



# CITY OF MILPITAS

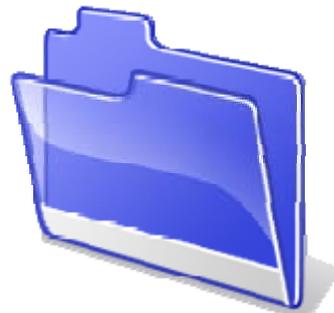
455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479  
GENERAL INFORMATION: 408-586-3000, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

10/15/2013

Agenda Item No. SA3



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





# Milpitas Unified School District

1331 E. Calaveras Blvd., Milpitas, CA 95035

Web site: [www.musd.org](http://www.musd.org)

**Cary Matsuoka**  
Superintendent

Tel. (408) 635-2600 ext. 6013 Fax (408) 635-2616

E-mail: [cmatsuoka@musd.org](mailto:cmatsuoka@musd.org)

October 8, 2013

Mr. Thomas C. Williams  
Executive Director  
Milpitas Economic Development Corporation  
City Manager, City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035

**RE: First Amendment to Standstill Agreement  
McCandless Property**

Dear Tom,

Thank you for the productive meeting on September 24 where the MEDC/City and the District were able to clarify their positions regarding the McCandless property. We also appreciate your October 2 letter, in which the MEDC/City advises that it can legally sell only a portion of the property to the District for school use because of park space obligations.

After much consideration, the District proposes to purchase 6.8 net usable acres in the southernmost portion of the 10.8 acre McCandless property, at a price of \$13.6 million (\$2 million/acre, the same price the MEDC/City paid for it) for construction of a K-6 school, leaving the more rectangular shaped northern 4 acres for park land. As you know, the District must move forward expeditiously to acquire the property since residential development is well under way in the Transit Area. Increased student enrollment over the past ten years and the imminent expansion of population in the Transit Area compel the District's governing board to fulfill its fiduciary obligations and take active steps to purchase land and begin construction of a new elementary school. Our requested amendment of the Standstill Agreement is intended to facilitate that process.

The longer the process for constructing a new elementary school takes, the more likely it is that money from our Measure E Bond, approved by the voters in June, 2012 with the promise of a new elementary school, will lose value. The District did a thorough search for viable school sites in the Transit Area and the only property which meets the initial requirements is the McCandless property. Unless a portion of it can be extricated from the Standstill Agreement to be purchased by the District, more time will be lost, resulting in higher costs and crowded schools for a longer period of time.

We are aware that the MEDC/City has statutory obligations regarding park land just as the school district has statutory obligations regarding a school site and, as agreed in our meeting, we did further research

regarding our specific obligations. The District shares the MEDC/City's concern that it not violate state law regarding its obligation to set aside land in the Transit Area as park/open space. Our research notes that within limits, the MEDC/City makes its own land use decisions, including the amount and designation of park and open space within the Transit Area Specific Plan. (Cal. Const. Art. XI, § 7 [conferring on cities the power to make and enforce "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."]; *DeVita v. County of Napa*, 9 Cal. 4th 763, 782, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995) [recognizing that a city's power to control its own land use decisions derives from its inherent police power through the Constitution, not from the delegation of authority by the state.]).

After much consideration, the District proposes to alter its plans from a K-8 school to a K-6 school so that it can purchase 6.8 acres of the McCandless property. Under the California Department of Education's most recent guidelines, a K-6 school requires 9.8 acres for 600 students unless "unusual circumstances" exist, such as insufficient available land due to urban or suburban development, in which case the District can deviate from those standards. (Ed. Code, § 17251; *Guide to School Site Analysis and Development* ("Guide"); CCR, Title 5, Section 14010).

The District has carefully considered a number of factors to arrive at the conclusion that 6.8 acres is the minimum amount of land on which it can construct a safe and educationally sufficient elementary school. Just as the MEDC/City must comply with a variety of state and federal laws regarding land use, the District must comply with laws affecting site size despite an exemption for unusual circumstances. Those include compliance with ADA laws, Title IX requirements, the Reduction in Class Size legislation and the approvals required by CEQA and DSA (Division of State Architect). The other elementary school in the Transit Area (Zanker) is sited on 7 acres. In evaluating all of the circumstances, the District has determined it can fit the new elementary school on no less than 6.8 acres. The District proposes to purchase 6.8 acres of the McCandless property at a cost of \$13.6 million (\$2 million/acre). In order to do so and in order for the Oversight Board and the Department of Finance to approve the transaction, the MEDC/City must agree to an amendment of the Standstill Agreement, in which the 6.8 acres of property will be replaced by the District's cash payment.

Given that the Oversight Board has established a time frame, in order for us to move forward expeditiously, we respectfully request that this letter with the proposal outlined below ("McCandless Proposal") be included in the October 15, 2013 agenda materials as background for discussion and determination to proceed. Should the MEDC/City Council agree to the McCandless Proposal, the District will modify the First Amendment to the Standstill Agreement for final approval at the November 5, 2013 MEDC/City Council meeting. If approved, the modified First Amendment will be presented to the Oversight Board at its November 7, 2013 meeting.

McCandless Proposal. The District proposes to purchase 6.8 net usable acres in the southernmost part of the 10.8 acre McCandless property for construction of a K-6 school. In order to ensure this transaction does not harm the interests of the taxing entities affected by the litigation, the remaining 4 acres and the District's cash payment would remain in the asset pool, with future disposition to be determined through the lawsuit process. The District proposes to purchase the 6.8 acres for \$13.6 million (\$2 million/acre, the same price the MEDC/City paid for it). The Standstill Agreement must be amended in order to effectuate the purchase and the amendment must not harm the interests of the taxing entities affected by the litigation.

We look forward to the MEDC/City Council's agreement to separate 6.8 acres of the McCandless property from the Standstill Agreement, allowing the District to meet the needs of the increased school population, respecting the MEDC/City's legal obligations regarding park space and development impact fees and causing no harm to the taxing entities affected by the current litigation.

Thank you.

Sincerely,



Cary Matsuoka  
Superintendent

Copies to:      President and Members, Board of Trustees, Milpitas Unified School District  
                         Kathleen J. McKee, Fagen Friedman & Fulfroost, LLP

## RESOLUTION NO. 25

### RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY DIRECTING THE SUCCESSOR AGENCY TO CONSIDER THE FIRST AMENDMENT TO THE STANDSTILL AGREEMENT AND TO PRESENT IT TO THE CITY AND MEDC

**WHEREAS**, the California Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 ("Dissolution Law"); and

**WHEREAS**, the Oversight Board has a fiduciary duty to the taxing entities that receive property tax money previously distributed to the Redevelopment Agency and desires to promote their interests, including those of the Milpitas Unified School District ("MUSD"); and

**WHEREAS**, student enrollment in the MUSD has grown by 5% between the 2007-08 and the 2012-13 school years, and is projected to continue growing; and

**WHEREAS**, the Milpitas Transit Area Specific Plan ("Plan"), adopted in June 2008 and amended in December 2011 by the Milpitas City Council, provides for the development of a 437-acre area of the City ("Transit Area"); and

**WHEREAS**, the Plan provides for the construction of approximately 4,109 housing units within the boundaries of the MUSD, and projects that an additional 688 K-8 students would enroll in the MUSD as a result; and

**WHEREAS**, the Plan also projects that an additional 414 students will enroll in the MUSD from a nearby planning area; and

**WHEREAS**, the Plan explains that this enrollment growth, combined with the existing distribution and capacities of MUSD schools, creates a need for a new K-6 or K-8 school for the MUSD, which would ideally be located in the Transit Area; and

**WHEREAS**, the Plan explains that there is only one location within the Transit Area that potentially meets the requirements imposed by the California Department of Education for school sites; and

**WHEREAS**, the Plan designates the parcels in that location, identified by Assessor's Parcel Numbers 86-41-016, 86-41-017, and 86-41-018 (collectively, the "McCandless Property"), as a school; and

**WHEREAS**, on February 15, 2011, Mission West Properties, LLC ("Mission West") agreed to sell the McCandless Property to the former Redevelopment Agency for the price of \$21.78 million, with a down payment of \$3 million, four additional annual payments of \$3 million and a final payment of the unpaid portion ("Purchase Agreement"); and

**WHEREAS**, on March 7, 2011, the former Redevelopment Agency assigned its rights and obligations under the Purchase Agreement to the Milpitas Economic Development Corporation

("MEDC"); and

**WHEREAS**, on January 9, 2012, Mission West conveyed the McCandless Property to the MEDC; and

**WHEREAS**, on March 28, 2013, the MUSD offered to purchase the McCandless Property from the MEDC for \$21.78 million; and

**WHEREAS**, there is pending litigation between the MEDC, the Successor Agency, the Milpitas Housing Authority ("MHA") and the City on one side and the California Department of Finance, the State Controller's Office, County Office of Education and the County of Santa Clara on the other, regarding asset transfers made from the Milpitas Redevelopment Agency ("MRDA") prior to dissolution (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento); and

**WHEREAS**, the McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC; and

**WHEREAS**, the Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property; and

**WHEREAS**, each additional year of delay in opening a new school on the McCandless Property costs the MUSD an estimated \$1.25 million or more in construction costs; and

**WHEREAS**, none of the parties to the aforementioned litigation would be prejudiced if the MUSD paid the MEDC the amount of money paid to Mission West under the Purchase Agreement, and in exchange assumed the MEDC's position as the owner of the McCandless Property;

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board directs the Successor Agency, within 14 days of the passage and adoption of this resolution, to provide the draft First Amendment to the Standstill Agreement ("First Amendment") considered at this meeting and attached hereto as **Exhibit A**, to the MEDC and the City for their consideration.

**BE IT FURTHER RESOLVED** that if the MEDC, the Successor Agency, and the City agree to the First Amendment no later than November 1, 2013, then the Oversight Board directs the Successor Agency to present the First Amendment to the Oversight Board for review and approval, and, if the Oversight Board so directs, to execute the First Amendment as well.

**PASSED AND ADOPTED** this 12th day of September, 2013 by the following vote:

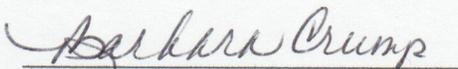
AYES: (7) Mendizabal, Grilli, Gomez, Karlen, Knopf, McInerney, Williams

NOES:

ABSENT:

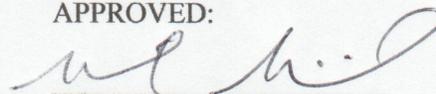
ABSTAIN:

ATTEST:



Barbara Crump, Oversight Board Secretary

APPROVED:



Mike Mendizabal, Chair

Resolution No. 25

00557-00104/488191.4

**EXHIBIT A**  
**FIRST AMENDMENT TO STANDSTILL AGREEMENT**

Resolution No. 25

00557-00104/488191.4

**FIRST AMENDMENT  
TO  
AGREEMENT BETWEEN THE CITY OF MILPITAS, THE SUCCESSOR AGENCY TO  
THE CITY OF MILPITAS AND THE MILPITAS ECONOMIC DEVELOPMENT  
CORPORATION REGARDING PRESERVATION OF ASSETS PER OVERSIGHT  
BOARD REQUEST ("STANDSTILL AGREEMENT")**

**THIS FIRST AMENDMENT TO THE STANDSTILL AGREEMENT ("First Amendment")** is entered into by the City of Milpitas ("**City**"), the Successor Agency to the Milpitas Redevelopment Agency ("**Successor Agency**") and the Milpitas Economic Development Corporation ("**MEDC**"), as requested and approved by the Milpitas Redevelopment Oversight Board ("**Oversight Board**") on \_\_\_\_\_, 2013.

**RECITALS**

A. The Milpitas Unified School District ("**MUSD**") enrollment has grown by 5% between the 2007-08 and the 2012-13 school years, and is projected to continue growing, with the increase in enrollment concentrated near the middle and south of the City ("**Transit Area**"), where over 4,000 housing units have been approved for development in the next few years.

B. The projected enrollment growth, combined with the existing distribution and capacities of MUSD schools, creates a need for a new K-6 or K-8 school, ideally located in the Transit Area, which is currently served only by Pearl Zanker Elementary School, already at or near enrollment capacity.

C. The quality of MUSD schools is crucial to the well-being of the City, its families, children and all local taxing entities.

D. The City's Milpitas Transit Area Specific Plan (adopted June 2008 and amended December 2011) designated properties with APN Nos. 86-41-016, -017 and -018 (collectively, "**McCandless Property**") as the site for a new elementary school.

E. The approximately 10.9 acre McCandless Property site is an ideal location for an elementary school, since it lies within walking distance of the areas of highest population growth in the City.

F. The McCandless Property is currently owned by the MEDC under a March 7, 2011 assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and -018," dated February 15, 2011, between Mission West Properties, LLC ("**Mission West**") as the seller and the Milpitas Redevelopment Agency ("**MRDA**") as the buyer for a total price of Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000) ("**Purchase Agreement**").

G. The Purchase Agreement calls for: (1) an initial payment of Three Million Dollars (\$3,000,000); (2) annual payments of Three Million Dollars (\$3,000,000) on the anniversary of the effective date for four years; and (3) payment of the unpaid portion on the fifth anniversary of the effective date.

H. On January 9, 2012, Mission West conveyed the McCandless Property to the MEDC in exchange for the initial Three Million Dollar (\$3,000,000) payment and a Promissory Note for the remainder Eighteen Million Seven Hundred Eighty Thousand Dollars (\$18,780,000).

I. Currently there is litigation between the City, the MEDC, the Milpitas Housing Authority ("**MHA**") and the Successor Agency on one side and the California Department of Finance, the State Controller's Office, the County of Santa Clara and the County Office of Education on the other, which involves property and assets (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento.) ("**Milpitas Litigation**").

J. The McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC. The Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property

K. MUSD wishes to acquire title to the McCandless Property as soon as possible to meet the pressing needs of projected enrollment figures and commence the lengthy process required for due diligence, state approvals and construction of an elementary school on the site.

L. MUSD offered to purchase the McCandless Property for Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000).

M. The City has explicitly stated its desire for the McCandless Property to be used for an elementary school.

N. MUSD is willing to reimburse MEDC for any sums already paid toward the purchase of the McCandless Property, and to assume the remaining obligations under the Promissory Note as long as MUSD's total obligations do not exceed Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000).

O. The parties to the Standstill Agreement wish to amend it to allow the sale of the McCandless Property to MUSD.

P. The Oversight Board agrees that an amendment to the Standstill Agreement is appropriate under these circumstances.

Q. This First Amendment will not prejudice the litigation positions adopted by any of parties.

**NOW, THEREFORE**, the Standstill Agreement is amended as follows:

1. The above recitals are true and correct and shall be treated as appended to existing recitals in the Standstill Agreement.

2. Section 4 of the Standstill Agreement is amended to add new Section 4(d) as follows:

**Notwithstanding anything to the contrary, the MEDC and Milpitas Unified School District ("MUSD") shall enter into an assumption and assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and - 018," dated February 15, 2011 ("Purchase Agreement"). Pursuant to this assumption and assignment, MUSD shall assume the MEDC's rights and obligations under the Purchase Agreement. As consideration for such assumption and assignment, any cash already paid to Mission West Properties LLC shall be paid by the MUSD to the MEDC.**

3. Section 4 of the Standstill Agreement is further amended to add a new Section 4(e) as follows:

**Section 4(d) is not intended to harm the positions of any taxing entities affected by the Milpitas Litigation, including the City. If the City made payments under the Purchase Agreement, the City is entitled to be reimbursed. In order to determine the appropriate amount of reimbursement, the City shall present proof sufficient to the Oversight Board through an independent auditor or a procedure agreed upon by the Oversight Board and the City. If the City presents such proof, the Oversight Board shall promptly approve reimbursement to the City by amendment to the Standstill Agreement. In order to protect the interests of all taxing entities affected by the Milpitas Litigation, other than reimbursement to the City as described in the foregoing, the restrictions of the Standstill Agreement apply and the MEDC shall treat funds from MUSD as Working Capital.**

**[Remainder of page intentionally left blank]**

**[Signature page follows]**

**SIGNATURE PAGE FOR FIRST AMENDMENT TO  
STANDSTILL AGREEMENT**

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment as of the date first above written.

**SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF MILPITAS**

By: \_\_\_\_\_  
Name:  
Title:

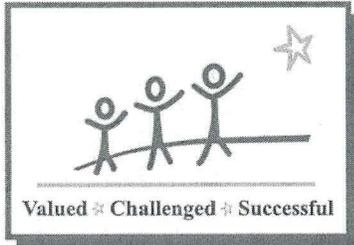
**MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

AS REQUESTED AND APPROVED BY:

**MILPITAS REDEVELOPMENT AGENCY OVERSIGHT BOARD**

By: \_\_\_\_\_  
Name:  
Title:



# Milpitas Unified School District

1331 E. Calaveras Blvd., Milpitas, CA 95035

Web site: [www.musd.org](http://www.musd.org)

**Cary Matsuoka**

**Superintendent**

Tel. (408) 635-2600 ext. 6013 Fax (408) 635-2616

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## Summary of District's Proposal

### To Acquire Property in the Transit Area to Construct an Elementary School.

- More than 4,000 new homes have been approved for development in the City of Milpitas over the next four years largely concentrated in the area near the middle and south of the City known as the Transit Area.
- The Milpitas Unified School District feels a sense of urgency to construct an elementary school located in the Transit Area to accommodate current and future growth from new residential development.
- The 10.8 acre McCandless property, located in the Transit Area, is designated as a school and park site but is currently tied up in litigation which may take years to resolve.
- The District does not have years to wait. It needs to acquire the property as soon as possible since construction of a public school takes approximately three years.
- If the parties to the litigation agree, the McCandless property can be separated from the lawsuit, the District can purchase it and begin construction of the elementary school.
- The District originally proposed that the parties to the litigation agree to separate the whole 10.8 acre McCandless property from the lawsuit so that the District could purchase it for a K-8 school with a joint use athletic field/community park space.
- The City expressed concern that agreeing to release the whole 10.8 acres might violate the City's statutory park obligations, but the City agrees that at least 6 acres of the property can be purchased by the District.
- Acknowledging the City's concerns, the District is willing to revise its original plans and construct a K-6 school on 6.8 acres.
- The District requests that the City Council agree to allow a portion of the McCandless property to be separated from the lawsuit so that the District can purchase 6.8 acres for \$13.6 million (\$2 million/acre, the same price the Milpitas Economic Development Corporation paid for it) and begin the process of constructing a K-6 school.



# Milpitas Unified School District

1331 E. Calaveras Blvd., Milpitas, CA 95035

Web site: [www.musd.org](http://www.musd.org)

**Cary Matsuoka**  
Superintendent

Tel. (408) 635-2600 ext. 6013 Fax (408) 635-2616

E-mail: [cmatsuoka@musd.org](mailto:cmatsuoka@musd.org)

March 28, 2013

Thomas C. Williams, City Manager  
City of Milpitas  
Milpitas Economic Development Corporation  
455 East Calaveras Boulevard  
Milpitas, CA 95035

Subject: Offer to Purchase 10.9-Acre Property on McCandless Drive  
APNs 086-41-016, 086-41-017 and 086-41-018)

Dear Tom,

As you know, the Milpitas Unified School District ("District") and the City of Milpitas ("City") have been in discussion for some years on the appropriate site for a new public school in the southwestern portion of Milpitas. The increasing need for a new elementary school has intensified the search. The District recently completed a new, area-wide review of possible school sites, including the McCandless property, which could adequately serve the Transit Area. From that review, the District concludes that the only location in the Transit Area meeting the California Department of Education ("CDE") criteria for a school site is the 10.9 acre McCandless property identified above ("McCandless Property"). The District's conclusion is consistent with the Milpitas Transit Area Specific Plan which identifies the McCandless Property as a school site. (*Milpitas Transit Area Specific Plan*, Ch. 6, p. 6-26.)

The contemplated new **K-8** school would serve the residents of multi-family developments being constructed as a result of the City's adoption of the Milpitas Transit Area Specific Plan. The proposed location on McCandless Drive has been identified on the Land Use Map of the Transit Area Specific Plan (enclosed) and is discussed at length in Chapter 6 of the Specific Plan document. The new school's recreational functionality is discussed in Chapter 3 of that document where Policy 3.49 (pages 3-35 to 3-36) states in part:

A school should be built on the park site in the McCandless/Centrepoint Area, with recreation facilities that can be jointly used by the City and the School District. The play fields could serve the school on weekdays and be open to the community as a park on evenings and weekends. The school building could also function as a community center on evenings and weekends.

Located at this site, the school would be close to the new Milpitas BART Station which is scheduled to open in 2018. A 21<sup>st</sup>-century K-8 school would be designed to be both an educational and recreational asset for the community. At full capacity 850 students and 75 staff members would occupy the K-8 school. The District's cost to develop such a facility, exclusive of land costs, would be approximately \$55 Million.

Enclosed is a proposed Purchase and Sale Agreement offering to purchase the 10.9-acre McCandless Property for \$21,780,000. While the CDE site size requirement for a K-8 school is normally 16 acres (see *Milpitas Transit Area Specific Plan* Ch. 6, page 6-25), it is anticipated that a site of only 11 acres could receive CDE approval, assuming a high quality and fully-functioning K-8 school to be built on the site. Also enclosed is one of the conceptual school site sketches for the McCandless Property which we have previously shared with your Planning Department.

As you know, the acquisition of land for a public school is heavily regulated by the State of California. Due to the necessary involvement of the Department of Education, the Department of Toxic Substances Control, and other statutory and regulatory agencies, the District would anticipate that the escrow for the McCandless Property would last 15 to 18 months. This escrow would involve the expenditure by the District of substantial funds for due diligence, investigation and approvals. Construction of the school itself would take approximately 24 months. Land and development costs for the new school would be met by a combination of State bond proceeds and local sources of financing, including developer fees, disposition of the District's Murphy School property and passage of a local GO bond.

The District understands that, because the McCandless Property is located within the City's Redevelopment Project Area, it is subject to the legal asset allocation requirements following dissolution of redevelopment agencies throughout the state and that this may be a complex and time-consuming process. However, the time required for the District's due diligence investigation will work in favor of resolution of the redevelopment issues as will the fact that the District is a State agency school district, one of the taxing entities within the Project Area, and thus a preferred purchaser of redevelopment property assets. Thus, we anticipate the sale of the property to the District would be approved by the Department of Finance.

We look forward to your response. Thank you.

Sincerely,



Cary Matsuoka  
Superintendent

Enclosures: (1) Land Use Map and Policy 3.49 of the Transit Area Specific Plan  
(2) Conceptual Sketch  
(3) Purchase and Sale Agreement