

Staff publicly noticed the application in accordance with City and State law. Any comments regarding the draft EIR are included in the final EIR. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The project represents a master development plan over the next 25 years, which includes phasing for infrastructure, buildings, open space, parking and design guidelines. The development agreement ensures the timing of the obligations and benefits for the City and the developer. Overall, the master development plan provides the basis for sound planning over a long period of time assuring the balance of infrastructure improvements and vitality to the Milpitas Business Park area.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission recommend approval of Milpitas Square Master Development Plan, subject to the attached Resolutions and Conditions of Approval therein.

Attachments:

- A. Resolution No. 043 (ZA/SDP/DA/CUP/GPA)
- B. Resolution No. 042 (EIR)
- C. Milpitas Square Design Guidelines
- D. Master Development Plan
- E. Demographic study
- F. Hexagon parking study
- G. General Plan/Zoning Map Exhibit
- H. Development Agreement
- I. Environmental Impact Report (Draft and Final) (previously distributed and available online)

IX. PUBLIC HEARING

1. GENERAL PLAN AMENDMENT NO. GP07-0002, ZONING AMENDMENT NO. ZA07-0001, SITE DEVELOPMENT PERMIT NO. SZ07-0001, CONDITIONAL USE PERMIT NO. UP09-0035, and DEVELOPMENT AGREEMENT NO. DA09-0003, MILPITAS SQUARE MASTER PLAN

Sheldon S. Ah Sing, Senior Planner, presented a request to allow a master plan that would accommodate phased future development of an existing regional commercial site that would ultimately include six buildings, a maximum of 900 dwellings and 175,000 sq. ft. of retail, shared parking and site improvements over a twenty-five year period. The project includes a General Plan and Zoning Amendment to consider a change in underlying site land use designation from commercial to mixed use; a Site Development Permit to consider the site layout, phasing plan and design guidelines; a Conditional Use permit to consider shared parking, height above 12 stories, deviations from setback; and Development Agreement to address timing and obligations by the developer. A final Environmental Impact Report will also be considered with the project. The project is located at 198 Barber Court. Mr. Ah Sing recommended adopting Resolution Nos. 10-042 and 10-043 recommending approval of the master development plan, the development agreement and certification of the EIR to the City Council.

Mr. Ah Sing stated the site is a 17-acre site. This would be a mixed use high density project. The site is relevant to Santana Row. This project is in close proximity to a PG&E gas transmission line. Therefore, the applicant has agreed to record a disclosure statement each property to inform future buyers of this fact as a condition of approval. The site includes some open space, which include courtyards for the private use of the residents and three outdoor plazas for use by residents, visitors and patrons of the shopping center. There will be a shared parking program for both residential and retail with parking guidance systems to help visitors and customers find parking efficiently and effectively.

Tony Morici, The Westwood Company, 1855 Park Avenue, San Jose, CA – stated they look forward to developing this project.

Rick Williams, Van Meter Williams Pollack, 18 De Boom Street, San Francisco, CA – described the development of the project. He stated they worked with staff on the traffic, design, and parking issues. The existing center is very successful. The site plan is trying to create a main street environment. This will be a new mixed use community where you can both live and shop, a great asset to the City of Milpitas.

Vice-Chair Mandal asked if there are any other developments of this sort. Mr. Williams stated Santana Row was one example near by, but his office has also worked on one in Colorado. Vice-Chair Mandal asked about the parking guidance system technology. Mr. Williams said this type of technology works very well. Vice-Chair Mandal asked if solar energy would be built into this project. Mr. Williams stated they will be able to incorporate green building technology.

Commissioner Ciardella asked staff will the Building codes be grandfathered in or would they adhere to the current laws. Mr. Ah

Sing stated the project would have to adhere to the most recent Building codes at the time any construction documents are submitted to the city for a permit. Commissioner Ciardella asked about shopping carts. Mr. Williams stated there are large parking areas where the carts can be stored. Commissioner Ciardella asked about freeway setbacks. Mr. Williams said the freeway setbacks will remain the same.

Commissioner Tao asked about 25 year term buildout, is that starting from the beginning of the phase. Mr. Ah Sing stated it is from the time the Council adopts the Development Agreement. Commissioner Tao asked when the first phase will begin. Mr. Morici stated it is undetermined due to the nature of the economy. Commissioner Tao asked the total linear feet of the project site. Mr. Williams said 1,000 ft to 1,200 ft. Commissioner Tao asked what the typical depth is for retail suites. Mr. Williams stated 60 ft to 80 ft.

Commissioner Sandhu asked what the story height is at the Colorado location. Mr. Williams stated five to six stories. Commissioner Sandhu asked, coupled with the Landmark Tower building is this project a safety issue since the proposed towers are 19 to 20 stories. Mr. Williams said they are very safe and a preferred lifestyle. Commissioner Sandhu asked there are adequate utilities. Mr. Ah Sing stated there will be utility upgrades over time as the project is built. The City has a master plan regarding utilities to maintain adequate service levels.

Vice-Chair Mandal asked if the project will have recycled water. Mr. Ah Sing said this site already has recycled water that may require an upgrade as necessary.

Chair Williams asked staff if they feel the data on these studies up to date. Mr. Ah Sing stated yes. Mr. Williams also stated they have spent an extensive amount of time on these studies. Chair Williams asked about shopping cart control. Mr. Williams said Ranch 99 Market is part of the development team. There is an overall managing retail strategy. Chair Williams asked about solar energy. Mr. Williams stated solar energy will be incorporated on the roofs and the parking lot roof tops. Chair Williams asked if the Landmark Towers will cause any difficulties. Mr. Williams stated the design of the building will allow separation between the two towers. Chair Williams asked about plaza ornaments. Mr. Williams stated the plaza will have features to create seating areas, sculptures, water features, and lighting.

Commissioner Tao asked if there will be full time staff to oversee the site. Mr. Morici stated there will be associations to oversee the site.

Chair Williams opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Sandhu, Mandal

AYES: 5

NOES: 0

ABSENT: 3 (John Luk, Noella Tabladillo, and Mark Tiernan)

ABSTAIN: 0

Chair Williams feels this is a nice project. He is requesting staff to work with the applicant and developer on a shopping cart master plan.

Vice-Chair Mandal is in favor of this project. He asked staff if there going to be checks on solar energy being utilized. Mr. Lindsay stated they will work with the developer to encourage them to utilize solar energy.

Commissioner Tao asked staff if there is any way to evaluate the parking as the phases go on. Mr. Lindsay stated currently there is no requirement.

Motion to adopt Resolution Nos. 10-042 and 10-043 recommending approval of the master development plan, the development agreement and certification of the EIR to the City Council with the amended condition.

M/S: Sandhu, Ciardella

AYES: 5

NOES: 0

ABSENT: 3 (John Luk, Noella Tabladillo, and Mark Tiernan)

ABSTAIN: 0



**CITY COUNCIL
TRANSPORTATION &
LAND USE
SUBCOMMITTEE
Unapproved Meeting
Minutes**

Date/Time: Monday, September 13, 2010, 3:00 pm

Where: Milpitas City Hall, Committee Conference Room

Attendants: Council Member & Chair Debbie Giordano,
Mayor Livengood

Quorum was established

1. Call to order

The meeting was called to order at 3:00 pm.

2. Public Forum *Please limit comments to 3 minutes*

There were no comments during Public Forum

3. Approval of agenda and minutes

There were no minutes due to lack of quorum. Notes from the August 2, 2010 were approved.

4. BART CPUC Letter Regarding Dixon Landing Road Grade Separation *

Staff Greg Armendariz reviewed a letter the VTA staff received from the California Public Utilities Commission (CPUC) staff regarding the CPUC staff position on the Dixon Landing Road alignment. The CPUC and VTA Staff met to discuss the alignment options. The CPUC is not in support of the City preferred alignment with Dixon Landing Road remaining at-grade while the BART tracks are in a retained cut. Unfortunately, the VTA failed to include City staff as agreed upon and were not able to discuss the alignment options directly with the CPUC. Mr. Armendariz shared a letter from City staff to the VTA stating the City preferred alignment.

The next steps are for the City to meet with the CPUC staff to review the alignment options and report back to the Subcommittee.

5. Milpitas Square Redevelopment*

Staff James Lindsay presented this item. Staff Sheldon Ah Sing and developer representative Mr. Morici were also present to answer additional questions regarding this project. Mr. Lindsay reviewed the Milpitas Square Master Development Plan with the Subcommittee referring to the renderings and site plans. The location of the project is on Barber Lane near Bellew Drive. Mr. Lindsay stated this is a long term development that will phase in mixed use development, annexed into the CFD to recover costs, which amount to \$500 per unit, per year in 2008 dollars. The applicant will maintain the retail floor, and can construct up to 900 new residential units or 520 units and 380 hotel rooms, and add 7,800 square feet of additional total retail space. Heights will be complimentary to the Landmark Tower project, next to this site, which will have approximately 18 stories.

Chair Giordano requested the percentage of mix of uses.

The next steps for this project are the planning commission hearing on October 20, 2010 and City Council review and adoption on November 16, 2010. This will include a General Plan amendment, rezoning, and approval of the master development.

6. Los Coches Area Rezone*

Mr. Lindsay also presented this item. He referred to a map of the area which includes properties along Los Coches Drive between Milpitas Boulevard and just east of Hillview Drive. This is an approximately 50-acre area that is currently zoned Industrial Park and Heavy Industrial, though many of the properties contain non-industrial and legal non-conforming uses, such as commercial and medical services, retail and office space, as well as community organizations. The Planning Commission reviewed this request at their August 25, 2010 meeting and recommend approval to the City Council. This will be reviewed at the September 21, 2010 City Council Meeting.

7. Adjourned to October 4, 2010, 2010

The Subcommittee was adjourned at 3:25 pm.

FINAL MEMORANDUM

To: Tony Morici, Milpitas Square
From: Darin Smith and Ed Sullivan
Subject: Milpitas Square Park Fee Demographics; EPS #19015
Date: March 2, 2009

The Economics of Land Use



Milpitas Square is a planned development expected to incorporate residential, commercial, and possibly hotel uses on the site of an existing shopping center. The City of Milpitas charges fees to developers who do not provide the required amount of parks and open space within their development. These fees are currently calculated assuming that a multifamily housing development will have an average of 2.52 residents per unit. Economic & Planning Systems, Inc. (EPS) has been retained by the developer of Milpitas Square to evaluate whether the park fees imposed by the City of Milpitas might be adjusted to reflect the specific demographic profile expected for the Milpitas Square development project.

Project Description

Milpitas Square is planned as a mixed-use development that may include as many as 900 multifamily housing units in addition to up to 175,000 square feet of commercial development. The site plan indicates that the residential development would be situated in mid-rise and high-rise buildings (up to eight and 20 stories, respectively). According to the project planners, Milpitas Square is currently expected to offer 384 one-bedroom units, 480 two-bedroom units, and 36 three-bedroom units.

Demographic Analysis

As described below, EPS has investigated a variety of Census-based data sources to understand whether 2.52 people per household is a reasonable assumption for the Milpitas Square project. These sources reveal the demographic and housing characteristics of Milpitas itself, those found elsewhere in Santa Clara County, and specific case studies that may more precisely mirror the expectations for Milpitas Square.

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Milpitas Demographics

As shown on **Table 1**, the US Census Bureau found that the housing and population characteristics in 2005-2007 were similar to those found in 2000. The year 2000 figures are significant because 2000 was the height of the dot-com era and the perception was that many Silicon Valley tech workers were living in close quarters to save money and to have housing close to their workplaces. The fact that similar figures were found five to seven years later suggests that the housing market had not significantly adjusted in that interim period, and thus the overall Census figures from 2000 (the most recent complete data set) are still likely to be reasonably reflective of the Milpitas housing demographics.

Table 1
Milpitas Demographic and Housing Statistics, 2000 - 2007

Year	Avg. Household Size	Percent of Homes Owner-Occupied	Percent of Homes in Structures w/ 20+ Units
2000	3.47	66%	6%
2005-2007	3.40	70%	7%

Source: US Census Bureau; EPS

In 2000, there were 2,066 Milpitas residents living in 793 "dense" housing units (50 or more units per structure). This translates to a ratio of 2.61 residents per dense housing unit. On average among these dense units, owner-occupied units had more residents per unit (3.07) than did rental units (2.60). If Milpitas Square were merely reflecting the overall patterns of Milpitas' existing multifamily housing stock, none of these Citywide figures suggests that the City's park fee population estimate is too high at 2.52 people per multifamily unit. However, Milpitas Square will be of much different character than most multifamily housing currently found in Milpitas.

Santa Clara County Demographics

If Milpitas Square's demographics and housing densities reflect those of neighboring jurisdictions, Milpitas Square may in fact have fewer residents than the City's park fee calculation would suggest. In 2000, the US Census indicated that Santa Clara County overall had only 1.91 residents per unit in owner-occupied "dense" housing (50+ units per structure), and 2.06 residents per dense rental unit, for an average of 2.05 people per dense unit. The City of San Jose, located less than a mile west of the Milpitas Square site, had 42,428 residents living in 19,240 "dense" units, for an average of 2.20 people per unit.

Several factors contribute to the lower residents-per-unit figures in San Jose and Santa Clara County versus Milpitas. First, Milpitas' housing stock has proportionately more large units than the other jurisdictions. In the 2000 Census, 62 percent of Milpitas units had three or more bedrooms, compared to only 53 percent for Santa Clara County and 54 percent for San Jose. To the extent that Milpitas Square is providing smaller units, the average residents-per-unit figure is likely to decrease. The current Milpitas Square plans show that only 4 percent of the planned units would be three or more bedrooms (compared to 62 percent Citywide), which would suggest that the Milpitas Square units would have a residents-per-unit figure well below the City average.

Second, Milpitas has proportionately fewer "dense" housing developments than do the other jurisdictions. In the 2000 Census, only 4.7 percent of Milpitas units were in structures with 50 or more units, compared to 7.0 percent in San Jose and 8.3 percent in Santa Clara County overall. These indicators suggest that, to the extent that Milpitas Square represents a shift toward a more urban lifestyle as found elsewhere in Santa Clara County, the residents-per-unit figure is likely to be lower. Indeed, Milpitas Square's current design includes housing buildings of eight to 20 stories – significantly more urban than is found elsewhere in Milpitas, where even the "dense" developments of 50 or more units per structure tend to be in low-rise buildings.

Case Study Demographics

The Milpitas Square project is expected to represent a specialized market niche for high-density units in tall buildings, rather than being reflective of the average housing stock in Milpitas or neighboring jurisdictions. To understand the demographic implications of this unique market segment, EPS has identified several data sources and studies that more closely resemble the expectations for Milpitas Square.

The Canadian Census gathers certain data that the US Census does not. The 2006 Canadian Census for the Vancouver region revealed that taller buildings had fewer residents per household than shorter buildings.¹ Specifically, multifamily developments taller than five stories had an average of 1.4 people per household, compared to an average of 1.6 people per household for shorter multifamily developments, and 2.2 people per household in the overall housing market. This evidence, albeit from a Canadian market, illustrates that taller buildings tend to be occupied by smaller households.

Further, EPS has evaluated the residents-per-unit figures for Santa Clara County Census block groups that more closely resemble the expectations for Milpitas Square. Within Santa Clara County, the 2000 Census identified 22 block groups in which over 85 percent of the units had fewer than three bedrooms, and in which the median household income was over \$65,000. These characteristics approximate those expected for Milpitas Square, which will have 96 percent of its units with fewer than three bedrooms, and will be oriented toward a moderate- to above-moderate income market. Among those 22 similar block groups, 12 had an average of fewer than 2.0 residents per unit, 17 had fewer than 2.25 residents per unit, and 21 had fewer than 2.50. The median residents-per-unit figure from these 22 block groups was 1.90, and the average was 1.96.

Conclusions

Through this analysis, EPS has reached the following conclusions:

1. Milpitas Square is planned to be a much taller and denser development than most found in Milpitas, and features more units (one- and two-bedrooms) than is typical for Milpitas.
2. Because of these characteristics, Milpitas Square is likely to have a lower residents-per-unit figure than would be expected for a more typical low-rise multifamily project in Milpitas.
3. Evidence from the most comparable Census block groups in Santa Clara County suggest that Milpitas Square could be expected to have roughly 1.90 to 1.96 residents per unit.

¹ Source: Capital Regional District Planning & Protective Services; www.crd.bc.ca

Table 2

2000 Census Housing Statistics from Comparable Block Groups
 Milpitas Square Parks Fee Analysis; EPS #19015

Geography	City/City SOI	Households: Median household income in 1999	Occupied housing units: Average household size; Total	Housing units: Total	% Total HH having 0-2 Bedrooms
Block Group 3, Census Tract 5091.06, Santa Clara County, California	Sunnyvale	\$67,269	1.83	801	88%
Block Group 1, Census Tract 5062.03, Santa Clara County, California	San Jose	\$67,784	2.47	1,595	90%
Block Group 1, Census Tract 5091.07, Santa Clara County, California	Sunnyvale	\$67,797	2.47	895	94%
Block Group 1, Census Tract 5022.02, Santa Clara County, California	San Jose	\$69,010	1.70	801	93%
Block Group 5, Census Tract 5083.04, Santa Clara County, California	Sunnyvale	\$69,441	2.61	1,179	90%
Block Group 1, Census Tract 5087.04, Santa Clara County, California	Sunnyvale	\$69,615	2.02	799	85%
Block Group 3, Census Tract 5113, Santa Clara County, California	Palo Alto	\$70,284	1.41	926	93%
Block Group 2, Census Tract 5048.03, Santa Clara County, California	Sunnyvale	\$70,682	1.82	1,415	93%
Block Group 1, Census Tract 5116.04, Santa Clara County, California	Palo Alto	\$70,855	1.51	915	100%
Block Group 2, Census Tract 5091.07, Santa Clara County, California	Sunnyvale	\$71,373	2.29	1,251	93%
Block Group 1, Census Tract 5085.04, Santa Clara County, California	Sunnyvale	\$71,508	1.72	1,146	98%
Block Group 2, Census Tract 5087.03, Santa Clara County, California	Sunnyvale	\$73,894	2.09	713	91%
Block Group 3, Census Tract 5085.03, Santa Clara County, California	Sunnyvale	\$75,000	1.91	1,459	85%
Block Group 3, Census Tract 5085.05, Santa Clara County, California	Sunnyvale	\$77,083	2.04	986	89%
Block Group 3, Census Tract 5120.29, Santa Clara County, California	San Jose	\$78,328	1.68	514	97%
Block Group 3, Census Tract 5054.01, Santa Clara County, California	Santa Clara	\$79,091	2.06	894	95%
Block Group 4, Census Tract 5091.05, Santa Clara County, California	Mountain View	\$81,133	2.18	807	92%
Block Group 2, Census Tract 5091.02, Santa Clara County, California	Sunnyvale	\$81,159	1.88	1,418	94%
Block Group 1, Census Tract 5049.01, Santa Clara County, California	Santa Clara	\$83,743	1.72	915	100%
Block Group 2, Census Tract 5087.04, Santa Clara County, California	Sunnyvale	\$83,903	2.33	1,487	85%
Block Group 3, Census Tract 5096, Santa Clara County, California	Mountain View	\$88,057	1.68	587	94%
Block Group 1, Census Tract 5050.06, Santa Clara County, California	San Jose	\$97,098	1.78	1,949	87%
Median		\$72,701	1.90	921	93%
Average		\$75,641	1.96	1,066	92%

Source: US Census Bureau; EPS



MEMORANDUM

TO: Tony Morici

FROM: Gary Black
Ryan Sebastian

DATE: April 14, 2009

SUBJECT: *Parking Study for the Proposed Milpitas Square*

Hexagon Transportation Consultants, Inc. has completed this parking study for the proposed mixed use development located at the Ranch 99 retail center on Barber Lane in the City of Milpitas. The project proposes to expand the existing 162,200 square feet (s.f.) retail center by 12,800 s.f. and construct up to 900 dwelling units on the site. The purpose of the parking analysis is to determine the adequate number of parking spaces expected to satisfy demand.

Estimated Parking Demand

To evaluate the proposed parking for the project, Hexagon considered data and input from parking surveys conducted by Hexagon at the existing project site and Urban Land Institute research. Each of these sources is described in detail below.

Retail

Hexagon conducted parking surveys at the existing Ranch 99 shopping center to estimate parking demand. Surveys were conducted between 9:00 AM and 9:00 PM every hour on two weekends in February 2009. Observations have shown that parking demand is highest on Saturdays. Since parking demand currently outstrips the supply of on-site parking spaces, surrounding parking areas such as on-street parking spaces on Barber Lane, off-street parking lots at Cisco Systems, and a nearby hotel lot were also monitored (see Figure 1). The parking surveys showed that the demand peaked at 991 spaces (or 6.11 spaces per 1,000 s.f.) at 1:00 PM on Saturday, February 7, 2009 (see Table 1). A previous parking study conducted by Fehr & Peers in December 2007 showed a peak parking demand of 1,079 spaces (or 6.65 spaces per 1,000 s.f.).

The Urban Land Institute (ULI) conducts research on shopping centers and published the report, *Parking Requirements for Shopping Centers, Second Edition*. According to the study, providing parking for the average demand would be inadequate, leading to insufficient parking half of the time. Designing the project for the year's busiest hour would also be undesirable because it would result in substantial excess parking throughout the majority of the year. Instead, the ULI recommends that shopping centers provide parking for the 20th highest hour of the year. That means that there may be more cars than parking spaces for only 19 hours of the year. The ULI has surveyed vehicular traffic data at numerous shopping centers throughout the country to determine the 20th highest hour. Research shows that the hours of 1:00 PM and 3:00 PM on the second Saturday before the week of Christmas are the best representative time periods for these conditions. This parking standard results in adequate parking under all but the most intense shopping times while avoiding expensive and unnecessary overbuilding.



PROJECT SITE

Barber Ct

Crowne
Plaza
Hotel
Parking

Cisco Systems Parking

LEGEND
= On-street Parking



Figure 1
PARKING LOCATIONS
Milpitas Square

Table 1
Parking Survey

Time	2/7/2009	2/21/2009
9:00 AM	88	108
10:00 AM	229	251
11:00 AM	514	543
12:00 PM	818	798
1:00 PM	991	871
2:00 PM	906	846
3:00 PM	740	721
4:00 PM	628	645
5:00 PM	677	668
6:00 PM	755	780
7:00 PM	942	858
8:00 PM	876	818
9:00 PM	511	526

Denotes highest peak parking demand.

Note: Counts include parking at the existing shopping center, and shoppers utilizing the adjacent Cisco Systems, Crowne Plaza Hotel, and Barber Lane parking spaces.

The most recent parking surveys were conducted on Saturday, February 7, 2009 and Saturday, February 21, 2009 and estimated a demand of 6.11 spaces per 1,000 s.f. A previous parking survey was conducted by Fehr & Peers on Saturday, December 8, 2007. The Fehr & Peers survey can be considered close enough to the guidelines to represent the 20th highest hour. The survey estimated a higher demand of 6.65 spaces per 1,000 s.f. In order for the shopping center to provide an adequate parking supply for the 20th hour, parking demand should be based on the December parking survey (see Table 2).

Residential

The ULI also conducts research on parking demand ratios and publishes the manual, *Shared Parking, Second Edition*, which estimates parking demand for projects with multiple uses and common parking facilities. *Shared Parking* also provides an appropriate parking demand estimate for the residential component of the proposed project. According to ULI parking supply ratios, for sale residential units should provide 1.7 and 0.15 spaces per unit for residents and visitors, respectively. This ratio provides an effective parking supply that allows for up to 10 percent empty parking spaces at peak demand to allow reasonable parking space search times by residents and visitors. The actual peak parking demand for residential projects according to the ULI research is 1.53 and 0.14 spaces per unit for residents

and visitors, respectively. These estimates allow one reserved parking spot for each dwelling unit to ensure convenient parking supply for residents. The estimated parking demand for the residential portion of the project is described in Table 2.

Table 2
Estimated Parking Demand

Land Use	Size	Ratio	Parking Spaces
Community Shopping Center /a/	175 ksf	6.65	1,164
Residential			
Reserved /b/	900 units	1.00	900
Resident /b/	900 units	0.53	477
Guest /b/	900 units	0.14	126
		Total	2,667

/a/ Ratio based on parking demand surveys conducted by Fehr & Peers, December 2007. The peak demand for parking was observed at 12:30 PM.

/b/ Urban Land Institute, *Shared Parking, 2nd Edition*, 2005.

Shared Parking

Under certain circumstances, multiple land uses within a single development may provide the opportunity for shared parking on-site. The combined land uses may result in a demand for parking that will be less than the demand that would be generated by separate free-standing developments. To determine the potential shared parking reduction, an evaluation of the peaking characteristics for the proposed development was completed. The evaluation is based on survey results compiled by the Urban Land Institute and the methodology presented in their *Shared Parking* guide. The surveys evaluated parking demand characteristics for various land uses and developed hourly parking demand ratios. Parking demand for the proposed project was calculated based on the proposed size and uses of the project and the application of the *Shared Parking* guide methodology. Based on the *Shared Parking* guide, the parking demand for the proposed land uses are staggered throughout the day. Weekend retail peak demands occur between the hours of 2:00 PM to 3:00 PM. Residential peak demands occur during late night/early morning hours of 10:00 PM to 6:00 AM.

The combined peak parking demand of residential and retail uses for the site was determined to occur at 2:00 to 3:00 PM on a weekend, with a peak of 2,423 spaces needed (see Table 3). Thus, the shared parking demand calculates to a number about 10% less than the individual demands added together.

**Table 3
 Shared Parking**

Use	ksf/units	Peak Demand	
		Ratio	Parking Spaces
Retail	175	6.65	1,164
Residential			
Reserved	900	1.00	900
Residents	900	0.53	477
Guests	900	0.14	126

Weekend Demand

Hour	Retail	Residential			Total
		Reserved	Residents	Guests	
6:00 AM	12	900	477	25	1,414
7:00 AM	58	900	429	25	1,413
8:00 AM	116	900	405	25	1,447
9:00 AM	349	900	382	25	1,656
10:00 AM	582	900	358	25	1,865
11:00 AM	756	900	334	25	2,016
12:00 PM	931	900	310	25	2,166
1:00 PM	1,047	900	334	25	2,306
2:00 PM	1,164	900	334	25	2,423
3:00 PM	1,164	900	334	25	2,423
4:00 PM	1,106	900	358	25	2,389
5:00 PM	1,047	900	405	50	2,403
6:00 PM	931	900	429	76	2,336
7:00 PM	873	900	463	126	2,362
8:00 PM	756	900	467	126	2,250
9:00 PM	582	900	472	126	2,080
10:00 PM	407	900	477	126	1,910
11:00 PM	175	900	477	101	1,652
12:00 AM	0	900	477	63	1,440

Denotes highest peak parking demand.

Source: Urban Land Institute, *Shared Parking, 2nd Edition*, 2005.

Parking Supply

If parking were provided solely on the basis of observed parking demand, vehicles searching for the last available parking spaces may encounter extended search times and long walking distances from intended destinations. The project as proposed consists of multiple parking structures to serve employees, residents and visitors. Visitors may find that some parking garages are more utilized than others due to location, accessibility, or a combination of both.

According to the ULI, parking lots are perceived as “full” at 85 to 95 percent of capacity, depending on the familiarity of the users. New users may take longer to find empty spaces. For a project mostly visited by new users, a “parking cushion” of 15 percent may be adequate. Regular visitors already have a working knowledge of the location of available spaces. For a project mostly visited by regulars, 5 percent may be adequate. Most likely, the shopping center as proposed would attract a mix of new and regular users. Therefore, a parking cushion of 10 percent ordinarily would be appropriate for the proposed project.

In recent years, some developments with multi-story parking structures, such as the proposed project, have implemented parking guidance systems that effectively reduce the recommended parking cushion. Basic parking guidance systems consist of roadway sensors that track ins and outs on each level of parking and display the results on electronic display boards throughout the garage. For developments with multiple garages, central display boards inform users of available parking at each garage. For both the casual and regular visitor, search times for available parking spaces is sharply reduced by parking guidance systems. Installation of a basic parking guidance system in the proposed project’s parking garages would conservatively reduce the required parking cushion to 5 percent. Therefore, with a basic parking guidance system in place, the recommended parking cushion would result in a recommended parking supply of 2,533 spaces (see Table 4).

The project as proposed would supply 2,970 spaces, substantially more than the estimated demand of 2,423 spaces and the recommended supply of 2,533 parking spaces. To ensure reasonable parking availability for residents, one parking space should be reserved exclusively for each dwelling unit. The remaining parking spaces should remain available for use by residents, guests, retail visitors, and employees. To maximize effectiveness of the parking guidance system, it is recommended that electronic boards should be installed at all project driveways to display parking availability at each garage with clear directional signage leading visitors to garage entrances.

Table 4
Recommended Parking Supply With Parking Guidance System

Use	ksf/units	Parking Supply	
		Ratio	Parking Spaces
Retail	175	6.98	1,222
Residential			
Reserved	900	1.00	900
Residents	900	0.61	549
Guests	900	0.15	135

Weekend Demand

Hour	Retail	Residential			Total
		Reserved	Residents	Guests	
6:00 AM	12	900	549	27	1,488
7:00 AM	61	900	494	27	1,482
8:00 AM	122	900	467	27	1,516
9:00 AM	366	900	439	27	1,733
10:00 AM	611	900	412	27	1,950
11:00 AM	794	900	384	27	2,105
12:00 PM	977	900	357	27	2,261
1:00 PM	1,099	900	384	27	2,411
2:00 PM	1,222	900	384	27	2,533
3:00 PM	1,222	900	384	27	2,533
4:00 PM	1,160	900	412	27	2,499
5:00 PM	1,099	900	467	54	2,520
6:00 PM	977	900	494	81	2,452
7:00 PM	916	900	533	135	2,484
8:00 PM	794	900	538	135	2,367
9:00 PM	611	900	544	135	2,189
10:00 PM	428	900	549	135	2,012
11:00 PM	183	900	549	108	1,740
12:00 AM	0	900	549	68	1,517

Denotes highest peak parking demand.

Source: Urban Land Institute, *Shared Parking, 2nd Edition*, 2005.