

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD12-0007, A DEVELOPMENT AGREEMENT AND CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE I-880 MILPITAS BILLBOARDS PROJECT AND ADOPTING RELATED MITIGATION FINDINGS, FINDINGS REGARDING ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, on September 28, 2012, an application was submitted by Milpitas Sign Company, LLC for site development approval for the erection and operation of a freestanding off-site advertising display including an agreement between the City and the applicant. The project is located at 1301 California Circle (APN: 022-37-002) and 1545 California Circle (APN: 022-37-049); and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated July 25, 2010 to public agencies and interested parties for consultation on the scope of the EIR; and

**WHEREAS**, based on the responses to the Notice of Preparation, the City prepared a Draft Environmental Impact Report (“Draft EIR”) dated May 2011 (SCH No. 201062083) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft EIR was circulated for a 45 day public review and comment period, from May 18, 2011; and

**WHEREAS**, the Project was the subject of public meetings and the Project and Final EIR were the subject of a public meeting held on January 23, 2013; and

**WHEREAS**, City staff reviewed all comments received on the Draft EIR during the public review period and prepared written responses providing the City’s good faith, reasoned analysis on the environmental issues raised by the comments. Revisions to the Draft EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft EIR pursuant to CEQA Guidelines § 15088.5. The comment letters, written responses to comments and revisions to the Draft EIR are contained in a separately bound Final EIR dated March 2012. The May 2011 Draft EIR and the March 2012 Final EIR, both of which are included in the Council packet and available for public review at the Office of the City Clerk, together constitute the final Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, and reflect the City’s independent judgment and analysis on the potential environmental impacts of the Project; and

**WHEREAS**, on January 23, 2013 the Planning Commission held a noticed public hearing on the Project at which time the Commission considered a written staff report as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes), the Draft EIR, written and oral comments on the Draft EIR, the Final EIR, and all other oral and written comments presented to them. Based on this evidence, the Planning Commission recommended that the City Council certify the EIR and approve the Site Development Permit No. SD12-0007 (Resolution No. 13-004); and

**WHEREAS**, the EIR identifies the potential for significant effects on the environment from development of the Project, not all of which can be substantially reduced through implementation of mitigation measures; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Exhibit B; 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 C; and

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

**WHEREAS**, on April 2, 2013, the City Council held a noticed public hearing to consider certification of the EIR, and approval of the Project.

**NOW, THEREFORE, BE IT RESOLVED** that the foregoing recitals are true and correct and made a part of this Resolution.

**BE IT FURTHER RESOLVED** that the Milpitas City Council determines, finds and certifies as follows:

1. Regarding the Site Development Permit:

- a. The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.
- b. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable State and federal rules and regulations.
- c. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.
- d. The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services.
- e. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.
- f. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:
  - i. provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
  - ii. allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
  - iii. promotes and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.

2. Regarding the EIR:

- a. That the final EIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
- b. That the EIR was presented to the City Council who reviewed and considered the information contained therein prior to approving the Project.
- c. That the Final EIR reflects the City's independent judgment and analysis on the potential for environmental effects of the Project.
- d. That 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.

**BE IT FURTHER RESOLVED** that the Milpitas City Council adopts the Conditions of Approval set forth in Exhibit A, the Findings for the EIR set forth in Exhibit B, the Statement of Overriding Considerations set forth in Exhibit C, and the Mitigation, Monitoring and Reporting Program set forth in Exhibit D.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:      APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## EXHIBIT A

### CONDITIONS OF APPROVAL

#### Site Development Permit No. SD12-0007

A request for off-site advertising displays

1301 California Circle (APN: 022-038-002) and 1541 California Circle (APN: 022-37-049)

#### General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for, review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

SD12-0007 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

- a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD12-0007 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
  3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
  4. Prior to issuance of a building permit, the owner or designee shall provide a landscape plan showing native and drought tolerant plants such as, but not limited to rosemary, California Poppy species to be planted at the base of the sign. **(P)**
  5. Prior to issuance of building permit final, the owner or designee shall demonstrate that the plantings pursuant to the landscape plan are in place. **(P)**
  6. Prior to issuance of a building permit, the owner or designee shall demonstrate final project design specifications to include a combination of display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various displays and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans, or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics. **(MM)**
  7. The Project Development Agreement shall include a process for modifying display and lighting specifications, if deemed necessary over time by the City. Modifications could include adjustments to digital display brilliance, content, motion, recess, aim, focus, shielding, etc. **(MM)**

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (MM) = Mitigation Measure

## EXHIBIT B

### MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE I-880 BILLBOARD PROJECT LOCATED AT 1301 CALIFORNIA CIRCLE AND 1545 CALIFORNIA CIRCLE

#### SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the project located at 1301 California Circle and 1545 California Circle (“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 Impact with Mitigation**

**Aesthetics Impact 4-2:** Project Spill Light and Sky Glow Impacts. A number of federal, state, and city laws and regulations have been adopted to regulate the brilliance of billboard lighting so as to not impair the vision of drivers. Digital billboards are also equipped with sensors that modify the brightness of the LED display in response to ambient lighting conditions, so that the brightness of the display at night does not present a traffic safety hazard. These brightness regulations and controls are not intended, and may not be sufficient, to effectively control the potential for billboard sign spill light and sky glow impacts. Mitigation features to be included in the project to shield nearby residences from spill light and to limit sky glow have not yet been specified—e.g., display brilliance (light intensity), static display light source shielding, electronic display dimming controls, and other specifications (display orientation, aim focus and shielding) sufficient to prevent excessive glare or overcast illumination).

Depending upon such specifications, the project could cause excessive spill light and sky glow (especially during nighttime foggy conditions) that may create a nuisance for adjacent sensitive residential uses on Heath Street, Redwood Avenue, Glenmoor Circle, N. Abbott Avenue, and east of the Penitencia Creek channel. As a result, sky glow caused by the project could substantially degrade the quality of nighttime views and night sky access from these nearby vantage points. These possible light, glare and sky glow effects represent a potentially significant impact.

**Mitigation Measure AES-4.2:** As a condition of approval, require final project design specifications to include a combination of display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various displays and lighting specifications, if deemed necessary over time by the City, based upon directives received from Caltrans, or the California Highway Patrol, complaints received, or the City’s own periodic visual inspection and consideration of billboard operational characteristics.

**Finding:** Implementation of these measures to the satisfaction of the City’s Planning and Neighborhood Services Director would reduce the potential light, glare and sky glow impacts of the project to a less than significant level.

#### 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." **Chapter 7 Alternatives** of this EIR analyzes several alternatives to the proposed project. A brief summary of these alternatives and their impacts is provided below.

### ***Alternative 1: No Project Alternative***

Under the No Project alternative, the project sites would remain as is with no new impacts. The No Project alternative would avoid all the environmental impacts of the proposed project. The No Project alternative would not meet any of the project objectives, but it would avoid all of the impacts of the proposed project. For this reason, the No Project Alternative is an environmentally superior alternative to the proposed project.

### ***Alternative 2: Lower Height***

Alternative 2, Lower Height, would involve installing three billboard structures along the east side of I-880 south of Dixon Landing Road, similar to the Project. However, Alternative 2 would reduce the height of billboards to 50 feet, down from 70 feet with the Project. All other location, design and operational characteristics of Alternative 2 would remain similar to the Project.

### **Impacts and Mitigations**

- a. Aesthetics. Alternative 2 would reduce significant impacts of the project on I-880 gateway visual character and spill light, glare and sky glow impacts. Impacts on I-880 gateway visual character would be reduced, but the reduction would not be substantial—i.e., this identified impact would remain significant and unavoidable. At a height of 50 feet, the billboards would not be blocked from view by roadside vegetation and would still be visible to approaching freeway drivers for considerable distance, but would likely not be visible from adjacent residential uses on Glenmoor Circle, North Abbott Avenue, and east of the Penitencia Creek channel. The sky glow impacts and mitigation needs of Alternative 2 would be similar to the project.
- b. Transportation. Alternative 2 would not be visible from as great of a distance or as long a time from the freeway view as the Project, but would still result in traffic safety effects similar to but less than the Project.
- c. Other Impacts. Alternative 2 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of the EIR.

### **Attainment of Project Alternatives**

Alternative 2 would reduce or avoid Project visual and noise impacts on nearby residential and hotel uses, and would be substantially as effective in meeting the basic Project objective of erecting new freeway billboards with high visibility, as well as providing advertising revenue to the applicant and the City.

### ***Alternative 3: Fewer Billboards***

Figure 7.1 of the EIR shows seven possible locations, Site Options 1 through 7, where the proposed three digital billboard structures may be located. Under the proposed Project, all three billboard structures would be located on the east side of I-880, at three of the four east side Site Options 1 through 4.

Under **Alternative 3**, Fewer Billboards, two billboard structures rather than three would be installed along the east side of I-880 south of Dixon Landing Road. The proposed east side billboard at Site Option 4 would be eliminated in order to reduce the potential for traffic safety hazards associated with driver distraction near driver decision and action points and official traffic control signs associated with the northbound off-ramp of the Dixon Landing Road interchange. The two billboards retained would be located on Project Site Options 1, 2 or 3. All other design and operational characteristics of Alternative 3 would also be similar to the Project.

#### Impacts and Mitigations

- a. Aesthetics. Alternative 3 would allow for optimal placement of the billboards to reduce or avoid visual impacts on nearby homes. With only two billboards instead of three there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 3 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Nevertheless, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.
- b. Transportation. With only two billboards instead of three, there would be some decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 3 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

#### Attainment of Project Objectives

Alternative 3 would achieve the basic Project objectives of erecting new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue. However, with only two billboards instead of three, there would be a proportional decrease in benefits accruing to the billboard owner and operator, as well as to the City.

#### ***Alternative 4: All Non-Led Billboards***

Under **Alternative 4**, All Non-LED Billboards, three billboard structures would be installed on three of the same four site options along the east side of I-880 as under the proposed Project, but without “digital” LED displays. Instead, all three would include externally illuminated facings, two per structure. The locations, height and size of the three “non-digital” billboards would be similar to the Project.

#### Impacts and Mitigations

- a. Aesthetics. Alternative 4 would be less visually conspicuous because non-LED billboards would not have changing messages. In addition, the light sources used for sign illumination could be more effectively shielded. Therefore, Alternative 4 could be designed to reduce spill light, glare and sky glow impacts. Alternative 4 would still cause a significant and unavoidable impact on gateway visual character. In summary, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply under Alternative 4.
- b. Transportation. Alternative 4 would reduce the traffic safety effects of the project. Non-LED billboards would be less distracting to drivers because they would be less bright and would not have changing messages, which are more noticeable and distracting.

- c. Other Impacts. Alternative 4 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

#### Attainment of Project Objectives

Alternative 4 would partially achieve the basic Project objectives of erecting new freeway billboards, though not digital billboards, and would provide similar but reduced benefits to the applicant and City in terms of advertising revenue and promotion of local businesses.

#### ***Alternative 5: Alternative Location--Two Billboards On East Side And One Billboard On West Side Of I-880***

Under **Alternative 5**, two of the three proposed billboard structures would be located on the east side of I-880 at two of the four east side Site Options 1 through 4, and one of the three would be located on the west side of I-880 at one of the three west side Site Options 6 through 7. All other design and operational characteristics would be similar to the Project.

#### Impacts and Mitigations

- a. Aesthetics. Similar to Alternative 3, Alternative 5 would reduce the number of billboards on the east side of the freeway where potential impacts on nearby homes could occur. Alternative 5 would allow for optimal placement of the two billboards on the east side to avoid or reduce visual impacts on nearby homes. With only two billboards instead of three on the east side of I-880, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 5 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. Impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.
- b. Transportation. With only two billboards instead of three on the east side of I-880, there would be some decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 5 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

#### Attainment of Project Objectives

Alternative 5 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

#### ***Alternative 6: Alternative Location--One Billboard On East Side And Two Billboards On West Side Of Interstate 880***

Under **Alternative 6**, one of the three proposed billboard structures would be located on the east side of I-880 at one of the four east side site options, and the other two billboards would be located on the west side of I-880 at two of the three west side site options. All other design and operational characteristics would be similar to the Project.

## **Impacts and Mitigations**

- a. Aesthetics. Alternative 6 would allow for optimal placement of the one billboard on the east side of I-880 to reduce or avoid visual impacts on nearby homes. With only one billboard on the east side instead of three there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 6 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road.

The two billboards located on the west side of I-880 would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the interchange overpass and southbound on-ramp embankment, the two billboards on the west side of the freeway would be visible to drivers entering Milpitas for a shorter distance.

- b. Transportation. With only one billboard instead of three on the east side of I-880, there would be a substantial decrease in potential Project effects on driver attention.
- c. Other Impacts. Alternative 6 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

## **Attainment of Project Objectives**

Alternative 6 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

### ***Alternative 7: Alternative Location--All Three Billboards On West Side Of Interstate 880***

Under **Alternative 7**, All Three Billboards on West Side of Interstate 880, all three billboard structures would be installed along the west side of I-880 rather than along the east side of the freeway, either on: the three west side Site Options 5 through 7 shown on Figure 7.1, or on undeveloped land west of N. McCarthy Boulevard, or on some combination of these various options. All other design and operational characteristics would be similar to the Project.

## **Impacts and Mitigations**

- a. Aesthetics. Billboards located on the west side of I-880 south of Dixon Landing Road would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the interchange overpass and southbound on-ramp embankment, billboards at these west side locations would be visible to drivers entering Milpitas for a shorter distance.

Billboards located on the west side of N. McCarthy Boulevard within the McCarthy Center office, industrial and commercial park areas and/or the adjacent WalMart site would be farther away from the Dixon Landing Road interchange gateway to Milpitas, and thus would have a less substantial impact on this important gateway view. However, this reduction in impact would be offset by increased visibility from the SR 237 gateway to Milpitas. Therefore, the impact on gateway visual character would still be significant and unavoidable. As a result, impact and mitigation findings 4-1 and 4-3 would continue to apply.

- b. Transportation. In general, digital billboards located on the west side of I-880 would have traffic safety effects similar to the proposed Project. Billboards located on lands east or west of N. McCarthy Boulevard would be less distracting to drivers because they would be farther away from the freeway and, due to the interchange overpass and southbound on-ramp embankment, would be visible to approaching drivers for a shorter distance.

## EXHIBIT C

### STATEMENT OF OVERRIDING CONSIDERATIONS

#### General

Prior to approving a project for which an Environmental Impact Report (EIR) is certified and for which findings are made that one or more significant impacts would result because mitigation measures or alternatives identified in the EIR are infeasible, the California Environmental Quality Act (CEQA) mandates that the lead agency state in writing the specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment. This must be a written finding stating the agency's specific reasons supporting its action based on the Final EIR and/or other information in the record. The requirements for a Statement of Overriding Considerations are established in Section 15093 of the CEQA Guidelines and in the CEQA provisions set forth in Public Resource Code Section 21081 et seq.

Accordingly, 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 providing advertising near a major freeway. Although the City Council believes that 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.

**Impact 4-1: Project Impacts on I-880 Gateway Visual Character.** The three project billboard structures may be perceived by many as substantially degrading the visual character and quality of the General Plan identified southbound I-880 "gateway" to Milpitas.

A mitigation is proposed that would require modifications and adjustments to the displays to reduce the impact, however, implementation of these measures cannot assure the impact is reduced to a less than significant level.

**Impact 4-3: Cumulative Impact on Community Aesthetic Character.** The previous EIR that evaluated five new freeway billboards in Milpitas concluded that there would be significant and unavoidable impacts related to community aesthetic character. Based on those findings, the current project along with the previous project would still result in a significant and unavoidable impact. No mitigations can assure that the impacts of the project would be reduced to a level of less than significant.

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 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 provide a media for

advertising commercial and non-commercial messages along I-880. 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 increase revenue to the City and provide a means to communicate community events and services.

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 economic, awareness 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.

**EXHIBIT D**  
**MITIGATION, REPORTING AND MONITORING PROGRAM**  
**(SCH2010062083)**

# MITIGATION MONITORING CHECKLIST--INTERSTATE 880 BILLBOARDS PROJECT

The environmental mitigation measures listed in column two below have been incorporated into the conditions of approval for the Interstate 880 Billboards Project in order to mitigate identified environmental impacts. A completed and signed chart will indicate that each mitigation requirement has been complied with, and that City and state monitoring requirements have been fulfilled with respect to Public Resources Code section 21081.6.

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE (Performance Criteria)	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
<i>AESTHETICS</i>						
<b>Impact 4-1: Project Impacts on I-880 Gateway Visual Character.</b> The General Plan identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road as a major visual “gateway” into the city. The City’s Streetscape Master Plan includes landscaping and signage recommendations for the seven General Plan-identified major “gateways,” including the I-880 “gateway” segment. The three Project billboard structures may be perceived by many as substantially degrading the visual character and quality of the General Plan-identified southbound I-880 “gateway” to Milpitas, which would represent a <i>potentially significant impact</i> .	<b>Mitigation 4-1.</b> Require the Project Development Agreement to include a process for modifying display and lighting specifications, if deemed necessary over time by the City. Modifications could include adjustments to digital display brilliance, content, motion, recess, aim, focus, shielding, etc.	Planning Division	Planning Division	Before approving development agreement		
<b>Impact 4-2: Project Spill Light and Sky Glow Impacts.</b> A number of federal, State and City laws and regulations have been adopted to regulate the brilliance of billboard lighting so as to not impair the vision of drivers. Digital billboards are also equipped with sensors that modify the brightness of the LED display in response to ambient lighting conditions, so that the brightness of the display at night does not present a traffic safety hazard. These brightness regulations and controls are not intended, and may not be sufficient, to effectively control the potential for billboard sign spill light	<b>Mitigation 4-2.</b> Require the final Project design specifications to include a combination of display shielding, display angle, display light source shielding, LED display brightness control; illumination aim, focus and shielding; etc., sufficient to shield nearby residential vantage point direct views of the displays and to prevent excessive glare, and stray (overcast) illumination. In addition, require the Project Development Agreement to include a process for modifying these various display and lighting specifications, if deemed necessary over time by the City, based upon	Applicant	Planning Division	Before issuing building permit		

EXHIBIT D

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE (Performance Criteria)	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
and sky glow impacts. The Project could cause excessive spill light and sky glow (especially during nighttime foggy conditions) that may create a nuisance for adjacent sensitive residential uses on Heath Street, Redwood Avenue, Glenmoor Circle, N. Abbott Avenue, and east of the Penitencia Creek channel. Sky glow caused by the Project could substantially degrade the quality of nighttime views and night sky access from these nearby vantage points. These possible light, glare and sky glow effects represent a <b>potentially significant impact</b> .	directives received from Caltrans or the California Highway Patrol, complaints received, or the City's own periodic visual inspection and consideration of billboard operational characteristics.					
<b>Impact 4-3: Cumulative Impact on Community Aesthetic Character.</b> An EIR certified by the City in 2006 which evaluated the impacts of five new freeway billboards, including two digital billboards, along I-880 and I-680, concluded that the billboards would result in unavoidable significant impacts related to community character and visual intrusion on nearby residential and hotel uses. The current Project together with the other five anticipated billboards evaluated in the 2006 EIR, would result in significant cumulative impacts rated to community character, nearby residential area visual character, and light, glare and sky glow. The Project could result in a considerable contribution to this <b>significant cumulative impact</b> .	<b>Mitigation 4-3:</b> Mitigations 4-1 and 4-2 in Chapter 4, Aesthetics, would reduce the Project contribution to this previously identified significant cumulative impact on community aesthetic character, but not assuredly to a less than considerable level. The potential Project contribution to this cumulative impact would therefore represent a <b>significant and unavoidable impact</b> .	Planning Division and applicant	Planning Division	Before approving development agreement/before issuing building permit		

**REGULAR**

**NUMBER: 38.807**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND MILPITAS SIGN COMPANY, LLC**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of , upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. 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

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, on January 7, 2011, an application was submitted by Milpitas Sign Company, LLC., 555 12<sup>th</sup> Street, #950, Oakland, CA 94607, for the construction and operation of two freestanding off-site advertising displays (“Project”) to be located at 1545 California Circle (APN: 22-37-049) and 1301 California Circle (APN: 22-38-002). The properties are located within the Industrial Park Zoning District; and

**WHEREAS**, the City and the applicant wish to memorialize the rights to design, construct, install, operate, maintain, manage and market advertising opportunities on said advertising display in the document entitled “Development Agreement By and Between the City of Milpitas and Milpitas Sign Company, LLC,” (hereinafter referred to herein as the “Development Agreement”), a draft of which is attached hereto as Exhibit A; and

**WHEREAS**, the environmental effects of the Project were considered in the Final Environmental Impact Report, State Clearinghouse No. 201062083 (“EIR”) prepared pursuant to the California Environmental Quality Act (“CEQA”) and certified by the Milpitas City Council on April 2, 2013. The terms and conditions of this Development 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 the Development Agreement and undertake its terms and conditions; and

**WHEREAS**, on January 23, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties, and unanimously recommended to the City Council to approve the accompanying sign proposal and the environmental assessment performed by City staff; and

**WHEREAS**, on April 2, 2013, the City Council held a duly noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.*

**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**

- A. The City Council finds that the proposed Development Agreement is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, is not detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable State law and City Resolution No. 6642, as amended.
- B. The City Council finds that the proposed Development Agreement complies with all the applicable procedural and eligibility requirements for the approval and execution 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 an advertising display in an appropriate zoning district and location. 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.

- C. The Development Agreement is consistent with the General Plan in that the advertising display would promote business development, appropriately identify local commercial activity and project a positive image of the City and the community.

### **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 between the City of Milpitas and Milpitas Auto Properties, LLC, attached hereto as Exhibit A. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder.

### **SECTION 4. 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 5. 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.

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, CA95035

**EXHIBIT A**

**DEVELOPMENT AGREEMENT**

**by and between**

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

**and**

**MILPITAS SIGN COMPANY, LLC,  
a Delaware limited liability company**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between Milpitas Sign Company, 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. \_\_\_\_\_ 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 is a Delaware limited liability company having its principal place of business and authorized to do business in California and engaged in the business of outdoor advertising.

D. Developer has entered into leases or license agreements with the owners of the real property described on Exhibit A (collectively, the "Properties"), for the sole purpose of erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing a maximum of three (3) outdoor advertising structures on such Properties, including, without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories as Developer may place thereon, for purposes of advertising to be visible from U.S. Interstate 880.

E. Developer shall file applications for sign permits to erect and operate at most three (3) outdoor advertising displays on portions of the Properties for consideration by the City at the same time that this Agreement is considered.

F. Developer desires this Agreement with City to assure that Developer will, at the time of application, be issued a sign development permit for each Developer's outdoor advertising displays and may, except as expressly provided herein, proceed to construct and operate Developer's outdoor advertising display on each of the parcels that make up the Properties (each hereinafter described as the "Project Site") within the term of this Agreement in accordance with all applicable laws and regulations in effect at the Effective Date.

G. City has examined the environmental effects of this Agreement and Developer's proposed outdoor advertising displays in the environmental impact report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On, April 2, 2013, the City Council for the City reviewed and approved 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. After conducting a duly noticed public hearing on April 2, 2013, the City Council for the City 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 the community, beyond the normal exactions for public benefit imposed in the development review process.

I. For the reasons recited herein, the City has determined that the construction and operation of Developer's proposed outdoor advertising display is a development for which this Agreement is appropriate. City finds that a substantial public benefit will accrue to City by reason of the advertising revenue that will be generated by Developer's outdoor advertising displays and shared with City, which adds value to the community by enabling City to undertake projects, programs and other activities for the benefit of City and its businesses and residents. In exchange for providing these public benefits, Developer receives assurance that it may proceed with the construction and operation of Developer's outdoor advertising displays and 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.

## AGREEMENT

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:

### 1. Definitions

The following definitions apply to this Development Agreement:

A. Agreement. The term "Agreement" shall mean this entire Development Agreement, including all appendices, exhibits and other documents attached hereto or incorporated herein by reference.

B. City. The term "City" shall mean the City of Milpitas, a municipal corporation, having its offices at 455 E. Calaveras Blvd., Milpitas, California 95035.

C. City Laws. The term "City Laws" shall have the meaning set forth in Section 3.B.

D. **Commencement Date.** The term “Commencement Date” shall mean the date of the complete erection and construction of the outdoor advertising display on the Project Site and receipt of the Certificate of Occupancy from the City by Developer. Developer shall provide to the City a Commencement Certificate to confirm the Commencement Date for each outdoor advertising display to insure that all parties have written confirmation of the appropriate Commencement Date to apply to such display.

E. **Developer.** The term “Developer” shall mean Milpitas Sign Company, LLC, a Delaware limited liability company, with leases or license agreements with the owners of the Properties.

F. **Gross Revenue.** The term “Gross Revenue” shall mean all money generated by the advertising displays subject to this Agreement, before deductions for expenses.

G. **New City Laws.** The term “New City Laws” shall have the meaning set forth in Section 3.C.

H. **Project.** The term “Project” shall mean the design, construction, installation, operation, maintenance, management, and marketing of advertising displays on the Properties.

I. **Properties.** The term “Properties” shall mean those parcels more particularly described in Exhibit A attached hereto and as otherwise referred to in Recital D above.

## 2. GENERAL PROVISIONS.

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

B. **Vested Rights.** The provisions of this Agreement shall create rights which shall vest in Developer. The burdens and benefits hereof shall bind and inure to the benefit of all successors in interest to the parties hereto. Notwithstanding anything to the contrary in this Agreement and for purposes of clarification, City and Developer acknowledge and agree that Developer is the real party in interest under this Agreement and that all rights accruing hereunder shall accrue to Developer and its permitted successors and assigns, notwithstanding the fact that leases and/or license agreements for the Properties have been entered into with third parties, it being the intent of the parties that Developer may place the outdoor advertising structures and accomplish the Project on the Properties or any other real properties to which Developer secures the relevant rights under applicable laws and regulation. Accordingly, any such lessors or licensors shall not be entitled to exercise any of the rights, or receive any of the benefits, granted to Developer under this Agreement.

C. **Term.** This Agreement shall be effective as of the Effective Date, and shall be for a term of thirty (30) years ("Term") commencing upon the Commencement Date and expiring thirty (30) years from the Commencement Date, 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. Commencement Date for the purposes hereof shall be as defined in Section 1.D above. Developer shall have the option to extend the Term of this Agreement for up to six (6) additional periods of five (5) years each by delivery of written notice to City no later than six (6) months prior to the expiration of the then current Term provided that at the time of such written notice Developer has not received a written notice of default under this Development Agreement which remains uncured.

D. Assignment. The rights of the Developer under this Agreement may not be transferred or assigned without the written consent of City. Developer may, however, assign its rights and obligations hereunder to (i) Clear Channel Outdoor, Inc. or an affiliate of Clear Channel Outdoor, Inc., or (ii) Sign-Co East, LLC, or a limited liability company or other entity in which Sign-Co East, LLC, or an affiliate of Sign-Co East, LLC, is a member, in each instance upon not less than sixty (60) days prior written notice to City.

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

### 3. DEVELOPMENT.

A. Development of Project. City hereby grants to Developer the exclusive right to construct and operate a maximum of three (3) outdoor advertising displays on the Properties, with back-to-back digital or static displays of up to 20 feet by 60 feet (collectively, the "Project"), subject to the condition that Developer complies with all conditions of approval issued in connection with Developer's sign permits for such Project Site. Development and construction of the Project shall be in accordance with Site Development Permit issued for each Project Site and the terms of corresponding development approvals, the terms of this Agreement and City Laws (as that term is defined herein) and all applicable State and Federal laws and permit requirements in effect on the Effective Date. The maximum height, size, location and design of Developer's outdoor advertising displays (including materials, color palate, and landscaping) shall be essentially as shown on the approved planning application drawings attached hereto as Exhibit B (the "Approved Planning Application Drawings"). Notwithstanding the foregoing, Developer agrees that the first two (2) outdoor advertising structures for displays constructed under this Agreement shall contain only digital display at the time of construction.

B. City Laws. Except as provided herein, City's laws, ordinances, rules, regulations and official policies applicable to the Project shall be those City laws, ordinances, rules, regulations and official policies in force as of the Effective Date governing uses of the Properties, and the maximum height, size, design and location of Developer's outdoor advertising displays (herein collectively referred to as "City Laws"). City agrees that under City Laws, the Project can be built and operated.

C. Applicable Future Laws and Regulations. Notwithstanding Paragraph 2.B. above, City may apply the following new City laws to the Project (as applied, such laws shall be defined as "New City Laws"):

(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, 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; and

(2) 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 permit application submittal and issuance;

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

(c) Permit fees applicable to all similar parties and properly approved under the Code then in effect;

(d) Any fees payable upon issuance of a building permit for which City acts as a collecting agent for another governing agency provided such fees are applicable to all similar parties and properly approved under the Code then in effect; and

(e) Any requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency provided such requirement is applicable to all similar parties and properly approved under the Code then in effect.

D. Developer Obligations.

(1) Initial Payment. After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code of each outdoor advertising structure with at least one digital display, the Developer shall pay a Fifty Thousand Dollar (\$50,000.00) advance to the City as to each digital advertising display. Thus, for example, an outdoor advertising structure with two back-to-back digital displays would require the payment of a One Hundred Thousand Dollar (\$100,000) advance. Such advance shall be deducted from future annual payments by Developer to the City under Section 3.D.2 below.

(2) Revenue Sharing. The following requirements shall apply to each advertising display. For the first three (3) years of this Agreement, Commencing on the date that is one (1) year from the Commencement Date, and continuing thereafter annually on each anniversary of the Commencement Date, Developer shall pay City within forty five (45) days following December 31<sup>st</sup> of each year during the Term an amount equal to ten percent (10%) of the Gross Revenue generated by Developer's outdoor advertising displays for the prior 12 month period (or in the case of the first partial year such prorated period between the Commencement Date and December 31 of such year). Along with each annual payment, Developer shall provide an accounting demonstrating the breakdown of Gross Revenue and payments provided. For each

digital display installed by the Developer, and commencing on the date that is four (4) full calendar years from the Commencement Date, Developer shall pay City annually an amount equal to the greater of (a) ten percent (10%) of the Gross Revenue generated by Developer's digital outdoor advertising displays, or (b) a minimum quarterly payment of \$10,000.00 per digital advertising display, and such minimum payment shall be increased annually by 2.5%. Notwithstanding the foregoing, if at any time during the Term of this Agreement Developer is not operating any or all of Developer's digital advertising displays in the Project for more than six (6) months in any annual period, then Developer shall only be required to pay City ten percent (10%) of the total Gross Revenue generated by each advertising display per year. Developer shall maintain adequate books and records with respect to the revenue generated by Developer's outdoor advertising displays in the Project, consistent with industry standards. City shall be permitted to review and audit Developer's books and records with respect to the revenue generated by Developer's outdoor advertising displays in the Project at any time during the Term of this Agreement, upon not less than thirty (30) days prior written notice to Developer. Any such review and/or audit shall be conducted during normal business hours at the office of Developer.

(3) Local Tax Issues. 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 use tax revenue to the City. The 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) Purchases: To the extent commercially reasonable, the Developer and its 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.

(4) Public Use of Outdoor Advertising Displays. City shall have the right to use a portion of the advertising space available on Developer's outdoor advertising displays in the Project, not to exceed 5% of the total display time, on a space and/or time available basis for advertising non-commercial City sponsored programming. In no event shall City be required to pay Developer or any third party for any such use of the advertising displays on the outdoor advertising displays in the Project for the right to use such advertising space as provided above, provided, however, that City shall be solely responsible for payment of any and all production costs and expenses incurred in connection with creating the advertising copy or material in a format acceptable to Developer. The City shall be responsible for providing Developer with approved advertising copy which may be updated by the City at any time. By January 1<sup>st</sup> of each year City shall provide stock advertising copy or copies with artwork in acceptable format which may be utilized by Developer for that calendar year. City's use is subject to the following conditions and parameters: all copy must be submitted to Developer at least five (5) days before

the proposed display date and will be subject to Developer's standard advertising copy rejection and removal policies, which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed. If new copy is not provided by the City within such five (5) day period, Developer shall be entitled to substitute any stock copy provided to Developer. Developer may grant additional display time to the City as the sole discretion of Developer.

E. City Obligations.

No Additional Sign Rights. City and Developer acknowledge that Developer has been granted the exclusive right to construct and operate a maximum of three (3) outdoor advertising displays within the non-landscaped sections of U.S. Interstate 880 within the City limits north of State Route 237, subject to the contingencies set forth in this Agreement. This exclusive right excludes any area of land which falls within the Piercey Automotive property and an advertising display on Assessor's Parcel Number 086-03-019, bordered on its western side by Barber Lane and on its eastern side by a freeway interchange connecting the Interstate 880 Freeway and the Montague Expressway ("Barber Lane Property"). Furthermore, this exclusive right shall be reduced or extinguished in its entirety, in the event of removal or inactivity of Developer-operated displays or termination of this Agreement pursuant to Section 3.F.

Subject to such contingencies, during the Term of this Agreement, City shall not grant any additional rights to construct and operate outdoor advertising displays within the non-landscaped sections of U.S. Interstate 880 within the City limits, other than any rights which may be granted to (a) a third party to construct and operate a single outdoor advertising display on the Piercey Automotive property or some other location in lieu of said site, (b) a third party to construct and operate an advertising display at the Barber Lane Property or some other location in lieu of said site, and (c) a third party to construct and operate displays to replace inactive or removed displays of the Developer in accordance with this Agreement.

F. Development Not Required. Developer is not obligated to develop any part or all of the Project on the Project Site. In addition, Developer is the owner of the outdoor advertising display in the Project to the extent they are developed in whole or in part and has the right to remove any or all of the outdoor advertising displays in the Project at any time during the Term of this Agreement or at the expiration thereof, subject to any rights that the fee simple owners or tenants of the Properties may have under California law which have not been otherwise waived or modified in accordance with agreements relating to the Project Site. But in the event that the Developer does not perform and commence operations of at least one (1) display within twenty-four (24) months of the Effective Date, the Agreement shall be terminated as to all the Project Sites and the City shall be free to grant land use entitlements and other approvals for the development and operation of alternative advertising display by a third party. Once Developer meets the requirements of commencing operation under one (1) display within twenty-four months of the Effective Date, then Developer shall have up to five (5) years from the Effective Date of this Agreement to commence operation of the remaining displays under this Agreement. If any Project Sites have not commenced operation of a display within five (5) years following the Effective Date of this Agreement, the Agreement shall be terminated as to such Project Sites

and the City shall be free to grant land use entitlements and other approvals for the development and operation of alternative advertising display by a third party.

Furthermore, in the event that once constructed, any outdoor advertising display that is removed or goes inactive for a period of twenty four (24) months or more, the Agreement shall be terminated as to only the display which shall have been inactive or removed for such period. Such terminations shall be automatically incorporated into the Agreement and notices of termination of the Agreement shall be recorded on respective Properties at the Developer's expense. Furthermore, for each advertising display that is removed or goes inactive for a period of twenty four (24) months or more, the competing display restrictions of Section E.1. of this Agreement shall be automatically modified so as to allow third parties to develop a commensurate number of competing signs, if permitted by law. Any advance payment made by the Developer pursuant to Section 3.D.1. shall be considered non-refundable and the sole property of the City.

#### 4. AMENDMENT/RELOCATION.

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. Procedure for Modification or Termination 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. If any such state or federal laws or regulations enacted after the Effective Date of this Agreement prohibit or prevent Developer from operating any of its outdoor advertising displays on the Properties and/or the parties are unable to reach a good faith accord and understanding as to the amendment of the Agreement, then Developer or the City shall have the right to terminate this Agreement upon not less than thirty (30) days prior written notice to any or all of its outdoor advertising displays in the Project. Upon such termination, no further payments shall be due to City under Section 3.D.2. of this Agreement other than any payments which may be due with respect to Project revenue earned through the date of termination. If, however, Developer or City elects to terminate this Agreement with respect to less than all of Developer's outdoor advertising displays, then any payments due to the City under Paragraph 3.D.2. of this Agreement shall be reduced as provided therein. In no event shall Developer be entitled to reimbursement for payments made to City under this Agreement.

C. Relocation; Damage; Destruction. If at any time during the Term of this Agreement or prior to commencement of construction, Developer determines that (1) the location of any or all of the outdoor advertising displays in the Project is or has become visually impaired, or (2) the location of any or all of the outdoor advertising displays in the Project is no

longer beneficial for, or is adversely affecting or limiting, the actual or prospective revenue generation of the other outdoor advertising display(s) in the Project, or (3) the economic benefit of the location of any or all of the locations that the outdoor advertising structures are diminished, Developer and City may agree to allow Developer to relocate the outdoor advertising display(s) to another location in the City of Milpitas and/or terminate this Agreement with respect to the applicable outdoor advertising display, subject to Developer's receipt of any necessary approvals from the City and the California Department of Transportation. Upon any such relocation, this Agreement shall continue in full force and effect in accordance with its terms. If for any reason any of the outdoor advertising displays, are removed, materially damaged or destroyed, then Developer, at its sole election, may reduce any guaranteed payments due to the City under Section 3.D.2. of this Agreement as provided therein until such time as the applicable outdoor advertising display(s) are fully operable and/or terminate this Agreement with respect to the applicable outdoor advertising display. If Developer elects to terminate this Agreement with respect to less than all of Developer's outdoor advertising displays, then any payments due to the City under Section 3.D.2. of this Agreement shall be reduced as provided therein. In the event the owner of the real property for any Project Site requests that Developer relocate a display on such Project Site in order to assist with development of the Project Site by such owner of real property, the City shall permit such relocation hereunder if requested by Developer and following such relocation, subject to Developer's receipt of any necessary approvals from the City and the California Department of Transportation, this Agreement shall continue in full force and effect in accordance with its terms.

## 5. 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 may 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. 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:

(1) A finding and determination by the City is 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 following all applicable notice and cure periods; or

(2) 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 60 day period, Developer shall have such additional time to cure as is reasonably necessary.

D. Procedures upon Default

(1) Upon the occurrence of an event of default after the expiration of all applicable notice and cure periods provided herein, City may terminate or modify this Agreement in accordance with the provisions of Government Code Section 65865.1 and Resolution No. 6642.

(2) 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.

(3) 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.

(4) 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.

(5) The Parties shall give written notice of any default under this Agreement as provided in Section 3.D(1) herein.

E. 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, including any ordinance governing or relating to signs or outdoor advertising displays. The City shall not attempt to enforce any ordinance against Developer if such ordinance became effective following the Effective Date, except as provided herein. Any attempt by the City to enforce such subsequent ordinances contrary to the provisions of this Agreement shall result in an event of default by the City hereunder.

6. INDEMNIFICATION.

To the fullest extent permitted by law, Developer shall indemnify, defend with counsel of the City's reasonable choosing that is mutually acceptable to both parties, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation,

reasonable attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or relate (directly or indirectly) to the construction, operation, maintenance, repair and/or removal of the outdoor advertising displays at the Properties. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding incurred by, City, its City Council, its boards and commissions, officials, officers, employees. The Developer shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Developer shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Developer of any claim, action, or proceeding and engage in reasonable efforts to cooperate with Developer in the defense against the claim, demand, obligation, damage, action, or suit. If City fails to so promptly notify the Developer, then the Developer's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Developer shall not be required to pay or perform any settlement unless the settlement is approved by the applicant.

7. 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, properly 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: City Manager

IF TO DEVELOPER:

Milpitas Sign Company, LLC  
c/o Clear Channel Outdoor, Inc.  
555 12<sup>th</sup> Street, Suite 950  
Oakland, CA 94607  
Attn: President - San Francisco Division

With a copy to:

McCarthy Ranch  
15425 Los Gatos Blvd., Suite 102  
Los Gatos, CA 95032-2541  
Attn: Joey McCarthy

8. 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.

9. 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 within ten (10) days of the effective date of the ordinance adopting this Agreement. Upon the earlier of the expiration or sooner termination of this Agreement or any applicable lease/license agreement, Developer shall promptly execute and deliver to the applicable lessor/licensor a quitclaim deed or other appropriate documentation to release this Agreement from record title to the Properties.

10. 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. 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. Each party shall be responsible for its own court costs and attorneys' fees expended by such party 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 or results therefrom, 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. Incorporation of Exhibits. Each of the exhibits attached hereto are incorporated herein by this reference and made a part hereof for all purposes.

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

CITY OF MILPITAS,  
Municipal Corporation

MILPITAS SIGN COMPANY, LLC, A  
a Delaware limited liability company

By: \_\_\_\_\_  
Jose Esteves, Mayor

By: Clear Channel Outdoor, Inc.,  
a Delaware corporation,  
Manager

ATTEST:

By: \_\_\_\_\_  
Mary Lavelle, City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael J. Ogaz, City Attorney

**Exhibit A**

**Legal Description of Real Property**

REAL PROPERTY IN CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

PARCEL 3 AS SAID PARCEL IS SHOWN UPON THAT CERTAIN PARCEL MAP (THE MAP) WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 19, 1994 IN BOOK 655 OF MAPS, AT PAGES 23 AND 24.

EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED TO THE CITY OF MILPITAS, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED JULY 22, 2002 AS DOCUMENT NO. 16377445 OF OFFICIAL RECORDS

**PARCEL TWO:**

A NON-EXCLUSIVE JOINT ACCESS EASEMENT (J.A.E.) FOR THE PURPOSE OF PEDESTRIAN AND VEHICULAR ACCESS AND INCIDENTS THERETO OVER, UPON AND ACROSS A PORTION OF PARCEL 1 AND PARCEL 2 AS SAID PARCELS AND EASEMENT ARE DELINEATED UPON THE MAP.

**PARCEL THREE:**

A NON-EXCLUSIVE PRIVATE STORM DRAIN EASEMENT (P.S.D.E.) FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING PRIVATE STORM DRAINAGE FACILITIES AND THEIR APPURTENANCE UNDER, UPON AND OVER A PORTION OF PARCEL 4 AS SAID PARCEL AND EASEMENT IS DELINEATED UPON THE MAP.

**PARCEL FOUR:**

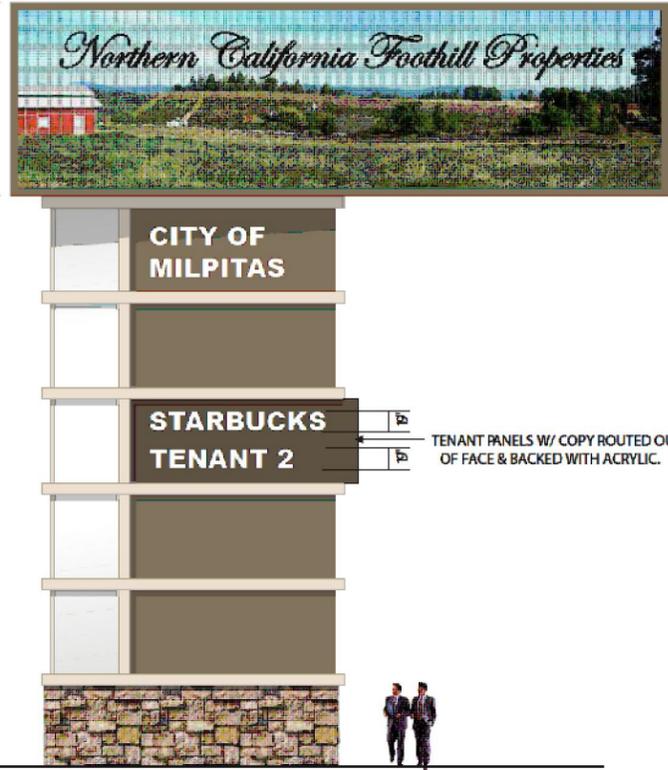
A NON-EXCLUSIVE PRIVATE WATER LINE EASEMENT (P.W.L.E.) FOR THE PURPOSE OF CONSTRUCTION AND MAINTAINING PRIVATE WATER LINES AND THEIR APPURTENANCES AND PRIVATE FIRE LINES AND THEIR APPURTENANCE, UNDER, UPON AND OVER A PORTION OF PARCEL 1 AND 2 AS SAID PARCELS AND EASEMENT IS DELINEATED UPON THE MAP.

APN: 022-37-049

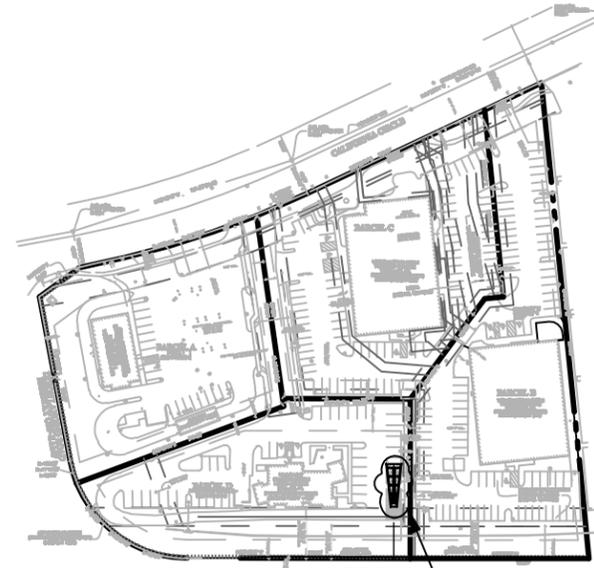
All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California and more particularly described as follows:

Parcel 7, as said Parcel is shown on that certain Parcel Map, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on January 27, 1983 in Book 508 of Maps, Pages 38, 39 and 40.

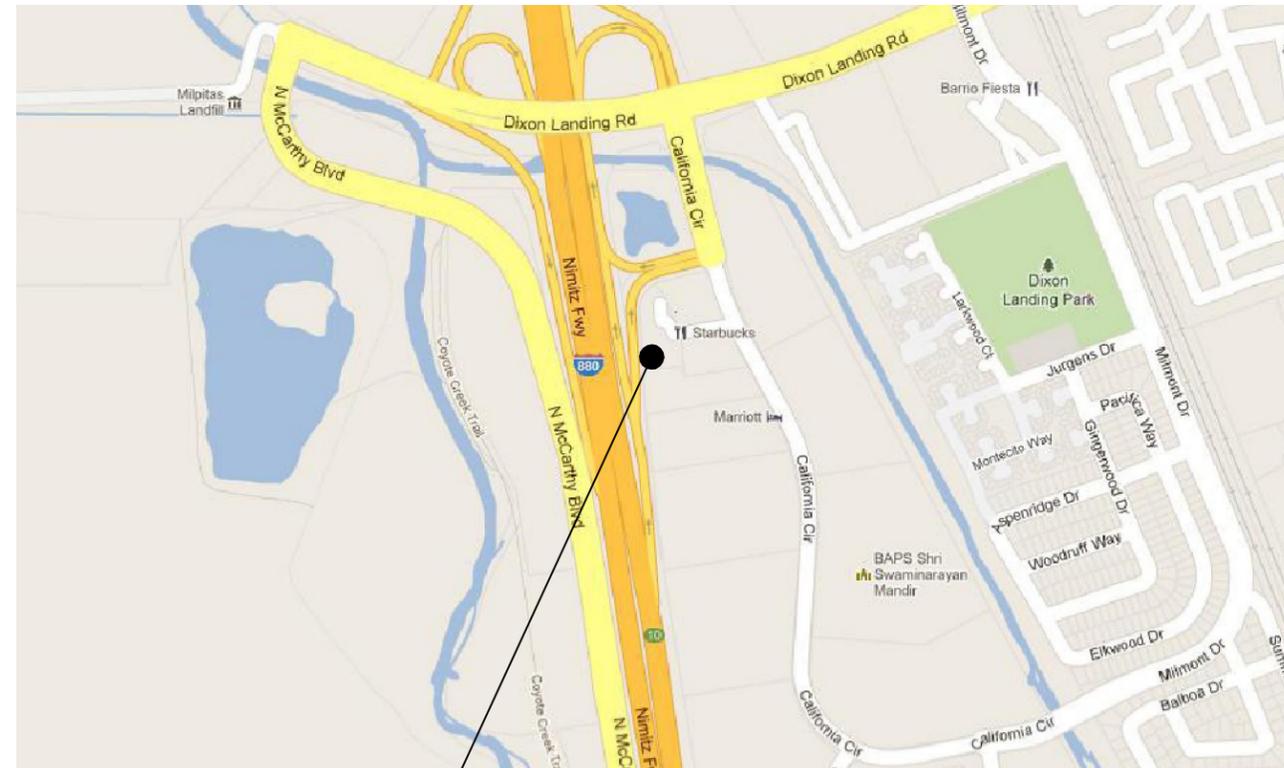
APN: 022-38-002



**SOUTH ELEVATION**



PROPOSED 14'X48'  
DIGITAL LED DISPLAY V-SIGN  
SEE PAGE 3 FOR DETAILED INFORMATION



PROJECT LOCATION:  
1545-1547 CALIFORNIA CIRCLE,  
MILPITAS, CA

**VICINITY MAP**



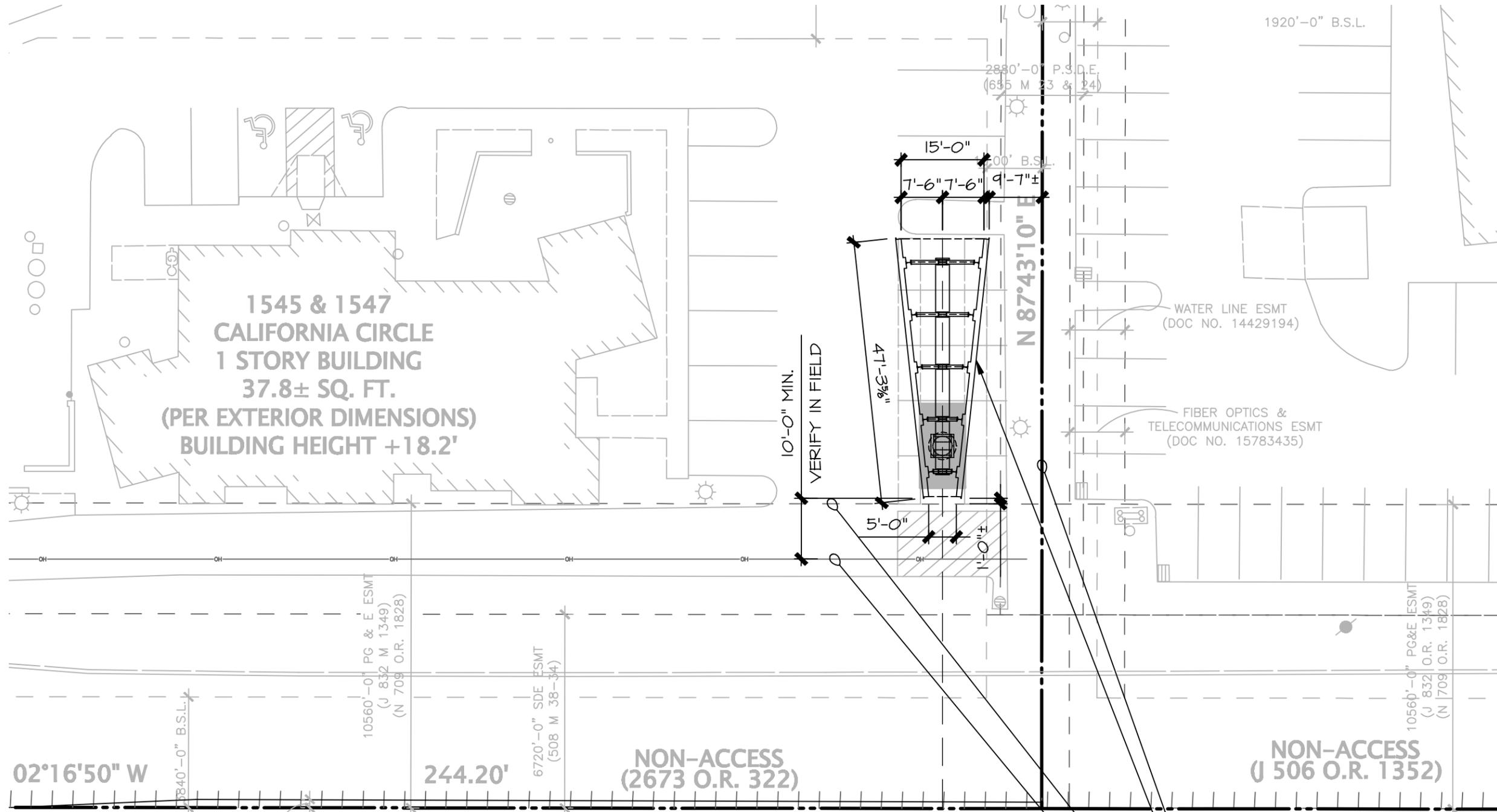
3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

Date 11/21/2012 Job # 12034  
Engr. VKK  
Sheet 1 of 5

**Vincent Kevin Kelly & Assoc., Inc.**  
structural engineering consultants

Client CLEAR CHANNEL OUTDOOR  
Project 14'x48' DIGITAL ADVERTISING V-SIGN  
1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA





**SITE PLAN**

SCALE: 1" = 20'

SITE AND SURVEY INFORMATION  
PROVIDED BY EXTREME DRAFTING, INC.  
PROJECT DATED NOV 20, 2009

**NIMITZ FREEWAY  
INTERSTATE 880**

NOTE: THE LOCATION OF THE OVERHEAD ELECTRIC LINES SHOWN ON THIS PLAN IS APPROXIMATE. THE EXACT LOCATION OF THE OVERHEAD ELECTRIC LINES SHALL BE DETERMINED AND PROVIDED BY CLEAR CHANNEL OUTDOOR INC. OR A HIRED SURVEYOR. A MINIMUM CLEARANCE OF 10'-0" IS REQUIRED BETWEEN SIGN STRUCTURE / DISPLAY AND ANY ADJACENT ELECTRIC LINES.

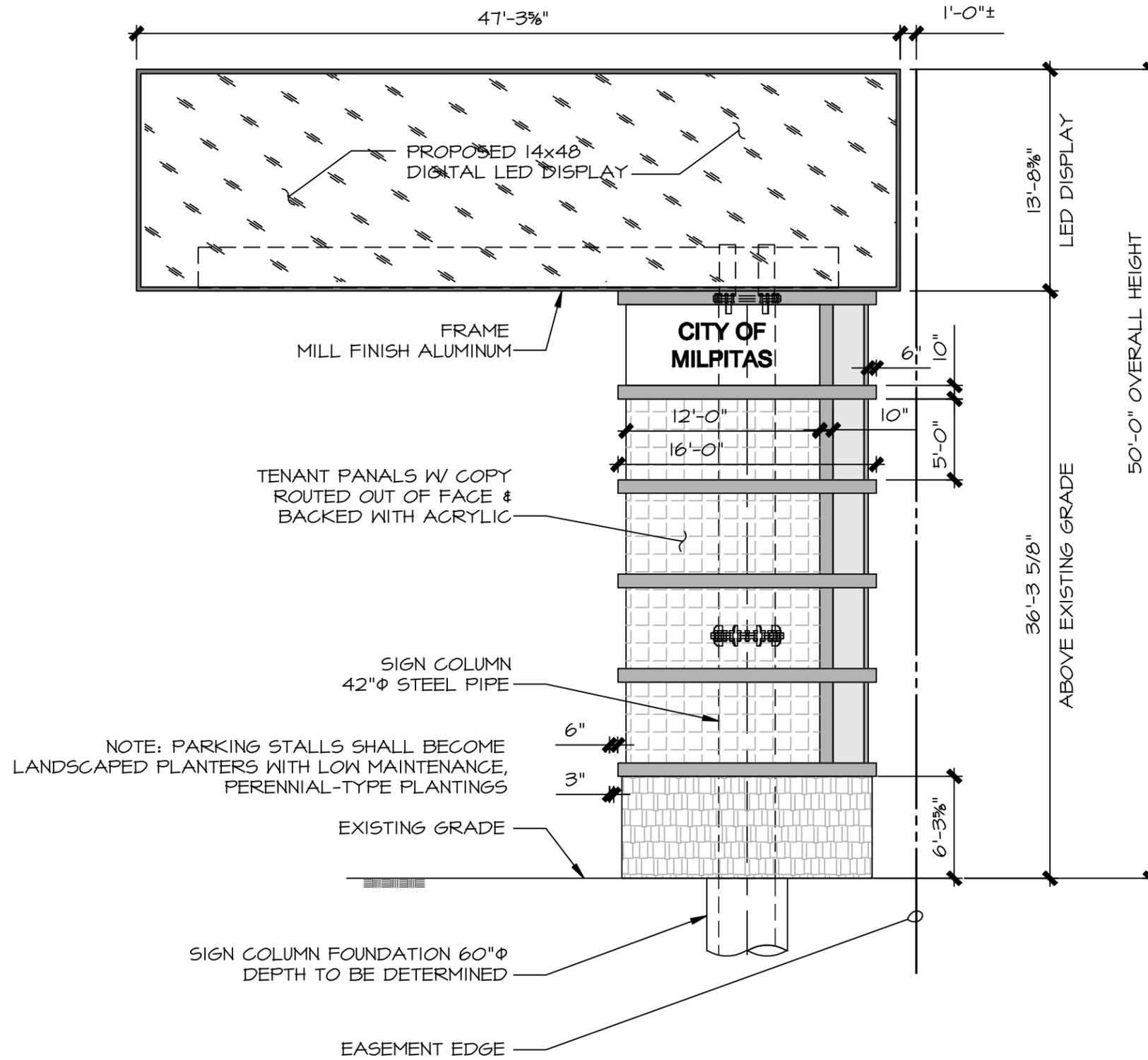
- PROPERTY LINE TYPICAL
- PROPOSED 14'x48' DIGITAL LED DISPLAY V-SIGN
- EASEMENT EDGE TYPICAL
- OVERHEAD ELECTRIC LINES



**Vincent Kevin Kelly  
& Assoc., Inc.**  
structural engineering consultants

3400 Airport Ave., Suite #99  
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Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	12C34
<b>Project</b>	14'x48' DIGITAL ADVERTISING V-SIGN 1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5



NORTH ELEVATION

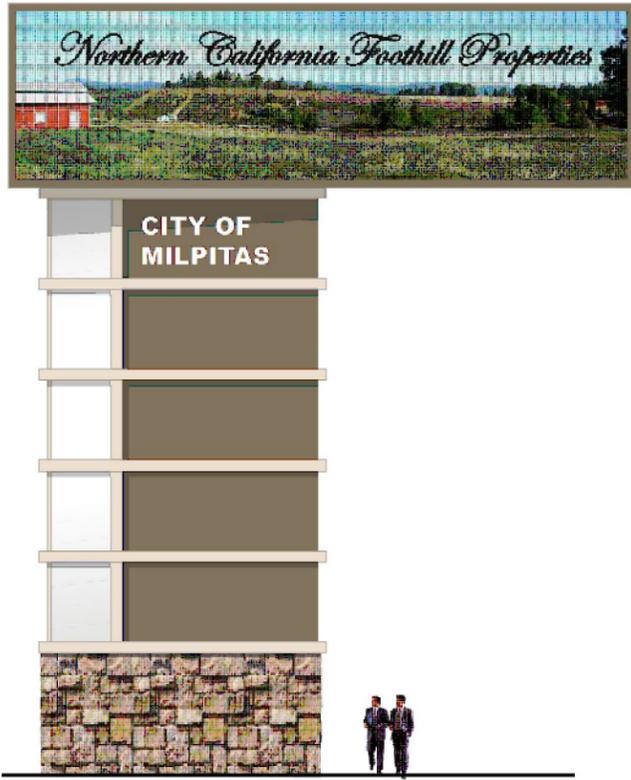
SCALE: 1/8" = 1'-0"

**Vincent Kevin Kelly & Assoc., Inc.**  
structural engineering consultants

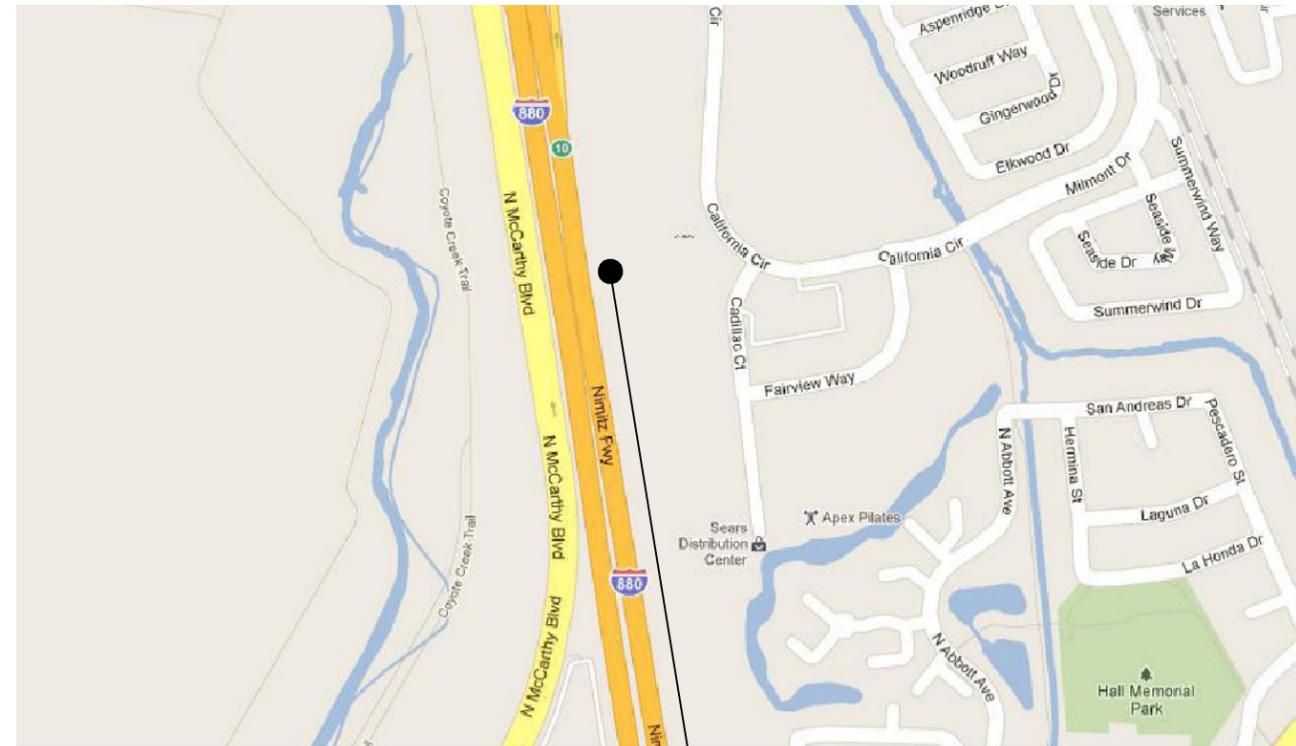
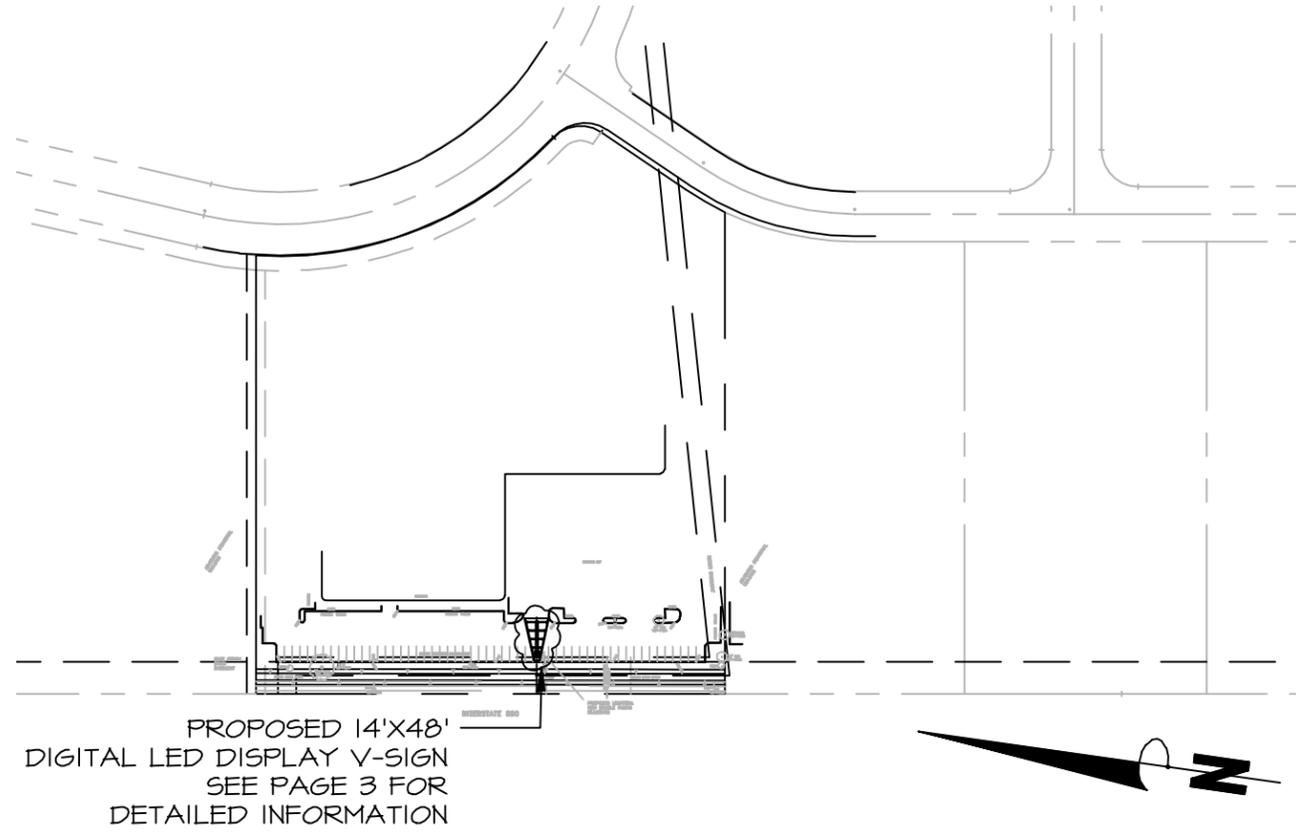
3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

Client	CLEAR CHANNEL OUTDOOR	Date	11/21/2012	Job #	12034
Project	14'x48' DIGITAL ADVERTISING V-SIGN	Engr.	VKK		
	1545-1547 CALIFORNIA CIRCLE, MILPITAS, CA	Sheet	4	of	5





**SOUTH ELEVATION**



**VICINITY MAP**

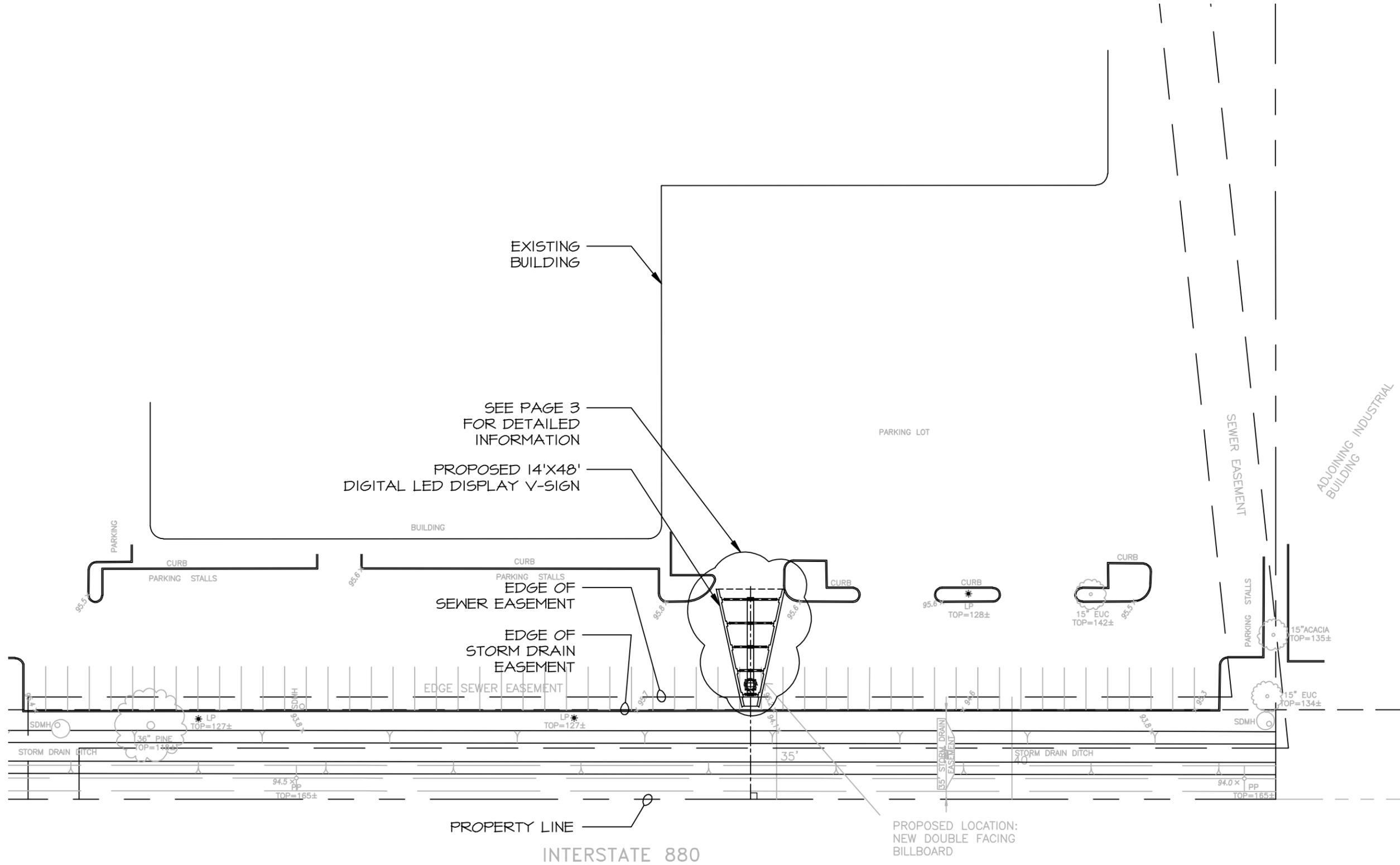
PROJECT LOCATION:  
1301 CALIFORNIA CIRCLE,  
MILPITAS, CA



3400 Airport Ave., Suite #99  
Santa Monica, CA 90405  
Web: [www.vkkengineering.com](http://www.vkkengineering.com)  
Email: [vkk@vkkengineering.com](mailto:vkk@vkkengineering.com)  
Tel: 310.397.3700 Fax: 310.397.8797

**Vincent Kevin Kelly  
& Assoc., Inc.**  
structural engineering consultants

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	1 of 5



**SITE PLAN**

SCALE: 1" = 40'

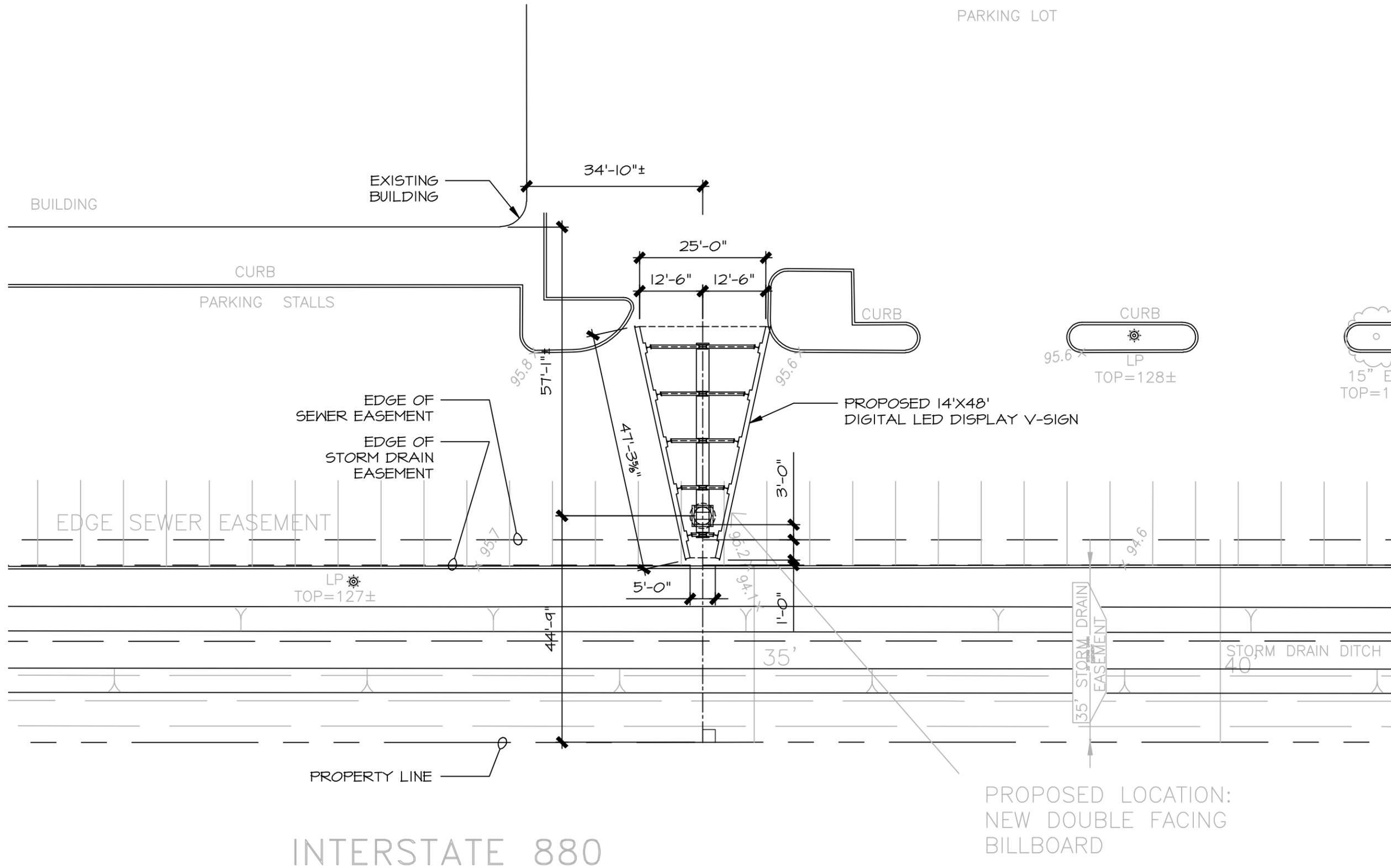
SITE AND SURVEY INFORMATION  
 PROVIDED BY CSA, INC.  
 PROJECT# 11173, DATED APR 18, 2012



**Vincent Kevin Kelly & Assoc., Inc.**  
 structural engineering consultants

3400 Airport Ave., Suite #99  
 Santa Monica, CA 90405  
 Web: www.vkkengineering.com  
 Email: vkk@vkkengineering.com  
 Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA
<b>Date</b>	11/21/2012
<b>Engr.</b>	VKK
<b>Job #</b>	11C56
<b>Sheet</b>	2 of 5



**SITE PLAN**

SCALE: 1" = 20'

SITE AND SURVEY INFORMATION  
 PROVIDED BY CSA, INC.  
 PROJECT# 11173, DATED APR 18, 2012

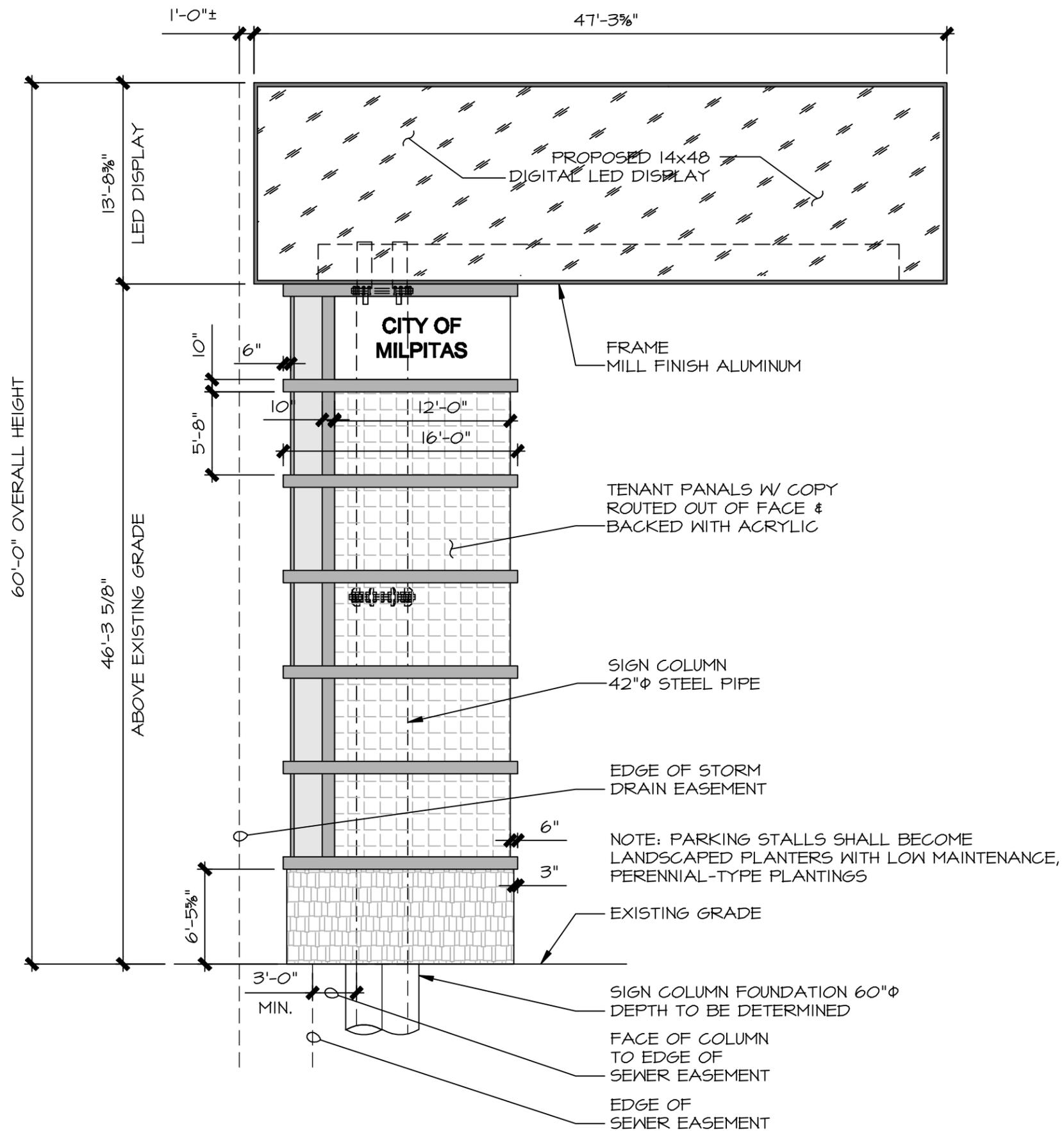


**Vincent Kevin Kelly & Assoc., Inc.**  
 structural engineering consultants

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 Santa Monica, CA 90405  
 Web: www.vkkengineering.com  
 Email: vkk@vkkengineering.com  
 Tel: 310.397.3700 Fax: 310.397.8797

<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5





**SOUTH ELEVATION**

SCALE: 1/8" = 1'-0"

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<b>Client</b>	CLEAR CHANNEL OUTDOOR	<b>Date</b>	11/21/2012	<b>Job #</b>	11C56
<b>Project</b>	14'x48' V-SIGN (DIGITAL) 1301 CALIFORNIA CIRCLE, MILPITAS, CA	<b>Engr.</b>	VKK	<b>Sheet</b>	3 of 5

# FINAL ENVIRONMENTAL IMPACT REPORT INTERSTATE 880 BILLBOARDS PROJECT

STATE CLEARINGHOUSE #2010062083

Prepared by

CITY OF MILPITAS

With the Assistance of

WAGSTAFF/MIG  
Urban and Environmental Planners

March 2012

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## 1. INTRODUCTION

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### 1.1 RELATIONSHIP BETWEEN DRAFT EIR AND FINAL EIR

The Final Environmental Impact Report (Final EIR) for the proposed Interstate 880 Billboards Project has been prepared by the City of Milpitas (City), the Lead Agency, in keeping with state environmental documentation requirements set forth in the California Environmental Quality Act (CEQA). The City has prepared the Final EIR pursuant to the CEQA Guidelines, including sections 15086 (Consultation Concerning Draft EIR), 15088 (Evaluation of and Response to Comments), and 15132 (Contents of Final Environmental Impact Report). In conformance with these guidelines, the Final EIR consists of the following **two volumes**:

- (1) the **Draft EIR**, which was circulated for a 45-day public review and comment period on May 20, 2011 and circulated for a 45-day State agency review and comment period on May 18, 2011; and
- (2) this **Final EIR document**, which includes a list of all commenters on the Draft EIR during and immediately after the Draft EIR public review period; verbatim versions of all communications (letters) received during and immediately after the Draft EIR review period; the responses of the EIR authors to all environmental points raised in these communications; and associated revisions to the Draft EIR.

Both volumes of the Final EIR are available for public review at the City of Milpitas Planning Department, 455 East Calaveras Boulevard, Milpitas.

The responses to comments included in this document are correlated to the letters by code numbers, which have been posted in the right hand margin of the letters.

### 1.2 PROPOSED PROJECT

#### 1.2.1 Proposed Project Summary

*This summary should not be relied upon for a thorough understanding of the details of the project, its individual impacts, and related mitigation needs. Please refer to Draft EIR Chapter 3 for a complete description of the project, and Chapters 4 through 7 for a complete description of identified environmental impacts, mitigation measures, and alternatives.*

The project consists of the installation of three new billboard structures at three separate locations along the Interstate 880 (I-880) freeway in the City of Milpitas. The proposed three billboards would be located on three of four possible sites currently under consideration. The four possible sites are located along the western boundary of commercial and industrial parcels on California Circle and Cadillac Court, adjacent to the east edge of I-880, south of the Dixon Landing Road interchange.

Each of the three billboards would include two approximately 14-foot high by 48-foot wide displays facing opposite directions, mounted on a single sign column. The overall height of the billboards would be 70 feet. Initially, four static and two electronic “digital” facings are proposed. As market demand increases, it is anticipated that the four static facings would also be converted to electronic “digital” facings incrementally over a period of approximately five years or longer. Each of the electronic billboard facings would display a number of static LED images in continuous rotation, with each image displayed for no less than four seconds.

As used in this Final EIR, the term "project" is defined to mean the proposed I-880 Billboards Project and all associated discretionary approvals, including the requested Development Agreement and Site Development Permit from the City of Milpitas, the Highway Outdoor Advertising Permit from Caltrans, as well as other local and state approvals, entitlements, permits, and actions that may be required to implement the project.

### **1.2.2 Changes to the Proposed Project Since Public Review of the Draft EIR**

There have been minor changes to the proposed project since public review of the Draft EIR:

- The location of Site Option 1, the southernmost site option under consideration, has been changed from parcel 002-38-020 (1001 Cadillac Court) to the northwest corner of the adjacent parcel to the south, parcel 002-38-019 (901 Cadillac Court).
- The Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now anticipates that four of the six facings may initially contain LED displays.

The responses to comments on the Draft EIR in Section 2 and revisions to the Draft EIR in Section 3 reflect these minor changes to the project.

According to CEQA Guidelines Section 15088.5, “A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.”

The impact analyses and conclusions presented in Chapters 4 through 6 of the Draft EIR remain valid for the change in location of Site Option 1. The changed location would be closer to adjacent residential uses (as close as approximately 300 feet from multiple family residential buildings on N. Abbott Avenue, 400 feet from homes on Glenmoor Circle, and 600 feet from homes on Heath Street and Redwood Avenue). At these distances, at relatively the same elevation as the nearest homes, with partial blockage by the approximately 30-foot high industrial building and the eight-foot-high masonry block wall on the site, and within the context of the surrounding industrial and commercial development, the billboard displays would not be highly prominent in daytime views from these nearest residential vantage points, and the impacts of the project on adjacent residential visual character would still be less-than-significant.

With the change in location of Site Option 1, the project would have a similar significant unavoidable impact related to I-880 gateway visual character and similar significant and mitigatable light, glare and sky glow impacts.

The visual simulations presented in Figures 4.2 through 4.7 are also adequately representative of project aesthetic effects for these minor changes to the proposed project. The photosimulations depict the size, shape, height, placement, design character and daytime visibility of the proposed billboards and provide an approximate indication of the visibility of the billboards from key public vantage points. Figures 4.2, 4.3, 4.6 and 4.7, which illustrate Site Option 1 and Site Option 3 in views from northbound and southbound I-880, are also adequately representative of the visibility and character of the minor change in location of Site Option 1. No new photosimulation of Site Option 1 is necessary.

The Draft EIR evaluates an ultimate scenario with all six of the facings containing LED displays, which represents a “worst-case” scenario with respect to potential aesthetic and transportation impacts. The potential impacts of some number of static displays and fewer LED displays would be similar to and less substantial than the impacts of the scenario of all facings containing LED displays evaluated in the Draft EIR. Alternative 4: All Non-LED Billboards evaluated in Chapter 7, Alternatives, of the Draft EIR compares the impacts and mitigation needs of all non-LED billboards to those of the project. As indicated by the evaluation of Alternative 4, some number of static displays and fewer LED displays would have a similar significant unavoidable impact related to I-880 gateway visual character and less substantial but still significant and mitigatable light, glare and sky glow impacts as the project. The Draft EIR evaluations of the project and of Alternative 4 adequately cover the range of potential impacts of the possible combinations of static displays and LED displays.

In accordance with CEQA Guidelines Section 15088.5, the new information explained in this section and added in revisions to the Draft EIR in Section 3 does not disclose a new significant impact, a substantial increase in the severity of an impact, or a different feasible alternative or mitigation measure that the project proponent declines to adopt, and so does not constitute significant new information requiring recirculation.



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## 2. RESPONSES TO COMMENTS ON THE DRAFT EIR

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After completion of the Draft EIR, the Lead Agency (the City) is required under CEQA Guidelines sections 15086 (Consultation Concerning Draft EIR) and 15088 (Evaluation of and Response to Comments) to consult with and obtain comments from other public agencies having jurisdiction by law with respect to the project, and to provide the general public with an opportunity to comment on the Draft EIR. Under CEQA Guidelines section 15088, the Lead Agency is also required to respond in writing to substantive environmental points raised in this Draft EIR review and consultation process.

The Draft EIR was circulated for public review and comment on May 20, 2011 and for State agency review and comment on May 18, 2011. The required 45-day public review period (for State review) on the Draft EIR began on May 18, 2011 and ended on July 1, 2011.

Comments on the Draft EIR were submitted in the form of four letters received by the City during the Draft EIR review period.

CEQA Guidelines section 15132 (Contents of Final Environmental Impact Report), subsection (b), requires that the Final EIR include the full set of "comments and recommendations received on the Draft EIR either verbatim or in summary"; section 15132, subsection (c), requires that the Final EIR include "a list of persons, organizations, and public agencies commenting on the Draft EIR"; and section 15132, subsection (d), requires that the Final EIR include "the responses of the Lead Agency to significant environmental points raised in the review and consultation process." In keeping with these guidelines, this Responses to Comments chapter includes the following sections:

- a **list of Draft EIR commenters** (section 2.1) which lists each individual and organization that submitted written comments (letters) to the City during the Draft EIR review period;
- a **responses to written comments** section (section 2.2), which includes copies of the three letters received, followed by a summary of and response to each comment therein pertaining to Draft EIR content or adequacy.

### 2.1 LIST OF DRAFT EIR COMMENTERS

The individuals and organizations who commented on the Draft EIR in writing during the Draft EIR review period are listed below alphabetically. Each letter received is also identified by a code in parentheses--e.g., letters L 1, L 2, L 3, etc. The code numbers are chronological in the general order that the letters were received.

Raluca Nitescu, PE, Project Engineer, County of Santa Clara, Roads and Airports Department (L 1);

Gary Arnold, District Branch Chief, Local Development-Intergovernmental Review, California Department of Transportation, District 4 (L 2);

Scott Morgan, Director, State Clearinghouse, Governor's Office of Planning and Research (L 3);  
and  
Roy Molseed, Senior Environmental Planner, Santa Clara County Valley Transportation  
Authority (L 4).

## **2.2 RESPONSES TO WRITTEN COMMENTS RECEIVED ON THE DRAFT EIR**

The following section includes copies of letters received during the Draft EIR public review period, each followed by written responses to each comment on the content or adequacy of the Draft EIR or on a substantive environmental point. The comments and responses are correlated by code numbers added to the right margin of each letter.



# County of Santa Clara

Roads and Airports Department



L 1

101 Skyport Drive  
San Jose, California 95110-1302  
(408) 573-2400

June 20, 2011

Mr. Sheldon Ah Sing  
Planning and Neighborhood Services Department  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

Subject: Notice of Completion and Availability of Draft Environmental Impact Report for  
proposed Interstate 880 Digital Billboards Project

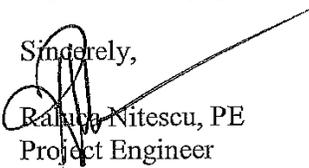
Dear Mr. Sing,

Your Notice along with the attachments for the subject project has been reviewed. We have no comments.

L1.01

Thank you for the opportunity to review and comment on this project.  
If you have any questions, please contact me at 408-573-2464.

Sincerely,

  
Raluca Nitescu, PE  
Project Engineer

cc: MA, WRL, File

L 1 Raluca Nitescu, PE, Project Engineer, County of Santa Clara, Roads and Airports  
Department, June 20, 2011

*Comment L 1.01:* Letter acknowledges that the County reviewed the Draft EIR and has no comments.

*Response:* Comment acknowledged. No further response is required.

L-2

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN, Jr., Governor

**DEPARTMENT OF TRANSPORTATION**

P.O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 286-5541  
FAX (510) 286-5559  
TTY 711



*Flex your power!  
Be energy efficient!*

June 30, 2011

SCL-880/10.4  
SCL880240  
SCH# 2010062083

Mr. Sheldon AhSing  
City of Milpitas, Planning Division  
455 East Calaveras Boulevard  
Milpitas, CA 95035

Dear Mr. AhSing:

**Interstate 880 Digital Billboards Project – Draft Environmental Impact Report (DEIR)**

Thank you for including the California Department of Transportation (Department) in the environmental review process for the above-referenced project. We have reviewed the proposed project's DEIR and are pleased to offer the following comments.

As lead agency, the City of Milpitas (City) is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process if required; see the end of this letter for more information regarding the encroachment permit process.

L2.01

L2.02

Design plans for any proposed freeway monument signage should be provided to the Department for review and, depending on proposed sign location, approval. The plans should depict the layout, roadway setback, orientation, glare intensity, and sign size. The Department is required by law to enforce the Outdoor Advertising Act and Regulations regarding the placement of advertising along the highways. That document is available on the internet at [http://www.dot.ca.gov/hq/oda/download/ODA\\_Act\\_&\\_Regulations.pdf](http://www.dot.ca.gov/hq/oda/download/ODA_Act_&_Regulations.pdf). For additional information, please contact Mr. James Arbis at (916) 654-6413.

L2.03

L 2

Mr. Sheldon AhSing/City of Milpitas  
June 30, 2011  
Page 2

**Traffic Safety**

The "Traffic Safety Impacts" analysis of Section 5.3.2 (see page 5-8) correctly states the potential impacts of the proposed displays to traffic safety, due to the message duration, location, and particularly the message sequencing. However, the Department does not concur with the determination by the City that these potential impacts are "less than significant" to traffic safety. We believe the project poses potentially significant impacts, based on the analysis below under the "Roadside Management & Landscape Architecture" comments.

L2.04

**Roadside Management & Landscape Architecture**

The proposed project description of Section 1.1 Proposed Project (see page 1-1) describes four signage locations as being 1,000 feet apart. However, Site Option 2 is depicted in Figure 4.1 (see page 4-8) as being closer than 1,000 feet from both Site Option 1 and Site Option 3, so there cannot be three billboard structures if Site Option 2 is selected. Additionally, there is no visual billboard structure simulation provided for Site Option 2.

L2.05

L2.06

Also, the project description states that, initially, four static and two electronic "digital" facings are planned with the four static facings being converted to digital in the future. Please identify which display facing will be digital and which static display facings will be converted. Also, the City's General Plan discusses possible future landscaping. If the City adds landscaping to this section of Interstate (I-) 880, this section of I-880 could be reclassified at that time as a landscaped freeway.

L2.07

L2.08

**Design**

Generally, the Department finds the DEIR lacking in specificity. For example, as discussed above in the "Roadside Management & Landscape Architecture" comments, the DEIR does not specify which display facing is to be digital and which static facings may later be converted to digital. Also, the DEIR does not discuss possible future landscaping in the project area under the City's General Plan. The Department prefers "Alternative 3: Fewer Billboards" (see Section 7. Alternatives, page 7-1).

L2.09

L2.10

L2.11

**Encroachment Permit**

Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

L2.12

Office of Permits  
California DOT, District 4  
P.O. Box 23660  
Oakland, CA 94623-0660

See the website link below for more information.  
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

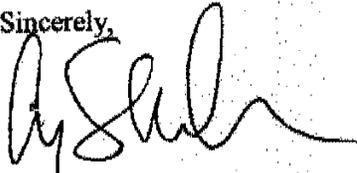
Further comments may be forthcoming, as the CEQA and review processes continue.

**L 2**

Mr. Sheldon AhSing/City of Milpitas  
June 30, 2011  
Page 3

Please feel free to contact Brian Brandert at (510) 286-5505, if you have any questions regarding this letter.

Sincerely,



**GARY ARNOLD**  
District Branch Chief  
Local Development-Intergovernmental Review

c: Scott Morgan (State Clearinghouse)

L 2 Gary Arnold, District Branch Chief, Local Development-Intergovernmental Review,  
California Department of Transportation, District 4

*Comment L 2.01:* As Lead Agency, the City is responsible for all project mitigation. Mitigation details should be fully discussed. The project's traffic mitigation fees should be identified. Any required roadway improvements should be completed before issuance of occupancy permits.

*Response:* The project would not generate any new vehicle trips, cause any change in traffic patterns, or change the traffic capacity of the local circulation system. The project would not directly or indirectly affect traffic operations on Interstate 880 or local streets. The project would have no impact related to traffic capacity and operations. The project would not require roadway improvements, improvements to State highways, payment of traffic mitigation fees, or any other traffic mitigations.

*Comment L 2.02:* Caltrans will not issue an encroachment permit until its CEQA concerns are addressed.

*Response:* The project is not expected to require an encroachment permit from Caltrans. Although the proposed billboards would be located near the eastern edge of the I-880 right-of-way, the billboards would be located on private property and no part of the billboards would overhang the freeway right-of-way. As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility.

*Comment L 2.03:* Caltrans enforces the Outdoor Advertising Act and regulations regarding the placement of advertising along highways. The project would require a Highway Outdoor Advertising Permit from Caltrans. Design plans should be provided for Caltrans review.

*Response:* As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility. Design plans for the proposed billboards would be provided to Caltrans for review and approval with the Highway Outdoor Advertising Permit application.

*Comment L 2.04:* The project poses potentially significant impacts on traffic safety, based on the analysis in comments 2.05 through 2.08.

*Response:* The comment notes that Caltrans believes that the project poses a potentially significant impact on traffic safety based on the analysis contained in comments 2.05 through 2.08. Comment 2.05 pertains to billboard spacing. Comment 2.06 pertains to aesthetic impacts. Comment 2.07 pertains to which of the billboard facings would be LED displays and which would initially be static displays. Comment 2.08 pertains to possible future reclassification of the subject segment of I-880 as a landscaped freeway.

The Draft EIR on page 5-8 notes that the project could reduce traffic safety due to the digital billboard message duration, location, and message sequencing. The proposed 4 second message duration is less than the minimum message duration of 8 seconds recommended by the FHWA and the longer message durations recommended by some

traffic safety experts, research studies and governmental agencies, and this shorter message duration has the potential to increase driver distraction. The placement of the proposed digital billboard at Site Option 4 adjacent to driver decision and action points and official traffic control signs associated with the northbound off-ramp to California Circle and Dixon Landing Road could reduce traffic safety. Due to their proximity to one another and their placement in succession, the three billboards could be used for message sequencing, which would also have the potential for driver distraction and could reduce traffic safety.

However, the Draft EIR concludes that there are no known existing standards or significance thresholds that would definitively indicate that reduced traffic safety due to the digital billboard message duration, location, and message sequencing would represent a potentially significant impact.

Although not identified as a mitigation measure, the Draft EIR nonetheless suggests that the Agreement between the project applicant and the City required by Title XI, Chapter 10, Section 24.05(G)(3)(a) of the Milpitas Municipal Code include provisions to enable the City to maintain limited ongoing oversight of billboard operation, and to facilitate updates to operational control requirements should new technologies emerge or should new operational data or research findings suggest needed changes to sign physical or operating characteristics.

*Comment L 2.05:* The Draft EIR on page 1-1 incorrectly states that the four possible sign locations under consideration are spaced at least 1,000 feet apart. Site Option 2 is located less than 1,000 feet from Site Option 1 and Site Option 3, so there could not be three billboards if Site Option 2 is selected.

*Response:* The proposed billboards would be spaced at least 1,000 feet apart, as required for digital billboards under the federal Highway Beautification Act of 1965, the California Outdoor Advertising Act, and the Milpitas Municipal Code. The federal Highway Beautification Act of 1965 and the California Outdoor Advertising Act require a minimum spacing of 1,000 feet between LED displays, and 500 feet between non-LED displays. The Milpitas Municipal Code requires a minimum spacing of 1,000 feet between off-site advertising displays adjacent to Interstate highways regardless of LED or non-LED displays.

The locations of the proposed billboards within each parcel at Site Option 1, Site Option 2 and Site Option 3 shown on Figures 3.2 through 3.6 are only approximate locations. The proposed billboards may be located anywhere along the western boundary of the subject parcels, Assessor Parcel Number (APN) 022-38-019, APN 022-38-010, and APN 022-38-002, but at no time would the locations be closer than 1,000 feet.

The location of the proposed billboard at Site Option 4 shown on Figures 3.2, 3.3 and 3.7, within the parking area at the southwestern corner of the lot with its site constraints, is a more precise location; the proposed billboard at Site Option 4 would replace the existing approximately 45-foot high freeway-oriented on-premise advertising sign at this location.



Only three out of the four locations will be chosen and at no time will the signs be closer than 1,000 feet. This spacing requirement may preclude choosing certain locations. As shown on the assessor parcel map on the following page, Site Option 2 (APN 022-38-010), Site Option 3 (APN 022-38-002) and the parcel between them (APN 022-38-009) combined have a total freeway frontage of 1,039.63 feet. Site Option 1 (APN 022-38-019), Site Option 2 (APN 022-38-010) and the intervening parcels (APNs 022-38-020 and 022-38-021) combined have a total freeway frontage of 1,104.20 feet. Billboards placed near the southern boundary of Site Option 2 and the northern boundary of Site Option 3 would be at least 1,000 feet apart. Billboards placed near the southern boundary of Site Option 2 and on Site Option 1 would be at least 1,000 feet apart. With the change in the location of Site Option 1 to APN 022-38-019, three billboards could be placed on Site Option 1, Site Option 2 and Site Option 3 at least 1,000 feet apart.

Draft EIR pages 3-5 and 3-18 have been revised to reflect that the proposed billboards at Site Option 1, Site Option 2 and Site Option 3 are only approximate. The visual simulations presented in Figures 4.2 through 4.7 are adequately representative of project aesthetic effects for any given location along the western boundary of Site Option 1, Site Option 2 and Site Option 3. The impact analyses and conclusions presented in Chapters 4 through 6 of the Draft EIR remain valid for any given location along the western boundary of Site Option 1, Site Option 2 and Site Option 3.

*Comment L 2.06:* The Draft EIR does not include a visual simulation of Site Option 2.

*Response:* The six viewpoints considered most representative of project aesthetic effects were selected for simulation and presented in Figures 4.2 through 4.7 of the Draft EIR:

- Site Options 1 and 3 from Northbound I-880,
- Site Options 3 and 4 from Northbound I-880,
- Site Option 4 from California Circle,
- Site Option 4 from East Side of Penitencia Creek Channel,
- Site Option 3 from Southbound I-880, and
- Site Option 1 from Southbound I-880.

The photosimulations depict the size, shape, height, placement, design character and daytime visibility of the proposed billboards and provide an approximate indication of the visibility of the billboards from key public vantage points. All of the billboards would be similar in size, shape, height, orientation and design character. Figures 4.2, 4.3, 4.6 and 4.7, which illustrate Site Option 1 and Site Option 3 in views from northbound and southbound I-880, are also adequately representative of the visibility and character of Site Option 2. No additional photosimulation of Site Option 2 is necessary.

*Comment L 2.07:* Please identify which of the billboard facings would be LED displays and which would be static displays initially and later converted to LED displays.

*Response:* The Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now

anticipates that four of the six facings may initially contain LED displays. The Draft EIR have been revised to reflect this possibility.

The Draft EIR evaluates an ultimate scenario with all six of the facings containing LED displays, which represents a “worst-case” scenario with respect to potential aesthetic and transportation impacts. The potential impacts of some number of static displays and fewer LED displays would be similar to and less substantial than the impacts of the scenario of all facings containing LED displays evaluated in the Draft EIR. Alternative 4: All Non-LED Billboards evaluated in Chapter 7, Alternatives, of the Draft EIR compares the impacts and mitigation needs of all non-LED billboards to those of the project. As indicated by the evaluation of Alternative 4, some number of static displays and fewer LED displays would have a similar significant unavoidable impact related to I-880 gateway visual character and less substantial but still significant and mitigatable light, glare and sky glow impacts as the project. The Draft EIR evaluations of the project and of Alternative 4 adequately cover the range of potential impacts of the possible combinations of static displays and LED displays.

*Comment L 2.08:* If the City adds landscaping to this segment of I-880 as identified in the General Plan, the segment of the freeway could be reclassified as a landscaped freeway.

*Response:* As explained on page 3-13 of the Draft EIR, a “landscaped freeway” is defined in the California Outdoor Advertising Act as a Caltrans-designated freeway segment that is now, or may in the future be, improved by the planting of lawns, trees, shrubs, flowers or other ornamental vegetation requiring reasonable maintenance on one or both sides of the freeway (Government Code Section 5216). Under the Outdoor Advertising Act, off-premise signs are not allowed along Caltrans-designated “landscaped freeways,” except when approved as part of relocation agreements involving the removal of an existing billboard elsewhere along the “landscaped freeway.” Within Milpitas, I-880 is designated a “landscaped freeway” from Montague Expressway to Great Mall Parkway (postmile (PM) 5.97 to PM 7.48) and from SR 237 to the southern boundary of Site Option 1 (PM 8.01 to PM 9.45). Remaining segments of I-880 within Milpitas, including the portion containing the project sites, are non-landscaped freeways and so the proposed billboards would not be precluded.

As explained on pages 4-6 through 4-8 of the Draft EIR, General Plan Open Space & Environmental Conservation Element Figure 4-6, Scenic Resources and Routes, identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road as a major visual “gateway” into Milpitas. The City’s Streetscape Master Plan includes landscaping and signage recommendations for General Plan-identified major “gateways,” including the I-880 “gateway” segment. The project would not preclude the potential future installation of “gateway” freeway landscaping along I-880 at Dixon Landing Road, although it may limit the extent of the landscaping south along I-880, so as not to conflict with State law and the objectives of this project.

*Comment L 2.09:* The Draft EIR lacks specificity. The document does not specify which billboard facings would be LED displays and which would be static displays initially and later converted to LED displays.

*Response:* As stipulated by the CEQA Guidelines, the project description has been detailed to the extent needed for evaluation and review of environmental impacts. The

Draft EIR explains that initially, two of the six advertising facings on the three billboard structures would be digital LED displays and, ultimately, up to all six of the facings would be LED displays. Due to market conditions, the project applicant now anticipates that four of the six facings may initially contain LED displays. The Draft EIR have been revised to reflect this possibility.

*Comment L 2.10:* The Draft EIR does not discuss possible future landscaping along this segment of I-880 as identified in the General Plan.

*Response:* General Plan Open Space & Environmental Conservation Element Figure 4-6, Scenic Resources and Routes, identifies the southbound I-880 freeway segment at the northern city limits at Dixon Landing Road and the eastbound SR 237 highway segment at the western city limits as major visual “gateways” into Milpitas. The City’s Streetscape Master Plan includes landscaping and signage recommendations for General Plan-identified major “gateways,” including the I-880 “gateway” segment. Pages 4-6 through 4-8 of the Draft EIR describe these City policies from the Milpitas General Plan and the Milpitas Streetscape Master Plan.

Impact 4-1 on page 4-16 of the Draft EIR explains that the project may be perceived by many as substantially degrading the visual character and quality of the General Plan-identified southbound I-880 “gateway” to Milpitas, which would represent a potentially significant impact. Mitigation 4-1 on pages 4-16 and 4-17 would require changes in the Agreement between the project applicant and the City required by Title XI, Chapter 10, Section 24.05(G)(3)(a) of the Milpitas Municipal Code to include provisions to enable the City to require adjustments to the digital display brilliance, content, motion, recess, aim, focus, shielding, etc. if deemed necessary over time. However, despite these measures, the impact on the southbound I-880 gateway visual character would remain significant and unavoidable.

*Comment L 2.11:* Caltrans prefers Alternative 3: Fewer Billboards.

*Response:* Comment acknowledged. No further response is required.

*Comment L 2.12:* Work that encroaches into the State right-of-way would require an encroachment permit from Caltrans. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

*Response:* The project is not expected to require an encroachment permit from Caltrans. Although the proposed billboards would be located near the eastern edge of the I-880 right-of-way, the billboards would be located on private property and no part of the billboards would overhang the freeway right-of-way. As explained on pages 1-1 and 3-21 of the Draft EIR, the project would require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of off-premise advertising displays adjacent to a Caltrans facility. Design plans for the proposed billboards would be provided to Caltrans for review and approach with the Highway Outdoor Advertising Permit application. The project would have no traffic impacts and would not require any traffic-related mitigations.



Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

July 5, 2011

Sheldon AhSing  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

Subject: Interstate 880 Digital Billboards Project  
SCH#: 2010062083

Dear Sheldon AhSing:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 1, 2011, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

L3.01

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures

cc: Resources Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2010062083  
**Project Title** Interstate 880 Digital Billboards Project  
**Lead Agency** Milpitas, City of

**Type** EIR Draft EIR

**Description** The project applicant, SignCo East, LLC, is proposing to install up to three separate billboard structures containing two advertising facings per structure along the I-880 freeway corridor in Milpitas. The three new signs are proposed to include electronic digital reader board components. The signs are proposed to be similar in size to existing digital reader board signs located along other stretches of I-880 in the subregion. Top-of-sign heights of up to 70 ft. and maximum sign areas of 14 by 48 ft. are proposed.

**Lead Agency Contact**

**Name** Sheldon AhSing  
**Agency** City of Milpitas  
**Phone** 408-586-3278 **Fax** 408-586-3305  
**email** sahsing@ci.milpitas.ca.gov  
**Address** 455 E. Calaveras Boulevard  
**City** Milpitas **State** CA **Zip** 95035

**Project Location**

**County** Santa Clara  
**City** Milpitas  
**Region**  
**Lat / Long**  
**Cross Streets** I-880 East Frontage & Cadillac Court, CA Circle, & Dixon Landing Rd.  
**Parcel No.** 022-38-020, -010, -002; 022-37-049  
**Township** **Range** **Section** **Base**

**Proximity to:**

**Highways** SR-237  
**Airports**  
**Railways**  
**Waterways**  
**Schools**  
**Land Use** Industrial Park (MP)

**Project Issues** Aesthetic/Visual; Traffic/Circulation; Cumulative Effects

**Reviewing Agencies** Resources Agency; Department of Fish and Game, Region 3; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Regional Water Quality Control Board, Region 2; Native American Heritage Commission

**Date Received** 05/18/2011 **Start of Review** 05/18/2011 **End of Review** 07/01/2011

L 3 Scott Morgan, Director, State Clearinghouse, Governor's Office of Planning and Research,  
July 5, 2011

*Comment L 3.01:* Letter lists the State agencies that reviewed the Draft EIR, transmits comments from responding State agencies, and acknowledges that the City has complied with State Clearinghouse requirements for draft environmental documents pursuant to CEQA.

*Response:* Comment acknowledged. No further response is required.



July 8, 2011

City of Milpitas  
Planning Division  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5479

Attention: Sheldon Ah Sing

Subject: I-880 Digital Billboards

Dear Mr. Sing:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR for three new digital signs on I-880 between Dixon Landing Road and SR 237. We have no comments at this time.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read "RM", is written over a large, light-colored circular mark.

Roy Molseed  
Senior Environmental Planner

L 4 Roy Molseed, Senior Environmental Planner, Santa Clara County Valley Transportation Authority, July 8, 2011

*Comment L 1.01:* Letter acknowledges that the Santa Clara County Valley Transportation Authority (VTA) reviewed the Draft EIR and has no comments.

*Response:* Comment acknowledged. No further response is required.

### 3. REVISIONS TO THE DRAFT EIR

The following section includes all revisions to the May 18, 2011 Draft EIR made in response to comments received during the Draft EIR comment period. All text revisions are indicated by a bracket in the left margin next to the revised line(s). All of the revised pages supersede the corresponding pages in the May 18, 2011 Draft EIR. None of the criteria listed in CEQA Guidelines section 15088.5 (Recirculation of an EIR Prior to Certification) indicating the need for recirculation of the EIR has been met as a result of the revisions which follow. In particular:

- no new significant environmental impact due to the project or due to a new mitigation measure has been identified;
- no substantial increase in the severity of an environmental impact has been identified; and
- no additional feasible project alternative or mitigation measure considerably different from others previously analyzed in the Draft EIR has been identified that would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt.



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## 1. INTRODUCTION

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This Draft Environmental Impact Report (Draft EIR) has been prepared by the City of Milpitas in accordance with the California Environmental Quality Act (CEQA)<sup>1</sup> and associated CEQA Guidelines<sup>2</sup> to describe the potential environmental consequences of the proposed Interstate 880 Billboards Project (Project). The Project applicant, SignCo East, LLC, proposes to install three separate billboard structures containing a total of six advertising facings, two per structure, along the east side of Interstate 880 (I-880) south of Dixon Landing Road in Milpitas. This Draft EIR is intended to serve as an informational document for use by public agency decision makers and the public in their consideration of the Project.

### 1.1 PROPOSED PROJECT

Four possible sites are under consideration for the three proposed billboard structures. The four possible sites are located along the western boundary of commercial and industrial parcels adjacent to the east edge of the I-880 freeway right-of-way. Initially, two static and four electronic “digital” facings are planned. As market demand increases, it is anticipated that the two static facings would also be converted to electronic “digital” facings.

Each billboard structure would include two approximately 14-foot high by 48-foot wide displays facing opposite directions, mounted on a single sign column. The overall height of the billboards would be 70 feet. Each of the electronic billboard facings would display a number of static LED images in continuous rotation, with each image displayed for no less than four seconds.

The Project would require City of Milpitas (City) approval of a Development Agreement and Site Development Permit, as well as building permits. Each billboard would also require a Highway Outdoor Advertising Permit from the California Department of Transportation (Caltrans). A detailed description of the Project is provided in Chapter 3, Project Description, herein.

As used in this EIR, the term "Project" is defined to mean the proposed Interstate 880 Billboards Project and all associated discretionary approvals, including the requested Development Agreement and Site Development Permit from the City, the Highway Outdoor Advertising Permit from Caltrans, as well as other local and state approvals, entitlements, permits, and actions that may be required to implement the Project.

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<sup>1</sup>The California Environmental Quality Act (CEQA) is codified in section 21000, et seq., of the California Public Resources Code.

<sup>2</sup>The CEQA Guidelines are set forth in sections 15000 through 15387 of the California Code of Regulations, Title 14, Chapter 3.

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## 2. SUMMARY

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This EIR chapter provides a summary description of the proposed action (the Interstate 880 Billboards Project), a list of associated environmental issues to be resolved, a summary identification of significant impacts and mitigation measures associated with the Project, and a summary identification of possible alternatives to the Project (pursuant to CEQA Guidelines Section 15123, Summary).

*This summary should not be relied upon for a thorough understanding of the details of the Project, its individual impacts, and related mitigation needs. Please refer to Chapter 3 for a complete description of the Project, Chapters 4 and 5 for a complete description of environmental impacts and associated mitigation measures, Chapter 6 for CEQA-required assessment conclusions, and Chapter 7 for a complete description and evaluation of identified alternatives to the Project.*

### 2.1 PROPOSED PROJECT

#### 2.1.1 Project Area Location and Site Characteristics

(a) Regional and Local Setting. The proposed three billboard structures would be located along the east side of the Interstate 880 (I-880) freeway segment south of the Dixon Landing Road interchange, in the northwestern corner of the city of Milpitas in Santa Clara County. The three billboard structures would be located between the interchange and a point approximately two miles south of the interchange. Lands east of this two-mile segment of I-880 are developed with suburban, low- to medium-density industrial, commercial and residential uses; lands west of this segment of I-880 are mostly undeveloped agricultural land and baylands.

(b) Project Site Characteristics. The three billboard structures would be located on already developed properties on the east side of the freeway and along the west side of California Circle and Cadillac Court containing industrial, office and commercial uses. The three structures would be located on three of four possible sites currently under consideration. The four possible sites are referred to in this EIR, in order from south to north, as Site Option 1, Site Option 2, Site Option 3, and Site Option 4--i.e.:

- *Site Option 1*: assessor's parcel number (APN) 022-38-019 at 901 Cadillac Court;
- *Site Option 2*: APN 022-38-010 at 1181 Cadillac Court;
- *Site Option 3*: APN 022-38-002 at 1301 California Circle; and
- *Site Option 4*: APN 022-37-049 at 1545-1547 California Circle.

### **2.1.2 Project Background**

**(a) Digital Billboards.** Electronic “digital” billboard facings are an emerging media type. A digital billboard facing typically contains a light emitting diode (LED) display that produces images controlled remotely by computer. Typically, approximately eight advertisements rotate continuously, each displaying a static image for about eight seconds. Scrolling, flashing, or moving images are generally prohibited by current federal, State and local regulations.

Currently, approximately 200 of the more than 10,000 freeway billboards in California are digital billboards. As of January 1, 2010, there were 35 digital billboards in the San Francisco Bay Area, including one on U.S. Highway 101 in Santa Clara County and five on I-880 in Alameda County.

**(b) Digital Billboards in Milpitas.** Over the past few years, there has been an emerging interest by the City and private entities in installing digital billboards at selected locations along the Milpitas segments of I-880, Interstate 680 (I-680), and State Route 237 (SR 237). The City has been interested in considering digital billboards as a potential source of municipal revenue and for possible use of a portion of the advertising in rotation to promote local businesses and economic development.

In November 2006, the City certified an EIR which identified the impacts of locating three new freeway billboards and replacing the two existing freeway billboards along I-680 and I-880. Two of the freeway billboards considered in 2006 were to be digital billboards. At the time, the City’s Sign Ordinance prohibited freeway billboards. In August 2010, the City adopted a new Sign Ordinance which authorizes City consideration of freeway billboards along I-880, I-680, and SR 237.

**(c) Billboard Regulation.** Freeway billboards, including digital billboards, are regulated at the federal, State and local levels. The primary federal and State laws pertaining to billboards along highways are the federal Highway Beautification Act of 1965 and the State’s Outdoor Advertising Act. At the local level, the City’s Sign Ordinance establishes minimum City standards for billboards and specifies required findings for City approval of a proposed digital billboard. A Development Agreement and Site Permit Approval for one of the five billboards, the “Toyota sign,” located at 950 Thompson Street (APN 086-05-026) in the northeast quadrant of the I-880/Great Mall Parkway interchange, were approved in June 2010.

### **2.1.3 Project Objectives**

The Project applicant, SignCo East, LLC, has identified the following basic objectives of the Project:

- Install up to three new digital billboard structures at a Milpitas freeway location with high traffic volumes and visibility;
- Provide substantial billboard-generated economic benefits to the applicant and City, including new revenues and promotion of local businesses;
- Minimize associated visual and noise impacts on vicinity residential and hotel uses; and

- Comply with all federal, State, City and outdoor advertising industry laws, regulations and standards in order to adequately address potential billboard-related light, glare, traffic safety, and other impacts.

#### **2.1.4 Project Characteristics**

The Project consists of the installation of three new separate billboard structures containing a total of six advertising facings, two per structure, along the east side of I-880 south of Dixon Landing Road in Milpitas. Initially, two static and four digital facings are planned. As market demand increases, the two static facings would be converted to digital facings.

(a) Proposed Billboards Locations. The three billboard structures would be installed along the western boundary of three of four possible sites currently under consideration, parcels 002-038-019 (Site Option 1), 002-038-010 (Site Option 2), 022-38-002 (Site Option 3), and 002-037-049 (Site Option 4), adjacent to the freeway, and spaced at least 1,000 feet apart. If Site Option 4 is selected, the Project would also require removal of one existing free-standing advertising sign located on Site Option 4.

(b) Digital Billboards Characteristics. All three billboard structures would be identical in design. The advertising displays would be mounted on a single approximately eight-foot diameter sign column. The bottom of the displays would be approximately 56 feet above ground level. The top of the displays and overall height of the billboard structure would be 70 feet. Each billboard would have two 14-foot high by 48-foot wide displays facing opposite directions and slightly angled toward freeway viewers. Each of the digital facings would display a number of static images in continuous rotation, with each image displayed for no less than four seconds.

(c) Project Construction. One drilling rig, one crane, and one four- or five-person crew would be used for all three Project sites. A hole five feet in diameter and 32 feet deep would be drilled for each sign. Construction would last approximately five days.

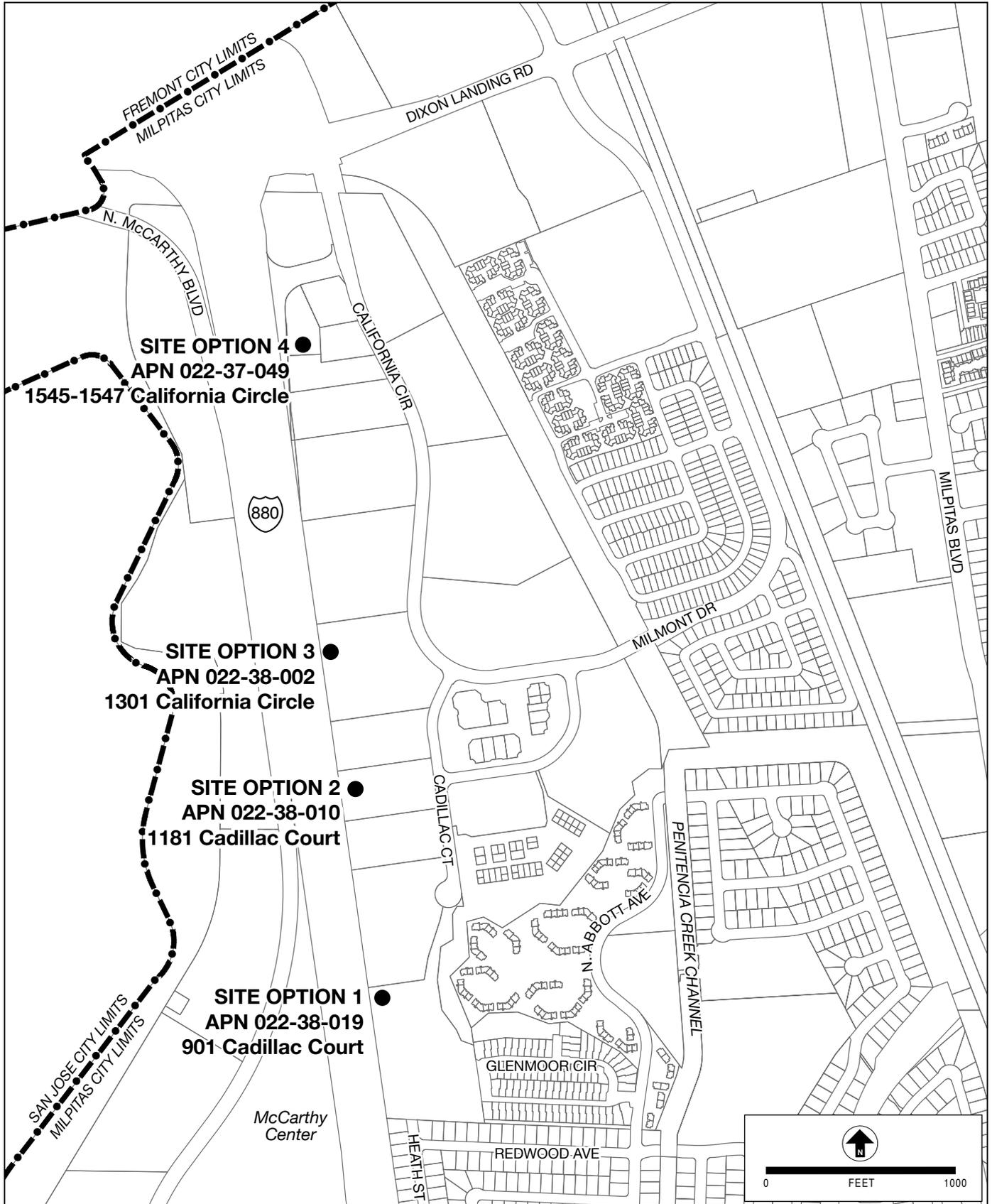
#### **2.1.5 Required Project Approvals**

(a) City of Milpitas. The Project would require City approval of a Development Agreement and Site Development Permit. Each billboard would also require a City building permit.

(b) Caltrans. Each billboard would also require a Highway Outdoor Advertising Permit from Caltrans to allow the placement of an "off-premise" advertising display adjacent to a Caltrans facility.

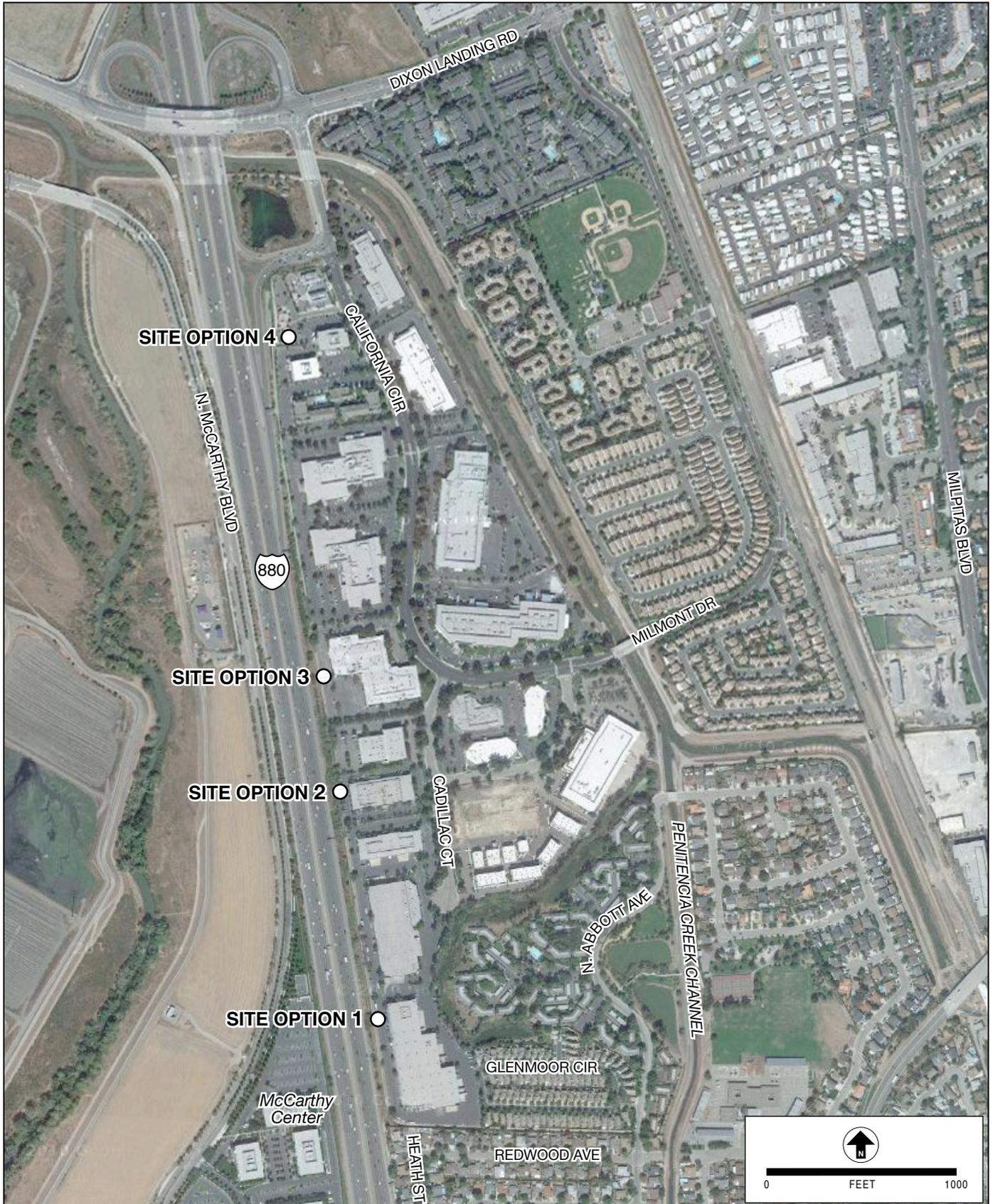
### **2.2 ENVIRONMENTAL ISSUES**

As required by the State CEQA Guidelines, the scope of this EIR includes all environmental issues to be resolved and all areas of controversy known to the Lead Agency (the City), including those issues and concerns identified as possibly significant by the City, and by other agencies, organizations, and individuals in response to the City's Notice of Preparation dated June 28, 2010. These areas of environmental concern include aesthetics (Chapter 4) and transportation (Chapter 5).



SOURCE: Google; McCarthy Ranch

Figure 3.2  
**LOCAL PROJECT MAP:  
SITE OPTIONS 1, 2, 3 AND 4**



SOURCE: Google; McCarthy Ranch

Figure 3.3  
**LOCAL PROJECT AERIAL:  
SITE OPTIONS 1, 2, 3 AND 4**

single family homes on Glenmoor Circle; a multiple family residential complex containing approximately 30 two-story buildings located off of N. Abbott Avenue; and two-story single family homes and three-story townhomes and apartments further to the east, off of Milmont Drive, east of the Penitencia Creek channel.

(c) South. Single-story single family homes are located on Heath Street and Redwood Avenue south of the Project sites. The SR 237 interchange is located approximately one mile south of the Project sites.

(d) West. I-880 is located adjacent to the Project sites on the west. North McCarthy Boulevard, a four-lane, roadway, is located on the opposite (west) side of I-880. The undeveloped lands on the west side of North McCarthy Boulevard are within the 203-acre McCarthy Ranch Master Plan area, and were approved in 2009 for an office park, industrial park, and general commercial uses (the Campus at McCarthy Ranch Project and the McCarthy Ranch Mixed Use Project). The 68-acre McCarthy Center complex, which contains approximately one million square feet of office and research and development uses spread among 19 two-story buildings in a campus setting, is located further south along North McCarthy Boulevard.

### **3.1.2 Project Site Characteristics**

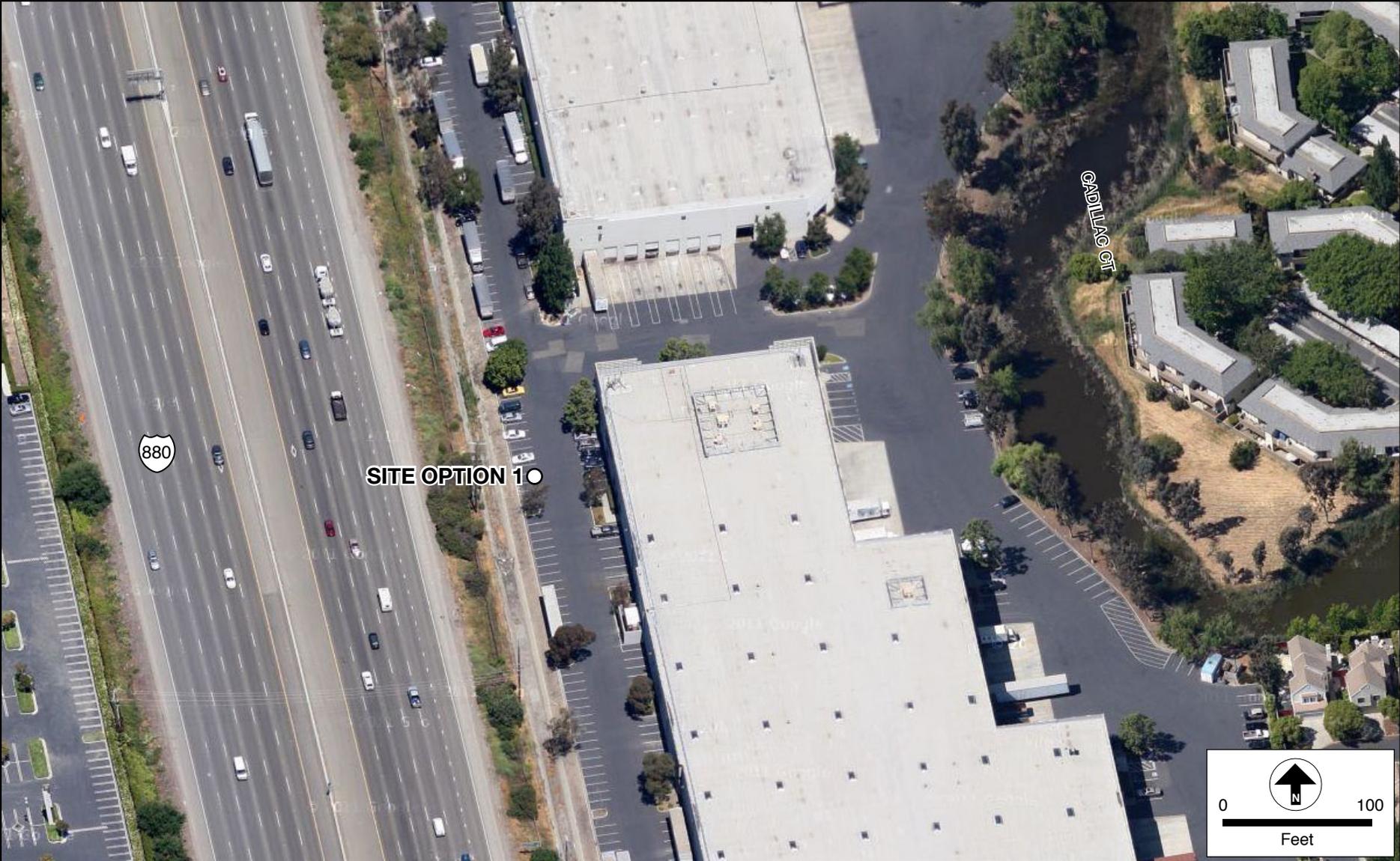
The three billboard structures would be located on three of four possible sites currently under consideration. All four possible sites are located on already developed properties containing industrial park and general commercial uses, located east of I-880 and south of Dixon Landing Road, on California Circle and Cadillac Court. The four Project site options are referred to in this EIR, from south to north, as Site Option 1, Site Option 2, Site Option 3 and Site Option 4. The four Project site options are shown in Figures 3.2 and 3.3. Each of the four site options is shown in greater detail in Figures 3.4 through 3.7, and is further described below. The locations of the proposed billboards within each parcel are approximately only. The proposed billboards may be located anywhere along the western boundary of the subject parcels, but at no time will the signs be located closer than 1,000 feet.

(a) Site Option 1. Site Option 1 is located adjacent to the I-880 freeway right-of-way at 901 Cadillac Court on assessor's parcel number (APN) 022-38-019. As shown on Figure 3.4, Site Option 1 is developed with one freestanding, approximately 30-foot high, flex industrial building surrounded by parking and loading areas. An electrical transmission line on wooden poles and a drainage channel are located along the western edge of Site Option 1, and on the western edges of Site Options 2 and 3. Residential uses are located to the south and east of Site Option 1.

(b) Site Option 2. Site Option 2 is located adjacent to the I-880 freeway right-of-way at 1181 Cadillac Court on APN 022-38-010. As shown on Figure 3.5, Site Option 2 is developed with one freestanding, approximately 30-foot high flex industrial building surrounded by parking and loading areas.

(c) Site Option 3. Site Option 3 is located adjacent to the I-880 freeway right-of-way at 1301 California Circle on APN 022-38-002. As shown on Figure 3.6, Site Option 3 is developed with one freestanding, approximately 30-foot high flex industrial building surrounded by parking and loading areas.

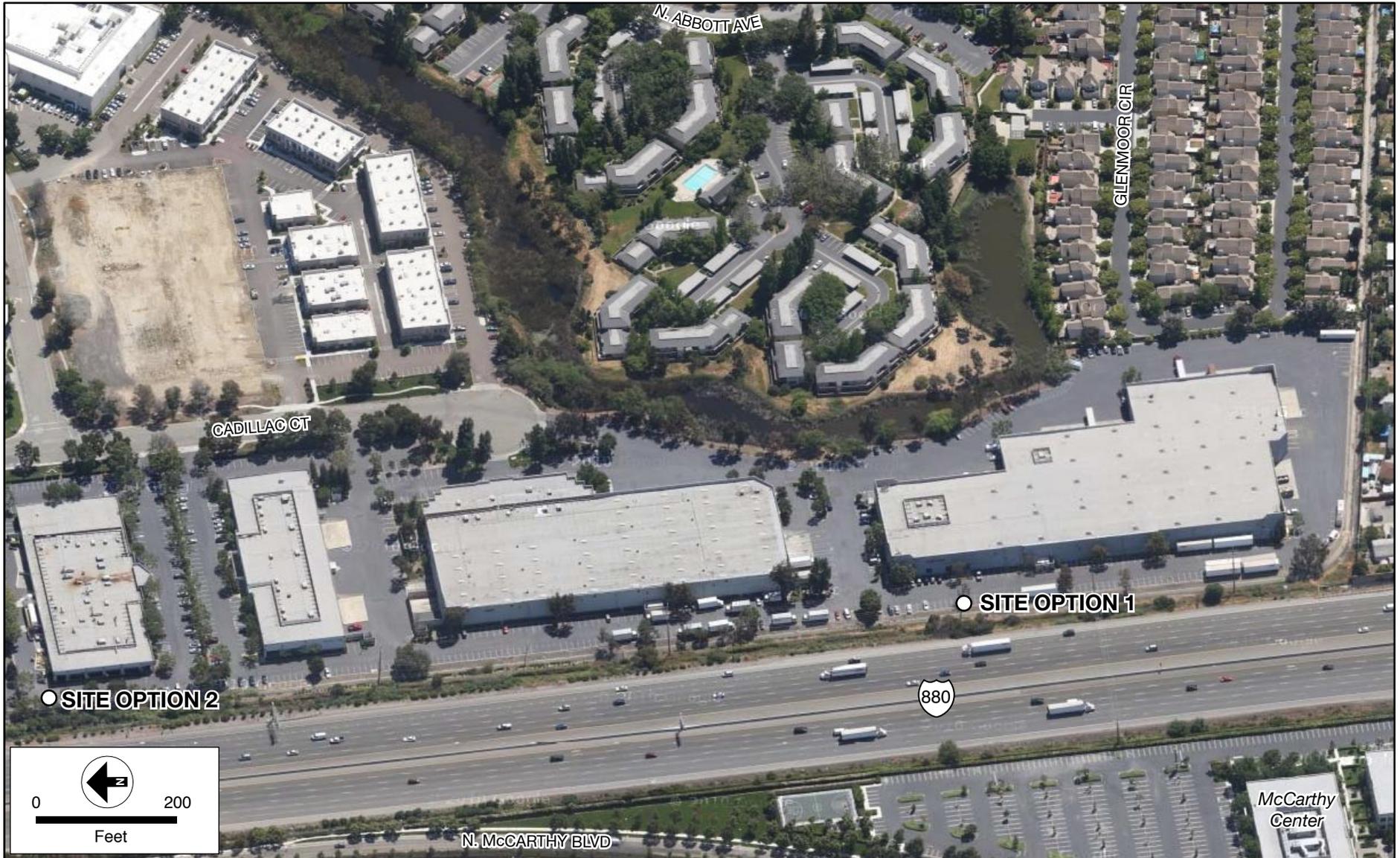
(d) Site Option 4. Site Option 4 is located adjacent to the I-880 freeway right-of-way at 1545-1547 California Circle on APN 022-37-049, adjacent to the I-880 northbound off-ramp to Dixon Landing Road. As shown on Figure 3.7, Site Option 3 contains a one-story Starbucks coffee



SOURCE: Google; McCarthy Ranch

Figure 3.4

# PROJECT SITE OPTION 1



SOURCE: Google; McCarthy Ranch

Figure 3.5

# PROJECT SITE OPTIONS 1 AND 2

- j. Any off-site advertising display shall include the words "City of Milpitas" and/or the City insignia somewhere on the structure.*
- k. Digital Billboard (changeable copy signs) Limitations.*
  - i. Digital billboards shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination or flashing or scintillating light.*
  - ii. Minimum display time. In compliance with State standards, each message on the sign must be displayed for a minimum of four (4) seconds.*
  - iii. Notwithstanding anything to the contrary in the Code, digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance consistent with acceptable practices.*
- 6. Required Findings. In order to grant a Site Development Permit for the proposed off-site advertising display, the Planning Commission and the City Council must determine that the following objective requirements have been met:*
  - a. The proposed off-site advertising display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and its surroundings.*
  - b. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.*
  - c. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display.*
  - d. The development of the off-site advertising display will promote economic development within the City.*
  - e. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions.*
  - f. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan.*

### **3.3 PROJECT OBJECTIVES**

The Project applicant has identified the following basic objectives of the Project:

- Install up to three new billboard structures at a Milpitas freeway location with high traffic volumes and visibility;

- Provide billboard-generated economic benefits to the applicant and City, including advertising revenue and promotion of local business;
- Minimize associated visual and noise impacts on vicinity residential and hotel uses; and
- Comply with all federal, State, City and outdoor advertising industry laws, regulations and standards in order to adequately address potential billboard-related light, glare and traffic safety impacts.

### 3.4 PROJECT CHARACTERISTICS

The Project consists of the installation of three new billboard structures at three separate locations along the east side of the I-880 freeway south of Dixon Landing Road in Milpitas.

#### 3.4.1 Possible Billboard Locations

The proposed three new billboard structures would be located on three of four possible sites currently under consideration. The locations of the proposed billboards within each parcel are approximately only. The proposed billboards may be located anywhere along the western boundary of the subject parcels. The four Project site options are shown in Figures 3.4 through 3.7 and are described below:

- *Site Option 1.* The southernmost site option under consideration is along the western boundary of parcel 002-038-019 at 901 Cadillac Court (Figure 3.4).
- *Site Option 2.* The second site option under consideration is along the western boundary of parcel 002-038-010 at 1181 Cadillac Court (Figure 3.5).
- *Site Option 3.* The third site option under consideration is along the western boundary of parcel 002-038-002 at 1301 California Circle (Figure 3.6).
- *Site Option 4.* The northernmost billboard would be installed along the western boundary of parcel 002-037-049 at 1545-1547 California Circle, in the southwestern corner of the Starbucks coffee parking lot, at the location of an existing off-premise advertising sign which would be removed, and adjacent to the I-880 northbound off-ramp to Dixon Landing Road (Figure 3.7).

At no time will the locations of the 3 selected sites be closer than 1,000 feet.

#### 3.4.1 Proposed Digital Billboard Characteristics

All three billboard structures would be basically identical. Initially, four static and two electronic “digital” facings are planned. As market demand increases, the four static facings would be converted to digital facings incrementally over the course of the project. The proposed billboard characteristics are illustrated by Figures 3.8 and 3.9, and are described below:

(a) Billboard Structure. On each of the three proposed billboard structures, the billboard advertising displays, both static and digital, would be mounted on a steel, approximately eight-foot diameter, circular sign column. Each sign column would be placed directly into the ground with no built-up sign base.

The bottom of the displays would be approximately 56 feet above ground level. The top of the displays and the overall height of the billboard structure would be 70 feet above ground level.

(b) Displays. Each billboard would have two 14-foot high by 48-foot wide displays facing in opposite directions and slightly angled toward freeway viewers. The precise angle has not been specified by the Project applicant.

(c) Operational Characteristics. Initially, four of the six advertising facings on the three billboard structures would be digital LED displays. Ultimately, up to all six of the facings would be LED displays. LED display operational characteristics would comply with federal, State, City and outdoor advertising industry laws, regulations and standards. Lighting levels on each LED display would not exceed 0.3 foot candles over ambient levels. Light sensors would be installed with each sign to measure ambient light levels and to adjust light intensity to respond to ambient conditions.

Each LED display would display a number of static images in continuous rotation, with each image displayed for no less than four seconds. Due to their proximity to one another and their placement in succession, the three billboards would have the capability to be used together to describe a single advertisement message over two or three successive billboards.

(d) Design Character. Each of the three billboard structure columns would have a brushed aluminum finish and a six-inch recessed accent. No other sign base structure is proposed. Landscaping would be provided at the base of each sign in accordance with the City's Sign Ordinance. The applicant would conduct a geotechnical study to evaluate soil conditions at each of the Project sites to determine structural design specifications. Unusual soil conditions may affect the final design of the sign structure.

(e) Additional Signs. At this initial implementation phase, it is anticipated that an approximately nine-foot wide by 14-inch high "Clear Channel" identification LED display would be located beneath each of the initial two main LED displays. Additionally, a "Milpitas" identification sign would be located on the sign column beneath each main display. The City's Sign Ordinance allows such additional fixed signs on a billboard's supporting structure, which do not count towards the maximum display area. No additional fixed signs have been specified by the Project applicant.

### **3.4.2 Project Construction**

(a) Construction Equipment and Personnel. One drilling rig, one crane, and one crew (usually four or five persons) would be used for sign installation at all three Project sites. Crews and equipment would move from one site to another as work progresses.

(b) Construction Duration and Sequencing. Construction would typically proceed as follows for each site.

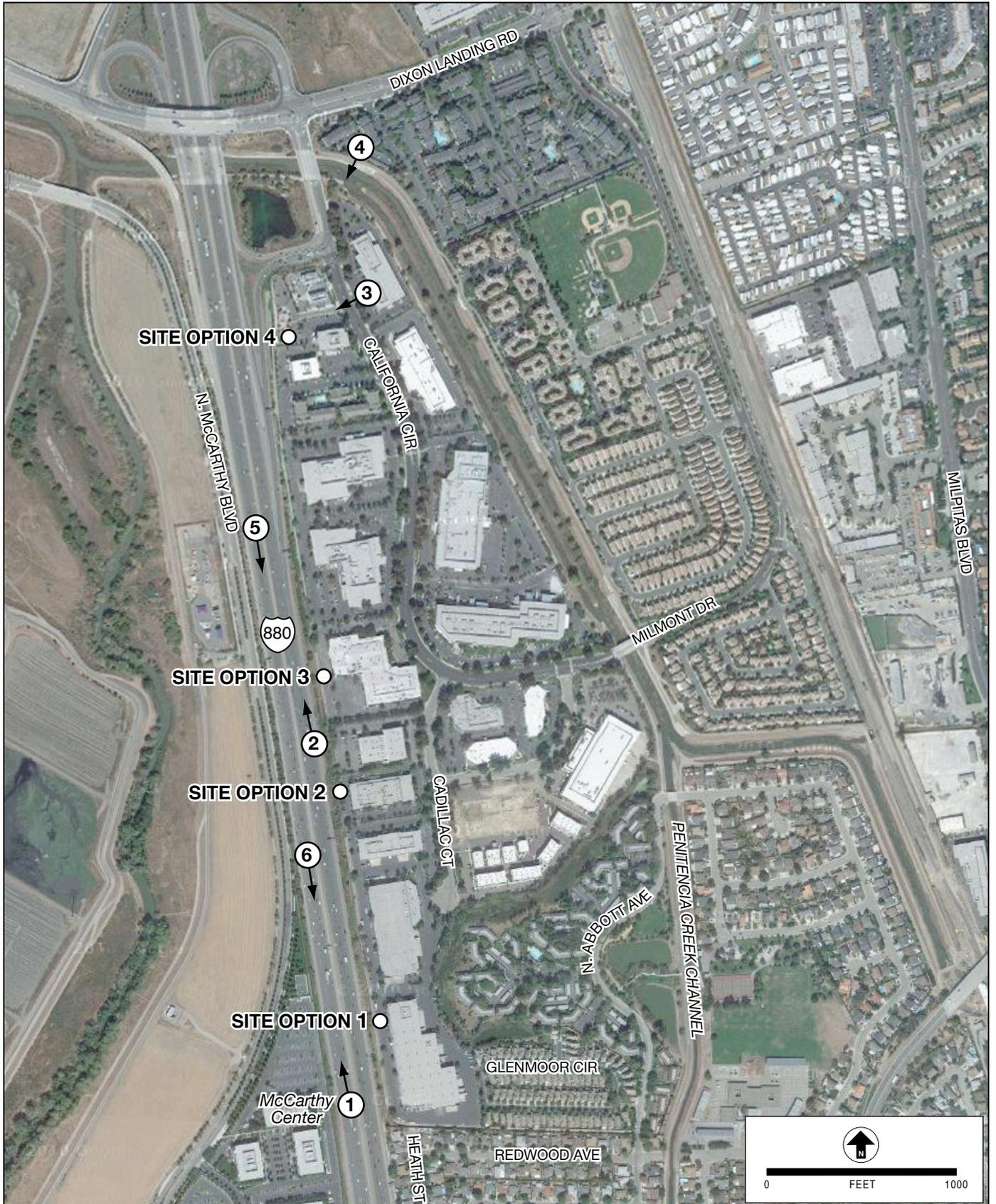
freestanding, approximately 30-foot high, concrete tilt-up flex light industrial buildings of various sizes, fronting on California Circle and Cadillac Court. The buildings are placed at the center of the sites surrounded by surface parking and loading areas, with landscaped planters at the edges and entries of buildings, along the rear and sides of some of the lots, and within landscaped islands within the parking lots. Existing exterior lighting at each of the three sites generally consists of approximately 20- to 30-foot high parking lot lights as well as wall-mounted building lights. Existing signage consists of low monument signs at the entry to each individual building site. An electrical transmission line on wooden poles is located along the western edge of the three properties, adjacent to the freeway right-of-way.

(d) Surrounding Commercial Center Uses. As shown on Figure 3.7, at the north end of the Project area, adjacent to the Dixon Landing Road interchange, there are a Chevron gas station and car wash, a Starbucks coffee commercial “pad” with drive-thru, two two-story office buildings, and a three-story Residence Inn. Existing signage includes an approximately 20-foot high on-premise pole sign for the Residence Inn and an approximately 45-foot high on-premise sign for the commercial center. Both of these signs are oriented toward the freeway.

(e) Adjacent Residential Neighborhoods. As shown on Figures 3.3 and 3.4, residential uses are located to the south and east, as well as east of the Penitencia Creek channel.

- *North Abbott Avenue.* A multiple family residential complex containing approximately 30 two-story buildings is located off of North Abbott Avenue, approximately 300 feet east of Site Option 1, across a drainage channel/detention lagoon. There is no property line fence along this portion of Site Option 1. A number of large trees, shrubs and grasses line the drainage channel but are not sufficiently dense to screen views from these homes.
- *East of Penitencia Creek Channel.* Two-story single family homes and three-story townhomes and apartments are located on the east side of the Penitencia Creek channel, off of Milmont Drive, approximately 1,000 to 1,500 feet from the Project sites.
- *Heath Street and Redwood Avenue.* Single-story, single family homes on small lots are located on Heath Street and Redwood Avenue approximately 600 feet south of Site Option 1. There is an approximately eight-foot high masonry block wall along the northern boundary of these lots.
- *Glenmoor Circle.* Two-story single family homes are located on Glenmoor Circle approximately 400 feet southeast of Site Option 1.

(e) Areas West of I-880. North McCarthy Boulevard, a four-lane, roadway, is located on the opposite, west side of I-880. The remaining undeveloped land west of North McCarthy Boulevard between SR 237 and Dixon Landing road has been recently approved office park, industrial park and general commercial development (The Campus at McCarthy Ranch and the McCarthy Ranch Mixed Use Project). Coyote Creek is located west of these two projects. The Coyote Creek Trail, a Class I bicycle/pedestrian trail, part of the San Francisco Bay Trail and the Juan Bautista de Anza National Historic Trail, parallels the east side of the creek. The 68-acre McCarthy Center complex, which contains approximately one million square feet of office, research and development and commercial uses spread among 19 two-story buildings in a campus setting, is located to the southwest.



SOURCE: McCarthy Ranch; Clear Channel Communications, Inc.

Figure 4.1

## VISUAL SIMULATION VIEWPOINTS

project refinements would not change the basic visual impact and mitigation conclusions in this EIR.

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**Impacts on Adjacent Residential Area Visual Character.** A billboard display at Site Option 1 would be visible from multiple family residential buildings on N. Abbott Avenue (approximately 300 feet away) and single family homes on Glenmoor Circle (approximately 600 feet away). Site Option 1 would likely not be visible to homes on Heath Street or Redwood Avenue, which are approximately 800 feet away and whose views towards the freeway are blocked by an approximately eight-foot-high masonry block wall located along the northern boundary of these lots, an approximately 30-foot high building at 875 Cadillac Court, and adjacent homes.

A billboard display at Site Option 2 may be visible from multiple family residential buildings on N. Abbott Avenue and homes on Glenmoor Circle.

A billboard at Site Option 3 would likely not be highly visible from any residential uses.

A billboard at Site Option 4 would be visible from three-story residential buildings located east of the Penitencia Creek channel (approximately 1,000 feet away).

At these distances of 300 feet or more, at relatively the same elevation as the nearest homes, and within the context of the surrounding industrial and commercial development, the billboard displays would not be highly prominent in views from these nearest residential vantage points. The Project would therefore not substantially degrade the existing visual character and quality of views from these residences. Impacts on adjacent residential visual character would therefore be **less than significant**. Project spill light and sky glow impacts are discussed in Impact 4-2 below.

**Mitigation.** No significant impact has been identified; no mitigation is required.

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**Impacts on Scenic Vistas.** There are no scenic vistas officially designated by the City or State along I-880 within Milpitas. However, as described in section 4.1.2 above, the Mission Hills and Monument Peak form a distinctive scenic backdrop to Milpitas and are important to the Milpitas community identity and character. The Mission Hills are visible in the background of views to the east from I-880 in the Project vicinity, and provide an orienting feature that frames views of the surrounding area. Due to the flat terrain, the width of the freeway and the low prevailing heights of surrounding buildings, the proposed billboard structures would not obstruct or substantially degrade views of the Mission Hills from the freeway during the day. The proposed billboard facings would be the brightest and most visually prominent at night, but the Mission Hills are generally not visible at night. Therefore, the Project would not have a substantial adverse effect on scenic vistas; i.e., the Project impact on scenic vistas would be **less than significant**.

**Mitigation.** No significant impact has been identified; no mitigation is required.

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**Impacts on State Scenic Highways.** There are no officially designated or eligible State Scenic Highways within Milpitas or along I-880. The Project impact on State Scenic Highways would therefore be **less than significant**.

### **7.2.3 Attainment of Project Objectives**

Alternative 2 would reduce or avoid Project visual and noise impacts on nearby residential and hotel uses, and would be substantially as effective in meeting the basic Project objective of erecting new freeway billboards with high visibility, as well as providing associated advertising revenue to the applicant and City.

## **7.3 ALTERNATIVE 3: FEWER BILLBOARDS**

### **7.3.1 Principal Characteristics**

Figure 7.1 shows seven possible locations, Site Options 1 through 7, where the proposed three digital billboard structures may be located. Under the proposed Project, all three billboard structures would be located on the east side of I-880, at three of the four east side Site Options 1 through 4.

Under **Alternative 3**, Fewer Billboards, two billboard structures rather than three would be installed along the east side of I-880 south of Dixon Landing Road. The proposed east side billboard at Site Option 4 would be eliminated in order to reduce the potential for traffic safety hazards associated with driver distraction near driver decision and action points and official traffic control signs associated with the northbound off-ramp of the Dixon Landing Road interchange. The two billboards retained would be located on Project Site Options 1, 2 or 3. All other design and operational characteristics of Alternative 3 would also be similar to the Project.

### **7.3.2 Impacts and Mitigations**

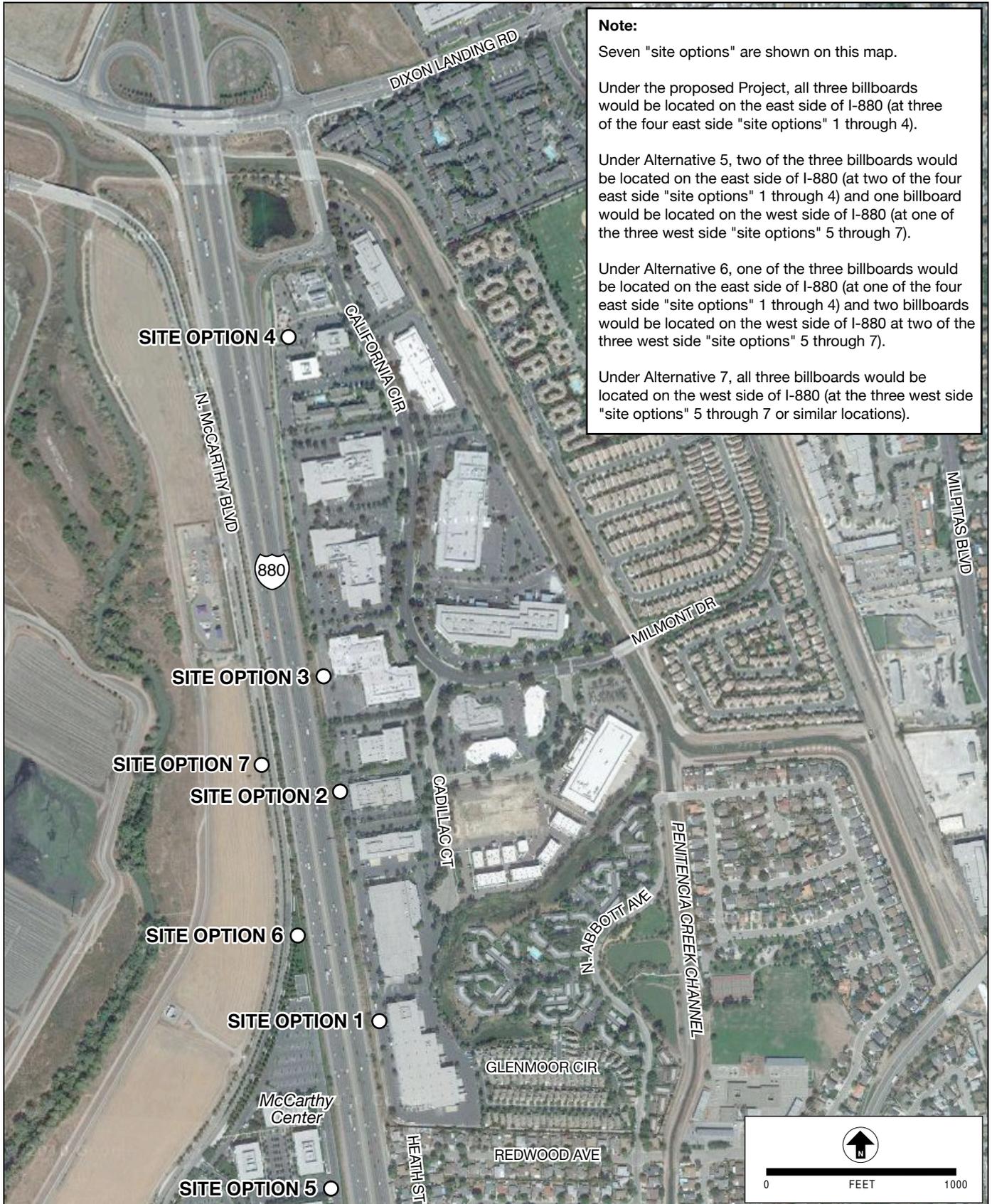
(a) Aesthetics. Alternative 3 would allow for optimal placement of the billboards to reduce or avoid visual impacts on nearby homes. With only two billboards instead of three, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 3 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Nevertheless, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.

(b) Transportation. With only two billboards instead of three, there would be some decrease in potential Project effects on driver attention.

(c) Other Impacts. Alternative 3 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

### **7.3.3 Attainment of Project Objectives**

Alternative 3 would achieve the basic Project objectives of erecting new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business



SOURCE: Wagstaff/MIG

Figure 7.1

# ALTERNATIVE BILLBOARD LOCATIONS

promotion and generation of associated advertising revenue. However, with only two billboards instead of three, there would be a proportional decrease in benefits accruing to the billboard owner and operator, as well as to the City.

## **7.4 ALTERNATIVE 4: ALL NON-LED BILLBOARDS**

### **7.4.1 Principal Characteristics**

Under **Alternative 4**, All Non-LED Billboards, three billboard structures would be installed on three of the same four site options along the east side of I-880 as under the proposed Project, but without “digital” LED displays. Instead, all three would include externally illuminated facings, two per structure. The locations, height and size of the three “non-digital” billboards would be similar to the Project.

### **7.4.2 Impacts and Mitigations**

(a) Aesthetics. Alternative 4 would be less visually conspicuous because non-LED billboards would not have changing messages. In addition, the light sources used for sign illumination could be more effectively shielded. Therefore, Alternative 4 could be designed to reduce spill light, glare and sky glow impacts. Alternative 4 would still cause a significant and unavoidable impact on gateway visual character. In summary, impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply under Alternative 4.

(b) Transportation. Alternative 4 would reduce the traffic safety effects of the project. Non-LED billboards would be less distracting to drivers because they would be less bright and would not have changing messages, which are more noticeable and distracting.

(c) Other Impacts. Alternative 4 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

### **7.4.3 Attainment of Project Objectives**

Alternative 4 would partially achieve the basic Project objectives of erecting new freeway billboards, though not digital billboards, and would provide similar but reduced benefits to the applicant and City in terms of advertising revenue and promotion of local businesses.

## **7.5 ALTERNATIVE 5: ALTERNATIVE LOCATION--TWO BILLBOARDS ON EAST SIDE AND ONE BILLBOARD ON WEST SIDE OF I-880**

### **7.5.1 Principal Characteristics**

Under **Alternative 5**, two of the three proposed billboard structures would be located on the east side of I-880 at two of the four east side Site Options 1 through 4, and one of the three would be located on the west side of I-880 at one of the three west side Site Options 6 through 7. All other design and operational characteristics would be similar to the Project.

### **7.5.2 Impacts and Mitigations**

(a) Aesthetics. Similar to Alternative 3, Alternative 5 would reduce the number of billboards on the east side of the freeway where potential impacts on nearby homes could occur. Alternative 5 would allow for optimal placement of the two billboards on the east side to avoid or reduce visual impacts on nearby homes. With only two billboards instead of three on the east side of I-880, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 5 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road. There would be less interference with future City implementation of gateway landscaping and signage treatments recommended in the General Plan and Streetscape Master Plan. Impacts on I-880 gateway visual character would be reduced but would nevertheless remain significant and unavoidable. Impact and mitigation findings 4-1 through 4-3 for the proposed Project would continue to apply.

(b) Transportation. With only two billboards instead of three on the east side of I-880, there would be some decrease in potential Project effects on driver attention.

(c) Other Impacts. Alternative 5 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

### **7.3.3 Attainment of Project Objectives**

Alternative 5 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

## **7.6 ALTERNATIVE 6: ALTERNATIVE LOCATION--ONE BILLBOARD ON EAST SIDE AND TWO BILLBOARDS ON WEST SIDE OF INTERSTATE 880**

### **7.6.1 Principal Characteristics**

Under **Alternative 6**, one of the three proposed billboard structures would be located on the east side of I-880 at one of the four east side site options, and the other two billboards would be located on the west side of I-880 at two of the three west side site options. All other design and operational characteristics would be similar to the Project.

### **7.6.2 Impacts and Mitigations**

(a) Aesthetics. Alternative 6 would allow for optimal placement of the one billboard on the east side of I-880 to reduce or avoid visual impacts on nearby homes. With only one billboard on the east side instead of three, there would be a proportional decrease in impacts on light, glare and sky glow. Alternative 6 would also reduce or avoid Project visual impacts on sensitive residential uses east of the Penitencia Creek channel near Dixon Landing Road.

The two billboards located on the west side of I-880 would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the

interchange overpass and southbound on-ramp embankment, the two billboards on the west side of the freeway would be visible to drivers entering Milpitas for a shorter distance.

(b) Transportation. With only one billboard instead of three on the east side of I-880, there would be a substantial decrease in potential Project effects on driver attention.

(c) Other Impacts. Alternative 6 would have similar less-than-significant impacts with respect to all other environmental topics included in CEQA Guidelines Appendix G and evaluated in Section 6.4, Effects Found Not to be Significant, of this EIR.

### **7.6.3 Attainment of Project Objectives**

Alternative 6 would achieve most of the basic Project objectives by erecting three new freeway digital billboards, as well as providing benefits to the applicant and City in terms of local business promotion and generation of associated advertising revenue.

## **7.7 ALTERNATIVE 7: ALTERNATIVE LOCATION--ALL THREE BILLBOARDS ON WEST SIDE OF INTERSTATE 880**

### **7.7.1 Principal Characteristics**

Under **Alternative 7**, All Three Billboards on West Side of Interstate 880, all three billboard structures would be installed along the west side of I-880 rather than along the east side of the freeway, either on: the three west side Site Options 5 through 7 shown on Figure 7.1, or on undeveloped land west of N. McCarthy Boulevard, or on some combination of these various options. All other design and operational characteristics would be similar to the Project.

### **7.7.2 Impacts and Mitigations**

(a) Aesthetics. Billboards located on the west side of I-880 south of Dixon Landing Road would result in similar significant and unavoidable impacts on the Dixon Landing Road interchange gateway to Milpitas. Due to the interchange overpass and southbound on-ramp embankment, billboards at these west side locations would be visible to drivers entering Milpitas for a shorter distance.

Billboards located on the west side of N. McCarthy Boulevard within the McCarthy Center office, industrial and commercial park areas and/or the adjacent WalMart site would be farther away from the Dixon Landing Road interchange gateway to Milpitas, and thus would have a less substantial impact on this important gateway view. However, this reduction in impact would be offset by increased visibility from the SR 237 gateway to Milpitas. Therefore, the impact on gateway visual character would still be significant and unavoidable. As a result, impact and mitigation findings 4-1 and 4-3 would continue to apply.

(b) Transportation. In general, digital billboards located on the west side of I-880 would have traffic safety effects similar to the proposed Project. Billboards located on lands east or west of N. McCarthy Boulevard would be less distracting to drivers because they would be farther away from the freeway and, due to the interchange overpass and southbound on-ramp embankment, would be visible to approaching drivers for a shorter distance.



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: January 23, 2013

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- APPLICATION:** **Site Development Permit No. SD12-0007: Electronic Freeway Orientated Signs**
- APPLICATION SUMMARY:** A request to allow two freeway billboard signs along the east side of Interstate 880.
- LOCATION:** 1545 California Circle (APN: 22-37-049) and 1301 California Circle (APN: 22-38-002)
- APPLICANT:** Milpitas Sign Company, LLC; 555 12<sup>th</sup> St. #950, Oakland, CA 94607
- OWNER:** APN: 22-37-049: Westcore Greenfield LLC; 1761 South Hotel Cir., Ste. 100, San Diego, CA 92122  
APN: 22-38-002: A1 Pak CA LLC; 480 Gianni St., Santa Clara, CA 95054
- RECOMMENDATION:** **Staff recommends that the Planning Commission adopt Resolution No. 13-004 recommending approval of project to the City Council.**
- PROJECT DATA:**
- General Plan/  
Zoning Designation: Industrial Park (INP)/Industrial Park (MP)
- Overlay: Site and Architectural (-S)
- CEQA Determination: Certify the Final EIR (SC#201062083) pursuant to Section 15090 of the CEQA Guidelines.
- PLANNER:** Sheldon S. Ah Sing, Senior Planner
- PJ:** 3221
- ATTACHMENTS:**
- A. Resolution No. 13-004
  - B. Project Plans
  - C. Final Environmental Impact Report

# LOCATION MAP



## **BACKGROUND**

There has been an interest by the City of Milpitas and private entities to develop off site advertising displays or digital billboards, also known as “changeable copy or static copy freeway signs” along Interstates 880 and 680. The purpose of these signs is to promote economic development, expand the communication of community services, and provide a reliable and ongoing source of revenue for the City of Milpitas.

In November 2006, the City certified an Environmental Impact Report that summarized and identified the impacts of locating three new signs along Interstate 680 and Interstate 880 for the purposes of offsite advertising. Of those signs, two of them would be capable of transmitting electronic changeable media.

The City’s Municipal Code includes a process for off-site advertising displays adjacent to interstate highways and state routes. The Code identifies specific criteria to ensure that the development of off-site advertising displays in the city does not create visual clutter or create other operational impacts on surrounding uses, and that it promotes the public health, safety and general welfare. The provisions are consistent with state and federal laws that govern such signs and with the accepted standards of the Outdoor Advertising Association of America.

This application for the Site Development Permit and the Development Agreement are submitted pursuant to the Municipal Code ordinance [Title XI, Chapter 10, Section 24.05(G)]. A Development Agreement is also required that requires only City Council approval and is not a part of this Site Development Permit application. The Planning Commission will make a recommendation on the Site Development Permit to the City Council.

## **PROJECT DESCRIPTION**

### ***Discussion***

The project includes the following two components:

- (1) A Site Development Permit is submitted to consider the design and compliance of the signs with the zoning ordinance regulations; and
- (2) A Development Agreement between the City and Milpitas Sign Co., LLC proposes to identify the timeframe for responsibilities, obligations and shared benefits of erecting an off-site advertising display.

### ***Site Development Permit***

The applicant proposes two off-site advertising displays on private property along the east side of Interstate 880. The Code provisions and development standards are as follows:

### **Review Process**

Two sign vendors were chosen by the City through a competitive selection process. Each sign vendor will enter into an agreement with the City regarding the location, construction, maintenance and define the public benefit of the signs. The design of the signs requires consideration of a Site Development Permit by the Planning Commission and the City Council. It is the intent that the signs by the two vendors are to be compatible in design, but not necessarily identical.

Zoning Development Standards for Off-Site Advertising Signs

*Maximum Height*

The overall height of the sign shall not exceed seventy (70) feet.

*Distance between other off-site advertising displays.*

No off-site advertising display shall be placed within one-thousand (1,000) feet from another advertising display on the same side of any portion of the interstate.

*Maximum sign area*

The maximum sign area shall not exceed one-thousand, two-hundred (1,200) square feet on each side. Ancillary fixed signs or logos may be permitted on the sign's supporting structure that would not count towards the maximum allowed sign area.

*Illumination*

The two-sided displays would use LED technology. Light intensity would be in compliance with state laws. An automatic dimming device or light sensors must be integrated into the sign and illumination must be designed to reduce glare or casting on adjacent properties.

**Analysis of the Two Proposed Signs**

1545-1547 California Circle Sign Location and Design

The sign is proposed to be located within the parking lot of the retail parcel shown on the attached site plan (Attachment B).

The main support column of the sign is 50 feet tall from grade. The dimension from the grade to the underside of the display is 46'-3". The total display area is 672 square feet for each side (14 feet by 48 feet) and includes panels on the support structure for "City of Milpitas" and the adjacent retail tenants. The structure includes a stone veneer base, and multiple panels for ancillary signs. The trim and structure have earth tone colors. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

At the base of the sign, drought tolerant plants will be used to form the planter as required by the sign code.

1301 California Circle Sign Location and Design

The sign is proposed to be located within the parking lot of the industrial building shown on the attached site plan (Attachment B).

The main support column of the sign is 60 feet tall from grade. The dimension from the grade to the underside of the display is 46'-3". The total display area is 672 square feet for each side (14 feet by 48 feet) and includes panels on the support structure for "City of Milpitas". The structure

includes a stone veneer base, and multiple panels for ancillary signs if necessary. The trim and structure have earth tone colors. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

At the base of the sign, drought tolerant plants will be used within the base planter as required by the sign code.

**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 1**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The proposed development agreement and signs promote and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.
<i>2.a-I-4 Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City’s location to both industrial and commercial use.</i>	<b>Consistent.</b> The proposed development agreement and signs allow the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
<i>2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	<b>Consistent.</b> The proposed development agreement and signs provide a partnership and provides an opportunity to promote businesses.

***Zoning Ordinance***

The proposed sign is consistent with the zoning ordinance regarding development and operational standards. The design, scale, size and materials of the sign as depicted in the project plans are consistent with the requirements of the sign ordinance. The sign complements the architectural theme of buildings along the I-880 corridor within Milpitas.

The development of the sign will result in a public benefit to the City outweighing any adverse impacts that may be caused by the displays. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.

### **ENVIRONMENTAL REVIEW**

Staff conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that because the proposal was not entirely covered by the previous Supplemental Environmental Impact Report (EIR), another subsequent EIR be drafted.

The scope of the EIR included the installation of three separate billboards containing a total of six advertising facings, two per structure, along the east side of I-880 south of Dixon Landing Road. While the EIR includes four possible locations where three of the billboards could be located, the signs will only be located two of the locations based on leasing negotiations with property owners and distance limitations imposed by State law. The Notice of Preparation for the EIR was circulated for public review between July 25, 2010 and August 25, 2010. The responsible agency was identified as Caltrans at the time.

The Draft EIR was circulated for public review for 45 days beginning May 18, 2011. The impacts identified in the EIR affect aesthetics at the project and cumulative levels.

The EIR concludes that the three billboards may be perceived as degrading the visual character and quality of the General Plan identified I-880 “gateway” to Milpitas. Implementation of suggested mitigation measures may reduce the impact, but cannot guarantee that the impacts can be reduced to a level of less than significant and therefore, the impact remains “significant and unavoidable”. The EIR also identifies that the electronic displays may cause spill over glare and glow impacts in the vicinity. Suggested mitigation measures, such as built in dimming mechanisms and periodic review will reduce the impact to “less than significant”. Taking into account the previous EIR and that there are other billboards proposed for the Interstate 880 corridor, the cumulative impact on the community visual character would be “significant and unavoidable” because any of the suggested mitigation measures may reduce the impacts of the signs, but it cannot be assured that the impacts would be reduced to a level of less than significant.

Staff notes that while the EIR discusses the project’s billboard structures being 70 feet in height, the proposed project’s billboard heights are 50 and 60 feet respectively, which corresponds closely with Alternative 2 (Lower Height) within the EIR (Chapter 7), thus reducing the anticipated impacts of the project.

The City Council will need to make findings of overriding considerations for any significant and unavoidable impacts of this EIR. Those findings would consider economic benefits that outweigh the physical impacts of the billboard signs.

The project's Final EIR was drafted and responds to the four responders to the EIR. The Final EIR, which includes the Draft EIR, any revisions to the Draft EIR and the response to comments are included at Attachment C.

#### **PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

#### **CONCLUSION**

The City has expressed a desire to allow off-site advertising displays to promote economic development. The project's EIR identifies potential impacts to the environment and statements of overriding consideration are necessary. Specific provisions and development and operational standards ensure compatibility with surrounding uses and acknowledge that the public benefits outweigh adverse impacts. The proposed sign is consistent with the provisions of the sign ordinance.

#### **RECOMMENDATION**

**STAFF RECOMMENDS** that the Planning Commission close the public hearing and adopt Resolution No. 13-004, recommending approval of the project to the City Council.

#### *Attachments:*

- A. Resolution No. 13-004
- B. Project Plans
- C. Final Environmental Impact Report

**IX. PUBLIC HEARING****1. SITE DEVELOPMENT  
PERMIT NO. SD12-  
0007**

**Sheldon Ah Sing, Senior Planner**, presented a request to allow two electronic freeway billboard signs along the east side of I-880, located at 1545 California Circle and 1301 California Circle, zoned Industrial Park with Site and Architectural Overlay. Applicant: Clear Channel Outdoor, Inc.

The purpose of the billboards is to promote economic development, expand communication of community services, and provide a source of revenue for the City. An Environmental Impact Report (EIR) summarized impacts of signs in 2006. A sign program was approved in 2008, and a zoning code amendment to allow off-site billboards was approved in 2010. The project includes a subsequent EIR to address impacts of the four possible locations (two of which are being considered this evening). A Site Development Permit considers the design and compliance with the sign ordinance. There will also be a development agreement to consider revenue sharing with the City.

Staff reviewed the applicant's proposal, which includes two of the four possible locations (options 3 & 4) and the design of the structures. Site option 3: The sign height at the 1301 California Circle location would be 60 ft. Site option 4: The sign height at the 1545 California Circle location would be 50 ft. At site option 4 there is currently a 45 ft high sign which will be replaced by one of the new billboard signs.

These two proposed signs are below the identified sign height in the EIR of 70 ft. The signs would be double panels in a "V" shape, illuminated by LED lighting directed towards the freeway and away from residents' views. The signs need to be located 1,000 ft from each other and both signs are 672 sq. ft.

Some unavoidable impacts are identified. I-880 gateway visual character and cumulative impact on community aesthetic character. There was public outreach with noticing regarding the EIR. Staff heard back from CalTrans and received comments from some residents and from the adjacent Chevron Station.

The City Council has expressed a desire to allow billboards to promote economic development. Conditions of approval and the development agreement assure operational compliance.

*(Recommendation: Adopt Resolution No. 13-004 recommending approval of the project to the City Council.)*

**Staff clarified some concerns of the Commissioners:**

The operator of the sign will have the authority to select the advertising vendors on the sign and negotiate the price. There would be an allocation of time for City community advertising in a standard rotation.

When staff drafted the sign ordinance they researched other cities, ordinances in place and federal regulations to determine what would be safe and feasible for the development of billboard signs. The applicant would need to adhere to the State Outdoor Advertising Act and apply for a permit from CalTrans. Ongoing maintenance of the sign will be the

responsibility of the sign provider, not the City.

Staff stated that the alternative locations are a result of the EIR process, but the two locations presented are the project locations to be evaluated, not the other locations. The height is a result of view sheds and power line limitations. The location of the signs depends on the ability to lease the property as well as meeting the requirements of the sign code and CalTrans. The distance between site options 2 & 3 is less than 1,000 ft. This would preclude using one site or the other.

Of the four possible site options, staff recommends sites 3 & 4 because they are spaced out enough to allow drivers to view the advertisements with enough time and those are the locations proposed by the applicant. The signs have two panels at a “V angle” that would be visible from both northbound and southbound traffic and directed away from residents.

The Council has certified the EIR in 2006 which identified locations of signs. The Council has given direction that there be six signs.

**Commissioner Madnawat** – Would like to recommend the Commission put a condition to limit the operation time of the lighted sign between certain hours. Additionally, he feels that signs should not be so high and is not beneficial.

**Bruce Qualls, representing Clear Channel Outdoor.** Mr. Qualls confirmed that the distance between signs needs to be a minimum of 1,000 ft. The 1,000 ft. regulation is based on one side of the freeway. There will be a rotation of advertisement on the billboards with eight (8) separate advertisements lasting eight (8) seconds each. 64 second cycle of the advertisements.

They ensure the brightness of signs (increase & ambient light) is limited to 0.3 ft candles at less than 250 ft. away, which can be analyzed with a light meter. There are 9 light meters built into the sign that measures the ambient light and adjusts automatically. There is no movement, motion or flashing of the advertisement.

**Commissioner Barbadillo** referred to a traffic safety concern from the Dept of Transportation in the attached letter dated June 2011. They state that the recommendations from the City of Milpitas fall short by saying that it is not a traffic concern. The Department of Transportation state that studies from different agencies indicate that shorter messages are a major traffic safety concern. Commissioner Barbadillo asked if the proposed ad duration of 64 seconds is considered to be a short message.

**Sheldon Ah Sing, Senior Planner** – Stated that the operator of the signs will need to follow the CalTrans outdoor advertising act to be consistent with their regulation and that what is proposed is safe.

#### **Open the Public Hearing:**

**Mr. Sanga, representing Chevron Gas Station on California Circle** – In 2008 this Chevron location requested from the City permission for their own sign, which was denied. The City informed the Chevron station to place their signage on the sign that had been erected on the

Starbucks location. Mr. Sanga feels they are being extorted by the sign owner on the Starbucks property and that they need to have their own separate sign. They are against the proposed new sign and will be seeking legal remedy.

**Chevron Station speaker** expressed concern if the sign at site option #4 next to the Dixon Landing exit will be safe. He feels that drivers will be distracted trying to read the sign as they exit. If the Chevron Station property owner removes their name from this sign program, will the proposed sign be legal?

**Kristen Valus, City of Milpitas resident** – Ms. Valus is not in favor of the proposed billboard signs and she was not in favor of the prior sign program back in 2008. Ms. Valus emailed pictures taken from her residence third floor where the current 45 ft high can be seen. She questions why it is necessary to erect an even higher and bigger sign, and why the signs can't be placed on the other side of the freeway where there are no residences. She feels the applicant is not concerned about the needs of the residents that will be able to see the light glow from the signs.

**Kelly Alexander City of Milpitas resident** – Mr. Alexander drives the 237 corridor every day and he will be impacted by the light from the proposed signs. Even though studies may say that certain light levels are safe, does not mean that it should be done. The light is annoying to drivers and the City should not make this section of the freeway like other highway areas.

**Motion** to close the public hearing.

M/S: Sandhu / Ciardella

AYES: 5

NOES: 0

ABSENT: 2 (Mohsin, Luk)

ABSTAIN: 0

**Clarifications / Deliberations:**

**Sheldon Ah Sing, Senior Planner** – The Commission will make their recommendation on the proposal for sites 3 & 4. The City Council will make the final decision on the selected alternative sites. At that time they will have the development agreement. A notice was sent to CalTrans regarding the final EIR study from the state; and as yet they have not responded to us. Staff briefly went over the EIR process and approval. The land where the signs will be erected is owned by Westcore Greenfield and Al Pak CA. The Chevron Station may apply to withdraw from their current sign program, and apply for their own sign, which would be based on the City sign ordinance.

**Commissioner Barbadillo** – Addressed the concerns of the two Milpitas

residents and provided information on ways they could seek relief.

**Commissioner Madnawat** – Feels that the Commission can approve both sign, but only allow one sign be erected first, with a nighttime curfew, get public feedback and observe if the sign impacts traffic or accidents. Thereafter, the second sign can be erected if there is no impact. He also feels that the signs should not be so close together.

**Commissioner Barbadillo** – Also feels that the signs should be approved one at a time and that the public should be more informed about what will take place.

**Chair Mandal** – If we approve the signs as a package, the two signs would have consistency. Maybe we could consider site options 1 & 3 in order to have more distance between signs. It would be difficult placing restricted hours of sign operation. He is concerned about the public concerns heard tonight, but also concerned about business needs to have a sign.

**Commissioner Ciardella** – Would like to adopt the resolution as stated, adding that City Staff to work with the applicant and owner of the property to work something out for the Chevron Station sign problem.

**Motion** to adopt Resolution No. 13-004 recommending approval of the project to the City Council with City staff to work with the applicant.

M/S: Ciardella / Sandhu

AYES: 3 (Ciardella, Mandal, Sandhu)

NOES: 1 (Barbadillo)

ABSENT: 2 (Mohsin, Luk)

ABSTAIN: 1 (Madnawat)

# MEMORANDUM

*Department of Planning and Neighborhood Services*

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**To:** Planning Commission  
**From:** Sheldon S. Ah Sing, Senior Planner  
**Subject:** Item IX-1, Freeway Billboard Signs  
**Date:** January 23, 2013

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The correspondence below was sent to Planning Staff today:

**From:** Kristen Valus [mailto:klvalus@yahoo.com]  
**Sent:** Tuesday, January 22, 2013 7:58 PM  
**To:** Joann DeHerrera  
**Cc:** Kelly Alexander  
**Subject:** 1/23/13 Public Hearing re: Billboard comments

To Whom It May Concern:

We are writing in opposition of the request by Clear Channel Outdoor to allow two freeway billboard signs on the east side of 880 at 1545 and 1301 California Circle. We live at 464 Cascadita Terrace and our bedroom and living room windows face the direction of the freeway.

We opposed the billboards for several reasons. First, the freeway corridor is relatively free of signage and has no billboards in this area. It is a notable difference from the area along 880 just south of us in San Jose which has billboard after billboard and is very unsightly. What is to stop other companies following suit wanting billboards along our section of freeway? What will these billboards be advertising? Will they be lighted? How high will they be? Please be thoughtful about the can of worms you are opening up for minor additional revenue to the city as well as furthering the industrial "look" of our neighborhood.

We are concerned that the needs of the neighborhoods which are extremely close to the light industrial areas around California Circle are not being taken into consideration. We have already endured Solyndra's building being abandoned perhaps left with industrial waste, extremely bright lights in the Solyndra parking lots that shine all night into our bedroom, several very large churches adding major structures in the back of their property (which faces our neighborhood) and now additional signage.

Several years ago, we also objected to the signage request by the 1545 California Circle property but the sign was built and remains empty except for Starbucks. Our concerns at the time were that this signage would be tall enough to be seen from our property but were told by the engineers and the developers that that would be impossible. Well, we CAN see it from our property, out of our bedroom windows and it is lighted and very annoying! We do not want any more signage on that property that can be seen, especially ugly billboards!

If this request is approved to go to the City Council as the Planning Commission has indicated they are likely to, we request that great care is taken to place these billboards where they cannot be seen from the neighborhoods at all and they are are not lighted!

We are sorry we cannot attend the meeting tonight to express our opposition in person.

Mr. Kelly Alexander  
464 Cascadita Terrace  
415-867-9673